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6406 Marine Dr
Tulalip, WA 98271-9694

360-716-4500
Fax 360-716-0628

The Tulalip Tribes are federally recognized successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands signatory to the Treaty of Point Elliott.

July 15th, 2022

Joshua Grice
Department of Ecology
Air Quality program
PO Box 47600
Olympia QWA 98504-7600

RE: The Tulalip Tribes comments relating to the draft rule for the Climate Commitment Act Program, Chapter 173-446 WAC

Dear Mr. Grice

The Tulalip Tribes are the successors in interest to the Snohomish, Skykomish, Snoqualmie, and other allied and subordinate tribes and bands signatory to the 1855 Treaty of Point Elliott. In the treaty, our ancestors ceded their right to much of our land in exchange for the recognition of our inherent rights and the guarantee from the United States that those rights would be protected and upheld into perpetuity. Included in those guarantees are the right to hunt, fish, and gather in all our usual and accustomed grounds and on all open and unclaimed lands of the Territory. We continue to exercise those rights today as we have since time immemorial.

The Tulalip Tribes would like to thank you for the opportunity to submit the following comments on the Department of Ecology's draft rules for the Climate Commitment Act Program, Chapter 173-446 WAC. Last year, the Tulalip Tribes worked closely with the Washington State legislature to secure passage of the Climate Commitment Act (CCA), a milestone for the Pacific Northwest and future generations. Enactment of the CCA solidifies Washington State and area Tribes as national climate leaders, making Washington the second to place a binding, declining greenhouse gas (GHG) emissions limit across all major sectors of our economy. The Tulalip Tribes appreciate the significance and short timeline of this rule-making process and applaud the efforts of the Department of Ecology to engage Tribes and the broader public in the undertaking. The Tulalip Tribes intend to continue our commitment to work closely with the State in implementing the CCA and offer the following comments in the spirit of strengthening our mutual efforts.

Tribal sovereignty

Removing limited waivers of sovereign immunity from CARB's requirements is significant and essential to the success of Washington's emerging market. As written, the rule supports this critical component. We commend Ecology and the State for recognizing this key element and fully advocate for the retention of this provision. Tribal communities in the Northwest represent a vital component of this emerging marketplace, with this essential provision allowing the Tribes to become fully engaged in a capacity, unlike in California.

Explicitly stating the obligation of state agencies to engage in meaningful consultation with federally recognized tribes with sufficient time and information available is critical to the success and adoption of these rules. The draft rules should affirm the regulations in no way limit tribes from requesting consultation at any time. Language should be added to the rules to clarify the sovereignty of Tribes and the capacity to request consultation at any time. Linkage agreements made in the future with other carbon markets must have meaningful consultation with tribes, with sufficient time and information available for policy decisions in our sovereign government forums.

Developing an Urban Forestry Offset Protocol

The Tulalip Tribes are concerned that simply adopting the existing CARB Urban Forest Project offset protocol will be ineffective in supporting the development of effective offset projects in urban landscapes. Moreover, the draft rule explicitly excludes the use of the urban forest protocol on tribal lands. By reference;

"(E) Section 3.1 waiver of sovereign immunity requirement is not adopted. Accordingly, section 3.1 is amended to: Only offset projects OTS-3614.4 located in the United States and its territories are eligible under this protocol."

This language purposely excludes language that is inclusive of Tribal lands that meet the following definitions:

- Land that is owned by, or subject to an ownership or possessory interest of a Tribe;
- Land that is "Indian lands" of a Tribe, as defined by 25 USC §81(a)(1); or
- Land that is owned by any person, entity, or Tribe within the external borders of such Indian lands.

Not only do we believe the exclusion of Tribal lands for this protocol is ill-conceived, we believe the adoption of the CARB protocol is equally near-sighted. It's our understanding the CARB protocol has yet to be deployed in the California market. Therefore, we believe it would be in the State's best interest to seriously consider adopting a more relevant and inclusive approach that facilitates uptake in Washington's urban areas and rural population centers, including tribal communities. Adopting an effective urban offset protocol is a significant opportunity for Ecology to provide leadership in this arena and deliver benefits to overburdened communities.

Evaluation and development of offset protocols

Related to the previous comment, we are equally concerned with the lack of clarity on how proposed or revised protocols will be considered and adopted. As written, the draft rules exclude a clear and concise mechanism for future adaptation and modifications to offset protocols, either by creating protocols unique to Washington State or participating in updates to protocols in linked markets. We view this as a significant omission in the rules that will likely limit opportunities to improve existing protocols, such as the urban forestry protocol, or address specific areas of need, such as blue carbon or aggregation. We believe these particular protocols (aggregation and blue carbon) are essential for successfully implementing carbon sequestration projects at a pace commensurate with the scale and urgency of the situation at hand.

The Tulalip Tribes strongly urges Ecology to address these weaknesses and omissions. In the absence of adopting additional protocols unique to Washington, we believe the inclusion of language that provides

for an annual proposal and review process, a process inclusive of tribal consultation, would help provide an appropriate and essential pathway for protocol improvement and expansion.

To address this concern, we would be wholly supportive of adding the following language to WAC 173-446-505:

(4) Informed by implementation of the Climate Commitment Act Program and input from technical experts, Tribal Nations, and stakeholders, Ecology will annually evaluate:

a) Opportunities to update existing compliance offset protocols to reflect best practice and ensure consistency with offset protocol criteria in (1), and

b) Opportunities to adopt additional compliance offset protocols in rule, consistent with criteria in WAC 173-446-505 (1).

