



May 7th, 2021

The Nature Conservancy (The Conservancy or TNC) respectfully submits the following comments on the Transportation and Climate Initiative (TCI) Draft Model Rule, released on March 1st, 2021.¹

The Nature Conservancy is a global conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to our world's toughest challenges so that nature and people can thrive together. We are tackling climate change, conserving lands, waters, and oceans at an unprecedented scale, providing food and water sustainably and helping make cities more sustainable. Working in 72 countries and territories: 38 by direct conservation impact and 34 through partners, we use a collaborative approach that engages local communities, governments, the private sector, and other partners.

TNC is committed to achieving net-zero carbon emissions in the United States by 2050 and we believe that the implementation of the Transportation and Climate Initiative Program (TCI-P) can be an important first step in reducing emissions from the transportation sector. We urge state policymakers to couple TCI-P with additional transportation policies and funding to help meet the multiple goals within TCI-P – such as reducing other pollutants, improving transportation access, and fostering economic activity. We believe that the participating jurisdictions must implement a program that is as effective, transparent, and equitable as possible. In that spirit, we offer the following comments on elements of the Draft Model Rule:

I. Compliance Mechanisms

Minimum Reserve Price and Containment Reserves

We support the establishment of a **Minimum Reserve Price** that increases over time and that is set at a level sufficient to ensure stability and integrity of the program and achieve its goals. As we have seen in other cap and invest programs, such a mechanism is important to ensure that the TCI-P maintains a reasonable price signal to incentivize the reduction of transportation emissions in a case where the initial cap turns out to be too high. It is also an important means for ensuring that participating jurisdictions have confidence that the program will provide funds they have reasonably anticipated for investment to advance their transportation goals and realize the benefits of program participation. If set too low, the benefits of the program could be significantly reduced. The Draft Model Rule should ensure that the minimum reserve price is sufficient to maintain a minimum amount of benefit to participating jurisdictions.

We support the establishment of stability mechanisms such as cost containment and emissions containment reserves, if designed appropriately. We agree with the inclusion in the Draft Model Rule of a cost containment reserve (“CCR”) that escalates each year as a consumer protection mechanism; however, the CCR must not jeopardize the program’s environmental integrity and must be set sufficiently

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high to only be triggered in exceptional circumstances. As currently proposed, the CCR would allow a significant number of **additional** allowances—up to 10 percent of the annual CO₂ limit in a given year—to be released at a fairly low trigger price. We recommend that the Draft Model Rule should instead require that any allowances released under the CCR be deducted from future years’ emissions caps, similar to the way California’s CCR mechanism works in its cap-and-trade program.² We also encourage the states to examine whether a higher CCR trigger price would better preserve the integrity of the program while still safeguarding consumers from truly unforeseen market forces.

We also strongly support the Draft Model Rule’s proposed **emission containment reserve** (“ECR”), which would automatically and permanently withhold a portion of allowances if emissions reduction costs are lower than anticipated. The ECR is especially important as a complementary and counterbalancing mechanism to the CCR. Combined with the minimum reserve price, the ECR will help ensure the TCI-P achieves the desired emissions reductions and provides investments between the launch of the program and its first program review. We encourage the participating jurisdictions to examine whether a higher ECR trigger price than what is proposed in the Draft Model Rule might garner increased benefits

Forest Carbon Offset Program

We do not believe that the TCI-P Draft Model Rule has met the criteria to justify a carbon offset program. Carbon offsets should be used only as a last resort, after deep emissions reductions have been achieved, and no more emissions reductions are possible through cost-effective means. Because the TCI-P cap is set very close to expected demand for fuel and decreases at a slow rate, and because the auction has a Cost Containment Reserve, TCI-P as currently designed does not have remaining unavoidable carbon emissions that could be offset. We expect that all carbon emissions will be easily covered by bought or banked allowances. **Therefore, we recommend that TCI-P not make use of the proposed Forest Carbon Offset Program at this time.**

Should TCI-P move forward with a Forest Carbon Offset Program, we respectfully offer our assistance, as we have over a decade of experience in developing carbon sequestration projects and following forest offset protocols. We would be available to assist in the development of an effective forest carbon offset program that is attractive to land managers and results in measurable, additional, long-term carbon sequestration, along with other ecosystem services such as improved water quality and reduced flooding. This work should occur alongside a robust stakeholder process to consider offsets in the context of other emissions sources and to ensure representation of environmental justice communities. Without early and genuine representation, we risk creating a regional market that allows pollution in underserved communities while concentrating funding and non-carbon benefits elsewhere. While we offer this assistance to maximize the effectiveness of any forest carbon offset program included in TCI-P, our position remains that a Forest Carbon Offset Program within TCI-P is currently unnecessary.

