

GUIDANCE FOR CARBON PROJECT
DEVELOPMENT ON
TRIBAL LANDS

VERSION 1.0

April 2018

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ABOUT AMERICAN CARBON REGISTRY® (ACR)

A leading carbon offset program founded in 1996 as the first private voluntary GHG registry in the world, ACR operates in the voluntary and regulated carbon markets. ACR has unparalleled experience in the development of environmentally rigorous, science-based offset methodologies as well as operational experience in the oversight of offset project verification, registration, offset issuance and retirement reporting through its online registry system.

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ACRONYMS

| | |
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| ACR | American Carbon Registry |
| ANC | Alaskan Native Corporation |
| BIA | Bureau of Indian Affairs |
| CFR | U.S. Code of Federal Regulations |
| ERT | Emission Reduction Tonnes |
| GHG | Greenhouse Gases |
| HEARTH | Helping Expedite and Advance Responsible Tribal Home Ownership |
| NIFRMA | National Indian Forest Resources Management Act |
| USC | United States Code |

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1 INTRODUCTION

1.1 BACKGROUND

The American Carbon Registry (ACR) has served the voluntary market since 1996, and since 2012 has also acted as an Offset Project Registry for the California cap-and-trade market. Over the years ACR has worked with tribes and their partners to facilitate the registration of several carbon projects on tribal land. We have learned through those efforts that carbon projects on tribal land face both unique opportunities and unique challenges.

There is great opportunity for carbon projects on tribal land because some tribal nations retain large contiguous forest, agricultural, and rangeland holdings, generally managed with a view toward long-term sustainability and land stewardship. Tribal nations also manage buildings, facilities, mineral resources and other assets, and generally seek to balance sound environmental management and economic development goals. These assets and goals are compatible with carbon offset project development.

At the same time, tribal land carbon projects face unique barriers because of the long history of land takings, complex relationships with federal, state and local governments, checkerboarding of land ownership within reservation boundaries, highly fractionated allotments, limited resources for project development, and many other issues. These tend to make any land management activity challenging on tribal land. Carbon project development is no exception.

ACR has developed this Guidance with the goal of helping tribal nations and tribal member landowners overcome the barriers and capitalize on the opportunity. ACR shares the mission of its parent non-profit organization, Winrock International, to “empower the disadvantaged, increase economic opportunity, and sustain natural resources.” We are publishing this Guidance in the hope that speaking to the unique characteristics of land ownership and project development on tribal land will facilitate carbon projects, help ensure that the benefits of those projects remain with tribal nations and tribal members, and further goals for economic development and sustainable natural resource management.

1.2 PURPOSE

The purpose of the ACR Guidance for Carbon Project Development on Tribal Lands (hereafter “Guidance”) is to facilitate the validation, verification, and registration on ACR of carbon offset projects located on tribal land using an ACR-approved methodology, including both lands held by tribal nations and those held by individuals. The Guidance helps tribes, project developers, and validation/verification bodies understand how to meet the requirements in the ACR Standard for the special circumstances on tribal lands.

1.3 SCOPE

This Guidance covers the project types listed in 2.1 and the tribal land ownership categories listed in 2.2.

Additional project types and land ownership categories, even if not explicitly addressed in this Guidance, may be registered on ACR as long as an appropriate ACR-approved methodology exists and the project type is not excluded by the ACR Standard. Subsequent versions of the Guidance may address additional project types and additional land ownership categories.

1.4 RELATIONSHIP TO ACR STANDARDS AND METHODOLOGIES

This Guidance effectively sits between the ACR Standard, which governs all projects registered on ACR, and project-specific methodologies. All requirements of the ACR Standard apply equally to projects on tribal land. The Guidance imposes no additional requirements; it merely interprets the existing requirements for the unique land tenure and legal requirements that characterize tribal lands.

The Guidance contains no requirements or quantification methods for a specific project type; these reside in project-specific methodologies.

Thus for example, a project aiming to generate Emission Reduction Tonnes (ERTs) by avoiding the conversion of tribal grazing land to cropland would meet all requirements of the ACR Standard, using this Guidance to help interpret those requirements, and quantify ERTs using ACR's methodology for Avoided Conversion of Grassland and Shrubland to Crop Production.

Project Proponents and other interested parties should refer to www.americancarbonregistry.org for the latest version of the ACR Standard, methodologies, tools, document templates, and other guidance.

