

BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS



Main Office:
1004-Landooz Road,
Prince George, BC V2K 5S3
Phone # 250-962-1603
Fax # 250-962-9552
Toll-Free # 1-877-621-1603

Vancouver Office:
1020-1200-West 73rd Avenue,
Vancouver, BC V6P 6G5
Phone # 778-945-9911
Fax # 778-945-9916
Toll-Free # 1-833-381-7622

BRIEFING NOTE

TO: First Nations in BC;
FROM: Patricia Rojas, BCAFN Regional Climate Change Coordinator, Michelle Connolly, Ecotrust Canada
DATE: April 14, 2022
RE: BCAFN First Nations Carbon Discussion Paper

PURPOSE

To summarize key elements of the [BCAFN First Nations Carbon Discussion Paper](#) and provide follow-up recommendations.

RECOMMENDATIONS

The rights of First Nations in BC are land-based Aboriginal rights, and it is First Nations communities that have the right to the carbon stored and absorbed across their lands and the potential revenues related to such carbon. Section 35 of the *Constitution Act* and the implementation of both the Canadian and BC legislation on the United Nations Declaration on the Rights of Indigenous Peoples may be an opportunity for First Nations to:

Assert jurisdiction:

- Assert territorial jurisdiction over forests and areas that can be managed and conserved in a way that is compatible with recognizing the existence of carbon rights that underlie carbon offsets. Returning lands to First Nations will support carbon storage and absorption.
- Claim ownership to carbon as a resource that was not ceded by First Nations to the crown, and thus ownership and rights of use are still retained by First Nations.
- Assert your Aboriginal and Treaty Rights to the conservation of the environment and the productive capacity of your territories and resources that would result in the ability to own and sell carbon offsets.
- Include carbon rights as a component of Aboriginal rights in your negotiated treaty or a reconciliation agreement.
- If your community does not already have a Community Forest Agreement or a First Nation Woodland Licenses, push for the creation of a tenure or a transfer of tenure from another licensee in order to enable a carbon project.

Advocate for legislation, regulation and policy reforms:

- Support collective action to advance First Nations' carbon rights, facilitate discussion on the benefits and limitations of carbon offset projects and propose mechanisms to ensure Indigenous rights and priorities are upheld during every phase of the carbon offset system.
- Push for reforming legislation, regulations, policies and procedures at multiple scales (e.g., international, federal and provincial) that are limiting First Nations in pursuing land-based carbon offsets and conservation projects in their territories.

#honouringourancestors



bcafn

- Nations in BC ought to be able to choose which protocol/registry is used on their lands.

Explore conservation as a carbon project:

- Consider creating conservation areas such as IPCAs that includes a carbon project. The Government of Canada has committed to conserving 25% of Canada’s lands and waters by 2025 and achieving net-zero emissions by 2050. IPCAs and First Nations carbon projects can help the Government of Canada in achieving these targets while reducing GhG emissions
- Map the ecosystems in your territory. Identify areas of primary forest and forest that can be restored (degraded forest). These lands constitute a potential carbon project and/or IPCA.
- Consider working with communities with whom you share territory to pursue a joint project that protects the primary forest and restores degraded lands.

Strengthen capacity and support economic development

- Build technical and professional capacity for careers in carbon, such as carbon project development, validation and verification.
- Consider building First Nations businesses related to carbon project development, validation and verification.
- Consider how a carbon project can generate employment in your community and create seed funding for low-carbon economic development with a conservation and sustainability focus.
- Support innovation on value-added forest products from second-growth forests.
- Support a National Occupational Classification category for carbon and climate change careers.
- Before selecting a project developer, consider speaking with other First Nations that the developer has worked with to get a sense of how they felt about the relationship.

BACKGROUND

- A. In 2021, Chiefs-in-Assembly mandated Regional Chief and BCAFN staff to support community-led climate initiatives across BC (Resolution no. 5/2021) to:
- enhance First Nations’ capacity and build resilience to adapt to the impacts of climate change;
 - reduce greenhouse gas emissions at the community level and help keep global warming below 1.5°C; and
 - place First Nations in a leadership role to advance and benefit from the growth of a new, clean and just economy, which is also premised on respect for their Rights, Title and Treaty Rights.
- B. To fulfil our mandate, BCAFN has been exploring options of supporting First Nations carbon offset projects in a way that respects and affirms Indigenous Rights. BCAFN has prepared the discussion paper [*First Nations Carbon*](#), whose purpose is to facilitate information and encourage discussions within First Nations governments and communities on:
- what carbon is,
 - what First Nation rights are concerning carbon,
 - how carbon offsets work, and
 - how First Nations can benefit from them.

The final goal of the discussion paper is to support interested First Nations to explore Indigenous-led carbon store initiatives as an alternative option to address economic deprivation while meeting



Indigenous land stewardship and conservation goals to prevent biodiversity loss, safeguard Indigenous culture and knowledge and decrease global carbon emissions.

