



SUMMARY OF COMMENTS & RESPONSES ON THE DRAFT FOREST PROJECT PROTOCOL

Project Implementation Agreement

17 sets of comments were received on the Project Implementation Agreement (PIA) for the Draft Forest Project Protocol Version 3.0. The Climate Action Reserve has reviewed and incorporated many of these comments into the final responses to final draft PIA and has prepared responses to each of these public comments as shown below.

The comment letters can be viewed in their entirety on the Reserve's website at <http://www.climateactionreserve.org/how-it-works/protocols/adopted-protocols/forest/forest-project-protocol-update/>.

Comments received by:

1. Blue Source (Blue Source)
2. Campbell Timberland Management (CTM)
3. CE2 Capital Partners LLC (CE2)
4. Ecotrust (Ecotrust)
5. Environmental Synergy Inc. (ES)
6. Equator LLC (Equator)
7. Finite Carbon (FC)
8. Forest Landowners (Landowners)
9. Jeremy Weinstein (Weinstein)
10. LandMark Systems & Akerman Senterfitt (LS&AS)
11. NAFO, OFIC, and WFPA (NAFO et al.)
12. New Forests Advisory Inc. (NFA)
13. North Coast Resource Management (NCRM)
14. Pacific Gas and Electric Company (PG&E)
15. Plumas Corporation (Plumas)
16. Rocky Mountain Elk Foundation (RMEF)
17. The Pacific Forest Trust (PFT)

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General Comments

1. The Work Group established by CAR to create V3.0 has developed a complex, highly technical process to establish a basis for determining the number of eligible Climate Reserve Tonnes (CRTs) associated with a forestry project. Therefore, CRTs associated with forestry projects should not be treated or valued differently than CRTs associated with any other offset type. For a market-based system to function properly, all CRTs must be considered equal. **(CTM)**

RESPONSE: All CRTS are considered equal with all other CRTs from other project types insofar as each represents one metric ton of CO2-equivalent emissions reductions or removals. For purposes of replacing reversed CRTs, the Reserve believes that it is important that forest CRTs be used in order to ensure the ongoing co-benefits associated with forestry projects.

2. Fewer landowners will develop forestry projects if there are not reasonable options for early termination while maintaining the atmospheric integrity of the arrangement. Specifically, compensation for early termination should occur on a one to one ratio. Penalties will only further discourage project developers. It is also essential to consider potential future advancements in carbon storage technology. Landowners should have the flexibility to meet contractual obligations through the acquisition and transfer of lower cost CRTs, thereby removing encumbrances on their property. **(CTM)**

RESPONSE: The Reserve has specifically included early termination provisions into the PIA in recognition that landowners may be unwilling or unable to participate in the program for the full 100 year permanency period. However, because the baseline is calculated on the basis of 100-year projects and is less accurate under a short term analysis, projects that do not continue for this full period are required to compensate at a greater than 1:1 ratio for the first 50 years of the project life as recommended by the forest workgroup.

3. The language that mandates all future financing by the landowner or their successors must be subordinate to this agreement and should be removed. As written, this condition will limit the ability of landowners to obtain competitive market rates for financing and prevent many landowners from entering into this agreement. **(CTM)**

RESPONSE: The Reserve has modified the PIA to include two types of subordination clauses. One clause requires subordination. A second clause does not require that landowners subordinate other agreements to the PIA in exchange for an additional contribution to the buffer pool in recognition of the additional financial risk to the Reserve. We have sought to create PIA terms that allow for a variety of financial arrangements while continuing to protect the ongoing integrity of the CRTs and of the Reserve program.

4. It is unfortunate that adequate time was not allowed for this review period. As we have seen with protocol development, an iterative process that allows for the maximum amount of public involvement is required. Standard business practices would suggest two weeks is not adequate to review the specifics of an agreement with a 100-year life span. Please consider an additional review period once the documents have been revised to reflect public comments received by

CAR. (CTM)

RESPONSE: Noted. The final draft of the PIA will be released to the public well in advance of adoption of the protocol.

5. We commend CAR for its efforts in incorporating feedback from diverse stakeholders in the development of the Protocol. However, we feel that the Project Implementation Agreement (PIA) would benefit from a similar level of scrutiny in order to ensure that it ultimately represents a document that could be used by different landowners across various geographic areas and forestry project types.

Our concern is that given the abovementioned restrictions, CAR may limit the Protocol's use due to a lack of commercial flexibility and not for reasons related to protecting the integrity of the offsets generated by a given project.

CE2 recommends that CAR revise the PIA and submit it to an additional, longer public comment period to ensure its broader utilization in projects across the United States. (CE2)

RESPONSE: Noted, see response to comment #4 above.

6. Definition of Forest Owner:
The PIA specifically defines the Forest Owner as the party that both holds the land fee simple and possesses all interests in the timber located on the property. This may not reflect the variety of landholding structures that actually occur across different markets. A more flexible approach that focuses on binding the party that controls the timber rights and activities might enable projects that would otherwise be excluded to be developed under the Protocol. (CE2)

RESPONSE: Agree. The Reserve has revised the definition of Forest Owner to provide additional flexibility for a variety of fee and timber ownership conditions.

