

Summary notes US Forest Technical Working Group #2

Topic #1 – Eligibility of previously listed projects

What additional context or considerations related to this topic should Ecology be aware of?

- There are a variety of reasons why a project may not move past the listing stage, and the bar for listing is relatively low
- COVID-19 created challenges for verification that may have resulted in missed deadlines
- Ecology should consider whether or not each change supports the overall goal of the protocol to encourage landowners to sequester more carbon

Does this change present a risk of double counting of offset credits? In what situation might this occur?

- Ecology should consider whether or not a project listed for a long time period meets the additionality requirements of the program
- There is always the potential for double counting, but can be mitigated by due diligence by verifiers and the program
- The project registration should be considered the point where a binding commitment occurs
- Concerns around cherry picking of project area should be addressed via logical management unit provision of the protocol
- Projects would still need to attain compliance with all elements of the protocol whether re-listing or listing for the first time

Does this change have a meaningful impact on developers or landowners?

- Flexibility is important for landowners
- This change would be meaningful for landowners, CARB has chosen to allow overlap with previously listed project in some cases
- There are a variety of reasons why a listing may not move forward outside of the landowner's control and that do not warrant excluding them from future development

Does this change positively or negative impact any of Ecology's programmatic goals for this rulemaking?

- Ecology should consider the additionality implications of this change
- This change would improve an unnecessary barrier, with a limited number of uses cases
- Anything that reduces confusion for private landowners is a positive change

Topic #2 – Definition of "forest owner"

What additional considerations or context related to this topic should Ecology be aware of?

- This definition took considerable work to develop and is an area of significant complexity and nuance
- Considerations around multiple landowner need to be considered if Ecology pursues an approach to facilitate aggregation, currently each individual landowner would be directly

responsible to Ecology. In other programs the project proponent is solely responsible, which alleviates a barrier for small landowners. This proposed change does not resolve that issue.

- The intent of this change is to separate out those who are responsible from those who are not directly responsible
- In some cases easements may be funded by the state and place the state in the role of the forest owners due to their investment role in the encumbrances

Are there alternatives to this change that Ecology should consider?

- Ecology should consider an explicit determination on the role of mineral rights holders as forest owners in this definition
 - At present, mineral rights holders would be considered forest owners

Does this change more accurately allocate liability to the responsible parties in the event of an intentional reversal? Why or why not?

- In most cases this definition would more accurately allocate liability to those who control the carbon, but mineral rights treatment should be considered
- Conservation easements rarely control the carbon

Does this change positively or negative impact any of Ecology's programmatic goals for this rulemaking?

- Revising treatment of conservation easements would be important to facilitate public lands participation
- This change does not improve feasibility for small landowners, allocating responsibility to the project proponent would be needed to achieve this

Topic #3 – Standard of negligence in Forestry reversals

What additional considerations or context related to this topic should Ecology be aware of?

- Raising the bar "gross negligence" is a new term introduced by the change and warrants a definition, as we as consideration on whether "negligence" may be a more appropriate bar.
- Legal review and definition of these terms – such as "willful intent" and "intentional misconduct" is needed
- The intent of this change was to allocate liability more accurately when warranted and protect forest owners from liability when it was unwarranted

Given that this change would classify some reversals that would otherwise be intentional as unintentional should a corresponding increase to buffer pools be included?

- Gross negligence should be dealt with in a court of law, the purpose of the buffer pool should be to address unintentional reversals
- The buffer pool should ideally ensure permanence of the projects. A more rigorous buffer pool would backstop all reversals that occur, intentional and unintentional and the court process would require the responsible party to replenish the buffer pool.
- Increasing buffer pool contributions would require legitimate landowners to pay for other landowner's misconduct

Does this change have a meaningful impact on developer or landowner risk?

- This change may help public landowners be able to use the protocol, as well as tribal or private landowners who wish to maintain public access
- Maintaining public access supports the public interest
- Support for continued public access could be achieved without changing the threshold from willful intent to intentional misconduct

Does this change positively or negatively impact any of Ecology's programmatic goals for this rulemaking?

- This would remove a barrier for participation for tribes and address a disincentive to project enrollment
- This change puts permanence and not incurring social harm at odds with each other