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Conflict of definition of
"minor deviation" and "substantial deviation"
895.1 . Definitions**

State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Board Members:

There is a serious conflict between the definitions of: "minor deviation" and "substantial deviation" in the Forest Practice Rules. The mere act of adding acreage to a THP or NTMP should not trigger an automatic substantial deviation. Yes, there would be a substantial deviation **if** additional adjacent owners become involved; or additional information regarding historical, biological data, or if additional streams or roads becomes involved. But if none of these factors are present why shouldn't this be considered a minor deviation?

This last year I added 9 acres to an existing NTMP. It took me almost 1 year; an additional 60 pages added to the NTMP; a change in the silvicultural system, and about \$2,000 additional expense, just to have this added to my NTMP. I have been the owner and manager of this property for the last 41 years and tried to convey to the Department that this is nothing but a minor deviation.

The amendment added 9.1 acre to the existing Grays Peak tract, which now becomes a 66-acre tract. This is a gentle sloping parcel of land that grows an overstocked; 80-year-old forest of white and red fir, sugar pine, ponderosa pine and some incense cedar. There are no existing roads on this parcel, and none proposed. There are no watercourses within this NTMP tract, and the nearest water source is miles from this area. There were no sensitive listed species or endangered wildlife found within this area. Likewise, no archaeological artifacts or cultural resources have been found nor was any added information found in the archaeological records check. Additionally, there are no new neighboring owners involved (there is one less neighbor). Does it really make good sense to require a new set of silvicultural rules to be applied to this new 9-acre parcel? When there is no substantial deviation, does it make sense to require a new set of environmental standards that have been adopted since the inception of this plan?

This addition of 9 acres to the NTMP clearly meets the definition of “minor deviation”, as defined by the Forest Practices Act. Other legal authorities have cited that a “minor deviation” is correct when: *a.) it does not adversely affect the substantial interest of a party; b.) has a good cause for the deviation to appear; c.) the deviation is not otherwise contrary to the law.* I have researched CEQA regulations and could not find and clear definition of substantial deviation as it relates to an enlargement of an area. There are many cases where there is an enlargement of a building and that allows for a maximum percentage increase before it becomes a substantial deviation.

According to: “Cal. Code Regs. Tit. 14, § 15064 - Determining the Significance of the Environmental Effects Caused by a Project”; I do not believe that a fair argument can be made that this project has a significant impact. Section C of this code states: “In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.” Also, section f.3 states: “If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (Friends of B Street v. City of Hayward (1980) 106 Cal. App. 3d 988)”.

And finally, section f.4 states: “The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment”.

To correct this discrepancy, in the definition of “Substantial Deviation”, the following item should be removed: (1) Change in location of timber harvesting operations or enlargement of the area to be cut. This definition infers that a mere enlargement of a harvesting area is a significantly adverse effect, this may or may not be the case.

Thank you for your consideration of this needed correction.

Sincerely,
Dennis Bebensee, RPF# 368