

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



To continue the effort to enable the “PTEIR for Carbon Sequestration and Fuel Reduction Program (Program), Matthew Reischman and myself met with Toby McCartt (the Department legal counsel) and Stella Chan (the Department Grants Unit). The bulk of this meeting was spent defining the actors and the relationships between them. The balance of the meeting was spent identifying the building blocks necessary to further develop the Program and defining the associated road map. Following is a summary. Included in this month’s Binder Materials is the most recent version of the Procedural Guide, which only reflects updated comments and minor changes to the text. Also included in this month’s Binder Materials is Appendix H, which reflects changes made at the last FMC meeting and a considerable addition to the Ranking Criteria to form the basis of ongoing discussion.

Actors/Relationships

The two paths to enable a Project follow:

- a) Funds are distributed to a single grantee.
- b) The Department executes the Project on behalf of the eligible landowner(s).

Comments (relationships, consequences and scenarios):

- 1) A Project is a PTEIR for Carbon Sequestration and Fuel Reduction that may encompass an entire watershed and/or cover land that is owned by an industrial landowner and/or ownerships greater than 5,000 acres and/or land that is owned by entities that may never tier to the PTEIR. Needless to say, the total acreage of a Project does not need to be 5,000 acres or less.
- 2) A Grantee shall be an Eligible Landowner. A single Grantee may be a nonprofit organization, a local government entity (such as Fire Protection Districts and Resource Conservation Districts), a corporation, Limited Liability Partnership (LLP), Limited Liability Company (LLC) or any other fictitious business entity.
- 3) An Applicant shall be an Eligible Landowner.
- 4) If more than one (1) Eligible Landowner applies for funding for Projects that cover the same footprint, overlapping footprints or disparate footprints that the Department deems would make sense to combine and they cannot form a single Grantee, then the Department will consider assuming responsibility for the Project on their behalf.
- 5) The Project will rank higher if the landowners who own the land in the footprint of the Project sign a form stating their interest and if the land is not in a timber preserve zone they sign a deed restriction in which the landowner agrees not to develop the parcel of timberland for uses incompatible with the PTEIR within 20 years following the execution of an agreement or the making of a grant, which the Department will hold until the Project is funded, at which point the Department on behalf of the Director shall record the contract in the office of the county recorder in the county in which the parcel of timberland is located and, upon recordation, the contract shall be binding upon any person to whom the parcel of timberland is sold, assigned, devised, or otherwise transferred by agreement or operation of law.

MGMT 3.0

The Board's mission is to lead California in developing policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of forest and rangelands, and a fire protection system that protects and serves the people of the state.

- 6) A Grantee shall have the discretion to hire the third-party consultant of their choice.
- 7) When the Department assumes responsibility for the Project then the Department shall enter into agreements with the Department of General Services or third-party consultants to prepare the PTEIR. This process is subject to the bidding process and there is no discretion to hire the third-party consultant of choice.
- 8) Advance Payments shall only be dispensed to nonprofit organizations. Include language that funds must be liquidated within 6 months of receipt unless otherwise approved by the Director.
- 9) A resolution “or other proof of the capacity of the signatory to bind the entity to the terms of the Grant Agreement” shall be required of nonprofit organization, a local government entity (such as Fire Protection Districts and Resource Conservation Districts), a corporation, Limited Liability Partnership (LLP), Limited Liability Company (LLC) or any other fictitious business entity.
- 10) The Form 204 shall be required of any Grantee.
- 11) The statute differentiates between agreements and grants. Agreements are between the Department and third-party consultant (bid is required) and grants are between the Department and grantee (no bid is required).

Building Blocks

- 1) Review and make modifications to Procedural Guide to reflect the relationships established above.
- 2) Develop the track when the Department assumes responsibility for the Project. The Procedural Guide may be applicable through the Application phase. What is required of Applicants, if the Department executes the Project on behalf of the eligible landowner(s), after the Application Phase, is to be determined.
- 3) Reconcile budget terms and develop sample budget to better reflect the nature of PTEIR development and phased implementation.
- 4) Make clear that the cost associated with forming a fictitious business entity would not be covered under the grant and that only direct costs shall be covered.
- 5) Remove “Equipment” because it is not applicable to the direct cost associated with the preparation of a PTEIR.
- 6) Remove “Grantees may utilize grant funds to contract a third-party consultant, acceptable to the Department, to assist in the preparation of PTEIRs” from APPLICANT ELIGIBILITY AND CONDITIONS because Grantees have the discretion to hire the third-party consultant of their choice.

- 7) Make clear that Advance Payments shall only be dispensed to nonprofit organizations. Include language that funds must be liquidated within 6 months of receipt unless otherwise approved by the Director.
- 8) Make clear that a resolution “or other proof of the capacity of the signatory to bind the entity to the terms of the Grant Agreement” shall be required of nonprofit organization, a local government entity (such as Fire Protection Districts and Resource Conservation Districts), a corporation, Limited Liability Partnership (LLP), Limited Liability Company (LLC) or any other fictitious business entity. The purpose of the requirement is to ensure that the entity has agreed to the conditions imposed and that the person signing the document has the authority to do so. This is especially important for local public entities, since case law suggests that a contract not entered into pursuant to the local public entity’s governing law is not valid and cannot be enforced in court. This would put the Department in the position of having a contract that binds us but that is voidable by the local public entity.
- 9) Make clear that the Form 204 shall be required of any Grantee (see item 3 on page 9, where there is an incongruity).
- 10) Identify if there is a reporting form from another GHG grant programs to satisfy 4598.9(g). If not, develop.
- 11) Develop form stating their interest and if the land is not in a timber preserve zone they sign a deed restriction in which the landowner agrees not to develop the parcel of timberland for uses incompatible with the PTEIR within 20 years following the execution of an agreement or the making of a grant.
- 12) Define watershed. Make clear that the land owned by the Eligible Landowner must be in the watershed for which the PTEIR is proposed.
- 13) Review questions and comments in the Guidance document?
- 14) Continue developing the ranking criteria. Consider making the number of Eligible Landowners, per Project; carry a great weight in order to minimize the speculation associated with quantification of the carbon benefit. Rationale: quantification will be very speculative...GHG reduction (carbon benefit) scenarios of high and low participation (if most landowners in the watershed meet the PTEIR objectives versus if very few landowners in the watershed meet the PTEIR objectives) would have to be provided. “
- 15) Continue developing the quantification methods.
- 16) Research statutory exemptions (like DGS has for contracts); are there any that would apply to this effort?

Roadmap

- 1) Accept track changes of changes already approved.
- 2) Have a new draft reflecting the changes to address the building blocks.
- 3) Finalize the Procedural Guide.
- 4) Finalize Appendix H.
- 5) Meet with legal to determine what does and what does not need to be in regulation knowing that a regulation means it has general application, is not already in law, implements or makes specific statute, is enforced by the Agency or it governs the Agency's procedures.