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May 11, 2009

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Comments on Forest Project Protocol (Version 3.0 April 15, 2009 Public Draft)

Thank you for the opportunity to comment on the proposed update to the CAR Forest Project Protocol. The members of the Workgroup and the staffs of the Climate Action Reserve and Air Resources Board should be commended for their work to broaden the Protocols from a California context to a more generalized structure that can be applied to forest projects outside the state.

These comments suggest areas for additional clarity and flag areas of substantive concern.

1. PERMANENCE

- ***The conceptual change from Conservation Easement to a Buffer Pool is acceptable***
One of the most substantial amendments is the change in permanence requirements from a Conservation Easement to maintenance of a carbon stock buffer pool. The size of the buffer pool is determined by the risk of reversal from biologic and non-biologic causes and is largely patterned after concepts developed in the international forest arena, e.g. the “VCS” Voluntary Carbon Standard.

Although a permanent Conservation Easement continues to provide the highest level of protection against loss of carbon stocks from land-use conversion, there has been an evolution of international thinking on permanence since the original passage of SB 812 (Sher) in 2002 requiring the Easement. The Buffer Pool incorporates other risks beyond land-use conversion, and better harmonizes with the international approach to permanence.

- ***Delete all reference to “Deed restrictions” in Buffer Pool requirements since they provide materially less protection than a “Conservation Easement”***
(Section 3.3, Section C.6, Appendix C Determination of the Buffer Pool Contribution for Forest Projects)

The legal construct of a “Deed restriction”, its interpretation in case law and its practical application make deed restrictions substantially flimsier than the binding provisions of Conservation Easements. Deed restrictions charge no specific party with enforcement and are easier to remove from the deed. The Conservation Easement provides more legal protections under most state statutes and is given greater deference by courts in the event of disputes. In regulatory actions the California State Coastal Commission specifically and

consistently requires Conservation Easements over deed restrictions to provide the permanence that the Commission intends when such measures are called for.

Lack of confidence in forest carbon permanence is one of the strongest arguments in opposition to the validity of forest offsets, therefore standards must be as rigorous as possible. The term “deed restriction” should be deleted from the Protocol.

2. BASELINE CALCULATION

The deletion of the California Forest Practice Rules as the framework for establishing the “Business As Usual” (BAU) baseline is the second most substantive change. In its place a concept that relies on the “common practices” of one’s neighbors within a region -- determined by CAR and as measured by the Forest Inventory and Analysis (FIA) data base of the USDA Forest Service – combined with a financial and regulatory test is proposed to determine BAU.

Issues: The approach is appealing because it utilizes a standardized FIA data base for forest lands across the United States and is generalizable beyond California. However, because the establishment of the carbon credit (i.e. CRTs, “climate reserve tonnes”) is so completely reliant on this database, and because it has not been fully tested in a carbon baseline application, it raises questions regarding:

- *the sufficiency of sample plots to adequately characterize the BAU “behavior” for different classes of ownership;*
- *Equity issues raised between Industrial and Non-Industrial land owners*
- *the transparency of the FIA database and its interpretation*
- *the complicated explanations required to describe, calculate and apply the approach.*

1) Sufficiency of FIA sample plots and possible inequity to non-industrial landowners: Penalizing the “early actor”?

There is specific concern whether the current number and distribution of FIA sample plots in California (and perhaps elsewhere) adequately capture the range of “common forest management practices” across the range of ownership classes and forest types in the state. For example, some have suggested that the Redwood type on non-corporate ownerships (i.e. non-industrial landowners with less intensive management objectives than commercial owners) may to be poorly represented by sample plots. Until the FIA approach is field tested by an assortment of real carbon projects across a range of ownerships there is uncertainty whether inequitable or unexpected outcomes may emerge. See for example the comment letter from Baldwin, Blomstrom, Wilkinson and Associates of January 15, 2009:

“...The Baseline methodology is potentially too cumbersome and complex to be effectively applied widely in practice. In particular, the reliance on FIA data to represent an average carbon value for a given forest type is questionable. Not the data itself but the allocation of plots to particular forest types has not, in our experience, resulted in a good representation of that forest type....”

Equity issue: One of the primary goals of the Sher legislation and original formulation of the Protocols was to *not disadvantage* landowners who had already made investments

in maintaining above-average carbon stocks on their land. Those owners were already providing an additional benefit to the atmosphere above what was legally required, and it was inequitable to start their baseline at a higher level and thereby disadvantage their already “good” carbon behavior, relative to owners that started from lower stocks. Hence the Forest Practice Rules were set as the common denominator that would span industrial and non-industrial owners, and would not penalize those already acting above the Rules.

The protocol text should discuss whether possible equity issues might occur when one owner is compared against the behavior of others in their region under the new FIA approach. For example,

- Will non-industrial owners have “a greater burden” in modifying their forest management to gain CRTs relative to industrial owners who maintain lower carbon stocks on the land (but move more into Harvested Wood Products, with resultant losses between standing stock and HWP pools)?
- Do the baseline rollback provisions tend to mitigate differences between industrial and non-industrial ownerships?
- What happens to FIA “common practice” as more owners enter carbon projects? Will FIA sample plots be identified if they suddenly fall within a carbon project, thereby skewing the mean? Will replacement plots be moved to a non-project site, more typical of “common practice” outside of a project?

