December 8, 2010

*Via Electronic Submittal*

California Air Resources Board

Attn: Kevin Kennedy

1001 I Street

Sacramento, CA 95812

**RE: Comments on the Final Draft Cap and Trade Regulations, the Compliance Protocol US Forests Project, and the Mandatory Reporting Regulation**

Dear Mr. Kennedy and CARB Staff:

The Pacific Forest Trust appreciates the tremendous effort that the staff and leadership of California’s Air Resources Board (ARB) have put into the final cap and trade regulations. This proposal represents one of the most comprehensive caps on global warming pollution in the world, and reflects California’s commitment to addressing global warming and reaping the economic benefits associated with such leadership and innovation.

In general, PFT is very impressed with the thoughtfulness and clarity of the proposed regulation. We offer a few constructive suggestions in the areas of transitioning early action forest projects to compliance offset projects, the treatment of biomass and biofuels under the cap, use of allowance value and some clarifications to the Forest Offset Protocol. We urge ARB to incorporate these changes into the regulation and Forest Offset Protocol prior to adoption.

**Summary of Recommendations:**

1. **In the interest of regulatory and market certainty, the cap and trade regulation should provide further clarification and guidance on the procedure for transitioning early action offset projects to compliance offset projects.**
2. **Emissions from biomass-derived fuels should have a compliance obligation under the cap that reflects net emissions after both upstream and downstream emissions associated with the production and combustion of the fuel source have been taken into account.**
3. **The cap and trade regulation should explicitly include clear language recommending the investment of allowance auction proceeds in ecosystem-based adaptation and the preservation of our natural infrastructure for its climate benefits.**
4. **Clarify the mechanism for third party registries, such as the Climate Action Reserve (CAR), to provide timely, consistent and accurate responses to questions that arise during offset project development and implementation.**
5. **Retain the original baseline for the entire 100-year commitment period—but adjust buffer pool contributions or discount factors based on new research or information that becomes available during the preceding 25-year crediting period.**

**6) Annual verification of Forest Offset Credits should occur through field visits at least every six years and annually through examination of inventory data and aerial photographs in all other years.**

***Comments Related to the Cap and Trade Regulation:***

**1) In the interest of regulatory and market certainty, the cap and trade regulation should provide further clarification and guidance on the procedure for transitioning early action offset projects to compliance offset projects.**

ARB should issue further guidance on how to transition Early Action forest offset projects developed under ARB-approved CAR forest protocols into compliance projects.

1. **Early Action Forestry Projects Conducted under the ARB-approved CAR Forest Project Protocol v. 2.1 with project start dates prior to 12/31/06 should be allowed to transition to a compliance offset project status.** The most reasonable solution is to grant an exemption to the post 12/31/06 compliance offset project start date to any Early Action Forestry Projects conducted under the ARB-approved CAR Forest Project Protocol v. 2.1.
2. **ARB should issue clear guidance such as the CAR-developed draft “Transitioning Forest Projects Registered Under Earlier Versions of the Forest Project Protocol to Version 3.x.”** (See Attachment A) Such guidance regarding transitioning earlier projects to the version 3.x forest protocol provides a workable path forward. Particularly for forest projects conducted under version 2.1, there is significant uncertainty about how to transition to compliance protocols.
3. **Early action projects should have the option to transition to compliance offset projects in the short-term and at the conclusion of the Early Action crediting period in 2014.** Section 95975(g) of the cap and trade regulation implies that a project cannot seek a renewed crediting period earlier than 18 months prior to the expiration of the crediting period. We recommend that early action projects be permitted to transition into compliance projects as soon as possible. We see no benefit to waiting until mid-2013 to begin that transition.
4. **When transitioning early action CRTs to compliance credits, one consolidated verification should suffice for all previous vintage years.** For future vintages, ARB and CAR verification requirements should be coordinated to only require one verification.

**2) Emissions from biomass-derived fuels should have a compliance obligation under the cap that should reflect net emissions after both upstream and downstream emissions associated with the production and combustion of the fuel source have been taken into account.**

*Please refer to the coalition letter that on this topic*

*for a more extensive discussion of this issue.*

PFT recommends that ARB amend § 95852.2 (a)(4)(A) of the Cap and Trade regulations and § 95852.2 et al. of the Mandatory Reporting Regulation (MRR) to include upstream biological emissions associated with land use impacts and the management of biomass feedstocks. The accounting and reporting guidance should be developed in 2011 prior to the regulations taking effect in 2012, and should require biomass fuel suppliers to report biological emissions associated with the feedstock. In the near term, CARB should require fuel users to report the origins of biomass for fuel.