1.5 CITATION

The appropriate citation for this document is: American Carbon Registry (2017). The American Carbon Registry Guidance for Carbon Project Development on Tribal Lands, version 1.0. Winrock International, Little Rock, Arkansas.

2 APPLICABILITY

2.1 PROJECT TYPES

Project types eligible for registration on ACR include all those for which an ACR-approved methodology exists, as long as not explicitly excluded from eligibility in the ACR Standard.

Version 1.0 of this Guidance focuses primarily on agriculture, rangeland, and forest carbon projects, since these land-based projects tend to face unique challenges due to the history and current characteristics of tribal land. Not all projects of interest are specifically land-based; the Guidance also addresses some types of energy projects, such as those avoiding direct on-site emissions by replacing fossil fuels with biomass or biogas for heat generation.¹

Other project types may be addressed in subsequent versions of this Guidance.

2.2 INDIAN LAND OWNERSHIP CATEGORIES

The vast majority of lands once used by tribal nations and people are now outside tribal control, the legacy of more than 500 years of colonialism and federal Indian policy. Even on lands remaining in control of a tribal nation, a complex and challenging patchwork of ownership and control now exists. Many reservations contain tribal and individual tribal member trust lands, fee lands, fee land in transition to trust status, restricted fee land, and non-Indian (private, county, state, and federal) holdings within the external boundaries of reservations. Many tribal nations are engaged in lengthy, expensive and resource-intensive efforts to re-acquire land and consolidate land ownership both within reservations and outside reservation boundaries within their aboriginal territory.

The various categories of Indian land include lands owned by tribal nations and by individual Indians; trust lands and other restricted-status lands where land management decisions require involvement by the Bureau of Indian Affairs (BIA), and fee lands that may be managed and disposed without U.S. Government involvement. In addition to these land ownership categories, which are discussed further below, various land use designations such as forest, agricultural

¹ As noted in the ACR Standard, renewable energy and energy efficiency projects are eligible if they “displace direct emissions by reducing the consumption of fossil fuels at a facility that the Project Proponent owns or controls, or for which the facility owner has assigned the Project Proponent clear and uncontested offsets title.” Such projects must also meet other criteria in that section, including – if the project generates electricity – not having been counted toward a mandatory Renewable Portfolio Standard (RPS) obligation or claimed Renewable Energy Credits (RECs), which are generally defined to include all GHG attributes.

and range lands have their own regulations under relevant provisions of the U.S. Code of Federal Regulations. Many of the relevant definitions and regulations are contained in 25 CFR Chapter I, Subchapter H.²

Version 1.0 of this Guidance does not attempt to cover all land ownership categories that exist in Indian country – rather, the land ownership types where ACR believes the majority of carbon projects are likely to occur in the near term. Other land ownership categories may be added in subsequent versions of this Guidance.

2.2.1 Tribal Land

Tribal land means “any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes.”³ Though Tribes also own lands in fee simple status (see below), the predominant type of Tribal lands are trust lands.

2.2.1.1 TRIBAL TRUST AND RESTRICTED FEE LANDS

Tribal trust land is land owned by a tribal nation in an area of land reserved for a tribal nation(s) under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribal nation. Most land management decisions on trust land require involvement and approval by the U.S. Secretary of Interior, acting through the Bureau of Indian Affairs (BIA).

“Restricted fee” land is fee-simple land where specific government-imposed restrictions on land use and/or disposition apply. Title is held by an individual tribal member or tribal nation but may only be alienated or encumbered by the owner with the approval of the Secretary of Interior. In practice, the distinction between trust and restricted fee lands is historical; the Secretary of Interior’s oversight role is identical for both. “Trust land” is often used to refer to both trust and restricted fee lands.

² Accessible in a convenient hyperlinked format at <https://www.law.cornell.edu/cfr/text/25/chapter-I/subchapter-H>.

³ 25 CFR § 162.003.

2.2.2 Individual Indian Lands

Individually owned Indian land is any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.⁴ An important category of individually owned Indian lands are trust allotments.

2.2.2.1 INDIVIDUAL INDIAN TRUST AND RESTRICTED FEE ALLOTMENTS

From approximately 1887 to 1934, the U.S. Government pursued a policy of granting parcels – generally 40, 80, or 160 acres – as “allotments” to individual Indians. The Government reserved some of the remaining land for tribal nations, and designated the rest – often the majority of reservation lands – as “surplus” land available for distribution or sale to non-Indians. The title to allotted land remained held in trust by the U.S. Government.