7. Requirement that all Forest Owners execute a separate PIA: the PIA does not facilitate the concept referenced in Section 2.2 of the Protocol which recognizes that project developers may aggregate acreage across multiple entities in order to reach economies of scale to enhance project feasibility. We believe that this lack of flexibility may adversely impact the ability of a developer to use the Protocol. The inclusion of a mechanism by which a project could enter into a PIA with the Reserve and ensure that the project's contractual arrangements with landowners include all relevant and binding elements of the PIA might facilitate the development of projects that aggregate acreage across multiple entities. (CE2)

RESPONSE: Noted. The revised protocol includes many mechanisms to streamline requirements which improve cost-effectiveness for all landowners, including small landowners. We continue to investigate opportunities, including aggregation, that will improve the economies of scale for small landowners. However, we believe it is important that every Forest Owner, as defined, that is participating in the program be required to enter into a PIA to ensure ongoing compliance with the protocol.

8. Contract Negotiation:

Ecotrust would like to see an accompanying description explaining the process involved in executing the Project Implementation Agreement (PIA). It is not clear how much flexibility CAR or the project proponent have in negotiating specific terms of this agreement. As an organization that works closely with landowners, we know that there are negotiations involved with any contract and it is important to understand the details of this process.

Since states, tribes, and federal agencies are all bound by different laws, it is clear that a single PIA could not be adopted that would serve all these groups. We hope that an effort will be made in the future to draft different model Project Implementation Agreements to serve each of these potential project participants. **(Ecotrust)**

RESPONSE: For reasons of equity between project participants and to reduce the administrative burden to the Reserve, the PIA is a standardized, form agreement and – as such – is not intended to be negotiated on a project by project basis. However, it is possible that different versions of the PIA for different landownership types may be contemplated in the future.

9. PIA as Encumbrance:

Requiring the PIA to be recorded on property records creates many challenges and costs for project participants. We hope that sufficient attention has been paid to the following issues that will result from this decision:

- a) The subordination clause could require an additional subordination agreement to be negotiated between lenders and the landowner. It may be in the interest of CAR to draft a sample Subordination Agreement that landowners could use. This subordination negotiation will not only cost additional time and money, but it will also put the viability of the project into the hands of third parties that may not fully understand its details. Many financial institutions may choose not to subordinate to avoid risk and may be able to kill the project.
- b) As with conservation easements, the PIA will survive after any transfer of ownership; however, there is a significant possibility that future owners of the property will not fully understand the implications, responsibilities, and costs of fulfilling its terms. The chance of project failure in these conditions is extremely high and may create numerous legal challenges to the document's validity.
- c) These agreements have not been tested in court and it may be difficult in some jurisdictions for the PIA to be upheld as a valid encumbrance. If a challenge is successful this precedent will threaten the viability of this instrument.
- d) The role of enforcing the PIA will fall to CAR and it is critical that sufficient funds to take on legal challenges are in place. We recommend that CAR develop an enforcement endowment to ensure that the legal validity of these documents is upheld to prevent a successful challenge to the validity of the PIA or to specific potential violations. **(Ecotrust)**

RESPONSE: a) The PIA has been revised to allow projects to proceed without requiring subordination in exchange for an additional contribution to the buffer pool; see response to comment #3 above. b) Noted. The PIA requires that a future owner assume the obligations of the PIA. A memorandum will be recorded so that a potential buyer will have notice of the PIA. c) Noted. To

protect the Reserve and the ongoing environmental integrity of the CRTs issued, an additional contribution to the buffer pool is required as part of the PIA to reflect this risk. d) Noted. The Reserve has included binding arbitration provisions to reduce costs in seeking enforcement of the PIA, but the comment is recognized and will be considered.

10. Equator believes the following strategies would expand the ability for the largest number of landowners possible to initiate forest carbon projects and thus ensure the greatest environmental impact on the aggregate:
- a) Endorse the permanence of forest based offsets by allowing issued credits to be compensated on a one to one ratio.
 - b) Reinforce that forestry offsets are equivalent to all other offsets by allowing the Reserve to be compensated with any issued tons from any offset type.
 - c) Increase landowner participation by requiring identical replacement requirements from improved forest management projects as all other forest project types.
 - d) Alleviate the Reserve's responsibility to determine the attainability of replacement forestry offsets, eliminating the need to rely on third party transactions beyond the Reserve's control in order to enforce PIA requirements.
 - e) Expand program safeguards by permitting the PIA to contain dispute resolution mechanisms that ensure equal protection for all interested parties.
 - f) Reaffirm the rights of project participants by evenly distributing all legal damages and expenses arising from disputes related to this Agreement.
 - g) Provide project proponents their appropriate contractual rights by indicating that successful completion of early project termination requirements will automatically remove future obligations and invalidate the PIA.
 - h) Establish a defined program for landowners to demonstrate sustainable long-term management requirements through public agency endorsement and supervision.
- (Equator)**

RESPONSE: a) See response to comment #2 above. b) See response to comment #1 above. c) The replacement ratio for improved forest management projects reflects the 100 average baseline and the potential overcrediting that could occur if projects have shorter periods. This type of baseline assumption is not the same for reforestation and avoided conversion projects and so is not imposed in these instances. d) Noted. e) Reasonable periods to cure and binding arbitration provisions are included in the PIA. f) Noted. This provision has been revised to provide fairer distribution of costs associated with disputes. g) Noted. The early termination provisions explain that the PIA shall be terminated so long as the requirements of Section 3 are satisfied. h) The protocol does allow landowners to meet the sustainable management requirement through state or federal agency approved management plans that explicitly address rates of harvest that can be permanently sustained over time.

