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AB-431 Forestry: timber harvesting plans: defensible space: exemptions. (2021-2022)

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Assembly Bill No. 431

CHAPTER 230

An act to amend Section 4584 of the Public Resources Code, relating to forestry.

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 431, Patterson. Forestry: timber harvesting plans: defensible space: exemptions.

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to, and approved by, the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities, as prescribed, including, only until January 1, 2022, the cutting or removal of trees on the person's property in compliance with specified defensible space requirements, as provided.

This bill would extend to January 1, 2026, the board's authorization to exempt a person engaging in the cutting or removal of trees on the person's property in compliance with the specified defensible space requirements, as provided.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4584 of the Public Resources Code is amended to read:

4584. Upon determining that this exemption is consistent with the purposes of this chapter, the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to any of the following:

- (a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.
- (b) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.
- (c) The cutting or removal of dead, dying, or diseased trees of any size.
- (d) Site preparation.
- (e) Maintenance of drainage facilities and soil stabilization treatments.
- (f) Timber operations on land managed by the Department of Parks and Recreation.

(g) (1) The one-time conversion of less than three acres to a nontimber use. A person, whether acting as an individual, as a member of a partnership, or as an officer or employee of a corporation or other legal entity, shall not obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual, as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. "Person," for purposes of this subdivision, means an individual, partnership, corporation, or other legal entity.

(2) (A) Notwithstanding Section 4554.5, the board shall adopt regulations that do all of the following:

(i) Identify the required documentation of a bona fide intent to complete the conversion that an applicant will need to submit in order to be eligible for the exemption in paragraph (1).

(ii) Authorize the department to inspect the sites approved in conversion applications that have been approved on or after January 1, 2002, in order to determine that the conversion was completed within the two-year period described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of the California Code of Regulations.

(iii) Require the exemption pursuant to this subdivision to expire if there is a change in timberland ownership. The person who originally submitted an application for an exemption pursuant to this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

(iv) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that a violation of the conversion exemption, including a conversion applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars (\$10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

(h) An easement granted by a right-of-way construction agreement administered by the federal government if timber sales and operations within or affecting the area are reviewed and conducted pursuant to the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(i) (1) The cutting or removal of trees in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 150 feet on each side from an approved and legally permitted structure that complies with the California Building Standards Code, when that cutting or removal is conducted in compliance with this subdivision. For purposes of this subdivision, an "approved and legally permitted structure" includes only structures that are designed for human occupancy, garages, barns, stables, and structures used to enclose fuel tanks.

(2) (A) The cutting or removal of trees pursuant to this subdivision is limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in accordance with any regulations adopted by the board pursuant to this section.

(B) Trees shall not be cut or removed pursuant to this subdivision by the clearcutting regeneration method, by the seed tree removal step of the seed tree regeneration method, or by the shelterwood removal step of the shelterwood regeneration method.

(3) (A) All fuel treatments conducted pursuant to this subdivision that do not comply with board rules and regulations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.

(B) The costs incurred by the department, city, or county, as the case may be, to abate the nuisance upon a parcel of land subject to the timber operations, including, but not limited to, investigation, boundary determination, measurement, and other related costs, may be recovered by special assessment and lien against the parcel of land by the department, city, or county. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ad valorem taxes.

(4) All timber operations conducted pursuant to this subdivision shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances. This paragraph does not authorize the cutting, removal, or sale of timber or other solid wood forest products within an area where timber harvesting is prohibited or otherwise restricted pursuant to the rules or regulations adopted by the board.

(5) (A) The board shall adopt regulations, initially as emergency regulations in accordance with subparagraph (B), that the board considers necessary to implement and to obtain compliance with this subdivision.

(B) The emergency regulations adopted pursuant to subparagraph (A) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(j) (1) The cutting or removal of trees on the person's property that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break. An exemption pursuant to this subdivision shall be known as the Small Timberland Owner Exemption. The cutting or removal of trees in compliance with this subdivision shall be subject to all of the following conditions:

(A) The notice of exemption is prepared, signed, and submitted by a registered professional forester to the department.

(B) The residual stocking standards are consistent with the following standards and shall be achieved through uneven-aged management, as defined in Section 895.1 of Title 14 of the California Code of Regulations excluding group selection:

(i) On Site I lands at least 150 square feet of basal area shall be retained within the coast forest district, as defined in Section 907 of Title 14 of the California Code of Regulations, while at least 100 square feet of basal area shall be retained within the northern and southern districts, as defined in Section 908 or 909, respectively, of Title 14 of the California Code of Regulations.

(ii) On Site II lands at least 100 square feet of basal area shall be retained within the coast district, while at least 75 square feet of basal area shall be retained within the northern and southern districts.

