



## PACIFIC FOREST TRUST

August 11, 2011

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

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

The Pacific Forest Trust would like to thank the California Air Resources Board for the opportunity to comments on the 15-day changes to the proposed Cap and Trade Regulations. We offer the following comments on the changes for your consideration.

### **§ 95802 Definitions:**

#### Sub-section 103 - Forest Owner

The definition includes all parties who may have an interest in the property. It requires that only one owner be identified as the project operator, but goes on to state that all owners with an interest in the property ultimately have responsibility for a forest offset project. We think this is contradictory and could make assigning responsibility for actual project implementation and all associated regulatory requirements difficult. There can be multiple parties with even a tangential interest in property. We recommend first that the forest owner be narrowed to those parties with an interest in the land and/or the trees, and further that the forest owner who is designated as the project operator be defined as the responsible party for the offset project.

We recommend these changes to the definition of forest owner also be made in the *Compliance Offset Protocol for U.S. Forests*.

### **§ 95985. Invalidation of ARB Offset Credits.**

This section does not distinguish between situations in which errors in offset reporting are the result of an unintentional or “good faith” effort to be accurate, and those in which misstatements are intentional and fraudulent. Calculations and inventory data for forest carbon projects can be complex, and it is not unrealistic to expect occasional unintentional errors on the part of either offset project operators, verifiers, or registries. We recommend that the cause of errors be bi-furcated, and the remedy for

unintentional mistakes in offset reports be to 1) allow the verifier or offset operator the chance to correct the information; 2) create a buffer pool similar to the one used for unintentional reversals to allow for re-payment if errors result in an over-issuance of offset credits; and 3) if unintentional errors in offset data reports resulted in an under-issuance of credits, that correction to associated accounts be allowed and no invalidation occur. When the origin of the mistake comes from verifier or registry error, we recommend that these parties be required to purchase ARB approved credits to cover credits taken from the buffer pool so that forest offset project operators are not penalized for another party's mistakes.

For intentional or fraudulent actions leading to invalidation, we recommend that 1) the party responsible for the intentional error be held responsible (e.g., offset project operator, verifier, or registry) and required to replace the credits. Both the intentional commission of a fraud and failure to replace credits would be subject to substantial fines. If fraudulent reports are submitted by any party more than once, the party should be disqualified from participating in the ARB offset program.

### **§ 95987. Offset Project Registry Requirements**

#### Consistent Interpretation of Protocol Implementation

We appreciate that the regulations lay out requirements for new registries. We however do not think that the language in sub-section (f) of this section is adequately clear or rigorous for ensuring that interpretation and implementation of these highly technical and complex protocols offset are consistent across registries. We recommend that ARB create a central repository and publically available site for answers to questions on how to interpret specific aspects of the protocol; that ARB clearly identifies itself as the final arbiter of disagreements or questions over interpretation; and that ARB actively ensures that consistent interpretation is being applied.

To this end, we also encourage to ARB to adequately staff its offset program with technical experts for each protocol type to handle technical issues that arise for project proponents and verifiers.

### **§ 95990. Recognition of Early Action Offset Credits**

#### Sub-section (f) – Regulatory verification of early action offsets:

We would like to note that the regulatory verification standards are different from the verification requirements of CAR v 2.1 forest projects. We think this could lead to difficulties in getting v 2.1 forest offset early action projects re-verified that are not due to lack of proper verification the first time, but from the application of different measures of success. We recommend that independent verification for regulatory purposes for all early action offset projects be done according to the same standards that applied during the original verification – i.e., following the verification instructions published along with the CAR 2.1 Forest Project Protocol. We also recommend that regulatory verification be done according to a procedural assessment of the methods and practices of the original verifier rather than a quantitative re-calculation.

### Sub-section (k) - Transition of Early Action Offset Projects to the Compliance Program:

The current language requires that CAR V 2.1 forest projects calculate how many offset credits would have been issued under the ARB compliance protocol from the project start date to the time of transition, and a comparison of that number to CRTs actually issued. If the number of credits would have been greater under the ARB compliance protocol, ARB will issue offset credits to make up the difference. If the application of the ARB protocol would result in fewer credits, then ARB only issues credits according to the *Compliance Offset Protocol for U.S. Forests* from the date of transition. We think that it is highly unlikely that V 2.1 projects will generate fewer offset credits compared to if they had been constructed using the baseline and project quantification requirements of the ARB compliance protocol. Given this situation, we propose that the requirement to compare offset credits between the two protocols from project start to the time of transition be made optional. This way, project operators can opt to take the approach that generates the fewest offsets, rather than engaging in a complicated paperwork exercise. Calculating hypothetical credits from past will be time consuming, and may not be fully technically possible because 2.1 project developers likely do not have harvested wood product data in the form required by the ARB compliance protocol for past years. Regardless, retaining the requirement to calculate the new baseline under the ARB compliance protocol from the original start date and starting new offset credit calculations from the year of the transition makes sense.

### **§ 95852.2. Emissions without a Compliance Obligation - Biomass**

Pacific Forest Trust appreciates the additions to the Mandatory Reporting Rule to gather information regarding the source of forest biomass being combusted at large biomass facilities (§95103(j)(2)). However, we reiterate our previous comments that not all biomass is created equally: biomass from different sources can have dramatically different carbon emissions. California's biomass policies will likely evolve in the coming years, and we urge ARB to retain a leadership role in that interagency discussion and to work toward an approach that more fully captures the accounting nuances of biomass combustion.

### **Compliance Protocol for U.S. Forest Offsets**

#### Section 3.5 Use of Qualified Conservation Easements

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.

## Triggers for Offset Protocol Updates

The proposed regulation would benefit from clearly articulating conditions that would trigger a review and update of offset protocols. At a minimum, new research or information that would substantially alter the accuracy of an ARB protocol should instigate a protocol review by ARB. We note that the recent white papers on the Forest Protocol commissioned by the Climate Action Reserve illuminate significant accounting shortcomings as well as opportunities to make the protocol more cost effective for project developers.

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.  
Director of Ecosystem Service Programs  
The Pacific Forest Trust