The allotment policy – pursued first under the 1887 Dawes Severalty Act, and subsequently under the 1906 Burke Act in which “forced fee” patents were granted to tribal members deemed “competent” to manage their land – was ostensibly designed to promote assimilation and agricultural development by giving tribal members private property rights. In practice, it had the effect of transferring some 90 million acres of land to non-tribal control.

When a tribal member dies without a will, his/her spouse and heirs all retain an undivided interest⁵ in the entire allotment, rather than the land itself being divided among those heirs. This has led, over multiple generations, to highly fractionated ownership status in which tens, hundreds, or even thousands of heirs each hold a very small percentage interest in the original allotment.⁶

Lease decisions on fractionated trust allotments require that the owners of an “applicable percentage” of the undivided trust or restricted interests in the tract consent to the lease. The “applicable percentage” varies depending on the total number of owners:

- if the number of owners of the undivided trust or restricted interest in the tract is one to five, 90% of the undivided trust or restricted interest;
- if six to ten, 80%;
- if eleven to nineteen, 60%, and
- if twenty or more, over 50%.

⁴ 25 CFR § 162.003.

⁵ Per 25 CFR § 162.003, an undivided interest is a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

⁶ Per 25 CFR § 162.003, a fractionated tract is a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Provided these applicable percentages of the undivided interest consent to the lease, that lease binds all non-consenting owners to the same extent as if those owners also consented to the lease.⁷

ACR will apply these same requirements to carbon project activities on trust allotments. That is, if an allotment has one to five owners, owners holding 90% of the undivided interest must consent to the carbon project activity and will be considered to bind remaining owners; if six to ten, owners holding 80% of the undivided interest must consent; if eleven to nineteen, owners holding 60% of the undivided interest must consent; and if twenty or more, owners holding at least 50% of the undivided interest must consent to the carbon project activity and will be considered to bind remaining owners. Some tribal nations are endeavoring to counteract fractionation by purchasing and consolidating from individual Indian owners their undivided interests in trust allotments. If a Tribe has purchased a percentage of the undivided interests in an allotment, ACR will follow the same provisions cited above. That is, if there are one to five owners including the Tribe, and the Tribe owns 90% of the undivided interest, the Tribe may consent to the carbon project activity on its own and bind the other owners. Similarly if there are six to ten owners including the Tribe, and the Tribe owns 80% of the undivided interest, the Tribe may consent to the carbon project activity on its own; if eleven to nineteen owners including the Tribe, and the Tribe owns 60% of the undivided interest, the Tribe may consent to the carbon project activity on its own; and if twenty or more owners including the Tribe, and the Tribe owns at least 50% of the undivided interest, the Tribe may consent to the carbon project activity on its own and bind the other owners.

2.2.3 Fee Land

Fee land, also called “fee simple,” is land owned by an individual tribal member or a tribal nation, where the title and unrestricted control rests with the owner. The owner may make decisions about land use or sell the land without U.S. Government oversight.

Fee land may be in transition to trust status if the tribal nation or individual tribal member has initiated the process (through an Act of Congress or approval of the Secretary of Interior) for fee-to-trust conversion.

As long as they remain in fee-simple status, tribal land is no different from non-tribal private lands, so does not require special guidance for carbon project registration on ACR. If the land in a carbon project transitions from fee to trust status during the Project Term, the guidance for trust land shall apply.

2.2.4 Alaskan Native Corporation Land

Alaskan Native Corporation (ANC) land is fee land under the Alaska Native Claims Settlement Act. Native members of a village are shareholders in a corporation that has title to land held in

⁷ See 25 CFR § 162.012 and 25 U.S. Code § 2218.

fee. These lands are similar to fee-simple land elsewhere, so no special ACR requirements or guidance apply. If ANC land transitions from fee to trust status during the Project Term, the guidance for trust land shall apply.

2.3 U.S. SECRETARY OF INTERIOR OVERSIGHT FOR TRUST LANDS

For trust lands, as well as land that transitions from fee to trust status during the Project Term, the U.S. Government holds the title in trust on behalf of an individual tribal member or tribal nation. This trust responsibility is exercised by the U.S. Secretary of Interior, acting through the Bureau of Indian Affairs (BIA). The title to restricted fee lands is not held in trust by the U.S. Government, but BIA approval may still be required for certain carbon offset project decisions and commitments.