(iii) On Site III lands at least 75 square feet of basal area shall be retained.

(C) (i) Forest management activities will increase the quadratic mean diameter of the stand.

(ii) Increases in quadratic mean diameter shall only consider trees greater than eight inches in diameter at breast height. The registered professional forester responsible for preparation of the notice of exemption shall report the expected postharvest increase in quadratic mean diameter.

(D) (i) The residual stand consists primarily of healthy and vigorous dominant and codominant trees from the preharvest stand, well distributed through the harvested area.

(ii) No trees of the genus *quercus* that are greater than 26 inches in diameter at stump height, measured 8 inches above ground level, shall be harvested under a notice of exemption submitted pursuant to this subdivision.

(iii) No trees greater than 32 inches in diameter at stump height, measured 8 inches above ground level, shall be harvested under a notice of exemption submitted pursuant to this subdivision.

(iv) The six largest trees per acre within the boundaries of a notice of exemption submitted pursuant to this subdivision shall not be harvested.

(v) The postharvest composition of tree species shall be representative of the preharvest stand condition and demonstrate progression towards climax forest conditions, unless the registered professional forester provides justification explaining how modification of species diversity will benefit forest health and resiliency.

(E) The submitted notice of exemption shall include a description of the preharvest stand structure and a statement of the minimum expected postharvest stocking.

(F) All trees harvested or all trees retained shall be marked by, or under the supervision of, a registered professional forester before felling operations begin.

(G) The board shall adopt regulations for the treatment of understory vegetation and standing dead fuels, canopy closure, clearance to base of live crown, or ladder fuels, that could promote the spread of wildfire. A fuel reduction effort conducted under a submitted notice of exemption pursuant to this subdivision shall comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

(H) A notice of exemption submitted to the department that is within the coast forest district is submitted for a small forestland owner who owns 60 acres or less of timberland within a single planning watershed.

(l) A notice of exemption submitted to the department that is within the northern forest district or the southern forest district is submitted for a small forestland owner who owns 100 acres or less of timberland within a single planning watershed.

(2) (A) All timber operations conducted pursuant to this subdivision may only occur once on any given acre per any 10-year period of time. The department shall only grant a maximum of three exemptions under the Small Timberland Owner Exemption per landowner.

(B) Except for the harvesting of dead, diseased, or dying trees, during this 10-year period the department shall not approve a plan, as defined in Section 895.1 of Title 14 of the California Code of Regulations, that allows even-aged silviculture prescriptions. During this 10-year period of time a registered professional forester shall not submit a notice of exemption pursuant to subdivision (k) on portions of the property subject to an exemption pursuant to this subdivision.

(3) The department may conduct an onsite inspection to determine compliance with this subdivision. The department may notify the regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey before conducting the onsite inspection. The regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey may conduct an inspection with the department.

(4) (A) This subdivision shall be operative for a period of five years after the effective date of emergency regulations as adopted by the board and as of that date is inoperative.

(B) The board shall notify the Secretary of State when emergency regulations have been adopted.

(k) (1) The harvesting of trees, limited to those trees that eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire spread, duration and intensity, fuel ignitability, or ignition of tree crowns. An exemption pursuant to this paragraph shall be known as the Forest Fire Prevention Exemption.

(2) The board may authorize an exemption pursuant to paragraph (1) only if the tree harvesting will decrease fuel continuity and increase the quadratic mean diameter of the stand, and the tree harvesting area will not exceed 300 acres. Increases in quadratic mean diameter shall only consider trees greater than eight inches in diameter at breast height. The notice of exemption may be authorized only if all of the conditions specified in paragraphs (3) to (9), inclusive, are met.

(3) A registered professional forester shall prepare the notice of exemption and submit it to the director.

(4) (A) The submitted notice of exemption shall include a description of the preharvest stand structure and a statement of the postharvest stand stocking levels and the expected postharvest increase in quadratic mean diameter.

(B) The level of residual stocking shall be consistent with maximum sustained production of high-quality timber products. The residual stand shall consist primarily of healthy and vigorous dominant and codominant trees from the preharvest stand. Stocking shall not be reduced below the standards required by the following provisions that apply to the exemption at issue:

(i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Sections 913.3, 933.3, and 953.3 of Title 14 of the California Code of Regulations, where appropriate.

(C) If the preharvest dominant and codominant crown canopy is occupied by trees less than 14 inches in diameter at breast height, a minimum of 100 trees over four inches in diameter at breast height shall be retained per acre for Site I, II, and III lands, and a minimum of 75 trees over four inches in diameter at breast height shall be retained per acre for Site IV and V lands.