11. Another issue vital to landowner participation is the establishment of a practical method for all project proponents to demonstrate sustainable long-term forest management. While nationally recognized certifications such as Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI) are realistic strategies for some landowners, these programs are extremely costly

and are not feasible for many potential forest project developers. Commonly, these landowners do manage their forests sustainably, but do not possess the capital to obtain expensive certification. It is unreasonable to expect landowners to participate in forest projects with high-priced requirements that extend beyond their financial means. Accordingly, the Reserve would promote greater program participation by establishing a method for public agencies to confirm landowner compliance with sustainable management requirements. Federal, state and local authorities have the experience and expertise to identify sustainable management practices and could provide the Reserve with equal assurances as private certification schemes. **(Equator)**

RESPONSE: See response to comment 10 h) above. Alternatively, landowners can meet this requirement through harvesting with uneven-aged silvicultural practices and maintaining an average canopy retention of at least 40 percent across the forest, as measured on any 20 acres within the entire forestland owned by the Forest Owner, including land within and outside of the Project Area.

12. We clearly feel that as drafted the overall feasibility or desirability of the PIA will be unlikely to be acceptable to forest landowners. The three major conceptual issues raised by the construction of the PIA are the requirement that all subsequent mortgages must subordinate to the PIA, that the PIA has the effect of creating a deed restriction due to provisions in at least three different sections, and the overly broad and one-sided indemnification requirements are significant barriers to participation.

Thus despite the stakeholder work groups 18 month effort to remove barriers to participation in the protocol, many of the same impediments have been rebuilt in the PIA. Also the PIA effectively precludes an entity that might act as an aggregator by having the responsible party always identified as the forest landowner, rather than the project proponent, even though the protocol suggests that aggregation should be allowed.

Please note that the version released for public comment leaves a great deal of substance to various portions and exhibits, which apparently are yet to be drafted. This continues the on-going difficulty of effective commenting on a final proposed language set.

As an overarching comment, while we recognize that CAR wishes to have a standard agreement that all project proponents must sign, it needs more balance to be reflective of an agreement between parties rather than a one sided document. There are numerous fine detail examples of how this manifests itself in the PIA and hopefully by highlighting the larger example of this problem the entire PIA can be reviewed in that light, a light that would encourage participation rather than discourage it. **(Landowners)**

RESPONSE: The PIA now provides two types of subordination clauses, which a Forest Owner may choose from. The first type requires subordination. In the second type the subordination requirement has been removed from the PIA in exchange for an additional contribution to the buffer pool. We have revised the indemnification language to provide greater fairness and have reviewed the language throughout the document to encourage greater participation in the program.

The revised protocol has improved many cost-related barriers and continues to explore how aggregation might be administered to further improve economies of scale. However,

we believe it is important that every Forest Owner, as defined, that is participating in the program be required to enter into a PIA to ensure ongoing compliance with the protocol.

13. In the current draft of the FPP itself, Section 3.3 has the PIA with the landowner, Section 7.2.2 has the PIA with the "Project Developer". This should be reconciled. **(Weinstein)**

RESPONSE: Noted. This has been corrected in the final documents.

14. While one of the Working Group's primary objectives is to increase participation, like many others, we believe that private landowners will be reluctant to agree to long-term restrictions on the use of their land (e.g., the proposed 100 year Term in the draft PIA) without adequate compensation from the market for CRTs. Unless the Term is reduced, or the market price for CRTs is high, private participation from profit-oriented forest owners will be limited. We believe that in the short-term, it is most likely that participation will continue to be limited to well funded, conservation oriented organizations and that the objective of increased participation will not be met. **(LS&AS)**

RESPONSE: Noted. The early termination provisions have been included in the PIA to allow for projects to be terminated prior to the end of the 100 year term. See PIA Section 3(b). An overriding objective of the work group was to ensure that project CRTs are permanent, thus ensuring that climate benefits are real. This is necessary for the integrity of the program.

15. Lack of Transparency:
In making our comments, we wish to note our disappointment that the release of this document is not accompanied by any supporting discussion document publicly setting forth the rationale and justification of the terms that have been fashioned into the PIA's requirements. This lack of transparency precludes a reviewer's ability to understand the intent behind many provisions. It also limits the ability of reviewers to support or challenge the rationales that are the basis for the PIA's content, making it difficult to judge the reasonableness of any given provision. It is imperative that in adopting or rejecting any of the recommendations in the Reserve's process for finalizing this document that the Reserve should publish its intent and rationale in accepting or rejecting all recommendations. **(NAFO et al.)**

RESPONSE: Noted. Our written response to this and all other comments provides the Reserve's rationale for the provisions included in the PIA.

16. Bias against managed forests: This set of draft documents will likely discourage if not outright preclude most managed forest owners from participating in the offsets program. As we noted in our May 11, 2009, submission: Comments on Climate Action Reserve's Forest Project Protocol, April 15th final draft, the language of Section 3.3 – Project Implementation Agreement sets forth a general description of the Reserve's and the Land Owner's obligations, and establishes the PIA as a material element of the overall Project Protocol's requirements. Thus, our review and evaluation of the PIA and the CRET [Consequences for Reversals and Early Termination] have been carried out from the perspective of determining whether these documents contribute to, or undermine the stated objective in the final draft Protocol: to "allow greater landowner participation, particularly...industrial working forests." As you will see from our comments below, in general, we do not believe that this draft document supports the ARB's intent, and CAR's own

stated objective in this regard. (NAFO et al.)

RESPONSE: Noted. The Reserve has revised the PIA to provide greater opportunity for participation from a variety of landownership types. Many other substantive changes have also been made to the revised Forest Project Protocol to increase participation without sacrificing integrity. Examples include the elimination of the entity reporting requirement, reforestation eligibility following disturbance, streamlined verification, and the inclusion of a PIA in place of a conservation easement.