Tribal members or tribal nations have the right to control and benefit from a land management activity, including implementation of a carbon project, but certain aspects of that activity may require BIA approval. These may include:

- Implementing a change in land management;
- Committing to the project activity for the duration of the Minimum Project Term;⁸
- Entering into a lease agreement;
- Entering into an agreement with an offset project developer;
- Receipt and distribution of carbon offset credits and/or revenues from the sale of credits.

For land not in trust or restricted fee status, no approval or documentation from the Secretary of Interior or BIA is required.

⁸ Only applicable to carbon sequestration projects with a risk of reversal; see section 3.2.

3 TRIBAL LANDS GUIDANCE

This section follows Chapter 3 of the ACR Standard, which outlines the eligibility requirements for all projects registering on ACR. The ACR definitions and requirements are not repeated here; users are referred to the ACR Standard. This chapter only provides guidance on how Projects on the tribal land ownership categories enumerated above can meet each ACR requirement for projects.

3.1 START DATE

3.1.1 All Tribal Lands

The project Start Date should be documented in a Tribal authorization adopted by the tribal government.⁹

Other Start Date documentation may include but is not limited to:

- Execution of a project-specific agreement with a third-party offset project developer
- Start Date of a new forest inventory (if updated for carbon inventory purposes).

3.1.2 Tribal Trust Lands¹⁰

For projects on tribal trust lands that use a lease under HEARTH Act authorities (see section 3.2), the Start Date may be the start of the first 25-year lease, which may subsequently be renewed to meet ACR's permanence and Minimum Project Term requirements.

⁹ Per 25 CFR § 162.003, a Tribal authorization is “a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.”

¹⁰ Throughout this Guidance, “Trust Lands” shall be understood to include restricted fee lands as well, since these are effectively treated the same as trust lands by the Secretary of Interior. See section 2.2.1.1 above.

3.2 PERMANENCE AND MINIMUM PROJECT TERM

3.2.1 All Tribal Lands

Project Proponents of forestry, agricultural and rangeland sequestration projects must enter into the ACR Reversal Risk Mitigation Agreement, which means they commit to project maintenance, monitoring and verification for the Minimum Project Term; implement an ACR-approved risk mitigation mechanism; and commit to replace issued credits in the event of an intentional reversal prior to the Minimum Project Term.

Because ACR will not require a waiver of sovereign immunity or consent to suit, Project Proponents must demonstrate contractually that sequestration projects can commit to the relevant Minimum Project Term in a way that does not leave ACR exposed to undue risk in the event of project discontinuation or intentional reversal.

3.2.2 Tribal Trust Lands

Most land management actions and long-term commitments on trust lands (both tribal nation and individual trust allotments) require BIA approval. However, BIA policy at the national level at this time remains unclear regarding carbon offset projects and what specific BIA approvals are required to enter into these projects. Lacking a uniform national policy, some BIA regional offices have approved tribes entering into offset projects, and/or provided documentation indicating BIA approval is not required for a specific project.

BIA may require sequestration projects on trust lands to obtain BIA approval in order to commit to the Minimum Project Term and sign the ACR Reversal Risk Mitigation Agreement. BIA's determination of this may vary across regional offices. If BIA determines that BIA approval is not required, ACR will follow this determination and only require Tribal approval.

Non-sequestration projects are a simpler case: because these have no minimum term, they will fall under the exemption from BIA review under USC Section 81 applicable to contract terms of less than seven (7) years.

3.2.2.1 HEARTH ACT

The Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act provides a potential solution for tribal nations seeking to implement sequestration projects on tribal trust¹¹ lands. Existing leases on tribal trust land, such as agricultural, business and mineral leases, often have a term shorter than ACR's 40-year Minimum Project Term. The HEARTH

¹¹ Including restricted fee lands; see prior footnote and section 2.2.1.1.

Act, passed in 2012, provides a mechanism for longer leases as well as a streamlined process for tribes to approve new leases without BIA approval for each specific lease. Prior to passage of this act, all leases generally required approval by the Secretary of Interior – often a lengthy and complex process. To streamline this process and allow tribal nations to exercise their inherent sovereignty to develop and implement leasing, the HEARTH Act affords a two-step process in which tribal nations 1) first submit for Secretary of Interior approval generalized leasing regulations, and 2) once approved, tribal nations may execute leases under these regulations without further federal approvals. Provisions of the HEARTH Act are contained in 25 U.S.C. § 415(h).

