

## The President's Climate Action Plan: Its Impact on Moderating Carbon Emissions Through Ecological Conservation

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*The President's proposal includes several recommendations for promoting ecological conservation as a tool for sequestering atmospheric carbon while simultaneously providing natural buffers against more intense and frequent storms, higher sea levels and increasingly severe droughts. Thus, the owners of environmentally valuable land will be in a position to benefit economically from the "ecological service" or "green infrastructure" capacity of their land. The monetary value of these services promises to become substantial if federal and state policies evolve in ways that enable landowners to capture and "stack" the economic benefit of their land's carbon sequestration capacity along with other valuable ecosystem services that the same landscape can provide if properly managed.*

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On June 25, 2013, the President announced his "Climate Action Plan" (CAP) addressing climate change issues affecting the nation and the world. For the United States, the President outlined a host of measures including a directive to EPA to develop new rules that would reduce carbon dioxide emissions from new and existing coal-fired power plants. While these new rules (which are to be promulgated by the end of 2015) are the centerpiece, the President said his strategy also is concerned with protecting the nation's forests and other critical landscapes jeopardized by a changing and more deleterious climate. The Plan specifies the steps that could be taken to reduce methane emissions from a variety of sources, while shoring up the capacity of our nation's forests, grasslands, and wetlands to stave off or ameliorate climate change impacts.

An important component of the President's Plan is the care that must be taken with regard to our natural landscapes, and the opportunities they present to enhance the quality of the environment. In particular, the Plan includes numerous recommendations to facilitate the use of natural landscapes for absorbing CO<sub>2</sub>

from the atmosphere and mitigating the anticipated adverse consequences of climate change. These recommendations recognize the role that thoughtful management of public and private forests, wetlands, grasslands and other natural landscapes plays in 1) removing CO<sub>2</sub> from the atmosphere and sequestering it in soil and plant tissue; 2) avoiding direct emissions of CO<sub>2</sub> associated with some land use conversions (e.g., burning forests); 3) creating biofuels to effectively recycle CO<sub>2</sub>; and 4) buffering the impact of floods and other damaging events associated with climate change.

It is likely that land-based strategies will play a major role in future climate change policy simply because of the potential scale of their impact. For example, U.S. forests currently remove over 10% of the nation's annual GHG emissions. Coastal marsh lands likewise absorb substantial quantities of CO<sub>2</sub> from the atmosphere, as do many other natural vegetated landscapes. Plants have evolved the ability over billions of years to use CO<sub>2</sub> as a carbon source. Hence, they can often capture CO<sub>2</sub> in a more cost-effective manner than add-on pollution control systems.

Expanding, restoring and avoiding large scale conversions of natural landscapes is expected to play a significant role in future U.S. climate strategy, not only because of the GHG absorption capacity of the landscape, but because of the many co-benefits that such conservation and restoration projects provide. To this end, the CAP includes several specific recommendations for promoting ecological conservation as a tool for sequestering atmospheric carbon, while simultaneously providing natural buffers for critical infrastructure (roads, pipelines, water supplies...etc.) against more intense and frequent storms, higher sea levels and increasingly severe droughts. The Plan proposes a \$100 million, competitive grant program to "foster partnerships and promote natural resilient systems while enhancing green spaces for wildlife habitat near urban populations." An additional \$250 million is proposed to support coastal restoration projects. Collaboration is proposed with the insurance industry to fund such projects in recognition of the significant exposure that industry faces when insuring property and infrastructure that is not adequately protected from major storms by natural floodplains or coastal marshland.

The owners of environmentally valuable land (public and private) will be in a position to benefit economically from the "ecological service" (sometimes referred to as the "green infrastructure") capacity of their land. The monetary value of these services promises to become substantial if federal and state policies evolve in ways that enable landowners to capture and "stack" the economic benefit of their land's carbon sequestration capacity along with other valuable ecological services that the **same landscape** can provide if properly managed. Such services may include the land's ability to cleanse and store fresh water, reduce wildfire risks, replenish ground water supplies by natural recharge, buffer coastal storm surges and satisfy the increasing demand for green space in and around metropolitan areas. These ecological services are often more cost-effective than conventional grey infrastructure because they take advantage of processes that occur naturally. Substances that the Clean Water Act classifies as "pollutants" often become essential "nutrients" for vegetative growth in a wetland. Storm water that might otherwise inundate an industrial complex can instead provide needed hydration for that same wetland. This concept underscores a theme long taught by the nation's environmental engineering schools that *pollution* (or flood water) is simply "a resource in the wrong place."

## Ecosystem Services

Pillsbury has created a corporate Ecosystem Services Working Group focused on ways U.S. companies can benefit from the ecological service value of their own real estate and water rights as well as the real estate/water rights of landowners in proximity to the companies' operations. Some of the topics addressed by the CAP that are being monitored by the Pillsbury Working Group are:

1. The ability of industries affected by GHG emissions limitations, such as coal- or gas-fired electric power plants, to **avoid (net-out) or satisfy GHG new source review requirements** (or to limit the

degree of required GHG control for existing emissions sources) through company-sponsored biological carbon sequestration projects;

2. Incentives for producing or using **biofuels from agricultural or forest land in order to satisfy EPA's Renewable Fuel Standard (RFS)**, meet the demand for biofuels by entities such as the U.S. military, and/or serve as part of a corporate carbon offset strategy;
3. Incentives for **investing in ecological restoration** projects to (i) cost-effectively achieve corporate GHG goals, (ii) help the surrounding community adapt to projected climate change impacts, e.g., by expanding flood zones or coastal marsh buffers, (iii) directly generate revenue from the sale of carbon sequestration credits and/or other ecological service credits, (iv) provide required mitigation for company expansion projects under the Endangered Species Act, the Clean Water Act's wetland program or NEPA, or (v) enable the company's plants to achieve environmental objectives, such as NPDES permit compliance, in a more cost-effective fashion. The Dow Chemical Company is currently preparing a report that describes a \$38 million cost savings at one of its Texas plants from the use of a natural wetland to treat the plant's process wastewater.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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