17. Ownership of CRTs: The documents do not adequately set forth who “owns” an issued and registered CRT at the time of issuance or after it is sold. Nor does it clarify the extent to which the Landowner and/or the Reserve have liability to third party buyers of CRTs. Even though the Reserve is not a trading bourse, nor intended to function as a CRT market trading forum, it sets forth various liabilities and responsibilities in the even of reversals and other events. In this context, there needs to be more clarity as to the ownership of a CRT at the time it is issued, when it is purchased by a third party, and when some of the registered tons (CRTs) are held in the Reserve’s buffer pool.

The PIA should also clarify the rights to Reserve Buffer Pool CRTs (or the tons registered by a Forest Owner, but held in the Reserves Buffer Pool) at the termination the PIA. The PIA is also ambiguous as to the right of a Land Owner with respect to withdrawing (retiring without use) a CRT that was registered, but never sold. A Land Owner may wish to reduce his/her exposure to liabilities and obligations by, in effect withdrawing previously registered tons and “returning” to the Reserve the unused (unsold) CRT that was awarded.

A Land Owner may also wish to use his/her CRTs to remedy intentional reversals or early termination obligations. The right to do so is not clear. In other words, once a CRT is issued and entered into the Land Owner’s account in the Reserve, who owns the title to that CRT, and who has what rights with respect to decisions to sell, hold, or rescind the CRT before it is “used” (sold) as an offset? All of these aspects should be clarified. (NAFO et al.)

RESPONSE: The revised section 2 explains that the Forest Owner shall be issued CRTs and shall thereafter have control over the CRTs. Ownership of CRTs is addressed in the Climate Action Reserve’s 'Terms of Use' manual.

18. Our defined primary interest in this arena is to make the protocols and the PIA usable by industrial and non-industrial forest lands. We do not believe you have yet carried out your intent to " allow greater landowner participation, particularly... working forests." (Plumas)

RESPONSE: Noted. See response to comment #16 above.

19. We support the creation of a strong, enforceable long-term contract between the Climate Action Reserve and a forest landowner to better ensure the clarity of a project owner’s obligations and the longevity of the Carbon Reduction Tons issued. We believe the general approach taken in the PIA is good. We are pleased that this draft, unlike the previous one, creates a contract that should be distinct from and additional to other legal instruments, such as a conservation easement, that would restrict a property’s deed in favor of sustaining the project activity and resulting CRTs.

Nonetheless, in our view the current draft contract would benefit greatly from further refinement to ensure it is not only strong from CAR’s point of view, but is sufficiently fair and equitable to be acceptable to a wide array of forest owners. Absent these changes, we can envision this contract becoming a serious damper on participation in Reserve projects. **(PFT)**

RESPONSE: Noted. See response to comment #16 above.

Recitals

20. [D] Recital “D” defines the Landowner as the sole owner in fee simple of certain real property described in Exhibit C, including the trees located on the Property.

Comment: The PIA should not disqualify projects in situations whereby an easement holder or lease holder (rather than the Landowner) retains interest in the trees, including carbon interest. The PIA should also consider instances where property is not owned solely, but jointly. **(ES)**

RESPONSE: See response to comment #6 above.

21. [F, 6(a)(1)] Interest:
The PIA states that when any “Interest” in the property is granted to anyone, that person assumes all the Forest Owners Obligations unconditionally and without modification or amendment, this is clearly overly broad. Granting an easement to use an existing road is very common and conveys an “Interest” but should someone who wishes to drive on a project road be forced to assume all the forest owners obligations. Any “Interest” should be qualified to something like “any interest that could materially affect registered tons of carbon offsets”. This should be limited to verified and registered tons because that is the true limit of CAR’s interest in a project. If the landowner chooses to simply stop selling and or registering more tons, but meets his monitoring obligations on those verified and registered tons, no matter what his original modeling of project tons indicated, he has met his obligations to CAR. This “interest” issue pervades Section 6 and needs to be addressed in the unnumbered paragraphs of section 6 and 6(c). **(Landowners)**

RESPONSE: Noted. The PIA has been revised to address this concern.

22. [F] This paragraph should be amended by striking the period at the end paragraph, adding a comma, and adding the following language: “or the landowner shall have otherwise replaced any registered and sold CRTs, and withdrawn from the landowners account and withdrawn any unused CRTs.” This addition allows the PIA to have conformance with the section addressing early termination and remedied intentional reversals. **(NAFO et al.)**

RESPONSE: The intent of this comment is not clear to us. If the Forest Owner desires to terminate the PIA, it must satisfy the early termination requirements in the revised Section 3(b).

23. [D, 9] Recital D, due to incorporation into the agreement by §1 of the PIA, essentially requires the Forest Owner to represent and warrant that he/she “is the . . . sole owner *in fee simple* of that certain real property located in . . .” (emphasis added). The requirement that property subject to a forest carbon project be owned in fee simple was not included in the Forest Project Protocol, and we suggest that it is inappropriate to limit forest carbon projects under CAR to owners of forest land in full fee simple. Many individuals and entities owning forests in California

and other states own forest through holding “timber rights,” technically *profits a prendre*, a type of extractive easement. So long as their timber rights extend for the duration of the proposed project, these individuals should not be arbitrarily prevented from accessing carbon markets. They may not be able to claim certain carbon pools if they only own the standing live timber, but there are no grounds from preventing them from creating carbon projects under the new Forest Project Protocol.