With respect to this Guidance, the key provisions of the HEARTH Act are that it:

- Applies only to tribal trust lands.
- Allows tribal nations to issue leases for a term of up to 25 years, with the option to renew for up to 2 additional terms, for a total maximum lease term of 75 years. ACR's Minimum Project Term requirement could thus be met with one lease renewal.
- Does not authorize leases for the exploration, development, or extraction of mineral resources (carbon project activities involving mineral resources or subsurface mineral rights are beyond the scope of Version 1.0 of this Guidance in any case).
- Must include an environmental review process with identification and evaluation of significant environmental effects of the proposed lease, public notice and comment, and the tribal nation's response to relevant and substantive public comments on environmental impacts prior to tribal nation approval of the lease.¹²

Tribal nations who have secured Secretary of Interior approval of their leasing regulations under the HEARTH Act may use a lease to meet ACR's Minimum Project Term requirement. When the lease expires at year 25, the tribal nation would need to renew the lease for at least 15 additional years in order to meet ACR's Minimum Project Term requirement for sequestration projects.

3.2.2.2 CONSERVATION EASEMENTS

If the tribal nation is itself Project Proponent, or if the Project Proponent does not wish to use a lease as the mechanism for meeting the Minimum Project Term, an alternative is to place a conservation easement on the carbon project lands. The easement should contain conditions requiring maintenance and verification of the carbon project activity, and the length of easement should be at least equal to the Minimum Project Term applicable to the project type. Conservation easements on trust land may require approval from BIA, or documentation from the responsible BIA office that BIA approval is not required.

¹² See <http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm> for further information on the HEARTH Act.

3.2.3 Individual Tribal Member Trust Lands

The HEARTH Act does not cover leases on lands held in trust for individual tribal member landowners, such as the allotment lands described in II.B.2. For sequestration projects on such lands, the Project Proponent (individual owner, or tribal nation acting as agent on behalf of individual tribal member owners) must commit to ACR's Minimum Project Term and sign the Reversal Risk Mitigation Agreement. The Project Proponent could use a conservation easement, as described above for tribal trust lands. This may require BIA approval, or documentation from the responsible BIA office that BIA approval is not required.

3.2.4 Fee Lands

The Project Proponent (whether the tribal nation itself or another entity) must commit to ACR's Minimum Project Term and sign the Reversal Risk Mitigation Agreement. No BIA approvals are required.

3.3 EMISSION OR REMOVAL ORIGIN

3.3.1 All Tribal Lands

The Project Proponent must document effective control over GHG sources and sinks included in the Project. If the Project Proponent is the tribal nation, it can demonstrate effective control over GHG sources and sinks (e.g. forest or range land) by documenting the ability to dictate land management (e.g. under a forest or rangeland management plan).

If the Project Proponent is other than the tribal nation (e.g. a third-party offset developer), the Project Proponent could document that effective control exists by the tribal nation, and the tribal nation has entered into an agreement with the Project Proponent, committing to the land management practices generating reductions/removals for the Minimum Project Term (if applicable).

Projects reducing or removing energy-related direct emissions,¹³ such as those that replace fossil fuel use with biomass or biogas, are eligible for registration. The Project Proponent shall doc-

¹³ Projects reducing energy-related indirect emissions are generally not eligible for the reasons described in the ACR Standard. For example, a grid-connected renewable energy project on tribal land selling electricity to an electric utility will generally not be able to document effective control over the GHG sources (e.g. power plants owned by the utility, whose emissions may be reduced because of the generation displaced by the renewable energy project) nor show unique Offset Title. The Project Proponent would have to be able to prevent the utility purchasing the power from claiming the GHG reduction, in order to avoid double-counting of the reduction.

ument that it owns or has effective control over the emission sources from which direct emissions (e.g. from the combustion of natural gas, propane, diesel or other fuels) are reduced or avoided.

3.3.2 Trust Lands

The Project Proponent (whether the tribal nation itself or another entity) must present documentation of BIA approval, or documentation from the responsible BIA office that BIA approval is not required, sufficient to demonstrate that the Project Proponent has effective control over GHG sources and sinks to be able to implement the project for the Minimum Project Term.

3.3.3 Fee Lands

The Project Proponent must document effective control over GHG sources and sinks, but no BIA approvals are required.