The adequacy of FIA data takes on real importance in capturing the real range of landowner behavior, particularly if, 1) through the vagaries of sampling and insufficient data plots it misrepresents “common practice” for the forest type, and 2) if in application, it penalizes some owners as a class because their lands are already well stocked.

Although noble in goal, the FIA database has not yet been adequately field tested to determine if it is sufficiently fine-grained for purposes of establishing equitable BAU carbon baselines.

Therefore, it is suggested that:

- ***The supporting text of the Protocol clearly explain, with examples, whether baseline calculations based on the FIA approach will disadvantage any ownership class;***
- ***CAR offer some form of “safety valve” to project developers to allow an adjusted baseline determination when 1) FIA data is believed to not reasonably reflect the actual “common practice” and when 2) adequately explained and justified by the project developer and concurred with by the Verifier and CAR;***
- ***CAR, in cooperation with CDF, advocate for intensified or higher tier sampling for areas where issues are raised.***

2) Transparency of FIA information: The California FIA database is not transparent to the interested public and is not readily understood. The location of sample points is purposely held confidential. Coincidentally, at the time of this drafting, all Google links to the USFS FIA site were

inoperable, and links within various FIA pages later led to dead ends; and only minor reference is found on Wikipedia. Consistent with the distinguishing CAR feature of transparency, it is incumbent on CAR to provide adequate explanations of the technical underpinnings of the Protocol so that it does not devolve into a “tech-y insider” process.

Since there is such crucial reliance on the FIA data base, CAR should do more than just cite the umbrella FIA weblink. CAR should:

- 1) provide plain English explanations of FIA data and the sampling regime that the numbers are based on;*
- 2) extract or highlight the references specifically for California, and for states where projects are proposed;*
- 3) include examples of the worksheet process for different ownership classes and starting points*
- 4) conduct periodic reviews of the adequacy of current FIA data for carbon baseline purposes;*
- 5) be a firm advocate for improvements to the data base relevant to baseline purposes.*

3) Complexity of explaining the Baseline calculations: Although the explanations and graphics have improved, they can still quickly lose informed readers, and experienced professionals can misunderstand use of equations. A more simplified, plain English version that talks through each case should continue to be an aspirational goal.

3. PUBLIC LANDS DEFINITION

Clarity is needed whether City-owned forest lands are considered “Public Lands”, and whether they fall under the requirements for public or private landowners. The City of Arcata for example is actively exploring forest carbon options for its city-owned forestlands.

- ***Add a definition of “Public Land” with specific reference to municipalities.***
- ***Specify which FIA forest ownership class (e.g. public, private corporate, private non-corporate) should be applied to city calculations;***
- ***Since cities operate forests more like the private sector, apply the provisions for private forestlands to municipalities, not the federal provisions.***
Rationale:
 - City forestlands are regulated by the State Forest Practice Act and Rules like private owners. Cities may adopt more stringent provisions (e.g. FSC certification), but not more lenient.
 - City decisions on forestland acquisitions and sales are more similar to private landowner behavior than federal:
 - 1) Comparable to private landowners, cities are more nimble in the purchase and disposal of forest land than the USFS and BLM. The federal land transfer process is long and cumbersome, is subject to Congressional action and Organic Acts, and national forest boundaries tend to be relatively stable over time. Like private landowners, cities

can take advantage of opportunistic forest purchases as they become available to increase their forestland base.

2) Carbon value can be a factor in the municipality's ability to finance the acquisition, similar to private landowners. Federal forest agencies do not currently have clear policy to enter carbon markets thus carbon value does not influence acquisition decisions.

4. PROMOTION AND MAINTENANCE OF NATIVE SPECIES

(3.5.1 Promotion and Maintenance of Native Species, p. 7 – 8; Table 3.1, p. 9)

The point of this section is to ensure that carbon projects are not designed to maximize carbon values alone, at the expense of sacrificing natural species distribution, forest diversity and ecosystem functioning.

- Unfortunately the language and table 3.1 describing “Composition of Native Species” are vague, too generalized and difficult to understand. A more specific look-up table in the Appendix for each forest type and its respective species mix would incorporate existing research on natural forest types in California and provide a metric that can be applied by a Verifier. Similarly detailed tables will be needed as forest projects are proposed from other states.
- Dead, downed wood on the forest floor provides habitat complexity and is a key component of many natural forest ecosystems. The evaluation form should add down dead wood , as well as standing dead wood.

I look forward to further reviewing the final package that will be presented to the CAR Board. I will then add comments putting these additional protocols into their broader perspective of full forest sector accounting, especially as forest CRTs potentially move from voluntary to compliance markets.

Thanks again to all who have participated in this challenging process towards a crucial goal.

Sincerely,

/s/

Andrea Tuttle