We suggest amending Recital D to state that: “The Forest Owner is the: (i) [sole owner in fee simple of that certain real property/for the Term of this Agreement, sole owner of all interests in all trees located on that certain real property] located in”. Furthermore, we suggest amending §8 of the Agreement to state that “. . . the Forest Owner is the [sole owner in fee simple of that certain **the** Property and holder of all interests in **the all** trees located on the Property, including without limitation, a fee, easement or leasehold interest/for the Term of this Agreement, sole owner of all interests in all trees located on that certain real property]”. (NFA)

RESPONSE: Noted. See PIA Footnote 1, 4 and 5 which explain who may be a Forest Owner.

24. [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. (NCRM)

RESPONSE: Please see response to comments #6 and #23 above. See PIA Footnote 1.

25. [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:

- a) 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
- b) 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. (NCRM)

RESPONSE: See revised and narrowed definition of Property Interest in Section 1 of the PIA. A Forest Owner who wants to the property (including portions of the property) is required to have buyers assume the obligations. If a Forest Owner wants a clarification to accommodate a specific set of facts, it may request an amendment to the PIA. If a Forest Owner elects early termination prior to a sale of the property or portion of the property, it must satisfy the

requirements of Section 3.

26. [F] This section should be amended to allow alternate methods (e.g. replacement) to assure continued integrity of the carbon dedication. **(Plumas)**

RESPONSE: See response to comment #2 above.

27. [D, 9(b)] Our primary concern over the PIA as drafted involves defining who may enter into a PIA with the Reserve. Under Recitals Section D and Agreement Section 9(b), the PIA recognizes the "Forest Owner" as the fee simple owner of the property. RMEF recommends having a broader description of the contracting party than currently included for the "Forest Owner." We urge the Registry to allow the PIA to potentially encompass those who may not own the property in fee simple, but do own the timber rights or can demonstrate that they have retained certain contractual rights to the carbon sequestration associated with a property.

An individual or entity owning a qualified interest in trees or carbon on a property should have an opportunity to contractually enter into a PIA with the Reserve. For instance, a conservation organization could own a tract of land, preserve the land through a perpetual conservation easement, and then transfer fee title to the property to another entity while retaining the carbon rights, timber rights or other interests in the land. That conservation organization should be able to market the carbon, or participate in an Avoided Conversion or an Improved Forest Management Project. All of this could be done without owning the land in fee simple. Narrowly defining "Forest Owner" as in the Draft PIA limits individuals or groups who may wish to participate in a PIA, but, for a variety of reasons, choose to not own the land in fee simple. **(RMEF)**

RESPONSE: See response to comments #6 and #23. See PIA Footnote 1.

28. [D] Should define and identify the Project Area as it exists within the Property and subsequent provisions for Compliance (paragraph 3) and Monitoring (paragraph 4) should be limited to the Project Area. It is inappropriate over-reaching for CAR to seek to restrict the actions of a landowner outside the Project Area if it is only a portion of the Property. **(PFT)**

RESPONSE: See PIA Footnote 2 which explains that only the property that is subject to the PIA will be described as part of Exhibit A.

Section 1 – Defined Terms

29. "Eligible CRTs" for Intentional Reversal, Early Termination or Breach:
There is no apparent justification for Forest Owners being required to submit CRTs from other forest projects in the case of intentional reversal, early termination or breach ("Eligible CRTs"). Given the equivalent high standards and rigor CAR incorporates in all of its project protocols, all CRTs are equivalent in terms of overall climate benefits. It makes no difference from the climate's perspective if a Forest CRT or Non-Forest CRT is submitted for retirement.

Despite this equivalency, Forest CRTs are likely to trade at a premium, due to many purchasers desire to be associated with a "green" bio-sequestration project rather than e.g. a landfill project. We see no reason why Forest Owners should be penalized by being forced to pay this premium when there is no associated benefit to the climate.

In the separate document “Consequences for Reversal and Early Termination” it is stated that the Forest Owner can submit Non-Forest CRTs if the Reserve determines Forest CRTs are unavailable. This is not reflected in the PIA and, in any case, should be expanded to give Forest Owners the Non-Forest CRT option. **(Blue Source)**

RESPONSE: See response to comments #1 and #2 above.

30. The Reserve has the opportunity to support forest based emissions reductions by reinforcing that forestry offsets are equivalent to all other offsets by allowing compensation with any issued tons from any approved offset type. A forestry offset has the same carbon benefit as any other offset type, and it is critical to secure extensive landowner project development that the Reserve’s replacement requirements clearly illustrate this fact. Moreover, requiring identical replacement from improved forest management projects as all other forest project types is especially critical to the goal of increased landowner participation as many potential participants are likely to develop this type of project. Also, this strategy avoids creating likely contentious circumstances by alleviating the Reserve’s responsibility to determine the attainability of replacement forestry offsets. The Reserve lacks the right to force project participants to transact issued forestry credits or to regulate sales prices and thus would not be able to determine the actual availability of forest carbon credits beyond merely confirming their existence. **(Equator)**

RESPONSE: See response to comments #1 and #2 above.

Section 2 – Registration with the Reserve

Section 3 – Term

31. [3(b), 8(a)] Penalty for Early Termination/Breach of IFM Projects:
There is no apparent justification for Forest Owners of Improved Forest Management (IFM) Projects being forced to pay a 5-40% “Compensation Rate” premium over issued CRTs. As long as the same number of CRTs is retired as was issued, there is no detriment to the climate. This apparently unnecessary penalty will serve to discourage participation by IFM project owners who are already struggling, and in many cases failing, to make the business case for CAR participation. **(Blue Source)**

RESPONSE: See response to comments #1 and #2 above.

