

ATTACHMENT F

Findings and Statement of Overriding Considerations

INTRODUCTION

The proposed project consists of regulatory language changes, a new Rice Cultivation Projects Compliance Offset Protocol (Rice Protocol) and an updated U.S. Forest Projects Compliance Offset Protocol (U.S. Forest Protocol) (referred to collectively as the “Amendments”). The potential environmental impacts associated with this proposed action have been analyzed in the Environmental Analysis (EA) section included as Chapter III of the Staff Report: Initial Statement of Reasons (ISOR) for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, which includes specific environmental analyses under its certified regulatory program for both the Rice Protocol and the U.S. Forest Protocol (included as Chapter III in Appendices B and C to the ISOR, respectively). The ISOR and the EA contained therein are incorporated here by reference.

The EA analysis was based on the expected compliance responses of entities covered by the Amendments. The EA concluded that the compliance responses to the Rice Protocol would result in beneficial impacts to greenhouse gas (GHG) emissions. It further concluded that the proposed Rice Protocol and associated regulatory language changes would result in less than significant impacts, or no impacts, to aesthetics, agricultural and forest resources, air quality, biological resources, cultural resources, energy demand, geology, soil, and minerals, hazards, hydrology and water quality, land use, noise, employment, population and housing, public services, recreation, transportation and traffic, and utilities/service systems. The EA found no potentially significant adverse impacts related to the Rice Protocol.

As explained in greater detail below, the EA analysis for the proposed updated U.S. Forest Protocol and associated regulatory language changes supplements the original environmental evaluation contained in the 2010 Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms (2010 FED). Implementation of the proposed updated U.S. Forest Protocol would not result in any new types of potentially significant adverse impacts on the physical environment that were not already addressed in the 2010 FED; however, the environmental effects identified previously for the Forest Protocol in 2010 would be extended geographically by the proposed updated protocol by expanding project eligibility for areas of Alaska. The EA concluded that the compliance responses would result in beneficial impacts to GHG emissions. It further concluded that the proposed updated U.S. Forest Protocol and associated regulatory language changes would result in less than significant impacts, or no impacts, to aesthetics, agricultural and forest resources, air quality, cultural resources, energy demand, geology, soils and minerals, hazards, hydrology and water quality, noise, employment, population and housing, public services, recreation, transportation and traffic, and utilities/service systems. The EA

found potentially significant adverse impacts to biological resources and land use and planning.

ARB's certified regulatory program requires that prior to adoption of an action for which significant adverse environmental impacts have been identified during the review process, ARB consider all feasible mitigation measures and alternatives available which could substantially reduce such adverse impacts. (California Code of Regulations, title 17, section 60006.) CEQA places the burden on the approving agency to affirmatively show that it has considered feasible mitigation and/or alternatives that can lessen or avoid the impacts. A statement of findings for each identified significant impact is the means to show this consideration. (Public Resources Code section 21081.) CEQA Guidelines section 15091 provides direction on the content of the statement of findings. That section states that one or more of the following findings should be identified for each impact:

- Changes or alterations have been required in, or incorporated into, such project which avoid or substantially lessen the significant environmental effect as identified in the final environmental impact report.
- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency, or can and should be adopted by such other agency.
- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

An agency may approve a project with unavoidable (unmitigated) adverse environmental impacts. When doing so, CEQA requires the agency to make a statement in the record of its views on the ultimate balancing of the merits of approving the project despite the environmental impacts in a "statement of overriding considerations." (Public Resources Code § 21081(b); CEQA Guidelines § 15093.) The following presents the Board's statement of findings for each identified adverse impact, accompanied by a brief explanation, and its statement of overriding considerations.

STATEMENT OF FINDINGS

The Board has independently reviewed and considered the entire record, including the information contained in the 2010 FED, the EA, public testimony, written comments received, and the written responses to comments, all of which are hereby incorporated by reference. As described above, the EA concluded that the Rice Protocol would not cause any significant environmental impacts. Based on this information, the Board finds that the proposed Rice Protocol would not cause any significant environmental impacts. The Board finds that the updated U.S. Forest Protocol has the potential to cause significant adverse impacts with regard to two resource areas: biological resources, and land use and planning. With regard to the proposed updated U.S. Forest Protocol, the Board makes the following written findings for each significant adverse impact, accompanied by a brief explanation of the rationale for each

finding. These findings are supported by substantial evidence in the record.

Biological Resources

The proposed updated U.S. Forest Protocol would not result in any changes to the qualifying forest project activities or associated compliance responses within the 48 contiguous states, as described in the 2010 FED. The only substantive change with respect to compliance responses is the geographic expansion for eligible locations of proposed forest projects to include Alaska, in addition to the contiguous 48 states. The U.S. Forest Protocol analysis in the EA supplements the original environmental evaluation contained in the 2010 FED. Consistent with ARB's conservative approach to environmental review (i.e., seeking to avoid a risk of understating potential effects), preparing a supplemental analysis is appropriate for a good faith disclosure of potential impacts in Alaska.

