

Finite Carbon

July 15, 2022

Joshua Grice
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Submitted online

RE: Rulemaking - Chapter 173-446 WAC, Climate Commitment Act Program

Dear Washington Department of Ecology,

Thank you for the opportunity to comment on the Climate Commitment Act Program Rule. Finite Carbon is North America's largest forest carbon offset developer. In November 2013, Finite Carbon developed and registered the Downeast Lakes Land Trust Farm Cove Community Forest, California's very first compliance offset project. Since then, we've generated over one-third of all California compliance offset supply and delivered more than a half-billion dollars to our landowners. Finite's project portfolio now includes over three million acres of working forestland representing every region and major forest type from the Appalachians to coastal Alaska. Enclosed, we have provided some comments based on our experience working in California's compliance offset program. We respectfully ask that you consider these comments for review pertaining to the use of offsets in Washington's proposed cap-and-invest program.

1. Direct environmental benefits to the state.

The current proposed rule requires all credits to provide direct environmental benefits to the state ("DEBS") unless the state establishes a linkage with another program. The rules pertaining to DEBS clarify that projects located outside the geographic boundaries of the state may apply for DEBS consideration with the submission of the first offset project data report (OPDR). However, in the absence of a linkage there seems to be no market for non-DEBS credits, so applying for DEBS consideration at the time of OPDR submittal introduces significant risk to project development. At this stage, a forest project will have already undergone a feasibility assessment, full inventory, and significant development work to generate the project listing documents and OPDR. If this rule remains as written, we believe the uncertainty of the application process coupled with the mandate for 100% DEBS credits would drive any out-of-state projects toward California's compliance program, where there is a potential market for non-DEBS credits. We request that Ecology consider an application process that would allow for a DEBS determination to be made earlier in the project development process, such as prior to or during listing of the project.

2. Participation of tribes.

The offset usage limits described in WAC 173-446-600 specify separate limits for projects taking place on tribal and non-tribal lands. For instance, during the first compliance period, 5% of an entity's compliance obligation may be satisfied with credits from projects on non-tribal lands, and an

additional 3% may be satisfied using credits from projects on tribal lands. Does this mean that an entity could not choose to source all of their offset credits from projects on tribal lands (or, in other words, that in doing so they would be limited to 3% of their obligation, rather than 8%)? Our understanding was that the intent here was to provide entities an additional incentive to use tribal credits, by expanding the offset usage limit in those cases. However, a strict read of the language here seems to indicate that this rule could in fact constrain the use of offset credits from tribal projects. If we are correctly understanding the intent, perhaps the language can be amended to state X% of a compliance obligation may be satisfied with any credits (from projects on tribal or non-tribal land), while an additional Y% may come exclusively from projects on tribal land. We also note that this section of the rule specifically refers to federally-recognized tribes. We request that Ecology consider expanding this to include any tribal lands.

Lastly, pertaining to tribal participation, WAC 173-446-505 strikes and modifies language from various California compliance protocols to make the protocols relevant to Washington's program. This includes striking references to the waiver of sovereign immunity requirement used in California's program for the livestock, ozone depleting substances (ODS), and urban forest protocols. However, this language is not modified in reference to the US forest protocol (WAC 173-446-505 (3)(b)). Does Ecology intend to utilize a waiver of sovereign immunity for forest projects? There does not appear to be reference to this anywhere else in the rule, so it seems like a potential oversight requiring clarification: will tribes be required to include a limited waiver of sovereign immunity as part of any offset project within the cap and invest program? For some tribes, this type of agreement is a dealbreaker for participating in an offset project. We would caution Ecology from adopting a similar waiver, if possible, as this has created a barrier to entry in California's program.

3. Adopted offset protocols and barriers to entry.

The draft rule for the cap-and-invest program currently proposes minimum standards for offset protocols, while specifically adopting the livestock, US forest, ODS, and urban forest protocols from California's compliance offset program. It appears that Ecology is considering adopting all versions of these protocols (for instance, US forest has 2011, 2014, and 2015 published versions). Will the earlier (2011 and 2014) versions simply be adopted to provide projects the opportunity to transfer into Washington's program, or will project proponents have the option to select their version of choice from any of the three?

In the time since the 2015 US forest protocol was adopted, a number of advancements have been made in the carbon market, particularly around the use of remote sensing to support project monitoring, reporting, and verification. The nature of the California program ♦ which relies on ground-based inventories for forest projects, extensive on-site verification requirements with little room for variation, and a lengthy audit process by the California Air Resources Board (CARB) ♦ has driven up the cost of project development in the compliance market. This has led to the exclusion of smaller landowners in the market, who typically cannot achieve the scale required to develop a financially feasible project. We applaud Ecology for the inclusion of aggregation, as described in WAC 173-446-020, as this will go a long way toward improving the feasibility of small-landowner projects. However, we encourage Ecology to consider making further adjustments to this US forest offset protocol to improve usability. For instance, California's offset protocol task force detailed a number of recommendations that may be useful to consider for improving the efficiency of MRV under the forest offset protocol without sacrificing quality of projects .