32. The early termination consequence for IFM projects is for the forest owner to retire an amount equal to the previous CRTs issued multiplied by the compensation rate.

Comment: It would be helpful to explain the underlying rationale for this compensation rate. **(ES)**

RESPONSE: See response to comments #1 and #2 above.

33. [3, 7, 8] Consequences and remedy for avoidable and unavoidable reversals.

Comment: i) With regard to retiring a quantity of CRTs equal to a verified estimate of the total quantified reversal denominated in equivalent metric tons, it would be helpful to clarify that the reversal will not exceed the previously issued CRTs. ii) There is some duplication of “Term” and

“Termination” clauses – perhaps Section 3 could reference Sections 7 and 8. **(ES)**

RESPONSE: Noted. The early termination provisions are located in PIA Section 3. Section 8 explains what happens when there is an Avoidable Reversal, prior to a breach. Section 9 explains when the Reserve shall send out a breach notice.

34. Equator is pleased by the Reserve’s recognition that including a provision for early termination of the PIA is essential to promote widespread landowner program participation. The ability for early termination of the PIA provides landowners with the necessary flexibility and assurance to realize the full future value of their asset while preserving the environmental integrity of the registry through a replacement requirement. Although Equator believes that it is not likely that an early termination provision would be highly utilized due to disincentives such as forfeiture of associated transaction fees, it is critical that the guidelines for this option are equitable to both project developers and to the Reserve. We are deeply concerned that the remedies for an early termination provision be guided by science and focused on securing the permanency of emissions reductions credited by the Reserve. Providing the ability for early termination of the PIA in instances where the registry can be made whole achieves both of these aims. In other words, requiring project developers to replace all issued credits to terminate a project early ensures that the project’s realized atmospheric benefits are permanently protected. **(Equator)**

RESPONSE: Noted. See response to comment #2 above.

35. Allowing issued credits to be compensated on a one to one ratio not only ensures the atmospheric integrity of forest carbon projects by guaranteeing that any sequestered carbon that may be reemitted would be balanced by a compensated offset, but also provides likely additional benefits in cases where the atmosphere experiences increased carbon reductions from projects that terminate early, but do not actually reverse the sequestration that has accumulated. Therefore, Equator believes the suggested replacement penalty ratio as a consequence for early termination is unnecessary and creates a barrier for landowner participation by placing undue burden on forest carbon project developers. A requirement to compensate the Reserve beyond the quantity of credits issued to a project lacks scientific support as each and every certified emission reduction is replaced regardless of any possible miscalculations or inaccuracies in credit delivery resulting from the strategy of averaging project baselines. **(Equator)**

RESPONSE: Noted. See response to comments #1 and #2 above.

36. [3(b)(2)] Key to ensuring participation from profit-oriented forest owners is ensuring that reasonable opt-out provisions exist. Paragraph 3 (b)(2) addresses the compensation rate that a forest owner would pay for removing a parcel from a Project. While the compensation rate is not necessarily unreasonable as formulated in the PIA, it would seem more reasonable to reduce from 1.4 to 1.25 the compensation rate for parcels removed from a Project in years 0-5. **(LS&AS)**

RESPONSE: Noted. Per the workgroup’s recommendation, the Reserve is continuing to require compensation at the higher ratio. See response to comments #1 and #2 above.

37. Project Termination Meeting the Requirements of the Protocol Should Not Be at the Reserve’s Discretion:
[Previous Section 7] states that termination of the Agreement is impossible unless “the Forest Protocols specifically provide for the termination of this Agreement and/or the Forest Protocols,

in which case this Agreement will terminate, at the Reserve’s option.” The Forest Protocols and this PIA under the June 2, 2009 proposal specifically provide for early termination of the Project, provided that a certain number of CRTs are retired.

If the Forest Owner follows the provisions of the Forest Project Protocol in an early termination of a project, the Reserve should not have the discretion to decline to terminate the PIA.

We therefore suggest the following language for [previous §7]: “No breach of this Agreement or the Forest Protocols shall entitle either Party to cancel, rescind, or otherwise terminate this Agreement unless (i) the Forest Protocols specifically provide for the termination of this Agreement and/or the Forest Protocols (ii) all terms and conditions of the Forest Protocols and this Agreement for early termination of the Forest Project and this Agreement have been met, in which case this Agreement will terminate, at the Reserve’s option.” (NFA)

RESPONSE: The approach decided on by the working group does not give the Reserve discretion over an early termination (except in the case of a transfer to a regulatory program) so long as the requirements of Section 3 are satisfied. See revised PIA section 3(b).

38. 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. (NCRM)

RESPONSE: See response to comments #1 and #2 above.

39. [Previous paragraph 7] Termination appears optional, at CAR’s discretion (end of first sentence, “. . . At the Reserve’s option). That seems contradictory and arbitrary. If the Protocols, as referenced, allow for termination, which they do, then those terms should be final. There needs to be certainty as to an exit to the PIA, even subject to replacement provisions, liquidated damages, etc. (PFT)

RESPONSE: See revised PIA Section 3(a) and 3(b). See also response to comment #37.

Section 4 – Compliance with Forest Protocols and this Agreement

40. Many private landowners may find it difficult to understand the Protocols, and we would thus recommend that a simple list of obligations be included in the PIA (could be different for each project type), including one that covers potential changes to the Protocols. (ES)

RESPONSE: Noted. Section 9 of the protocol provides a summary of many of the obligations associated with project management. A summary of the protocol and PIA will be prepared and posted once the documents are final.