3.4 OFFSET TITLE

3.4.1 All Tribal Lands

If the tribal nation designates a third-party offset project developer to act as Project Proponent, and assigns responsibility to the Project Proponent to transact Emission Reduction Tonnes, the Project Proponent must demonstrate in agreements that the tribal nation (or other entity owning land/facilities from which the GHG reductions or removals originate) has transferred Offset Title to Project Proponent.

If the tribal nation designates a tribal or other entity (e.g. tribal enterprise, Section 17 corporation, non-profit organization) to act as Project Proponent, this entity must provide a tribal resolution or other relevant documentation that charges the entity with implementing the project activity and holding Offset Title until it is transferred to another party.

Authority exists in federal regulations for a tribal nation to convey certain land management rights to tribal members or tribal corporations. For example, 25 CFR § 162.003 defines a Tribal land assignment as “a contract or agreement that conveys to tribal members or wholly owned tribal corporations any rights for the use of tribal lands, assigned by an Indian tribe in accordance with tribal laws or customs.”¹⁴ In this case, the tribal nation is only assigning to another person or entity the right to implement the carbon project, enter into the necessary agreements with ACR, and hold Offset Title until it is transferred to another party.

¹⁴ 25 CFR § 162.003.

3.5 ADDITIONALITY

3.5.1 All Tribal Lands

Tribal and BIA land management plans sometimes imply a more stringent management (higher forest carbon stocks, lower livestock stocking levels on rangelands, etc.) than is typical for non-Indian land. In addition, actual management – e.g. forest harvest intensity or livestock stocking – on tribal lands is often less intensive than is practiced on non-Indian lands in the same region, and/or than is allowed under the approved management plan.

This raises two issues: whether the land management plan is considered legally binding, making it effectively the baseline for crediting; and whether tribal lands projects should be compared, for crediting purposes, against a baseline representing typical land management in the region or instead against past management on the lands in the project itself, i.e. on tribal lands. These are addressed in turn.

3.5.1.1 MANAGEMENT PLAN

In some instances, a tribe's Forest Management Plan¹⁵ or Agricultural Resource Management Plan¹⁶ may represent a higher baseline management – e.g. maintaining higher forest carbon stocks, lower livestock stocking levels, etc. – than is typical for similar non-Indian lands in the same region. In existing carbon markets this has raised the question whether such a management plan represents a legally binding baseline that must be modeled as the offset project baseline scenario against which crediting is calculated, or merely provides a more flexible guideline for management.

BIA has provided guidance on this issue in a letter to the California Air Resources Board regarding California's cap and trade program.¹⁷ According to BIA, the National Indian Forest Resources Management Act (NIFRMA), 25 U.S.C. 3101 et seq., requires Forest Management Plans in which the principle goal is sustained yield management of Tribal forests, which BIA defines as "the yield of forest products that a forest can produce continuously at a given intensity

¹⁵ Under 25 CFR § 163.1, a Forest Management Plan means "the principal document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe... [including] standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan."

¹⁶ Under 25 CFR § 166.4, an Agricultural Resource Management Plan is a ten-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under the American Indian Agricultural Resources Management Act will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and Indian tribal governments.

¹⁷ Letter from Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs, to Mary Nichols, Chair – California Air Resources Board. September 15, 2016.

of management,” citing 25 CFR § 163.1. BIA notes that a tribe may target sustained yield of a wide variety of forest products; may target the management of any or all of their commercial forest acreage, and apply any harvest level that achieves a sustained yield of products and a sustainable level of forest health and ecological resilience; and that sustained yield may be pursued using a variety of concepts (Maximum Biological Yield, Maximum Biological Cut, Indicated Allowable Cut, and Annual Allowable Cut) that are not considered legally binding constraints. BIA also notes that Tribes may amend their Forest Management Plan at any time, either increasing or decreasing the Indicated Allowable Cut or, managing for different tribal goals, objectives, or products, provided sustained yield management is achieved. All of this guidance suggests that BIA does not view the various metrics in a Forest Management Plan as legal constraints, and sees considerable flexibility for Tribes to manage to different harvest levels as long as the principle of sustained yield is maintained.

Following this guidance, ACR will not treat the various metrics in a Forest Management Plan (Maximum Biological Yield, Maximum Biological Cut, Indicated Allowable Cut, and Annual Allowable Cut) as legal constraints for the purposes of describing and modeling the offset project baseline scenario. Instead, a baseline management scenario should be created that represents sustained yield. The baseline scenario must represent a management approach that could realistically be pursued absent the offset project.