Pacific Forest Trust is supportive of the utilization of forest biomass when it is a byproduct of a bona fide forest restoration activity, such as remediating the long-term impacts of fire suppression, or when it is otherwise useful in sustaining watershed health. However, when substantial amounts of forest biomass are removed, that removal must be tracked to maintain accurate carbon accounting in both the forest and energy sectors

In order to track the flow of carbon from the forest to the energy sector, ARB staff should immediately begin the development of a clear reporting methodology that allows the forest biomass combusted for energy to be tracked back to a specific forest project. This accounting methodology should, at a minimum, capture the physical location of the project, the volume of material extracted, associated biogenic emissions such as those from soil disturbance, and anthropogenic emissions, such as those from forest harvest operations and hauling. Section 95852.2(a)(4) of the cap and trade regulation should be amended to include this new reporting requirement. Section 958452.2 of the Mandatory Reporting Regulation should also be amended to reflect this reporting requirement, and in the period until this guidance is developed, the MMR should require facilities to report the source and volume of any forest biomass combusted.

**3) The cap and trade regulation should explicitly include clear language suggesting the investment of allowance auction proceeds in ecosystem-based adaptation and the preservation of our natural infrastructure for its climate benefits.**

The cap and trade regulation proposes to deposit all auction revenues into a common Air Pollution Control Fund (see Section 95870) to be appropriated by the Legislature for purposes consistent with AB 32. Pacific Forest Trust urges ARB to explicitly identify the appropriate investments that were identified by the Economic Allocation Advisory Committee (EAAC) in its final March 2010 report, *Allocating Emissions Allowances under California’s Cal and Trade Program.*

Specifically, PFT believes that investments that preserve California’s natural infrastructure will bear great dividends in a world with a changing climate. For example, using conservation easements to protect critical watersheds from land use conversion or harvest practices that could adversely impact future water supplies will help ensure that future generations of California’s have productive, forested watersheds that are more resilient to the impacts of climate change.

Investment in California’s natural infrastructure provides myriad co-benefits, including clean drinking water, carbon sequestration, flood control, wildlife habitat, crop pollination, air quality improvement, recreation, timber production, employment and climate regulation. It is sometimes easy to forget about these critical services provided by our natural landscapes, and preserving these benefits should receive a substantial portion of the allowance value. Highlighting these ecosystem services would help ensure that they are not lost in the ensuing appropriation debate in the Legislature.

We urge ARB to amend Section 95870(f) as follows:

The proceeds from the sale of these allowances will be deposited in the Air Pollution Control Fund and will be available for appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq. *and may be used for purposes of ecosystem-based adaptation, the protection of public health and disadvantaged communities, land use and transportation, greenhouse gas reductions by local governments and a community benefits fund, as advised by the Economic and Allocation Advisory Committee in its March 2010 report to the California Air Resources Board.*

**4) Clarify the mechanism for third party registries, such as the Climate Action Reserve, to provide timely, consistent and accurate responses to questions that arise during offset project development and implementation.**

As an entity that has developed forest carbon projects, we are keenly aware that questions about how to interpret and implement the forest protocol will inevitably arise. It will be critically important for Project Developers to receive timely answers to implementation questions, and it will be critical that the guidance be consistent regardless of which Registry is asked.

Ideally, ARB staff would provide answers to implementation questions. However, if ARB is unwilling or unable to provide staff to play that role, and intends for the Offset Registries to provide that guidance to the Project Developer, we believe there need to be standards in place to ensure technical and administrative competence and consistency.

First, offset registries should be required to demonstrate substantial competence and technical depth on any offset protocols they are using. The current focus in the regulation on conflict of interest standards, liability insurance, and attendance of a training course does not seem to be of adequate depth to prepare a registry to provide complex, nuanced, technical guidance regarding development and implementation of offset projects. We suggest that there should be an ARB-administered competency exam and/or demonstrated experience in implementing the relevant protocols.

Second, there needs to be a clear, transparent mechanism to ensure that ARB and the various Offset Registries are all aware of any guidance that is provided to Project Developers. The regulations require the Offset Registry to communicate any guidance to ARB. We suggest that the regulations require that all guidance be made available on a publically accessible web site available to any Offset Registry or member of the public. In this way, the guidance documents can begin to form a body of “case law” to help guide consistent implementation of the protocols.