Section 5 – Monitoring Rights of the Reserve

41. Monitoring Rights of Reserve:
The Reserve retains the right to enter the property with 5 days notice. Most project owners will feel they need to be onsite for this visit to ensure safety and address any Reserve questions.

Given this need, 5 days advance notice will impose unnecessary travel expense and scheduling hassle. This notice could seemingly be increased, without any detriment to project or climate.

(Blue Source)

RESPONSE: Noted. The revised PIA (Section 6) now requires 15 business days advanced written notice to Forest Owner.

42. The current language requires a minimum of five business days' notice prior to performing site visits to verify carbon stocks on the forest site. Many landowners will not feel that this is sufficient. There are many instances, such as landowner travel or difficulty contacting a landowner, where this length of time will not prove adequate. We recommend general language that would require "reasonable prior notice" before site visits. However, if CAR determines that this general language is not sufficient, we would recommend at least two weeks' notice prior to any site visit. **(Ecotrust)**

RESPONSE: See response to comment #41 above.

43. [5, 14(a)] Indemnity:
Section 5 establishes that verifier, even though employed by the project proponent is an agent of CAR and receives blanket indemnification regardless of the landowners requirements for its contactors to carry insurance and act in a prudent manner. So in Section 5, inserting "landowners, insurance requirements," in front of the word reasonable. Under Section 14 the problem compounds as it is in direct conflict with Section 13 which says the prevailing party in the binding arbitration can recover legal costs etc, but Section 14 would require, if the prevailing part was the landowner, that he still pay all CARs legal fees and costs. **(Landowners)**

RESPONSE: Noted. The Reserve has revised these sections to increase fairness.

44. [5, 6(d), 15] Recordation and Deed Restriction:
Section 5, 6(d) and Section 15 when interpreted under California Civil Code Section 1220 create a deed restriction. The work group worked diligently to remove the primary identified barrier to participation in the first adopted protocol, the conservation easement. In its collaborative process the stakeholder work group established two approaches to the issues surrounding permanence, first to allow projects to participate with the permanence of the verified and registered tons being protected by the contract (the PIA) and then identified that landowners who wanted to provide even greater protection and bolster permanence with a deed restriction or conservation easement would be granted lower buffer requirements because of the added value of these mechanisms to permanence. Now the PIA has rebuilt those barriers by these two sections. In no case does the contract, deed restriction, or conservation easement result in a situation where the atmosphere or the registry have offsets that are not protected, given the remedies procedure. The atmosphere is clearly made whole and much more. **(Landowners)**

RESPONSE: Recording a memorandum of the PIA on title is necessary to provide notice to potential future owners of the existence of the PIA and the obligation that owners assume the obligations of the PIA. The PIA allows for early termination so long as the provisions of Section 3 are satisfied, in which case an amendment will be executed indicating that the PIA has been terminated. The Forest Owner may then record a memorandum of the amendment.

45. This provision should be modified to add language that limits the Forest Owner from any liability for injury or other harm to Reserve employees or the Reserve's agents while on the Forest

Owner's property due to the Reserve's or agent's personnel's negligence or failure to adhere to safe practices that should be followed on managed forest lands, particularly to the extent that such personnel are in proximity to harvesting areas. The language should also make it an obligation of the Reserve's personnel or the Reserve's agents to have the proper health and safety training and knowledge and experience for such field activities, and be able to present evidence of such to the Forest Owner. This should include evidence of personal health, injury and casualty insurance, and as applicable, worker's compensation insurance.

The Forest Owner should also have the right to reject any such evidence if it fails to meet the requirements that are usual and customary for third parties employed by the Forest Owner in the management of the Forest Owner's property.

The Forest Owner, at his/her discretion, may also require the Reserve's employees and/or agents to review and agree to the Forest Owner's safety policies and requirements prior to entering onto the Forest Owner's property. The Forest Owner and/or the Forest Owner's agent shall also have the right to accompany the Reserve's employees and/or agents while the latter are on the landowner's property.

The Reserve's employees and/or agents shall make every reasonable effort to inform the Forest Owner of any concerns or other matters, including but not limited to a finding of a Breach or Threat of a Breach, as defined by the PIA, prior to leaving the Forest Owner's property. Such notice should be deemed to only be preliminary and should not trigger the period of performance required by "Section 8 Remedies," until such notice of a Breach or Threat of a Breach is delivered to the Forest Owner in writing in accord with the procedures set forth in "Section 11 Notices." (NAFO et al.)

RESPONSE: Noted. These sections have been revised to reflect the issues raised.

46. Monitoring Rights of the Reserve Should be Expressly Limited:
Many landowners have expressed very reasonable reservations about signing a document that would enable a nonprofit and all its agents to have access to their property at will with only five business days notice for a period of 100 years. After all, it is impossible to know who will control the Reserve in 75 years and what the character of the organization will be at that point, and it would be unwise to allow such unfettered access to a corporate body that may choose to significantly increase the burden imposed by that access right in the distant future for reasons unforeseeable to us now. Furthermore, five business days notice may cause difficulties for Forest Owners who do not live on or near their property.