California's US forest offset protocol, proposed for adoption under Washington's cap-and-invest

program, includes harvest restrictions that may serve as an additional barrier to entry for Washington landowners. Based on the protocol's California origins, limitations around even-aged management in the protocol were heavily influenced by the California Forest Practice Rules. The protocol requires that even-aged harvest units not exceed 40 acres in total area (Section 3.1(a)(4)(A)). This policy may be incompatible with the forest management plans for certain Washington landowners. We suggest Ecology consider an alternative approach that is more tailored to forest management practices in Washington.

Lastly, we note that in WAC 173-446-510, Ecology has taken care to apply definitions and requirements for offset protocols that are consistent with California's cap-and-trade regulation. We support this consistency to ensure the rigor of any future adopted protocols. Of particular importance is the definition and application of any additionality requirements. The draft program rule refers to GHG emission reductions and removal enhancements that "would not otherwise occur in a conservative business-as-usual scenario." "Conservative" and "business-as-usual scenario" are both defined terms under the California cap-and-trade regulation. We recommend Ecology further define these terms to reduce the potential for misinterpretation and to ensure consistency with California's terms. We believe consistency in these key principles for high-quality offsets (real, quantifiable, permanent, verifiable, enforceable, and additional) will help pave the way for a compatible linkage between the two jurisdictions, which would be a valuable step forward for both programs.

4. Participation of public lands.

As written, California's US forest protocol currently is not functional for public landowners wishing to undertake IFM projects. If Washington is interested in allowing for projects to take place on state and municipal public lands, we recommend revising that section of the US forest protocol, or to consider adopting a separate protocol pertaining specifically to public lands.

5. Project review timing and transparency.

Washington's proposed offset program is modeled on California's program, with a similar process for having Ecology review projects following verification by an accredited verification body, as well as review by an approved offset project registry (OPR). In California's program, the final step in which the CARB reviews project documents prior to issuance of credits has created significant delays in the program. These reviews often amount to a full audit of the project and in some cases, projects have waited well over a year between issuance of registry offset credits and issuance of ARB offset credits. While we recognize the benefit in having parity between the two programs, particularly if Washington intends to link with California's program at some point in the future, we urge Ecology to seek to improve efficiencies in these final reviews conducted by Ecology staff. It is important that all projects be carefully reviewed and subjected to the same level of scrutiny, but this can be done within reasonable timelines to prevent severe backlogs in credit issuances.

Another challenge that has arisen in California's program is related to the distribution of guidance. The policies in cap-and-invest rule, as well as the various offset protocols, will be subject to some level of interpretation. In the California compliance offset program, requests for guidance are typically provided to OPR staff. If OPR staff are not able to directly respond to the request based on past guidance from CARB, then the issue is elevated to a discussion with CARB. CARB staff respond verbally to OPR staff, who then disseminate the guidance back to project developers or verifiers. This process has been incredibly inefficient and has led to a lack of transparency in the program. There have been instances in which CARB staff have revised guidance over time, which has led to confusion among project developers, since the verbal nature of

the guidance means there is little ♦ if any ♦ paper trail. This has also created some inequities in the market, as project developers sometimes only learn of relevant guidance if they think to ask the right question, and other market participants often learn of the relevant guidance at a later date. We strongly encourage Ecology to consider sharing guidance in writing to improve transparency and equity in the market.

6. More nature-based solutions (NBS) will make the program stronger.

Enhancing and leveraging offsets outside Washington's capped sector will allow regulated entities more flexibility while making the transition to non-carbon energy sources. The multiple benefits of NBS are not limited to sequestering carbon, particularly when located near frontline communities. Offset projects can create numerous co-benefits, including air and water quality enhancement, job creation, and direct investment in disenfranchised communities. When considering additional offset protocols, we urge Ecology to consider other NBS project types, such as grassland conservation, soil organic carbon enhancement, and biochar.

There are also numerous new protocols adopted by voluntary registries that if adopted by Ecology would increase access for Washington citizens and landowners to generate nature-based carbon offsets and participate in the cap-and-invest program. Some of these cater to specific landowner classes (like the American Carbon Registry's methodology for Improved Forest Management on Small Non-Industrial Private Forestlands), while others seek to improve upon project types that are underrepresented in the market (like Climate Forward's Reforestation Forecast Methodology and Verra's new pending Methodology for Afforestation, Reforestation, and Revegetation Projects). We encourage Ecology to review some of these protocols available in the voluntary market for potential adoption into the Washington compliance offset program, for the benefit of Washington's citizens. We thank you for your consideration and would be happy to answer any questions you may have. Sincerely,

Sarah Wescott
Director of Methodologies
Finite Carbon Corporation
Sarah.wescott@finitecarbon.com

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¹ Report can be found at: <https://ww2.arb.ca.gov/our-work/programs/compliance-offset-program/compliance-offset-protocol-task-force>

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We thank you for your consideration and would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Wescott". The signature is fluid and cursive, with a large initial "S" and "W".

Sarah Wescott

Director of Methodologies
Finite Carbon Corporation
Sarah.wescott@finitecarbon.com

