United States Department of the Interior
NATIONAL PARK SERVICE
Golden Gate National Recreation Area
Fort Mason, Building 201
San Francisco, CA 94123

IN REPLY REFER TO:
Y1823

September 5, 2007

Mary Nichols
Chair, California Air Resource Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Comment on the Proposed Endorsement of the Forestry GHG Protocols

Dear Ms. Nichols;

The National Park Service (NPS) is pleased to submit comments on the proposed endorsement by CARB of the Forestry Green House Gas Protocols developed by the California Climate Action Registry (CCAR). Our comments focus on amending the language of a protocol criterion so that reforestation projects on NPS-managed lands could meet the requirements for eligibility.

The criterion in question is item E. Long Term Carbon Security and Environmental Integrity of the Forestry Project Protocol (pages 16-17), which requires that all lands proposed for reforestation projects be secured with an easement that dedicates the land permanently for forest use. There is both no need for and no legal instrument that could place federally owned, NPS-managed lands in a conservation easement granted to another party. Though PG&E does have easements on NPS lands, these easements allow PG&E to fulfill its primary mandate of providing utility service to its customers rather than establishing a redundant overlay dictating resource protection. As resource management is a primary mandate of the NPS, this responsibility would not be delegated through a permanent easement.

To establish our credentials as providing the legal equivalent to a conservation easement, the criteria used to define a conservation easement for the purposes of the Forestry Protocol must be examined. In the Protocol, the conservation easement must provide for:

1. the preservation of open space,
2. the protection of relatively natural habitat,

3. support of the project activity-type, and
4. include a statement indicating the easement is perpetual and conforms with Section 42823 of the CA Public Health and Safety Code which provides additional criteria that must be incorporated into the protocols and procedures governing acceptable forestry activities. These additional requirements include:
    a. that projects take place on forestland that is permanently dedicated to forest use through a restriction, granted in perpetuity, on the use that may be made of real property. This use must be consistent with:
        i. the protection of relatively natural habitat of fish, wildlife, or plants or similar ecosystem, and
        ii. the preservation of open space (including farmland and forest land) where such preservation is a) for the scenic enjoyment of the general public or, b) pursuant to a clearly delineated Federal, State or local conservation policy (26USC, Internal Revenue Code, (A) (1) (B) Part VI, Section 170, Charitable Contributions and Gifts).
    b. Forestry activities maintain and promote native forest types.

Since there is no language in any of the regulations that appears to restrict proposals for Forestry Protocol Projects to non-public lands, no text deletions would be required to permit NPS to meet the current protocol. The language in CA Health and Safety Code, Section 42823 which sets forth the requirements that the CA Climate Action Registry must follow in establishing procedures and protocols may permit NPS-managed lands to participate in the program under current language. NPS-managed lands meet the requirements called for in Section 42823 (d) (2) states:

> (2) Forestry activities that are reported as a participant's emissions results, or a part thereof, shall occur on forestland that is permanently dedicated to forest use through a restriction, granted in perpetuity, on the use that may be made of real property that is consistent with the conservation purposes listed in Section 170(h)(4) (A)(ii) and (iii) of Title 26 of the United States Code (listed above: protection of relatively natural habitat and open space).

We request that the Forestry Protocols for reforestation require lands be under conservation easements *or their legal equivalents*. The permitted equivalents must demonstrate conformance to the requirements of conservation easements that are listed above. This would clarify that NPS-managed lands meet the intent and purpose of requiring a conservation easement for the Forestry Project Protocols and allow NPS-managed lands to compete as part of a local partnership for funding in programs such as the PG&E ClimateSmart grants.

The support for the argument of legal equivalency is based on the mission of the NPS set forth in the Organic Act which established the Service in 1916, the enabling legislation that established Golden Gate National Recreation Area and the NPS 2006 Management Policies which define our management requirements. The key section of the Organic Act addressing management responsibilities states:

> [The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same, in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1).

Specific to Golden Gate National Recreation Area, the park was established in 1972:

> ...."to preserve for public use and enjoyment certain areas of Marin and San Francisco Counties, California, possessing outstanding natural, historic, scenic, and recreational values."

Management at GGNRA is directed to:

> "...utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management. "...preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area. (Pub.L. 92-589, § 1, Oct . 27, 1972, 86 Stat. 1299.)

Our management policies require that park resources and values are managed so as to leave them unimpaired for future generations. Resources are defined in Policy 1.4.6. as:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and
- the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

It is through these regulatory mandates and management directives that we feel confident that NPS-managed lands are the legal equivalent of the easements in perpetuity that will be established for Forestry Protocol project areas.

We appreciate the opportunity to comment on the Forestry Protocols. We request that you consider our proposed amendment text for the Protocols and allow NPS-managed lands to participate in programs conducted in accordance with the requirements of the Forestry Protocols. We are recommending that Criterion E. be amended to permit lands secured by a conservation easement or *its legal equivalent*. If you have any questions on our comments or require further information please contact Maria Alvarez, Restoration Specialist at 415-331-0847 or Wendy Poinsot, Fire Program Planner, at 415-218-6551.

Sincerely,

Brian O'Neill
General Superintendent

cc: Jeanne Panek, California Air Resources Board
John Parkhurst, PG&E
Wendy Poinsot, Jennifer Chapman, Maria Alvarez, National Park Service