II. **Covered Fuels**

We understand the participating jurisdictions’ decision to include only the fossil-fuel based portion of regulated fuels within the program for the purpose of administrative simplicity. However, TNC continues to believe that biofuels should be a covered fuel under TCI-P, if not now, then in the future. By excluding the biomass-based portion of transportation fuels, TCI-P is in essence treating all biofuels equally and as inherently carbon neutral. We know that this is an incorrect assumption and could create incentives for

² Environmental Defense Fund, Carbon Market California: A Comprehensive Analysis of the Golden State’s Cap-and-Trade Program, http://www.edf.org/sites/default/files/content/carbon-market-california-year_two.pdf

fuels that increase, rather than decrease, net carbon emissions. We hope that the jurisdictions will expand the TCI-P in the future to include biomass-based fuels as covered fuels and use detailed life-cycle accounting of the carbon emissions associated with the production and combustion of biofuels to determine their equivalence to fossil fuels within the program.

III. Investment Decisions and Equity Provisions

In previous comments, TNC has expressed its support for the states' decision to dedicate no less than 35 percent of revenues to investments in underserved or overburdened communities. We strongly encourage states to commit to spending at least 35 percent of revenues or a percentage proportional to the number of residents in these communities, whichever number is higher. We believe this will help ensure that investments are being directed first and foremost by community need.

We also support the states' continued dedication to establishing a robust Equity Advisory Body (EAB) in each state. In addition to the roles and responsibilities outlined in the Draft Model Rule, we believe the EABs should:

- Develop community outreach and stakeholder engagement targets to ensure diversity of representation and broad-based input;
- Employ best management practices for engaging diverse stakeholders, such as providing compensation, translation services, and accessibility for people with disabilities; and,
- Ensure transparency and clarity of communications regarding issues related to technical content and process.

We also believe that EABs should make recommendations to their jurisdictions on how to allocate, or periodically re-allocate, funds towards or away from specific investments based on the EAB's assessment of their effectiveness in achieving the intended outcomes of TCI-P.

Finally, we strongly encourage states to enact statutes to establish dedicated trust fund accounts to collect and disburse revenues from the TCI-P auctions, rather than placing them into state general funds or transportation accounts. We believe this is the only way to guarantee that TCI-P revenues will be spent in a way to honor the intent of TCI-P and achieve the goals of the program. We understand that this may not be relevant to the development of the Draft Model Rule, as it is the power of individual governors and state legislatures to determine how state funds are spent; however, we feel that this is an important provision that states need to adopt to ensure they can fulfill their commitments to equitable investments and program effectiveness.

IV. Reporting

We strongly encourage the participating jurisdictions to include robust reporting requirements around TCI-P to help build and maintain public trust and allow for continued improvement in the program. We ask that the states clarify the reporting provisions in the Draft Model Rule to require states to report on investment decisions and emissions outcomes for the entire program, not just for those investments made in overburdened or underserved communities. Reporting on the subset of TCI-P investments made in overburdened and underserved communities should be mandatory but does not replace the need for comprehensive reporting on investments and emissions.

We also ask that the Draft Model Rule require states to utilize common metrics and format for reporting both investment decisions and emissions outcomes. State agencies in participating jurisdictions should also allow the regional entity that administers TCI-P to serve as a publicly available clearinghouse for all reporting and program assessments. We believe this is an important step in ensuring program transparency and allowing policymakers and the public to assess the effectiveness of the TCI-P overall along with individual state programs.

Thank you for the opportunity to provide these comments. We look forward to seeing a Final Model Rule that incorporates these recommendations and helps facilitate implementation of TCI-P across participating jurisdictions in a way that effectively achieves the environmental, transportation, and equity related goals to which the jurisdictions have aspired.