***Comments Related to the Compliance Protocol US Forest Projects:***

Pacific Forest Trust strongly supports the Forest Offset Protocol and urges the Board to adopt the Compliance Offset Protocol for US Forests. In our ongoing effort to ensure that the Forest Protocol achieves accurate accounting at a reasonable cost, and achieves significant environmental co-benefits, we offer the following suggestions:

**Crediting Period**: **Retain the original baseline for the entire 100-year commitment period—but adjust buffer pool contributions or discount factors based on any new research, information, or changes in regulation that has occurred.**

Due to the permanence obligation of offsets, a project would have a continued obligation to verify reductions against the initial baseline even if a new baseline is established at the 25 year crediting period renewal. Recasting a baseline at years 25, 50, etc. would have the effect of creating parallel monitoring and verification obligations against multiple baselines, which could be costly, confusing, and unnecessary. Therefore, we recommend the forest project baselines to be fixed for the duration of the project life to avoid this problem.

We understand and agree it makes sense to require projects to transition to the most recently approved compliance protocol as a condition of renewal. However, we think that it would more efficient, and provide more certainty, to retain the original 100-year baseline (especially given the fact that it represents an average value), and make necessary adjustments to discount factors and buffer pool contributions as new data become available. Without this baseline certainty, landowners could be deterred from participating in the offset protocol due to the increasing complexity of monitoring multiple baselines. While we expect there to be improved information over time on basic forest carbon accounting, the use of a 25-year crediting period creates uncertainties for landowners who are being asked to make 100-plus year commitments for every ton of CO2 they sequester.

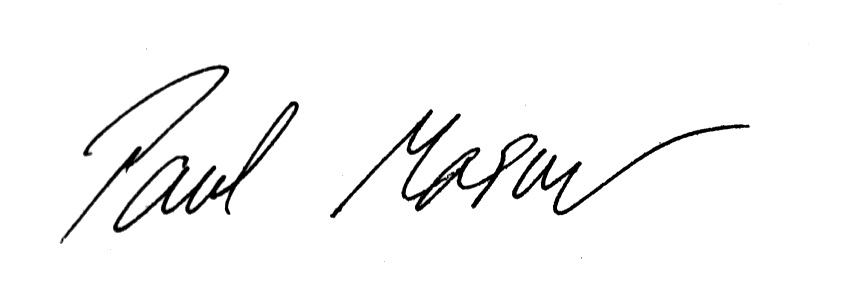
**Verification of Forest Offset Credits should occur through field visits at least every six years and annually through examination of inventory data and aerial photographs in all other years.**

All offsets need to be verified annually, which is appropriate. Verification of Forest Offset Projects should allow for office examination of inventory data and aerial photographs in the years in between field visits. Project owners would be responsible for paying back credits if credits were overestimated during office verifications. ARB would also be responsible for ensuring issuance of additional credits to project owners if credits were underestimated. We support the requirement that field verifications should occur every six years.”

The change from the CAR v.3.2 protocol made in the draft regulations, which only allow credits to be verified during a field visit, eliminates the cost efficiencies gained by allowing some verifications to occur by office review. If a project owner conducts field verification every sixth year, but can only sell credits after each field verification, five year’s worth of credits will be of older than current vintage, and therefore of lower market value. Allowing “office” verifications but requiring true-ups if inaccuracies are found every sixth year reduces the transaction cost burden on the project owner but still creates a reliable system in which error rates on credit approval are likely to be very low. Digital aerial photography can be used very successfully to cross-check inventory data and ensure that forests remain in the age class stated in inventory data. Re-checks of inventory data in the field every sixth year would allow for fine-grain adjustments in the case of minor inaccuracies due to plot-level measurement, but would be no more effective at detecting large-scale deviations from stated carbon stocks than examining photos.

We appreciate ARB’s attention to our comments. If you have questions regarding any of our comments, please contact Paul Mason at 916-214-1382 or [pmason@pacificforest.org](mailto:pmason@pacificforest.org).

Yours truly,



Paul Mason

Director, California Policy

Encl: *Climate Action Reserve, Draft Guidance Document for Transitioning Forest Projects**Registered Under Earlier Versions of the Forest Project Protocol to Version 3.x*

**Attachment A**

***Climate Action Reserve***

***Draft Guidance Document***

**Transitioning Forest Projects Registered Under Earlier Versions**

**of the Forest Project Protocol**

**to Version 3.x**

Transitioning Forest Projects Registered Under Earlier Versions of the Forest Project Protocol to Version 3.x

April 2010

Forest projects registered under earlier versions of the Climate Action Reserve’s Forest Project Protocol (FPP) are encouraged to transition to using FPP Version 3.x. Doing so will allow such projects to participate in the Reserve’s “buffer pool” used to insure against the risk of unavoidable reversals. Projects registered under earlier FPP versions may continue to quantify GHG reductions against the baseline established at the time they were registered. However, they must follow all other quantification, monitoring, and verification requirements of Version 3.x of the FPP, as outlined in the following table.

