THE PACIFIC FOREST TRUST
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*Via: web submission at http://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=dec-14-pdr-ws&comm_period=1*

California Air Resources Board
1001 I Street
Sacramento, CA 95814

**Re: Comments on Preliminary Draft Regulation for a California Cap-and-Trade Program**

Dear CARB Staff:

The Pacific Forest Trust appreciates the extensive efforts of Air Resources Board staff in compiling the Preliminary Draft Regulation, and we appreciate the opportunity to provide feedback on current thinking. We hope that our comments help focus and refine staff thinking on the following important issues.

Offset Project Eligibility Date for Additionality

Section 96240 of the PDR improperly sets January 1, 2007 as the earliest possible start date for offset projects. We believe this is a serious error. Previous action by the California Legislature and the Air Resources Board make clear that offset projects registered with the California Climate Action Registry (now Climate Action Reserve) should be eligible for inclusion in any state or federal Cap & Trade program.

The California Climate Action Registry (CCAR) was established by the California Legislature through SB 1771; legislation authored by Senator Byron Sher in 2000. The legislation's findings and declarations demonstrate clearly that it was the Legislature's intent that actions to reduce greenhouse gas emissions taken through CCAR be given credit in a future regulatory system, if at all possible. Note, for example:

> 42801. The Legislature finds and declares all of the following:
>
> (b) Mandatory greenhouse gas emissions reductions may be imposed on California sources at some future point, and in view of this, the state has a responsibility to use its best efforts to ensure that organizations that voluntarily reduce their emissions receive appropriate consideration for emissions reductions made prior to the implementation of any mandatory programs.

And:

> (e) The state hereby commits to use its best efforts to ensure that organizations that establish greenhouse gas emissions baselines and register emissions results that are verified in accordance with this chapter receive appropriate consideration under any future international, federal, or state regulatory scheme relating to greenhouse gas emissions. The state cannot guarantee that any regulatory regime relating to greenhouse gas emissions will recognize the baselines or reductions recorded in the registry.

The California Climate Action Registry (CCAR) was directed by SB 812 (Sher) in 2002 to develop science-based forest offset protocols to encourage the development of forest carbon projects to combat global warming. CCAR developed the forest protocols, which were subsequently endorsed by the Air Board as early action measures. Relying

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upon the representation made by the Legislature, several California landowners (including ones working with the Pacific Forest Trust) developed forest carbon sequestration projects with the understanding that resulting emission reductions would be recognized by California in future regulatory activities. It should be noted that these forest projects were conducted under the Climate Action Reserve Forest Project Protocol version 2.1, which was unanimously endorsed as an early action measure by the Air Resources Board in October of 2007.

Further, AB 32 clearly indicates that, to the maximum extent feasible, AB 32 implementation activities by the Air Resources Board should build upon the efforts already undertaken by the California Climate Action Registry. For example, AB 32 states, at Health and Safety Code section 38530(b)(3):

> Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the California Climate Action Registry, established pursuant to Chapter 6 (commencing with Section 42800) of Part 4 of Division 26. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

In summary, it was clearly the intent of the legislature that emission reduction projects and reporting conducted though the California Climate Action Reserve be eligible, to the maximum extent feasible, for use in a future regulatory scheme to control greenhouse gas emissions. Further, the forest projects that were conducted prior to the date that AB 32 became effective were done pursuant to CCAR Forest Project Protocol version 2.1, which was subsequently endorsed by the Air Resources Board.

Pacific Forest Trust strongly believes that verified forest offset projects registered with CCAR should be eligible projects, and not be excluded as offset projects due solely to the January 1, 2007 start date currently suggested in the PDR at section 96240.

Geographic limits on offsets

In regards to forest project offsets, PFT believes that projects in California are generally going to be superior to forest projects in other states or countries because California has a far more comprehensive and robust regulatory framework for including forests in climate policy. California's policy of No Net Loss of forest carbon sequestration, articulated in the AB 32 scoping plan, combined with an inventory of California's forest sector, give greater confidence that in-state offset projects genuinely supply additional emissions reductions when considered in the overall sectoral context. Accordingly, we believe if would be appropriate for the regulations to embody a distinct and significant preference for in-state forest offset projects, for example at least 80% of forest carbon offsets would be derived from within California.

Additionally, offset projects that are undertaken in California help return the economic benefits of AB 32 to Californian forestland owners, as opposed to exporting economic benefits to other states and nations that are otherwise not subject to the regulatory requirements of AB 32. To the extent that revenue associated with forest offset projects can stay in California to help facilitate improved forest management, the co-benefits (clear air, clean water, habitat and resilient ecosystems) accrue to Californians.