U.S. Forest Protocol related activities associated with this update would occur in Alaska in the same manner as was evaluated in the 2010 FED. As identified in the 2010 FED, the EA found that the U.S. Forest Protocol would not increase total forest activities, but could shift activities to projects that increase carbon sequestration. The Board finds that the proposed U.S. Forest Protocol would not cause any new impacts to biological resources within the contiguous 48 states. However, because the proposed updated U.S. Forest Protocol would extend the applicability of the U.S. Forest Protocol to Alaska, the Board finds that the proposed updated U.S. Forest Protocol has the potential to cause significant and unavoidable impacts to biological resources in Alaska, including habitat changes and wildlife disruption resulting from implementation of reforestation projects.

The EA identified recognized measures that exist to reduce this potentially significant impact. The Board finds that implementation of the Adaptive Management Plan, as described in Section 2.E of the 2010 FED, would reduce the risk of unanticipated, unintended and ongoing adverse impacts to biological resources due to forestry projects under the U.S. Forest Protocol. However, the Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with local permitting authority, such as city or county governments. Therefore, ARB cannot guarantee that the mitigation described above will be implemented. Further, the programmatic analysis in the EA does not allow project-specific details of mitigation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts. In light of this uncertainty, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts discussed above to be significant and unavoidable.

Land Use and Planning

The proposed updated U.S. Forest Protocol would not result in any changes to the qualifying forest project activities or associated compliance responses within the 48 contiguous states, as described in the 2010 FED. The only substantive change with respect to compliance responses is the geographic expansion for eligible locations of proposed forest projects to include Alaska, in addition to the contiguous 48 states. U.S. Forest Protocol related activities associated with this update would occur in Alaska in the same manner as was evaluated in the 2010 FED.

The proposed updated U.S. Forest Protocol includes avoided conversion projects that could conflict with local land use plans that envision development or other uses of forested areas. The EA identified recognized measures that exist to reduce this potentially significant impact. However, the Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with local permitting authority, such as city or county governments. Therefore, ARB cannot guarantee that the mitigation described above will be implemented. Further, because conflicts with planned future land uses are inherent to avoided conversion projects, the Board finds that impacts of the avoided conversion projects on land use are considered significant and unavoidable, even with implementation of feasible mitigation. Therefore, the Board finds that implementation of the proposed updated U.S. Forest Protocol could result in significant and unavoidable impacts to land use and planning as evaluated and disclosed in the 2010 FED and the EA, as summarized above and incorporated by reference, but extended geographically to Alaska.

Findings on Alternatives to the Project

The Board finds that the proposed Rice Cultivation Protocol would not result in any potentially significant adverse impacts on the environment. Thus, the identification and analysis of potential alternatives to the proposed Rice Protocol activities are not required.

The EA considered a reasonable range of action alternatives potentially capable of reducing the environmental effects of the proposed updated U.S. Forest Protocol, while accomplishing most of the project objectives listed in the EA. The Board finds the alternatives analysis is sufficient to inform the Board and the public regarding the tradeoffs between the degree to which the alternatives could reduce environmental impacts and the corresponding degree to which the alternatives could achieve the project objectives.

Based upon a full evaluation of the alternatives, the Board finds that adoption and implementation of the proposed updated U.S. Forest Protocol is the most desirable, feasible, and appropriate action for achieving the objectives of the project, and the Board rejects the other alternatives as either less desirable or infeasible based on consideration of the relevant factors identified in the EA and briefly described below.

a. Alternative 1: No-Project Alternative

The EA analyzed a No Project Alternative. Under the No Project Alternative, the amendment to extend the U.S. Forest Protocol to Alaska would not occur. Thus, Air Resources Board Offset Credits (ARBOC) could only be credited from projects in the contiguous U.S. and the U.S. Forest Protocol would not extend to Alaska. The existing Forest Protocol would continue, allowing ARBOCs for reforestation, improved forest management, and forest protection (avoided conversion) projects. The Board finds that there would be no new environmental impacts under the No Action Alternative because compliance responses would not be extended to Alaska. Thus, the No Project Alternative would avoid the specific impacts to biological resources and land use and planning in Alaska identified in the EA. However, the potentially significant adverse environmental impacts associated with the existing Forest Protocol for the contiguous

48 states would still occur, but without the benefit of the additional GHG reductions gained from the proposed updated U.S. Forest Protocol. Furthermore, this alternative would not achieve other anticipated climate and ecosystem benefits in Alaska resulting from more sustainable harvesting and natural forest management practices as required for participation under the U.S. Forest Protocol.