ANALYSIS:

Carbon and carbon offsets projects:

- C. The global economy produces over 10 billion tonnes of carbon emissions every year, causing global warming and devastating worldwide impacts. Indigenous peoples are often among the populations most affected by climate change due to their deep connection and dependence on the land, even though they are the least responsible for causing it.
- D. Carbon in the atmosphere is naturally captured and stored in the ocean and terrestrial ecosystems like forests, grassland, wetlands, peatlands and permafrost, often located within Indigenous territories. This ability of carbon sequestration can be commodified by introducing carbon credits that are tradable within markets.

One offset unit = 1 CO₂ reduced already

- E. Land-based carbon offset is one way to help nature soak up more CO₂. BC projects in so-called 'crown land' and private land are eligible for carbon offset projects.
- F. BC has four land-based carbon offsets projects listed as 'Forestry' in [BC's 2020 offset portfolio](#). These offset projects result from improved forest management practices (Cheakamus Community Forest, The Great Bear – South Central Coast, The Great Bear - North and Central Mid-Coast, and Great Bear Rainforest - Haida Gwaii).

Carbon rights and carbon offsets projects:

- G. The rights of First Nations in BC are land-based Aboriginal rights, including title and treaty rights (Section 35, the *Constitution Act*), and it is First Nations communities that have the right to the carbon stored and absorbed across their lands and the potential revenues related to such carbon.
- H. Current legislation and policies establish that participation in a carbon market requires that the project proponent of the carbon offset has the legal right to it. First Nations rights to the carbon absorbed and stored across First Nations lands and the potential revenues related to such carbon are, for the most part, not recognized by the governments of BC or Canada.
- I. In BC, the government's position is that, in the absence of any agreement or legislation, the province is the owner of the rights to benefit from land-based offset projects on "crown land," except in relation to lands where Aboriginal title has been proven
- J. The implementation of the UN Declaration in Canada and the *Declaration Act* in BC must change this situation and recognize and create the frameworks to affirm First Nations' rights to carbon and assert jurisdiction.

Carbon offset markets

- K. In BC, the Legislative Framework for the BC Offset Program relies on the Greenhouse Gas Industrial Reporting and Control Act (GGIRCA, 2016), governed by the Greenhouse Gas Emission Control Regulation ([GGECR](#), 2015). The GGIRCA enables:
 - the creation of carbon credits,
 - BC's carbon offset market, and



- the creation of protocols through which proponents can submit plans for specific offset projects.
- L. First Nations land-based carbon offset projects in BC must be compliant with the GGIRCA and GGECR, including carbon offset protocols and trading carbon offset markets.
- M. Carbon markets enable an entity, government or company to purchase a quantified emission reduction from another entity in order to comply with their own national commitment or target. In a carbon market, indirect emission reductions can be exchanged via carbon offsets from one entity to another¹.
- N. There are two types of carbon markets:
- Compliance: regulated by regional, national or international regimes of emission reductions (emitters with mandatory legally-binding emissions reductions targets). An example of a compliance market is the [Western Climate Initiative](#). Compliance markets lead to emission reductions by gradually reducing the available emission allowances over time.
 - Voluntary: outside government-mandated compliance programs (business, governments, NGOs, etc.)²
- O. BC's current emissions trading market is small, with proponents only having access to potential buyers in two provincial compliance markets, with some limited voluntary demand from the private sector. The first compliance market constrains the public sector to become carbon neutral through emission reduction and the purchase of carbon credits. The second compliance market restrains the emissions of liquefied natural gas plants and partially permits the purchase of carbon offsets to meet these limits partially.
- P. A potential market for BC Offsets Units is the federal Output-Based Pricing System (OBPS), an emissions trading system for large industrial facilities such as mines, oil and gas, cement production, and others.
- Q. In addition, a new [Federal Greenhouse Gas Offset System](#) (Federal Offset System) is under development to encourage domestic GHG emissions reductions and removals from activities that the OBPS does not cover. This creates potential future demand for credits from BC by adding them as an option for industrial emitters across the country to reduce their emissions to the required level.
- R. At the international level, the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) is a carbon market designed by the UN's International Civil Aviation Organization (ICAO) to reduce carbon emissions from international aviation. BC has been negotiating with the International Air Transport Authority for recognition of the BC Offset Program in this market, which is in its pilot phase until 2023.
- S. In order to update broader opportunities for First Nations land-based projects, some elements that need further discussion are:
- Benefits from accessing more significant markets.
 - Making markets compatible with each other or having a single global carbon market to improve the existing system for sellers and buyers.
 - Create a certification for First Nations carbon offset projects to help differentiate them from other projects or avoid market segmentation and burden efforts from the creation of a whole new First Nations carbon offset standard (having to build all the details, certifications, trust and market demand) by creating an additional certification to designate quality First Nations projects.

¹ Carbon Market Watch 2020...

