



**Date:** June 10, 2009

**From:** Mark D. Edwards and Andrew Atkins - North Coast Resource Management

**To:** Climate Action Reserve

**Re:** Comments Regarding Draft Project Implementation Agreement dated June 2, 2009

Dear CAR,

Please find following our comments regarding the Draft Project Implementation Agreement dated June 2, 2009.

**Recitals (D)** – This paragraph requires that the Forest Owner is the “sole owner in fee simple” and also is the “holder of all interests in the trees located on the Property”.

**Comment:** This clause would not allow owners of timber rights to sell carbon rights if they do not own the land. I believe that the PIA should allow carbon sales on the basis of timber rights for those individual who own timber rights only. My intent here is that if a person owns a particular right – say timber rights, or “all redwood timber on the property” - that they should be able to sell the appurtenant carbon rights that match their form of ownership. I do not believe that fee simple land ownership should be an absolute requirement to sell carbon.

**Recitals (F)** – This clause limits landowners, successors, assigns, and any other party holding rights from transferring, assigning, delegating, or conveying any interest in the Property or any Forest Owner Obligation unless those receiving the interest agree to assume all of the Forest Landowner Obligations.

**Comment:** This clause seems overly broad. For example, a landowner may choose to sell some number of carbon tonnes, and then sell the property in smaller parcels. Arguably, there are other ways to meet the sequestration/retention objectives:

1) It should be possible to make certain portions of the property subordinate to the PIA (they would be responsible for retaining the required sequestered carbon) while others portions of the property could be terminated from the PIA, or;

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2) The specific retention standards could be allocated at differing levels on the subordinate parcels, such that the overall retention/sequestration requirements in the Project are met.

**Agreement – Clause 4) Monitoring Rights of the Reserve** – This clause grants virtually unlimited access to The Reserve, and accredited third party verifiers.

**Comment:** This clause gives too much access to the property by the Reserve and other parties. Verification should be the only circumstance where access is normally required. Other instances should be defined pursuant to some reasonable standard – such as breach; or say an annual inspection. Outside of verification/breach – discretionary access needs to be per the consent of the Landowner. The issue of access, and by whom, should be defined/described in the monitoring and verification protocols (still being written).

**Agreement – Clause 5a) - Assignment and Assumption** - This clause requires that the “Assignee” agrees to assume all Forest Owner Obligations without modification or amendment.

**Comment:** Again, the “successors, assigns, and any other party holding a right, obligation, title, possession, or interest” should only be bound by the provisions of the PIA if their interest potentially impacts the Forest Owner Obligations.

5a (paragraph 3 on page 3), beginning “If any Assignor transfers” seems excessive. If a forest owner assigns or transfers an interest (say the entire fee), executed an assignment and assumption agreement as required, delivered a copy to Reserve, recorded a copy of the assignment agreement in the county, given 30 days advance notice of the assignment to Reserve and then notice again within 10 days of the transfer – they are still not released from the Forest Owner Obligations “unless the Reserve gives written consent releasing the Assignor from the Forest Owner Obligations, which consent shall not be unreasonably withheld”? We can understand that the Reserve wants to make sure all the formalities are done properly, but the language should be that the consent **shall** be given if the PIA’s requirements were accomplished properly.

Furthermore, the same paragraph, “Notwithstanding any consent by the Reserve that releases any Assignor from any Forest Owner Obligation, the Assignor shall remain obligated to and liable for any Forest Owner Obligation, which arose during the time that the Assignor held an Interest in the Property or was subject to or liable for any Forest Owner Obligation.” This make sense for certain types of liability, but not in this

instance – a landowner would not want to be on the hook for obligated reductions for CRTs sold, for example, when they no longer have any control over the property!

**Agreement – Clause 7) Requirements for Early Termination** – there is place holder language here.

**Comment:** We support that early termination be allowed. However, if GHG reduction benefits are maintained or otherwise provided for by the Landowner for the full term, we can see no reason why there should be a penalty for early termination.

**Agreement – Clause 8) Warranties and Covenants – Subsection (i)**

**Comment:** We suggest that this representation is generally made “to the best of the Landowner’s knowledge”. Subsection (ii): here again is reference to fee simple ownership of land and trees – We believe that this requirement should be changed to require only ownership of the trees/timber/entity sequestering carbon.

**Agreement - Clause 9) Conservation Easements Permitted**

**Comment:** It is **not** clear if conservation easements would replace this PIA or not – or what the relationship between the two are.

**Agreement – Clause 11) Costs**

**Comment:** This clause should be modified to reflect that costs of compliance stop when the Agreement is terminated pursuant to the PIA (Agreement – Clause 1 - which hopefully will contain the requirements/standards for early termination).

**Agreement – Clause 12) Dispute Resolution**

**Comment:** Seeing that most Forest Protocol disputes will originate in timber counties – it strikes us that Dispute Resolution should take place in a more proximal location – say in the County where the property is located, or at very least, somewhere in Northern California. Los Angeles is ridiculous – and punitive to the Landowner.

Also, we suggest that the requirement of almost immediate arbitration seems excessive. We are aware of other Agreements where the resolution process is step wise: “meet and confer” first, then non-binding mediation, then litigation if all else fails. We suggest that this approach is more reasonable and equitable to both parties. Most landowners do not like binding arbitration and will find this requirement unacceptable.

**Agreement – Clause 13a) Indemnity**

**Comment** – The clause is too broad, and does not treat landowners equitably. Landowners will not be willing to indemnify and defend the extensive list of people described in this clause. We believe this clause should be significantly re-written to consider the notion that likely disputes under this PIA will be between one of the “indemnified parties” and the Landowner – how does this work?

There are numerous examples we can think of where the Landowner should not provide indemnification - for example, if the Reserve or one of their Contractors starts a fire while verifying or assessing the property – why would they reasonably be indemnified?

Again, this passage needs extensive revision!

**Other Document: Consequences for Early Termination – Section 2(ii)**

**Comment:** There should be no compensation rate above 1.0 if the GHG reduction benefits are maintained (on or off site) following termination by the Landowner. Seemingly, the compensation rate would only apply should termination result in a release.

END OF COMMENTS

Thank You!