



THE PACIFIC FOREST TRUST

Working Forests Work Wonders For Us All.

March 12, 2010

Gary Gero, President
Climate Action Reserve
523 W. Sixth Street, Suite 428
Los Angeles, CA 90014

By Electronic Transmittal

RE: Proposed Guidance for Sustained Yield Planning Documents

Dear President Gero:

California is unique in that state forestry regulations require a landowner with more than 50,000 acres of timberland to submit a Long Term Sustained Yield (LTSY) plan. Draft guidance by Climate Action Reserve staff proposes to use these plans, which often include significant voluntary conservation by the landowner, as the regulatory baseline for large timberland owners. Such an approach is likely to have significant adverse policy implication, since landowners would have a strong financial incentive to abandon their existing LTSY plan and adopt a management approach that does not include any conservation beyond that required by regulation, thereby starting a race to the regulatory minimums.

To avoid such perverse outcomes, the Pacific Forest Trust offers the attached alternative guidance language, as well as the following thoughts.

As mentioned above, LTSY plans are used by large timberland owners to fulfill the Forest Practice Rule requirement to demonstrate Maximum Sustained Production. These plans have certain regulatory requirements, and are approved by the California Department of Forestry and Fire Protection (CDF), but the plans also generally reflect voluntary actions that are more protective of the environment than minimum regulatory requirements. These LTSY plans can be modified and resubmitted by the landowner at any time.

One of the worst possible outcomes of a forest carbon offsets market would be to cause landowners to abandon conservative long term management plans in order to demonstrate that the regulatory minimums would allow much more aggressive harvesting. That outcome would run counter to innumerable state and private efforts to encourage conservative long-term planning, and would also generate a substantial (and counterproductive) workload for state agencies. It is clearly in the public interest to avoid such an expensive and useless exercise.

In the interest of finding a workable solution to this question, and recognizing that California is the only state with an LTSY requirement, as well as the only state actively developing and

implementing a cap and trade program pursuant to AB 32, the Pacific Forest Trust offers this framework for approaching the problem.

We suggest the following general principles to guide California policy on forest offsets in the context of AB 32:

- 1) The demonstration of the relevant legal and regulatory minimums needs to incorporate all legal and regulatory considerations.
- 2) Landowners should not be disadvantaged by having voluntarily engaged in environmentally sensitive management, or having created conservative management plans.
- 3) It is important for forest offsets to be credible and clearly additional in order for them to be accepted as a compliance mechanism for AB 32.
- 4) Offsets originating from within California are preferable to offsets from other parts of the United States because they accrue environmental co-benefits to Californians.

CAR's proposed interpretation that an LTSY plan represents the regulatory baseline presents several problems. To summarize:

- a) It substantially penalizes landowners who have articulated conservative management plans that voluntarily increase carbon stocks, and it effectively rewards those who have managed to the regulatory minimums.
- b) Because California is the only state with this requirement, it further increases the disparity between regulatory baselines in California and any other state in the US. As a result, it becomes much more appealing to do improved forest management projects outside of California, where the regulatory baseline is lower and more nebulous. If the majority of offset projects happen in other states (or other countries), then California ends up exporting many of the very real co-benefits of AB 32.
- c) It ignores the fact that current activities do not necessarily represent future actions and the LTSY document can be altered at any time, for example due to changes in landowner priorities or changes in ownership. This reality is well illustrated by the tragic tale of Pacific Lumber Company. For more than 100 years those redwood forests were managed exceptionally conservatively, until the company was purchased by Maxxam Corporation in the 1980s. The new owners immediately implemented a liquidation strategy that involved harvesting to the regulatory minimum as rapidly as possible. Sustained yield planning plan does not bind future management.

The attached guidance document recognizes that timber harvest plans are legally binding permits that must be incorporated into the modeling of regulatory requirements, but also recognizes that landowners could change their LTSY document at any time. Rather than require a landowner to actually alter their current planning document, we propose modeling the legal and regulatory requirements.

We sincerely hope that this approach to establishing the regulatory floor in California helps the Climate Action Reserve board and staff issue guidance that allows large California landowners

to engage in carbon projects without creating an incentive to modify their LTSY plans to reflect the minimum regulatory requirements.

We regret that we won't be able to attend the workshop scheduled for March 18. If you have any questions about our suggested approach, please contact Paul Mason at (916) 214-1382 or pmason@pacificforest.org.

Regards,

A handwritten signature in black ink that reads "Paul Mason". The signature is written in a cursive, flowing style.

Paul Mason
California Policy Director

Encl: Proposed Guidance Regarding Relationship of Demonstration of Maximum Sustained Production as Required by the California Forest Practice Rules with Section 6.2.1.1 of the Forest Project Protocol regarding Legal Constraints

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 superceded 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).