Maintaining Consistent High Standards for Offset Protocols

In coming years proposed offset protocols from a variety of sources will be brought to ARB for adoption for compliance purposes under AB32. Given the multiple sources and varying development methods of these anticipated candidate protocols, and given that the offsets protocols will be used for regulatory compliance with AB 32, it is going to be critical for ARB staff to ensure consistent, high standards. PFT respectfully suggests that as future protocols are brought to ARB, staff solicit public comment and ensure that all proposed protocols meet equivalent standards for permanence; additionality; inventory, measurement and monitoring rigor; and independent verifiability.

ARB staff must ensure any and all offset standards proposed for use in CA meet or exceed the quality and rigor extant in those developed via CCAR/CAR to date. For example, with regard to forests, any future standard must include provisions requiring natural forests and ecosystem health, as well as precision in assessing the specific carbon stock in any given project. The regulatory compliance credit resulting from forest offsets need to be predicated on standards that embody ecosystem resilience and robustness as well as accounting.

Finally, rather than allowing for the automatic import of standards from other states or regional partnerships such as WCI or RGGI, we strongly urge ARB to individually review each offset standard in use to assure consistency with existing ARB protocol standards, before permitting the regulatory use of offsets developed under such other standards.

Biomass

Section 95950 of the PDR suggests that biomass energy should generally be treated as carbon neutral, on the theory that the carbon emissions from the facilities are offset by the sequestration of the feedstock growth. While that may be the case, it is also easy to envision a situation where the economics create an incentive to harvest much more aggressively, depleting the net carbon stored in the forest. The PDR needs to include language preventing the depletion of the forest sector to create energy, and ensuring restoration of the net stock over a time certain.

95950(a)(2)(A) appears to be a placeholder for language yet-to-be-developed that would ensure that biomass is being generated by sustainable sources. This is perhaps most critical for the forest sector, and we assume that the activities of the Inter-Agency Forest Working Group (IFWG) will help inform the approach and language. We look forward to being involved in those discussions and helping to develop an approach that allows biomass energy to utilize forest materials in a way that restores more natural, resilient forests well-positioned to deal with a changing climate.

GHG Sequestration associated with public grants

Section 96240(c)(5) contains rather sweeping language saying that GHG sequestration associated with public or government grants is not considered additional. This language needs further refinement.

As currently drafted, the language will create significant confusion and consternation in the conservation community, and generate uncertainty about the impact of, for example, doing a conservation easement funded with public grant funds. For example,

if a landowner were to grant a conservation easement restricting future development on the property, would section 96240(c)(5) effectively prohibit any future offset projects on that property, even if the landowner were to engage in exceptional forest management outside the parameters of the easement?

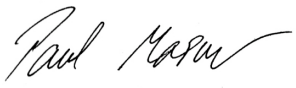
The effect of this provision, as currently articulated, would be to stifle innovation and increase the cost of conservation efforts. For example, under the status quo a landowner could grant a conservation easement eliminating development rights and restricting land use to benefit habitat, water quality and other environmental values, and still be able to pursue a forest carbon project, using protocols approved by ARB. By combining some revenue from the conservation easement, and some revenue from a carbon project, a landowner can afford to commit to doing exceptional forestry and shoulder the on-going burdens of maintaining a high quality carbon project, while protecting the land in perpetuity. If 96240(c)(5) were in effect, the value of the future carbon income would be prohibited, so the landowner would naturally expect to be compensated for that value at the time of purchase, significantly increasing the cost to the public.

We would also note that there should be consistency in how this concept is applied. Does any public investment in a project (such as a grant from the California Energy Commission or federal financing) for a biofuels or co-generation facility, or support for solar or wind energy, or investments in efficiency, obviate any role in a carbon market?

This is a complex topic, and we look forward to having discussions with ARB staff and some of the entities that grant public funds for conservation. However, as currently drafted the main effect of the provision would be to increase the cost of conservation transactions.

Again, we very much appreciate the efforts of the Air Resources Board in putting together this Preliminary Draft Regulation, and applaud the approach of giving the public this early insight into staff thinking on this complicated topic. Pacific Forest Trust looks forward to continued discussions with staff over the coming year. If you have any questions about these comments or other issues relating to forests or other biological carbon (broadly defined) please don't hesitate to contact Paul Mason at (916) 214-1382 or pmason@pacificforest.org.

Yours truly,



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