The Board finds that the No Project Alternative would meet the project objectives but not to the fullest extent. By excluding Alaska from the areas eligible for project development under this protocol, this alternative would result in the issuance of fewer ARBOCs. Because issuance of ARBOCs would still occur for projects located in the contiguous U.S., this alternative would be consistent with the stated primary objectives of the project but would not fulfill those objectives to the fullest extent. Excluding Alaska would result in a reduced supply of ARBOCs available, thereby diminishing an opportunity to ensure cost-effectiveness in the Cap and Trade program and resulting in fewer reductions in GHG emissions. Therefore, while this alternative is conceptually feasible, the primary objectives would not be fully realized. For the foregoing reasons, the Board rejects this alternative.

b. Alternative 2: Extension of Improved Forest Management and Avoided Conversion to Alaska Alternative

The EA analyzed an alternative that would allow for extension of the Forest Protocol to Alaska, but would not allow reforestation compliance responses to be used to obtain ARBOCs in Alaska. Reforestation, improved forest management, and avoided conversion could still be implemented to obtain ARBOCs in the contiguous U.S. The Board finds that by disallowing reforestation compliance responses in Alaska, this alternative would avoid the identified significant and unavoidable impacts associated with biological resources. Land use and planning impacts would be the same as under the proposed updated U.S. Forest Protocol. Thus, there would be less environmental impacts under this alternative.

This alternative would meet the project objectives listed in the EA, but not to the fullest extent. Under this alternative, ARBOCs could not be obtained in Alaska for reforestation compliance responses. This alternative would result in fewer ARBOCs being issued under the U.S. Forest Protocol. Because issuance of ARBOCs would still occur for improved forest management and avoided conversion projects, this alternative would be consistent with the stated primary objectives of the project but would not fulfill those objectives to the fullest extent. Excluding reforestation projects narrows the range of potential activities, resulting in a reduced supply of ARBOCs available and therefore a lower potential for program cost effectiveness in the Cap and Trade program, as well as fewer reductions in GHG emissions. Therefore, while this alternative is conceptually feasible, the primary objectives would not be fully realized. For the foregoing reasons, the Board rejects this alternative.

c. Alternative 3: Extension of Reforestation and Improved Forest Management to Alaska Alternative

The EA analyzed an alternative that would allow for extension of the U.S. Forest Protocol to Alaska, but only would allow reforestation and improved forest management compliance responses to be used to obtain ARBOCs in Alaska. Reforestation, improved forest management, and avoided conversion could still be implemented to obtain ARBOCs in the contiguous U.S.

Under this alternative, the U.S. Forest Protocol would be implemented in both the contiguous U.S. and Alaska. However, ARBOCs could not be obtained in Alaska for avoided conversion compliance responses. By not allowing avoided conversion compliance responses in Alaska, there would be no significant and unavoidable impacts associated with land use and planning. Biological resources impacts would be the same as under the proposed updated U.S. Forest Protocol. Thus, there would be less environmental impacts under this alternative.

This alternative would meet the project objectives listed in the EA, but not to the fullest extent. This alternative would result in fewer ARBOCs being issued under the U.S. Forest Protocol. Because issuance of ARBOCs would still occur for improved forest management and reforestation projects, this alternative would be consistent with the stated primary objectives of the project but would not fulfill those objectives to the fullest extent. Excluding reforestation projects narrows the range of potential activities, resulting in a reduced supply of ARBOCs available and therefore a lower potential for program cost effectiveness in the Cap and Trade program, as well as fewer reductions in GHG emissions. Therefore, while this alternative is conceptually feasible, the primary objectives would not be fully realized. For the foregoing reasons, the Board rejects this alternative.

STATEMENT OF OVERRIDING CONSIDERATIONS

The Board finds that despite the potential for adverse environmental impacts associated with the proposed updated U.S. Forest Protocol, other benefits of this regulatory action, which will flow to all residents of the State, are determined to be overriding considerations that warrant approval of the project and outweigh and override the unavoidable significant effects to biological resources and land use and planning, discussed above. The Board finds that these benefits include:

1. A reduction in greenhouse gas emissions, thereby supporting California's laws and policies regarding achieving significant GHG reductions, as well as benefitting the environment and current and future generations;
2. Incentivizing reforestation and avoided conversion forest projects that will provide for carbon sequestration while resulting in long-term beneficial effects on scenic resources, soil erosion, and loss of topsoil;
3. Providing a program that complements other Scoping Plan measures, such as standards for cleaner vehicles, low-carbon fuels, renewable electricity and energy efficiency;
4. Providing an economic benefit to foster more sustainable agriculture and forestry practices;
5. Providing an economic benefit to the state by helping preserve and enhance lands enjoyed by California's scenic tourism industry;
6. Providing additional ARBOCs that have the potential to support the state's trajectory towards further GHG reductions beyond the 2020 target; and

7. Achieving emission reductions in a cost-effective manner by providing additional compliance instruments that give regulated entities flexibility to seek out and implement the most cost-effective options to reduce emissions.