



Date: January 26, 2010

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Re: Option A and Project Baseline

Dear Mr. Broekhoff,

Thank you for taking the time to speak with me regarding CAR's current discussion as to how an "Option A" document might influence the calculation of a carbon project's baseline. As we discussed, NCRM is preparing a number of forest carbon projects for private landowners on the North Coast; several of these properties have an Option A document associated with them.

NCRM has prepared Option A documents for several large properties we manage. As such, we are familiar with the process involved in developing, and implementing and obtaining approval of an Option A for a property. We also understand the interplay between the requirements of Forest Practice Regulations (FPR) and a landowner's land management philosophy in the context of an Option A. In this regard Option A documents are not typically written to meet minimum FPR standards – to the contrary, and depending on each owner's land management philosophy, they may contain provisions that offer environmental protections that significantly exceed FPR minimums. Such protections, to the extent not required by the FPRs, are at the election of the landowner.

In our opinion, Option A is best viewed as a long-term planning vehicle that may or may not guide actual harvest operations. For example, on some of the properties we manage that have an approved Option A, extensive harvesting has occurred, while on others, little or no timber harvesting has taken place. The decision to actually harvest timber under an approved Option A is highly sensitive to market conditions and other considerations unique to each owner's land management philosophy. As will be clear from the discussion that follows below, an approved Option A may be modified, withdrawn, or cancelled at the election of the landowner.

With this background in mind, I would like to offer the following comments regarding the interplay between an Option A and CAR's recently adopted Forest Protocol.

**Issue:** Does an approved Option A constitute a 'legal constraint' within the meaning of Section 6.2.1 of CAR's *Forest Project Protocol Version 3.1* (the "Protocol") such that modeling of the baseline for standing live carbon stocks is constrained and must be based solely upon growth and harvest scenarios under the approved Option A?

**Discussion:** Improved Forest Management Projects on private land must estimate baseline onsite carbon stocks by following the requirements of Section 6.2.1. Those requirements are stated as a series of steps, the third of which is: "Estimate baseline carbon stocks, taking into account financial and *legal constraints* on harvesting in the Project Area." (Emphasis has been added whenever text is shown in *italics*).

The definition of 'legal constraints' is set forth in detail in Section 6.2.1.1 of the Protocol. The key components of the definition for purposes of the issue under discussion are the following:

"baseline. . . must represent a growth and harvest regime that fulfills all legal requirements. Voluntary agreements *that can be rescinded*, such as voluntary Habitat Conservation Plans (HCPs), Safe Harbor Agreements, rental contracts, and forest certification are not legal requirements"

"*Legal requirements* include all laws, regulations, and legally-binding commitments applicable to the Project Area at the time of the project's initiation *that could affect standing live carbon stocks*. Legal constraints include:

1. Federal, state/provincial, or local government regulations *that are required* and might reasonably be anticipated to influence carbon stocking over time, included by not limited to:
  - a. Zones with harvest restrictions (e.g. buffers, streamside protection zones, wildlife protection zones)
  - b. Harvest adjacency restrictions
  - c. Minimum stocking standards
2. Forest practice rules, or applicable Best Management Practices established by federal, state, provincial or local government that relate to forest management.
3. Other *legally binding requirements* affecting carbon stocks including, but not limited to, covenants, conditions and restrictions, and other *title restrictions* in place prior to or at the time of project initiation, including *pre-existing conservation easements and deed restrictions*, excepting an encumbrance that was put in place and/or recorded less than one year prior to the project state date, as defined in section 3.6.

It is clear from the plain language of the Protocol, and in particular the language set forth in italics above, that the term 'legal constraints' is intended to be a type of constraint that is a

*mandatory, legally binding requirement* under federal, state or local laws or regulations. Specifically excluded from the definition of the term 'legal constraint' are voluntary agreements that may be rescinded at the election of the owner of the project.

Option A is defined in Section 913.11 of Title 14 of the California Code of Regulations as one of the three approved methods for achieving Maximum Sustained Yield of High Quality Timber Products (MSP) in an individual THP. By its express terms, an Option A allows the landowner to define the yield of timber products for purposes of achieving MSP:

“913.11 (a) Where a Sustained Yield Plan or Nonindustrial Timber Management Plan (NTMP) has not been approved for an ownership, MSP will be achieved by:

(1) Producing the yield of timber products *specified by the landowner*, taking into account biologic and economic factors, while accounting for limits on productivity due to constraints imposed from consideration of other forest values, including but not limited to, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and aesthetic enjoyment.

