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May 11, 2009

VIA E-MAIL (policy@climateactionreserve.org)
Climate Action Reserve

Re: Forest Project Protocol

Dear Sir or Madam:

We are special counsel to the East Bay Regional Park District (“District”) and submit these comments on its behalf. The District provides carbon sequestration, habitat conservation and other valuable co-benefits and ecosystem services to Californians throughout the greater San Francisco Bay Area. Like other regional park districts throughout the State of California, the District protects forests and other undeveloped lands close to the urban edge, which are at greatest risk of conversion. That proximity to urban areas makes these lands among the most expensive to acquire and protect. The District is pleased by the Climate Action Reserve’s (“Reserve”) expansion of opportunities for public lands to participate in the carbon offset market through the Updated Forest Project Protocol (“Protocol”) and believes the carbon market will provide important supplemental funding to support regional parkland acquisition throughout the State.

The District wishes to comment on the criteria for avoided conversion projects in Section 6.3 of the Protocol, which allows project proponents to demonstrate that conversion is legally permissible by supplying proof that necessary government approvals were obtained for similarly situated lands nearby.¹ The District strongly supports this provision and believes it is essential to fulfill the intent of making the Protocol available for public lands, especially those near the urban boundary such as regional parks.

Regional park districts must pay fair market value for the properties they acquire. And because these properties surround urban areas, they are at greatest risk of conversion to non-forest uses, most often residential development. The conversion of such undeveloped lands is a

¹ The specific language appears on page 29 of the Protocol and provides as follows:

“In the case where the above documentation has not been attained, analogous proof shall be provided based on similarly situated lands in the surrounding area to demonstrate that all necessary approvals from the governing County to convert the project property to the proposed type of conversion (including, for instance, certificates of compliance, subdivision approvals, timber conversion permits, other rezoning, major or minor use permits, etc.) could be attained.”

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multi-step process that often requires successive approvals from multiple governmental entities. The value of such properties increases sharply with each successive step and/or approval. Once a property-owner secures the approvals necessary to develop the property, it is highly unlikely that the property will be purchased by a park district or private conservation entity, because the fair market value is too high. Scarce conservation dollars are better spent acquiring larger tracts for which no entitlements have been obtained, because prices are much lower. If the Protocol restricted eligibility to properties where conversion entitlements had already been obtained, it would effectively exclude regional park districts from participating in the carbon offset market, because entitled properties are far too expensive for parkland acquisition. Accordingly, the District applauds the Reserve's acceptance of evidence from similarly situated properties where such approvals have already been obtained.

The District urges the Reserve to remain flexible in how it evaluates the legal permissibility of conversion, especially for lands situated near urban areas where population growth and market forces fuel continuous urban sprawl that consumes forestlands and eliminates vital carbon sinks necessary to address Climate Change. The District appreciates the opportunity to comment on the Protocol and looks forward to participating in the protocol development process in an ongoing manner.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

/s/

Donald S. Simon

Special Counsel to the East Bay Regional Park
District