(D) All trees that are harvested or all trees that are retained shall be marked or sample marked by, or under the supervision of, a registered professional forester before felling operations begin. The board shall adopt regulations for sample marking for this section in Title 14 of the California Code of Regulations. Sample marking shall be limited to homogenous forest stand conditions typical of plantations.

(5) (A) The board shall adopt regulations for the treatment of understory vegetation and standing dead fuels, canopy closure, clearance to base of live crown, or ladder fuels, that could promote the spread of wildfire. A fuel reduction effort conducted under a submitted notice of exemption pursuant to this subdivision shall comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

(B) The postharvest stand shall not contain more than 200 trees over three inches in diameter per acre.

(C) Vertical spacing shall be achieved by treating dead fuels to a minimum clearance distance of eight feet measured from the base of the live crown of the postharvest dominant and codominant trees to the top of the dead surface fuels.

(D) The standards required by subparagraphs (A) to (C), inclusive, shall be achieved on approximately 80 percent of the treated area.

(6) Before the submission of a notice of exemption to the department, the registered professional forester responsible for submitting the notice shall designate temporary road locations, landing locations, tractor road crossings of class III watercourses, unstable areas, or connected headwall swales on the ground and map their locations.

(7) The construction or reconstruction of temporary roads on slopes of 30 percent or less shall be allowed if all of the following conditions are met:

(A) Temporary roads or landings shall not be located on unstable areas, as defined in Section 895.1 of Title 14 of the California Code of Regulations.

(B) Temporary roads shall be single-lane in width.

(C) Temporary roads shall not be located across a connected headwall swale, as defined in Section 895.1 of Title 14 of the California Code of Regulations.

(D) Construction or reconstruction of temporary roads, landings, or watercourse crossings shall not occur during the winter operating period. Pursuant to subdivision (g) of Sections 923.6, 943.6, and 963.6, as applicable, of Title 14 of the California Code of Regulations, roads and landings used for log hauling or other heavy equipment uses during the winter period shall occur on a stable operating surface and, where necessary, be surfaced with rock to a depth and quantity sufficient to maintain the stable operating surface. Use shall be prohibited on roads that are not hydrologically disconnected and exhibit saturated soil conditions. Timber operations during the winter period shall comply with paragraphs (1) and (2) of subdivision (c) of Sections 914.7, 934.7, and 954.7, as applicable, of Title 14 of the California Code of Regulations.

(E) Use of temporary roads shall comply with the operational provisions of Article 12 (commencing with Section 923) of Subchapter 4 of Chapter 4 of Division 1.5 of Title 14 of the California Code of Regulations, and recognize guidance on hydrologic disconnection in Technical Rule Addendum Number 5.

(F) No logging road or landings construction or reconstruction activities of any kind shall occur within 200 feet of class I and class II watercourses or within 50 feet of a class III watercourse.

(G) The landowner shall retain a registered professional forester who is available to provide professional advice to the licensed timber operator and timberland owner throughout the active timber operations. The name, address, telephone number, and registration number of the retained registered professional forester shall be provided on the submitted notice of exemption. This professional advice shall include overseeing the construction or reconstruction of any temporary roads or landings and advising on necessary mitigation to avoid potential impacts to associated watershed and forest resources. The registered professional forester shall also comply with Section 1035.2 of Title 14 of the California Code of Regulations, relating to interaction between the licensed timber operator and the registered professional forester.

(H) The registered professional forester responsible for submitting the notice of exemption shall affirm that the construction or reconstruction of each temporary road is necessary to provide access to harvest areas where no feasible alternative exists. The submitted notice of exemption shall include the number and cumulative length of temporary roads that will be constructed or reconstructed.

(I) (i) Temporary road construction or reconstruction, shall be limited to no more than two miles of road per ownership in a planning watershed per any five-year period.

(ii) For each exemption affecting less than 40 acres, all temporary roads constructed or reconstructed under this exemption shall not exceed a cumulative length of 300 feet.

(iii) For each exemption affecting between 40 and 80 acres, all temporary roads constructed or reconstructed under this exemption shall not exceed a cumulative length of between 300 and 600 feet, as determined on a pro rata basis by the total acreage affected by the exemption.

(iv) For each exemption affecting over 80 acres, all temporary roads constructed or reconstructed under the exemption shall not exceed a cumulative length of 600 feet. The submitted notice of exemption shall list the number of acres affected and the cumulative length of the road in feet.

(v) Temporary roads constructed or reconstructed under this exemption shall not be connected to other temporary roads constructed under previous or subsequent exemptions filed under this paragraph.

(vi) All temporary roads shall be abandoned using proactive measures that have been applied to effectively remove them from the permanent road network, in accordance with the definition of abandoned road as defined in Section 895.1 of Title 14 of the California Code of Regulations.

