

## Guidance Document for Verifiers, Project Developers, and Interested Parties

Proposed by the Pacific Forest Trust, March 12, 2009

*Relationship of Maximum Sustained Production of High Quality Wood Products (MSP) rules in the California Forest Practice Rules to Section 6.2.1.1 (Consideration of Legal Constraints) in the Climate Action Reserve's Forest Project Protocol (Version 3.1).*

### **Issue**

The Climate Action Reserve's (the Reserve) Forest Project Protocol Version 3.1 (FPP) requires that baseline carbon stocks for Improved Forest Management projects be determined by modeling a growth and harvesting regime that "reflect[s] all legal constraints." This memo provides guidance for project developers, verifiers, and the public for Improved Forest Management projects in California clarifying the treatment of plans submitted to the California Department of Forestry and Fire (Cal Fire) for the purposes of meeting the requirement in the California Forest Practice Rules that landowners meet Maximum Sustained Production (MSP) of High Quality Wood Products (14 CCR 913.11 (933.11, 953.11)). **These MSP documents affect current Timber Harvesting Plans (THPs), but do not bind future landowner action. As such, the future projections of harvest levels are not considered a legal constraint under the protocol.** The Forest Project Protocol language under Section 6.2.1.1 is as follows:

#### ***6.2.1.1. Consideration of Legal Constraints***

*In modeling the baseline for standing live carbon stocks, the Forest Owner must incorporate all legal requirements that could affect baseline growth and harvesting scenarios. The standing live carbon stock baseline must represent a growth and harvesting 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 Voluntary agreements that can be rescinded, such as voluntary Habitat Conservation Plans (HCPs), Safe Harbor Agreements, rental contracts, and forest certification are not legal requirements.*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 including, but 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 start date, as defined in Section 3.6.*

## **Determination**

### **Landowners larger than 50,000 acres:**

The California Forest Practice Rules (FPRs) require a landowner with more than 50,000 acres of timberland to submit a document establishing that their operations meet the requirement to demonstrate Maximum Sustained Production (MSP). This can be demonstrated with a Sustained Yield Plan (SYP, see 14 CCR 913.11(b)) or with an "Option A" (see 14 CCR 913.11(a)). Nearly all of the large timberland owners required to submit such a plan utilize Option A. The few landowners utilizing Sustained Yield Plans could replace them with an Option A at any time, therefore the analysis is the same for an SYP as for the much more common Option A.

A landowner's Option A document is attached as an appendix to each timber harvest plan, becoming part of that permitting document. A landowner can also modify and resubmit a revised Option A document to CDF at any point. The MSP document represents one vision of possible future harvesting, but it does not bind the landowner to that approach. Because the Option A only becomes a legally binding commitment when appended to an approved timber harvesting permit, a different approach is necessary to establish the "legally binding commitments" for the proposed project area outside of any currently approved timber harvesting plans.

Project areas currently covered by an active timber harvesting plan should be modeled as the stands that would result from the approved THP's silviculture, and all those silvicultural treatments required by the THP, using the assumptions contained in the Option A document attached to those plans. Project areas not currently covered by a THP should be modeled to reflect "all laws, regulations, and legally-binding commitments", including demonstrating MSP and all the requirements of the FPRs that must be satisfied to obtain a timber harvest permit.

In summary, currently active timber harvest plans within a proposed project area must be modeled to reflect the silviculture and all silvicultural treatments associated with that THP. The remainder of the project area should be modeled to reflect compliance with all forest practice rules and other applicable laws, regulations and legally binding commitments that could constrain areas available for timber harvest.

In the event of an irresolvable disagreement over the constraints that must be included in the modeling of the regulatory baseline, the CA Department of Forestry has indicated its willingness to opine on whether the modeling accurately reflects a legally compliant regulatory baseline.

### **Landowners with Non-industrial Timber Management Plans (NTMP):**

Landowners with less than 2,500 acres of timberland are eligible to utilize a Non-industrial Timber Management Plan (NTMP) as a harvest permitting document. NTMPs are entirely voluntary, and can be superseded by a timber harvesting plan at any time. Accordingly, the regulatory minimum for a landowner with an NTMP should be considered to be a THP meeting all legal requirements, including meeting MSP per 14 CCR 913.11(c).