



PACIFIC FOREST TRUST

September 27, 2011

California Air Resources Board
James Goldstene, Executive Officer
1001 I Street
Sacramento, CA 95812

RE: Comments on Proposed 2nd Round of 15-day Changes to Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations – September 2011 (Cap and Trade Rules)

The Pacific Forest Trust would like to thank the California Air Resources Board for the opportunity to comment on the second round of 15-day changes to the proposed Cap and Trade Regulations. We offer the following comments on the changes for your consideration, and look forward to working with you to address these issues at the earliest opportunity.

§ 95802 Definitions:

Sub-section 103 - Forest Owner

PFT thinks there is still some inconsistency in the regulations in how the definition of Forest Owner works in relation to a forest Project Operator. The definition states that one Forest Owner must be designated as the Project Operator, and language was removed from the definition that is consistent with keeping responsibility for forest offset projects clear. However, there are several places in the regulations where responsibility is split between the Project Operator and the Forest Owner. For instance, Project Operators sign attestations when a project is listed accepting legal responsibility for the integrity of the project and accepting the jurisdiction of the State of California for enforcement of the cap and trade regulations. On the other hand, the Forest Owner(s) is/are responsible for paying back credits in the case of intentional reversals and credit invalidation. Given that by definition, there can be more than one forest owner (e.g., owner in fee of the land and owner of additional forest rights in an easement), we recommend that the regulatory language allow for one forest owner, the Project Operator, to be designated as responsible for all aspects of a project, including submitting relevant reporting data, signing attestations, and replacing credits in the case of reversals or invalidation. The one forest owner party responsible should be identified in the listing information. In the case of invalidation or reversals, language could be added to name other forest owners in the event that the Project Operator is no longer in business.

Corresponding changes need to be made to the *Compliance Offset Protocol for U.S. Forests*. See below.

§ 95985. Invalidation of ARB Offset Credits.

Reporting Errors: We appreciate that the language in 95985(c)(1) spells out in more detail how reporting errors are determined. We however repeat the request from our letter dated August 11th that a buffer pool mechanism be established to cover credits for this category to mirror unintentional reversals of forest projects where reporting errors are found to be caused by unintentional errors in calculations.

Legal non-compliance: The language contained in section 95985(c)(2) is overly broad and could lead to invalidation of large numbers of offset credits for issues that are either immaterial to the offsets themselves, and/or are minor technical violations that are in the process of being remedied and for which no actual enforcement action has been taken by the relevant agency. Further, these violations could be beyond the control of a Forest Owner in situations where a court may have issued a change in interpretation of the law, but no administrative remedies for compliance are yet available. We recommend changes along the following line:

The offset project activity and implementation of the offset project was found by a court or administrative body of competent jurisdiction to be not in material accordance with all local, state, or national environmental and health and safety statutes and regulations, as interpreted by a court of competent jurisdiction from which an appeal cannot be taken, during the Reporting Period for which the ARB offset credit was issued.

At the very least, a violation should be material, and should be the subject of a final notice of non-compliance after the violation has been through its relevant adjudication process with the jurisdiction of authority over the relevant statute and regulations.

Use of ARB Credits for more than one purpose: For the situations defined in c(3), forest owners have no control over how their credits are used after they are sold. In this instance, holders of credits should be liable for invalidated credits if after an ARB offset credit was sold, an entity used it to comply with some other obligation in addition to using it as a compliance instrument in the California Cap and Trade system.

§ 95990. Recognition of Early Action Offset Credits

PFT is concerned with the lack of clarity in section 95990(d) with regards to situations under which holders of credits from potential early action forest projects may list a forest project. Language in (d)(3) appears to indicate that only when a forest project operator transitions to the ARB Compliance protocol but has not registered the project for prior early action credits can a credit holder, as opposed to the project operator, list the same project for early action credits. However, there remain different interpretations of this sub-section in the project developer community. We request full clarification of the intent of this section as soon as possible, and request that credit holders not be given the ability to

list forest projects under broadly defined circumstances, but only in the event that a project does transition to the compliance protocol, and has not listed the project for early action credits.

Further, we believe the language in 95990(d)(3) causes confusion in that project operators have until February 28th, 2015 to transfer their projects to the compliance protocol. The existing language seems to allow for the possibility of a credit holder listing a project prior to the forest project operator having made the final decision or actually taken the action to transition their project to the compliance protocol. We request that this sub-section be clarified to mean that the holder of potential early action credits cannot list the project until AFTER the project operator actually has transitioned to the compliance protocol.

Compliance Protocol for U.S. Forest Offsets

Section 2.2 Forest Owners

The language in the second paragraph of this section stating that ultimately all forest owners are responsible for all project commitments creates confusion of responsibility. This language was removed from the definition section of the regulations (see above) but has not been fixed here. We recommend that the sentence be struck, and that one forest owner be allowed to be designated as having full responsibility for all project commitments.

Section 3.1.2.3 Performance Test for Avoided Conversion Projects

The performance test for avoided conversion projects includes a requirement that the slope of project areas where residential, commercial, or agricultural development is the anticipated converted land use cannot exceed 40%. It has come to our attention that there are areas in the Appalachian Mountains where residential development is legally permissible and regularly occurs in a manner that removes trees in areas that exceed 40% slope. Thus, the current language limits the ability of forest owners to use avoided conversion projects to prevent emissions from documentable business as usual situations. We recommend that this slope percent limitation be removed and replaced with the requirement to show that projects are eligible in areas where development is legally permissible and has been shown to occur in similar situations regardless of slope.

Section 3.5 Use of Qualified Conservation Easements

We would like to reiterate this point from our comments submitted on August 11th: We understand the need for ARB to have the ability to intervene in conservation easement issues that relate to carbon offset projects. However, we think that ARB having the same enforcement authority as the easement holder, and broadly defined to encompass all aspects of an easement, is overly broad and could create confusion about roles and responsibilities. We think it is more appropriate to 1) narrow ARB's scope of concern to provisions of easements that affect the integrity of offset projects, and 2) to clearly define the time at which it is appropriate for ARB to intervene in the execution and enforcement of the easement. We believe that requiring holders of qualified conservation easements for carbon offset projects be accredited by the Land Trust Accreditation Commission should provide a layer of assurance

that easements will be properly executed and ARB should only have the right to intervene when such land trusts have demonstrably failed to enforce provisions of qualified easements that adversely affect carbon projects. We would like to work with ARB to craft acceptable language.

If you have questions on these comments, please contact Paul Mason at 916-214-1382 or Paula Swedeen at 360-791-8224.

Respectfully,

A handwritten signature in black ink, appearing to read "Paula Swedeen", with a long horizontal flourish extending to the right.

Paula Swedeen, Ph.D.
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