(vii) This paragraph shall not be interpreted to permit road construction or reconstruction except as authorized under the Forest Fire Prevention Exemption, pursuant to this paragraph.

(viii) No trees larger than 36 inches in diameter at stump height, measured 8 inches above ground level, shall be removed for the purposes of road construction or reconstruction under a notice of exemption submitted pursuant to this subdivision. A tree that is between 30 and 36 inches in diameter at stump height, measured 8 inches above ground level, may be removed for the purposes of road construction or reconstruction under a notice of exemption submitted pursuant to this subdivision only if there are no feasible alternatives for the road placement.

(8) Except within constructed or reconstructed temporary road prisms, only trees less than 30 inches in stump diameter, measured at eight inches above ground level, may be removed.

(9) All timber operations conducted pursuant to this subdivision shall only occur within the most recent version of the department's Fire Hazard Severity Zone Map in the moderate, high, and very high fire threat zones.

(10) If pesticides or herbicides will be used within the boundaries of an area covered by a notice of exemption pursuant to this paragraph within one year of director acceptance, the timberland owner shall notify the appropriate regional water quality control board 10 days before application of any pesticides or herbicides.

(11) After the timber operations are complete, the department shall conduct an onsite inspection to determine compliance with this subdivision and whether appropriate enforcement action should be initiated. The department shall notify the appropriate regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey seven days prior to conducting the onsite inspection. The regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey may conduct an inspection with the department.

(12) (A) This subdivision shall be operative for a period of five years after the effective date of emergency regulations as adopted by the board and as of that date is inoperative.

(B) The board shall notify the Secretary of State when emergency regulations have been adopted.

(l) The cutting or removal of trees to restore and conserve California black or Oregon white oak woodlands and associated grasslands, if all of the following requirements are met:

(1) A registered professional forester shall prepare the notice of exemption and submit it to the director. The notice shall include all of the following:

(A) A certification signed by the registered professional forester that a minimum of 35 square feet of basal area per acre of California black or Oregon white oak, or both, occupy the proposed treatment area at the time the notice is prepared and the timber operation is designed to restore and conserve California black and Oregon white oak woodlands and associated grasslands.

(B) A description of the preharvest stand structure and a statement of the postharvest stand stocking levels.

(2) No tree larger than 26 inches in diameter at stump height shall be harvested for commercial purposes, which includes use for saw logs, posts and poles, fuel wood, biomass, or other forest products.

(3) Only conifers within 300 feet of a California black or Oregon white oak that are at minimum four inches in diameter at breast height may be harvested.

(4) The total area exempted pursuant to this subdivision shall not exceed 300 acres per property per five-year period.

(5) Conifer shall be reduced to less than 25 percent of the combined hardwood and conifer postharvest stand stocking levels.

(6) No more than 20 percent of the total basal area of preexisting oak stock shall be cut or removed during harvest and a minimum of 35 square feet of basal area per acre of California black or Oregon white oak, or both, shall be maintained postharvest.

(7) Slash shall be configured so as to minimize the risk of fire mortality to the remaining oak trees.

(8) The board shall adopt regulations to implement this subdivision.

(9) This subdivision shall not apply to the Southern Subdistrict of the Coast Forest District, as defined in Section 895.1 of Title 14 of the California Code of Regulations, or the Southern Forest District, as defined in Section 909 of Title 14 of the California Code of Regulations.

(m) (1) The board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person's property in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 300 feet on each side from an approved and legally permitted habitable structure, when that cutting or removal is conducted in compliance with this subdivision and all of the following conditions are met:

(A) The notice of exemption is prepared, signed, and submitted by a registered professional forester to the department.

(B) For the areas between 150 and 300 feet from the habitable structure, the operations meet all of the following provisions:

(i) The residual stocking standards are consistent with Sections 913.2, 933.2, and 953.2 of Title 14 of the California Code of Regulations, as appropriate.

(ii) Activities within this area will increase the quadratic mean diameter of the stand.

(iii) The residual stand consists primarily of healthy and vigorous dominant and codominant trees from the preharvest stand, well distributed throughout the harvested area.

(iv) Postharvest slash treatment and stand conditions will lead to more moderate fire behavior in the professional judgment of the registered professional forester who submits the notice of exemption.

(v) Any additional guidance for slash treatment and postharvest stand conditions and any other issues deemed necessary that are consistent with this section, as established by the board.

(2) For purposes of this subdivision, "habitable structure" means a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multidwelling structures, mobile and manufactured homes, and condominiums. For purposes of this subdivision, "habitable structure" does not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

(3) This subdivision shall become inoperative on January 1, 2026.