² Art 6 of the Paris Agreement establishes the rules for voluntary trading (Internationally Transferred Mitigation Outcomes -ITMO)



Atmospheric Benefits Sharing Agreement (ABSA)

- T. As First Nations' ownership over carbon in 'crown lands' is not recognized by the government in BC, an agreement called Atmospheric Benefit Sharing Agreement (ABSA) has to be negotiated and signed between a First Nation proponent and the provincial government to sell carbon credits from an offset project in a carbon market. In other words, an ABSA clarifies carbon ownership over a given area and allows the sale of carbon offsets by identifying a % of the atmospheric benefits granted annually to the proponent. The province may retain a share of the benefits obtained through the sale of the offsets. It is often a condition for an ABA approval.
- U. An ABSA can only be entered into if the First Nation has signed a Reconciliation Protocol or similar agreement with the provincial government. [14 First Nations](#) have established ABSAs with BC, which are reviewed every five years.
- V. Forest tenures may potentially be used for carbon offset projects. Currently, the Cheakamus Community Forest has a high-quality project. Tenures such as First Nations Woodland licenses and Community Forest licenses should be explored for their offset project potential.

Forest Carbon Offset Protocol (FCOP):

- W. A FCOP sets the methodologies and instruments for quantifying Greenhouse emissions reductions and sink from a proposed offset project. It also provides project planning and implementation requirements to ensure that the proposed project produces the committed emissions reductions. This includes technical considerations such as project types, baselines, additionality, deductions, risks and reversals, monitoring, etc.
- X. The previously issued BC Forest Carbon Offset Protocol (FCOP 1.0) has been retired, and a draft FCOP 2.0 was under public review last year. A *What We Heard* report summarizing comments received is shared on the [government website](#). The final FCOP is expected to be released this year. The FCOP 2.0 will be the approved protocol for projects in BC on "crown land."¹ Projects on private land or on reserves can use any protocol they want.

Opportunities and Challenges for First Nations Land-Based Carbon Offsets projects

There are many challenges and opportunities associated with carbon offsets for First Nations in BC and identified in the [BCAFN First Nations Carbon](#) discussion paper (pages 24-25), including but not limited to:

- Defining land tenure and carbon rights is the most significant barrier to First Nations participation in carbon markets. Crown recognition of First Nations' jurisdiction over their territories is limited, and carbon rights have not yet been defined across most of BC. However, the introduction of the Declaration Acts may offer new opportunities for recognizing jurisdiction and negotiating carbon rights on a government-to-government basis.
- Carbon projects can enable self-determination when established and managed according to First Nations' legal, knowledge, and governance systems and are an expression of Indigenous nationhood.
- There is alignment between carbon storage and First Nations-led conservation, which is a co-benefit of land-based projects. Carbon and conservation-related activities (e.g. protection and restoration) may prevent the pursuit of other non-aligned economic ventures such as logging, mining or other extractive industries investments.
- The Government of Canada has committed to conserving 25% of Canada's lands and waters by 2025 and achieving net-zero emissions by 2050. These commitments enable the creation of Indigenous Protected and Conserved Areas (IPCAs) and/or a carbon project.



- Restoring degraded landscapes and protecting forests within the timber harvesting land base can increase the net carbon storage of the ecosystem and avoid emissions from logging, which can support community goals.
- A land-based carbon project can be linked to cultural maintenance and revitalization. It can also generate employment and funds to seed social enterprises and new businesses with a sustainability focus (a conservation economy).
- Indigenous Guardians could monitor the climate, measure carbon, and deliver on carbon projects. Carbon offset credits could generate capital to support Guardians programs.
- Developing a carbon offset project requires significant resources and time. The rigid rules and regulations related to carbon offset projects underlie this challenge. In addition, capital may be required if a First Nation wishes to purchase privately owned land for a carbon project.
- Carbon markets can contribute to economic diversification. Developing new local markets can create direct and indirect jobs and spin-off benefits.
- Measuring how much carbon is stored in an ecosystem can be technically challenging.
- Carbon opportunities can be perceived as risky and complicated and can lead to fears of dispossession by the community.
- Being limited to using the BC Forest Carbon Offset Protocol on 'crown land' might not be in the best interest of a First Nation
- First Nations in BC should be fully engaged in developing legislative and policy changes and land-based carbon offset projects. However, crown governments are failing to this commitment.

NEXT STEPS

BCAFN will continue working to support First Nations economic sovereignty and climate change initiatives while advocating for the recognition and affirmation of inherent Title, Rights and Treaty rights in the context of a climate crisis. In this regard, BCAFN has partnered with [Ecotrust Canada](#) to develop and implement the project *Enriching BC First Nations Capacity to Develop Forest Carbon Projects*, which seeks to support First Nations in BC to engage in carbon offsets projects in a way that responds to First Nations interests and priorities. To project seeks to achieve the following three goals:

- Build and deliver capacity tools for First Nations in BC to protect forests through conservation and carbon offsets;
 - Convene efforts by First Nations in BC to scale up old-growth conservation, assert First Nations inherent rights and support the exercise of First Nations culture and knowledge; and,
 - Enhance communication and collaboration, and increase government and public awareness, understanding and support for conservation and carbon offset actions, including policy and regulation changes.
-