**Table 1. Requirements for Transitioning to FPP Version 3.x**

|  |  |  |  |
| --- | --- | --- | --- |
| Topic | Version 3.x Protocol Reference | Description/Requirement | Time Allowed to Meet Requirement |
| Forest Owner and Project Implementation Agreement | 2.2/3.5 | The Forest Owner must enter into a Project Implementation Agreement with the Reserve. | A Project Implementation Agreement (PIA) must be completed and signed before the project can register under FPP Version 3.x. |
| Minimum Time Commitment | 3.4 | Projects must be monitored and verified for 100 years following the issuance of any CRT. | Once the PIA is signed, the commitment applies to all CRTs issued to the project, including CRTs issued under prior FPP versions. |
| Attestation of Title | 3.7 | The Forest Owner must sign an Attestation of Title form each time the project is verified and CRTs are issued. | A signed Attestation of Title must be submitted each time the project is verified under FPP Version 3.x, prior to issuance of CRTs. |
| Sustainable Harvesting and Natural Forest Management | 3.9.1 | Demonstration of sustainable harvesting methods across entity. | These criteria and demonstrations must be met by the first site-visit verification under Version 3.x. |
| 3.9.2 | Requirements for native species, composition of native species, diversity of age class requirements, and structural elements. |
| 3.9.3 | Promotion of onsite standing live carbon stocks. |
| 3.9.4 | Balancing age and habitat classes | Any harvesting following transition to FPP Version 3.x must comply immediately with stated limits. |
| Project Types | 2.1 | All references to projects in monitoring reports following the transition to FPP Version 3.x must conform to FPP Version 3.x project definitions. The term *Improved Forest Management* must be used for *Conservation Based Forest Management* projects and the term *Avoided Conversion* must be used for *Conservation* projects. | FPP Version 3.x project terms and definitions must be used in all new monitoring reports. |
| Baseline | 6 | Projects may continue to use baseline carbon stock estimates developed and adopted under previous versions of the FPP after the transition to FPP Version 3.x. No changes to baseline onsite (or offsite) carbon stock estimates are required. Baseline estimates for Improved Forest Management projects do *not* have to be averaged. | N/A |
| GHG Assessment Boundaries | 5.1, 5.2, 5.3 and 6 | All projects continue to report carbon stocks (emissions) based on the carbon pools that were quantified at the project’s initial verification. The project must also adapt their projects to account for harvested wood products. This will require projects to determine the harvested wood products associated with the original baseline modeling and factor the quantity of averaged wood products into their annual reports. | Must be included in the next annual monitoring report submitted to CAR.  The accounting of harvested wood products will apply to current and future monitoring reports and not be retroactive. |
| Quantifying Secondary Effects | 6.1.5, 6.2.6, and 6.3.5 | All projects must quantify secondary effects according to the relevant requirements in Section 6 of FPP Version 3.x. | Immediately |
| Insuring Against Reversals | 7.2, Appendix D | All projects must calculate a risk rating and associated contribution to the Reserve Buffer Pool following the requirements and guidance in Section 7 and Appendix D of FPP Version 3.x. Required contributions must be calculated for all years since the start date of the project. The Forest Owner must surrender CRTs sufficient to cover the total required Buffer Pool contributions for all years since the project’s start date. | Calculation of Buffer Pool contributions must be conducted as part of the first verification under FPP Version 3.x. Buffer Pool CRTs may be surrendered immediately, or withheld from future CRT issuances until the required contributions have been met. |
| Monitoring | 8.0 | Project must meet all monitoring requirements in FPP Version 3.x. | Must commence with first submitted monitoring report under FPP Version 3.x. |
| Reporting | 9.0 | Projects must meet all reporting requirements of FPP Version 3.x other than those relating to baseline and GHG assessment boundary requirements that are not applicable, as detailed above. For example, a project transitioning to FPP Version 3.x does not have to report on carbon pools that were not quantified under previous versions of the FPP. | Must commence with first submitted monitoring report under FPP Version 3.x. |
| Verification | 10.0 | Projects must be verified following the verification guidelines under FPP Version 3.x. | The project must undergo desk or site-visit verification to ensure that secondary effects and the buffer pool contributions are accurately reported per the requirements of FPP Version 3.x. |
| Developing an Inventory of Forest Project Carbon Stocks | Appendix A | Projects must continue to use the biomass equations that were used at the project’s initial verification for the life of the project, unless the Reserve provides other direction. | N/A |