A similar approach should be taken to other offset project types. An offset project baseline scenario should be defined that represents any and all land management activities that could be implemented consistent with applicable constraints in the management plan. For example:

- For an avoided conversion of grassland or shrubland to croplands project, the baseline scenario should be consistent with allowable cropping activities under an approvable agricultural management plan;
- Similarly for other project types, the baseline scenario may include any activity that could legally and realistically be implemented on the project lands in the absence of the project activity.

3.5.1.2 REGIONAL VS. TRIBAL BASELINE

Tribal lands are often managed with less aggressive harvest or livestock stocking than is typical for similarly situated non-Indian lands in the same region.¹⁸ If the baseline for a tribal lands project represents typical management on the project lands themselves, tribal lands offset projects may receive fewer credits than if the same carbon offset project were implemented on adjacent non-Indian lands.

If the applicable methodology uses a performance standard approach, an offset project on tribal lands should be compared to a regional baseline representing typical management on lands

¹⁸ “Many tribes typically do, for example, choose management goals that lead to conditions favorable for the production of large diameter trees or, average residual growing stock levels higher than neighboring private landowners.” BIA letter to CARB, September 15, 2016.

(tribal and non-Indian) in the region.¹⁹ This allows the tribal project some credit for continuing to exceed a baseline that is typical for the region – a level of forest harvest or livestock stocking that is legally permissible and common practice in the region -- which the tribe could pursue if it chose not to implement the carbon offset project.

If the applicable methodology uses ACR's three-prong additionality approach, which includes a requirement that the project go beyond common practice for the lands in question, common practice should be defined as typical land management in the region rather than pre-project land management on the project lands themselves.

3.6 AGGREGATED PROJECTS AND PROGRAMMATIC DEVELOPMENT APPROACH (PDA)

3.6.1 All Tribal Lands

Various types of Aggregates are potentially of interest on tribal lands. These include but are not limited to:

- **SINGLE TRIBAL NATION, MULTIPLE LOCATIONS, ALL TRIBAL LAND** An individual tribal nation may act as Project Proponent for an Aggregate in which multiple project sites (instances, fields, parcels or facilities), all on lands controlled by the tribal nation itself, are combined into a single project.
- **SINGLE TRIBAL NATION, MULTIPLE INDIVIDUAL TRIBAL MEMBER ALLOTMENTS** A tribal nation or other entity may act as Project Proponent for an Aggregate in which multiple individual tribal member landowners or allottees participate, all within a single reservation. The tribal nation, once it holds 51% of the interest in an allotment, may act as the agent and Project Proponent, holding the account on ACR and distributing among participating landowners their share of revenues from credits that are sold. Alternately, an entity other than the tribal nation – tribal enterprise, offset project developer, non-profit organization, inter-tribal organization, etc. – could act as Project Proponent for an Aggregate with multiple individual tribal member landowners or allottees.
- **SINGLE TRIBAL NATION, MIX OF TRIBAL NATION TRUST LAND AND ALLOTMENTS** An Aggregate could include both tribal nation trust land and individual tribal member allotments. As above, the tribal nation or another entity designated by the tribal nation may act as Project Proponent.

¹⁹ This is the approach taken in the California Air Resources Board's Compliance Offset Protocol – U.S. Forest Projects, in which the baseline is set based on average forest carbon stocking in the U.S. Forest Service – Forest Inventory and Analysis region in which the project is located. The FIA stocking level is affected by both tribal and non-Indian forest land in the region, so reflects a baseline that accounts for typical harvest levels, not just the (often less intensive) harvest levels on tribal lands.

- **MULTIPLE TRIBAL NATIONS, MULTIPLE LOCATIONS, SINGLE LEAD ENTITY** An Aggregate may include multiple tribal and/or individual tribal member landholdings, potentially on different reservations, where the participating landowners have designated either one of the tribal nations, or another entity, to act as Project Proponent on behalf of all participating tribal nations and/or individual tribal members. This designated lead entity would be the Project Proponent holding the account on ACR and distributing to each participating tribal nation or landowner tribal member its share of revenues from credits that are sold.

