



TO: California Climate Action Registry
FROM: Dan Martin, The Trust for Public Land (Dan.Martin@tpl.org)
DATE: January 16, 2009
RE: Comments on DRAFT California Forestry Protocols, Version 3.0

The Trust for Public Land (TPL) salutes the California Registry's Forest Project Protocol 3.0 Working Group. The Working Group has grown in size and diversity. It is no accident that this more inclusive group created a more robust and practical set of rules to govern forestry climate projects in California. TPL is pleased with the treatment of public lands in the protocols, adoption of concrete rules around reserves, and efforts to promote a more workable solution for private landowners.

Our specific comments are as follows:

Abbreviations & Acronyms, p.1

“Reserve” as in “Climate Action Reserve” should be further defined. “CCAR” and “Reserve” appear to be used interchangeably throughout the document. Are they legally the same entity? Providing clarity in definitions would be helpful.

Section 2.2, p.3

The difference between owning timber rights versus owning fee simple of the property should be defined. Without the distinction, this could be problematic as it relates to Section 3.3, p.4. Under Section 3.3, an agreement is signed between the landowner and the Reserve, and the landowner is not necessarily the same as the owner of the timber rights. More clarity regarding the roles and responsibilities between fee owner, timber rights owner, and carbon rights owner would help address this issue. In addition, there should be more thought given to how changes in ownership of any of these rights will be handled by CCAR.

Section 3.3, p.4

CCAR should address the specific instance of private lands moving into public ownership. In keeping with the spirit of the current draft language, CCAR should explicitly state that all lands moving from private into public ownership for conservation purposes should be exempt from further permanence requirements.

Prior versions of the Forestry Protocol required a permanent conservation easement for both public and private land. This absolute requirement was considered by many to be too strict and simply did not work for most public land owners. The current approach of 100-year contracts between CCAR and private landowners makes sense,

but more legal work needs to take place to ensure the viability and enforceability of those contracts. If the contracts are not legally binding in a way that is difficult to amend, then not much prevents a private timber owner from terminating the project and converting the forest into a housing development when economic conditions offset any penalties of non-compliance with CCAR.

We strongly agree that public lands should be exempt from this permanence requirement due to the infrequency and transparency of lands moving out of public ownership.

Section 3.5.1, Table 1, p.6

Native Species Test (p.6):

The formula outlined in the table could result in unintended consequences. A project could qualify as a native forest under this matrix and yet still have a majority of non-native species. Take for instance, a forest that is composed of 45% native, non-commercial trees and 55% non-native, commercial trees (e.g., eucalyptus). Such a composition would score the project a “0” for native tree species, but a “2” for composition and distribution. With a total score of “2”, the native species project test is met. We suggest a more absolute standard for native tree species such as a minimum of 80% natives.

Sensitive Areas (p.7):

Greater detail needs to be added to this section. In regard to “Internal policies” the protocol mentions “a monitoring plan must be developed and adhered to that demonstrates consistent progress toward policies,” but makes no mention of who enforces the monitoring plan and what the ramifications will be if the plan is not enforced. A similar situation exists with the phrase “Regulations exist with oversight.” Regulations at what level? Technically all four of the rows in this area should be addressed in any Timber Harvest Plan (THP), which is regulated by the State. So, does that mean every single project that has a THP would score an “8” and thus meet the Natural Forest Management Test minimum score of “5”? If so, perhaps additional desirable aspects under this category should be required.

Third Party Oversight Test (p.7):

The third party certification programs should not be weighted equally. The Forest Stewardship Council (FSC) is a more rigorous and accountable standard than most other third party certification programs. To give a greater incentive to meet FSC certification standards, we suggest weighting it with a higher score.

Section 3.5.2, p.9

This section could open a large loophole that allows project developers to experience significant reductions in their carbon stocks without taking any penalties. Any net loss of carbon in the project should be accounted for, regardless of the reason.

Section 6.2.1, p.13

A site visit and on-site measurement should be required to assess the true baseline of any project. However, this section appears to employ a computer simulation process instead of requiring a site visit to assess initial carbon stocks for the baseline.

Using Forest Inventory & Analysis (FIA) average data over broad territories ignores significant differences in stocking levels at a micro level. For instance, much of California's timberland lies in a "checkerboard" pattern of ownership where one square mile (section) is owned by private parties and the next square mile is owned by a public agency (primarily the USFS). These two landowners manage their lands very differently. Using an average distorts the true baseline significantly in the large areas where different ownership patterns exist.

In addition, we recommend that the FIA data idea be scrapped or made optional only for project years prior to 2009 (i.e., only in the limited instances of projects with historical start dates from 2001-2008) in determining the project baseline carbon stocks. Years covering 2009 forward should require site visits and annual reporting.

Section 7.2, p.27: Reversals & Insurance

The concern here is that a large disturbance or catastrophic claim on a particular project could deplete not only the project buffer, but also the central reserve of pooled buffers. What is the expedient method to re-build the central buffer when a catastrophic loss is incurred, especially in the earlier years before the central reserves are large? What is the project developer's liability beyond his own project buffer? There needs to be greater assurance that a deficit can be restored quickly.