(2) *Balancing growth and harvest over time, as explained in the THP for an ownership, within an assessment area set by the timber owner or timberland owner and agreed to by the Director*. For purposes of this subsection the sufficiency of information necessary to demonstrate the balance of growth and harvest over time for the assessment area shall be guided by the principles of practicality and reasonableness in light of the size of the ownership and the time since adoption of this section using the best information available. The projected inventory resulting from harvesting over time shall be capable of sustaining the average annual yield achieved during the last decade of the planning horizon. The average annual projected yield over any rolling 10-year period, or over appropriately longer time periods for ownerships which project harvesting at intervals less frequently than once every ten years, shall not exceed the projected long-term sustained yield.

(3) Realizing growth potential as measured by adequate site occupancy by species to be managed and maintained *given silvicultural methods selected by the landowner*.

(4) Maintaining good stand vigor.

(5) Making provisions for adequate regeneration. *At the plan submitter's option, a THP may demonstrate achievement of MSP pursuant to the criteria established in (b) where an SYP has been submitted but not approved.*

Under the above quoted regulations, as highlighted in italics, Option A is only binding with respect to harvest plans upon which the landowner intends to commence harvesting activities. Properties less than 50,000 acres may elect to submit an Option A, however, they may meet MSP requirements through compliance with minimum post harvest stocking and silvicultural requirements of the Forest Practice Act and Forest Practice Regulations (Option C). Regardless of property size, nothing prevents the landowner from modifying its Option A document with respect to current or subsequent harvest plans, including even approved harvest plans that have not been operated upon at the time of such modification.

Alternatively, the landowner/plan submitter may submit an SYP (Option B) that differs from its Option A plan and thereafter *at the plan submitter's option*, proceed under the SYP submission and not under Option A. Obviously any proposed modified Option A plan and any SYP, to be accepted for submission, must meet all of the requirements of the Forest Practice Act and its rules and regulations. The point being, for purposes of the discussion here, is that the landowner, in its sole discretion, has the authority to determine what silvicultural methods will be employed to achieve MSP; what the yield of timber products will be over time, and how the landowner will meet the MSP requirements of the rules.

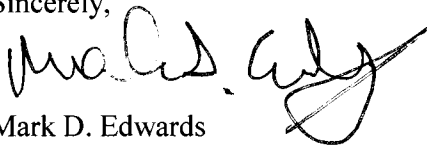
Because an Option A can be modified or voluntarily withdrawn and cancelled at the election of the landowner, it does not meet the Protocol's definition of a legal constraint: i.e. it is not a *mandatory, legally binding requirement* under federal, state or local laws or regulations. Rather, the landowner has the right to modify or withdraw its Option A at the landowner's discretion so long as any THP submitted under the modified Option A plan, Sustained Yield Plan, or Option C demonstrates how MSP will be achieved under applicable rules and regulations.

In this regard, Option A is similar to agreement by a landowner under the California State Safe Harbor Agreement Program Act (*Fish and Wildlife Code §2089.2, et seq.*). Under this Act, the landowner will be permitted to engage in activities that may result in taking an endangered species, provided the landowner has demonstrated that implementation of the 'agreement' will result in a net conservation benefit for the species. As provided under Protocol Section 6.2.1.1, quoted above, because voluntary withdrawal from the Program is permitted, participation does not constitute a 'legal constraint'. Similarly, under Option A, the benefit that is to be obtained is attainment of MSP standards. The terms under which MSP is attained are discretionary with the landowner within a broad range of silvicultural and management options as permitted under the Forest Practice Rules.

Based on the foregoing discussion, it is my conclusion that an **Option A is not a Legal Constraint under Forest Project Protocol (Version 3.1)**. As such, I do not believe that additional clarification or policy development relative to Option A is necessary or warranted at this time.

Thank you for allowing me to comment regarding this matter, and do not hesitate to contact me should you wish further clarification or assistance in any manner regarding this issue.

Sincerely,



Mark D. Edwards

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Cc: John Nickerson, Dogwood Springs Forestry