In each of these cases, a single entity – a tribal nation or other entity – will serve as aggregator and Project Proponent. This Project Proponent will prepare and submit project documents to ACR; engage and work with the third-party Validation/Verification Body; receive ERTs in its account on ACR; and distribute to each tribal nation or tribal member landowner that participates in the Aggregate its share of ERTs (or revenues from ERT sales) in proportion to its share of the project or otherwise negotiated share.

ACR takes no role in the negotiation of transactions or distribution of credits between a Project Proponent and other parties.

3.6.1.1 PERMANENCE AND MINIMUM PROJECT TERM REQUIREMENTS

If the tribal nations participating in an Aggregate have designated one of the tribal nations, or another entity, to act as Project Proponent of a sequestration project, the Project Proponent need not commit to the Minimum Project Term and sign ACR's Reversal Risk Mitigation Agreement on behalf of all participants. It is unlikely that one tribal nation or other entity would be able to enter into such commitments on behalf of other tribal nations.

Instead, the Project Proponent may work with each participating tribal nation and serve as a liaison, with each tribal nation ultimately signing its own Reversal Risk Mitigation Agreement with ACR. If the aggregated project includes tribal trust lands, the participating tribal nations may use HEARTH Act authorities, as described in section 3.2, to meet ACR's requirements for Minimum Project Term.

DEFINITIONS

This Appendix includes only definitions specific to this Guidance. For all generally defined ACR terms, the user is referred to the ACR Standard.

Many relevant definitions are contained in 25 CFR Chapter I, Subchapter H, with some of the subparts containing their own definition section – e.g. definitions applicable to land records and title documents in § 150.2, definitions applicable to leases and permits in § 162.003, and so on.²⁰

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| Agricultural resource management plan | A ten-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under the American Indian Agricultural Resources Management Act will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and Indian tribal governments. ²¹ |
| Alaskan Native Corporation (ANC) land | Fee land under the Alaska Native Claims Settlement Act. Native members of a village are shareholders in a corporation that has title to land held in fee. |
| Allotment | Lands held by individual tribal members, initially granted under the Dawes Severalty Act of 1887 or Burke Act of 1906. Title to allotted land is held in trust by the U.S. Government. Ownership in allotments is often highly fractionated, with undivided interests in the allotment as a whole split among multiple heirs. |
| Fee land or fee simple | Land owned by an individual tribal member or a tribal nation, where the title and unrestricted control rests with the owner. The owner may make decisions about land use or sell the land without U.S. Government oversight. |
| Forest management plan | The principal document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe... [including] standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan. ²² |

²⁰ 25 CFR Chapter I, Subchapter H is accessible in a convenient hyperlinked format at <https://www.law.cornell.edu/cfr/text/25/chapter-I/subchapter-H>.

²¹ 25 CFR § 166.4.

²² 25 CFR § 163.1.

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| Fractionated tract | A tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein. ²³ |
| HEARTH Act | The 2012 Helping Expedite and Advance Responsible Tribal Home Ownership Act, which attempts to streamline approvals of business, agricultural and other types of leases on tribal trust lands by establishing a process for federal approval of generalized tribal leasing regulations such that subsequent leases do not require federal approval. The HEARTH Act applies only to tribal trust lands. |
| Indian land | An inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and U.S. Government-owned land under Bureau jurisdiction. ²⁴ |
| Indian landowner | A tribe or individual Indian who owns an interest in Indian land. ²⁵ |
| Individually owned Indian land | Any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status. ²⁶ |
| Lease | A written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease. ²⁷ |
| Restricted fee land | Fee-simple land where specific government-imposed restrictions on land use and/or disposition apply. Title is held by an individual tribal member or tribal nation but may only be alienated or encumbered by the owner with the approval of the Secretary of Interior. |

²³ 25 CFR § 162.003.

²⁴ 25 CFR § 150.2(h).

²⁵ 25 CFR § 162.003.

²⁶ 25 CFR § 162.003.

²⁷ 25 CFR § 162.003.

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| Tribal land | Any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. ²⁸ |
| Trust land | Land owned either by an individual tribal member or by a tribal nation in an area of land reserved for a tribal nation(s) under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribal nation or individual tribal member. Many land management decisions on trust land require involvement and approval by the U.S. Secretary of Interior, acting through the Bureau of Indian Affairs (BIA). |
| Tribal authorization | A duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action. |
| Undivided interest | A fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners. ²⁹ |

²⁸ 25 CFR § 162.003.

²⁹ 25 CFR § 162.003.