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Re: Draft Revised Forest Project Protocol

To Whom It May Concern:

Thank you for the opportunity to submit comments regarding the Draft Revised Forest Project Protocol, released in December 2008. New Forests is an international forestry investment management and advisory services company specializing in institutional and private equity investments that generate returns from sustainably managed plantation forests and from environmental assets, such as carbon, biodiversity and water. Our company participated in the development of the previous CCAR Forest Protocol, and we have been following the revisions with interest. Our interest is to support the establishment of forestry protocols that will create market confidence, and with efficient processes of project accreditation and risk management.

We would like to make the following comments regarding the new Draft Revised Forest Project Protocol:

3.3 Project Implementation Agreement, p. 4-5

CCAR plans to require a Project Implementation Agreement ("PIA") with each project listed in the Registry. The text states that "The agreement must be recorded and is binding on the successors and assigns of the landowner." (5) The term 'recorded' suggests that the PIA is intended to be a restriction on the deed. We suggest that CCAR clarify whether the PIA is intended to be a contract or a property interest and, if the latter, whether it is intended as a real covenant, negative easement, or some other variety of servitude. The law in this area is notoriously murky, and the requirements for servitudes on real property to 'run with the land' can vary from state to state. We therefore strongly suggest that CCAR seek expert legal advice and provide actual clarity on what legal instruments ensuring permanence will be allowed for CCAR forest projects. Lack of clarity on this issue could prove a significant barrier to private investment in forestry projects.

We would suggest that the PIA be clearly acknowledged to be a contract and not be recorded with the deed. We expect that the PIA contract will be often supplemented in practice with conservation easements, given the positive incentives for conservation easements in the risk assessment section of the protocol and the difficulty of using other property interests to ensure the maintenance of obligated reductions over a 200-year time span.

6.2.1.1 Private Forest Lands, p 13

The terms 'simulation' and 'model' are generally used interchangeably in the document. We would recommend that the terms be clearly defined and distinguished.

6.2. Improved Forest Management Projects, p 15

We suggest you provide greater clarity in this section regarding the extent to which projects with initial carbon inventories below the applicable FIA mean can receive CRTs for project-related sequestration. It is not clear to us if projects will produce credits between project initiation and the time at which stocks reach the applicable FIA mean.

7.2.1 Establishing a Buffer Pool Account, p. 27

In the interests of credibility and the strong reputation of forest carbon offsets, New Forests would support including in this section a modest minimum buffer requirement (e.g. 5%) for all projects due to the complexity of accurately estimating the risk of reversal over a lengthy time span.

Also, it is not clear from the text if buffer credits can ever be recovered by the project over time.

8.1 Crediting Period and Required Duration of Monitoring Activities

Your text here states: "Please note that the 100 year project length and ability to terminate does not eliminate the independent requirement of reductions to be maintained for 100 years, measured from the year in which the reduction is first measured and reported (for more information on length of reductions, see Section 7)."

This means that obligated reductions in year 99 – carbon sequestered in year 99 for which CRTs are issued – must be maintained until year 199 after project initiation. However, the term of the PIA between the project developer and CCAR (see comment above) is stated to be a 100-year term. We suggest that CCAR require a 200-year term to the PIA (page 5) to match the true length of the commitment by a landowner to maintain obligated reductions.

We would also recommend that there be provision for landowners to 'buy out' their obligations by buying and extinguishing CCAR credits equal to their total balance of CRTs.

10. Glossary of Terms: Assessment Area, p. 32

"Assessment Area" is defined as "a geographic area defined by the Reserve that consists of a distinct forest community within common regulatory and political boundaries that affect forest management." The definition of the assessment area will prove critical for evaluating the financial viability of IFM projects, and yet the text gives no guidance as to how these assessment areas will be defined by CCAR. We suggest CCAR specify a procedure in the text by which it will define assessment areas.

C.2.2 Management Risk II, p. 55

The text here notes that "Projects that are found within the following categories are considered to have a zero risk of conversion . . . Land units that have current (and for the foreseeable

future) legal restrictions that disallow conversion activities. (e.g. conservation easements, deed restriction, or third party contract)."

This section continues a general conflation within the text of contracts with real property instruments (see our comment on section 3.3 above). A 'third party contract' might not specify an injunctive remedy for breach, and in general contracts do not have the same ready access to injunctive remedies as property rights. Land subject to a 'third party contract' that disallows conversion activities should in no way be considered to have a "zero risk of conversion" – the risk compared to an enforceable conservation easement is considerably higher. We suggest that CCAR exclude projects with third party contracts as the legal restraint against conversion not be allocated a zero risk of conversion in assessing the risk of reversal.