(5) Ecology will update existing compliance offset protocols and adopt new compliance offset protocols according to the evaluation in WAC 173-446-505 (3), and update WAC 173-446-505 accordingly.

Aggregation

Regarding aggregation, the CCA requires the reduction of barriers and transaction costs for landowners, including through aggregation. However, as currently written, the rule does not explicitly prohibit, allow, or incentivize the aggregation of offset projects. WAC 173-446-520 (2) provides the only reference to aggregation in the draft rules. It alone only allows a waiver of requirements for *listing* projects. Facilitating project-level aggregation is a significant omission in the draft rules. Given the importance of aggregation for encouraging participation of tribal and small forest landowners, Ecology needs to adjust the proposed regulations further to facilitate aggregation, including in a way that responds to the needs of Tribal Nations.

Allowing smaller projects with similar characteristics within a logical geographic boundary such as a watershed—to register as part of an “aggregate” can create efficiencies, reduce costs, and potentially create more interest in innovative financing structures to address the high upfront project costs that create a barrier for most small landowners. Aggregation is particularly important for forestry projects, given that 15% of Washington’s forestland is managed by small forest landowners¹. By allowing aggregation, Ecology can make compliance offset protocols more accessible to a significant percent of the state’s landowners.

As written, Ecology does not meet the intent of the CCA of “adopting offsetting protocols that. . . make use of aggregation or other mechanisms to reduce transaction costs related to the development of offset projects?” Protocols for aggregating smaller projects of similar types would expand the potential for offset programs in tribal and underrepresented communities. Tribes and other landowners with small to medium-sized land bases face significant financial and administrative barriers to developing offset projects.² According to one study, “transaction costs for entering the carbon market under existing programs are so high that projects usually don’t pencil out until they reach at least 3,000-5,000 acres of productive forestland.”³

¹ Department of Natural Resources. “Small Forest Landowner Demographic report.” 2021. Available via. https://www.dnr.wa.gov/publications/fp_sflo_demographic_report_20210401.pdf

² Hunt, J. and B. Kittler. Pricing Carbon in Oregon: Carbon Offset Aggregation. Pinchot Institute for Conservation. Washington, D.C. https://img1.wsimg.com/blobby/go/93660845-1c6e-4fe0-93bc-0db763a88350/downloads/CarbonPolicy_COA.pdf?ver=1605113834851

³ Davies, B. EcoTrust. <https://ecotrust.org/tipping-the-balance-to-more-carbon-storage/>

Currently, the only reference to aggregation is WAC 173-446-520 (15). In this light, we urge Ecology to include in these rules a pathway for strategies that promote aggregation and broader participation of landowners, particularly concerning the CARB Forest offset protocol. As we understand, market costs associated with carbon offsets have made participation in the compliance market challenging or impossible for owners with smaller landholdings. This constraint is particularly limiting for small forest landowners, who own 15% of Washington's forestland, and Tribal Nations, which own approximately 7% of Washington's forestland. For the Climate Commitment Act to achieve its goals, it will be vital to promote and increase the part of these two groups.

Ecology should work closely in partnership with The Tulalip Tribes and other Tribal Nations that sets an example for the rest of the country. Such a partnership would help meet the full potential of the carbon offset credit allocation designated explicitly by the CCA for projects on federally recognized tribal lands. For these reasons, we encourage Ecology to explore with Tribal Nations the possibility of an Indigenous-led carbon offset program.

Adaptive Management

The rules, as drafted, lack direction and specific language that allows for adaptive management of the program. For example, as previously stated, the rules lack a clear means for adopting new or revised protocols. The omission of a suitable framework for adaptation is concerning. This is a fundamental issue that must be addressed in the final adopted rules. Examples of where this issue could be addressed include the following:

- (1) WAC 173-446-050: Covered and opt-in entity registration
Rules should require detail about proximity to overburdened communities and tribal lands as well as documentation of pollution emitted by the facility.
- (2) WAC 173-446-200: Establishing the baseline for allowances – Rules do not require Ecology to publicly share and document the data used to establish the program baseline and/or how that baseline might be evaluated over time. At a minimum, Ecology should provide data and analysis on a bi-annual basis.
- (3) WAC 173-446-500: Protocols for establishing offset projects and securing offset credits:
Ecology can provide greater clarification on what is meant by; 1 (f) "that result from an offset will not produce significant adverse environmental impacts after mitigation..."
- (4) WAC 173-446-585: Ecology should invoke an analysis after two years to publicly report who owns and manages offset projects, who are using offsets projects, where projects are located and what type of offset projects are being utilized.
- (5) WAC 173-446-600 (6)(d): Reduction of offset limits in response to cumulative air pollution burden in overburdened communities - Ecology should make data about offset impacts to overburdened communities available and clarify the process for reducing limits.

In summary, The Tulalip Tribes believe the proposed rules generally are well drafted but can use specific improvements in the treatment of adaptive management and adoption of offset protocols in the future. We believe the topical areas of urban forestry, aggregation, and impacts on overburdened communities will be important to the success of the program and will need to be adaptively addressed in the very near future, if not as a part of the immediate rulemaking process. Therefore, we see this rulemaking process as being critically important for establishing a framework that ensures opportunity for government-to-government engagement with Tribes early and often as the CCA is implemented.

We appreciate Ecology's consideration of our comments and commend Ecology for efforts made to date in developing these rules. The Tulalip Tribes look forward to the ongoing dialog as these rules are updated and improved in the future.

Sincerely

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Teri Gobin
Chairwomen, The Tulalip Tribes of Washington