We therefore strongly recommend that the §5 be amended to state that "The Reserve and its agents, including, without limitation, any **and all** accredited third party verifiers approved by the Reserve, shall have the right to enter the Property at reasonable times and from time to time to monitor and verify the Forest Owner's compliance with this Agreement and the Forest Protocols provided that (i) the Reserve gives fifteen (15) business days written notice to the Forest Owner in accordance with Section 11 and (ii) the Reserve adheres to **the** reasonable health and safety practices while on the Property **and (iii) such entries to the Property shall be limited to at most two (2) times per calendar year, unless the Forest Owner expressly waives this limit through a written instrument or the Forest Owner has been declared in breach of this Agreement and has not initiated dispute resolution proceedings contesting such breach.**"

Furthermore, §5 should require the Reserve to demonstrate proof of liability insurance to Forest Owners to limit their liability when providing the Reserve and its agents access to their property.

(NFA)

RESPONSE: Noted. These sections have been revised to provide access with certain limitations as reflected in the comment.

47. 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). **(NCRM)**

RESPONSE: Noted. This section has been revised. See response to comments #45 and #46 above.

48. This section should include more specific provisions for Reserve's assumption of safety and liability (e.g. insurances and training). **(Plumas)**

RESPONSE: Noted. This section has been revised. See response to comment #46 above.

49. CAR's right to entry should be scoped more tightly to what is needed for monitoring and verification. As written, CAR could enter the property frequently as it wants to, with little notice. This creates a burden and liability for the landowner. We believe CAR's genuine interests could be equally well served by allowing for entry as part of periodic monitoring and verification, not to exceed twice yearly without cause. Five days' notice is too short; two weeks is more reasonable. It is standard for landowners to require a party like CAR to provide proof of insurance to limit liability to landowners for the access so provided and this should be added. The word "Forest Owner's" should be added in the last sentence between "adheres to the" and "reasonable health and safety practices". **(PFT)**

RESPONSE: Noted. This section has been revised. See response to comments #45 and #46 above.

Section 6 – Transfer of this Agreement

50. Transfer of this Agreement:
This section extends broad restrictions to any interests in the property which could include standard easements, rights-of-way, and rights to recreational use of the property, all of which may have little bearing on the implementation of the Protocol. Revising this section to focus on the types of encumbrances that would potentially conflict with the use of the land would avoid unnecessary conflicts between the use of the land for other compatible purposes (e.g. recreational use). **(CE2)**

RESPONSE: Noted. This section has been revised. See new definition of "Property Interest" in Section 1.

51. Long-Term Transfer of Agreement and Monitoring/Verification Requirements:
In the case of property transfer, the current draft PIA requires Forest Owners to transfer the agreement, notify the Reserve, and receive Reserve consent to transfer Forest Owner Obligations for the 100-year term of the PIA.

We understand this requirement stems from the Reserve's intent to require monitoring and verification over this period. However, for projects that incorporate permanent conservation easements, these requirements are likely unnecessary and impose significant burdens on succeeding generations.

Properly construed easements with reliable counterparties that are registered on the property title effectively remove the possibility of intentional reversal, early termination, or breach. This leaves the risk only of unintentional reversal that the Buffer Reserve Account has been established to address.

For these reasons, we propose Forest Owners of projects incorporating conservation easements with government or other counterparties approved by the Registry should have the option of eliminating these long-term Transfer of Agreement and Monitoring/Verification requirements. However, this taking option would eliminate the Forest Owner's ability to register CRTs, or recover any CRTs from the projects Buffer Reserve Account, in the future.

This change would significantly reduce administrative burdens, monitoring/verification costs, risks of unintentional breach by the heirs and successors to current project owners. We believe this would encourage more use of conservation easements, and greatly increase participation in the Reserve. All could be achieved without any detriment to project or climate.

As an alternative to the approach described above, a landowner that modifies or terminates a project without providing offsets sourced from the market could surrender offsets held on deposit in a reserve account designed specifically for intentional reversal or early termination. Again, to provide an incentive not to take this option, the reserve requirement should be significant and higher for projects making shorter-term, less-binding commitments with higher risk of reversal. We believe the approach adopted by the Voluntary Carbon Standard in this regard is worthy of consideration. **(Blue Source)**

RESPONSE: Noted. The Reserve has recognized the reduced risk of reversal on projects with qualified conservation easements through a lesser contribution to the buffer pool, but believes that the PIA must transfer to subsequent landowners for the term of project. The PIA requires adherence to the protocol, which provides the monitoring and verification mechanisms, as well as the accounting mechanisms, to ensure CRTs are not reversed.

52. [6(a), 6(c)] Timing of Notifications and Deliveries:
There are several requirements for follow-up actions within 10 or 15 days of certain triggers. These short time horizons could force a project owner into breach simply due to administrative errors or processes. They could seemingly be extended to (e.g. 30 days) to avoid this situation with no detriment to the climate. **(Blue Source)**

RESPONSE: Noted. The Reserve believes the notification requirements are appropriate and necessary to require prompt recording,. In practice, an Assignment & Assumption Agreement would be recorded at the same time as the transfer of the property.

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53. Paragraph 6(d) should only apply during the Term. **(LS&AS)**

RESPONSE: The PIA applies only during the Term as defined in Section 3.

54. Allow the PIA to be subordinate to any other mortgage or title against the project land base, since making it superior would hinder participation by commercial landowners who have debt on their land because refinancing and or replacing such debt is customary business for these landowners. **(Equator)**

RESPONSE: Noted. See response to comment #3 above.

55. [6(f)] The incorporation of a Subordination clause to remain in force during the 100-year term of the agreement may be in direct conflict with financing requirements, particularly those involved in sustainable commercial forestry endeavors. Flexibility that enables commercial entities to continue their routine financing activities while providing CAR with the comfort required regarding recourse in the event of breach would be helpful for many landowners. **(CE2)**

RESPONSE: Noted. See response to comment #3 above.

56. Deed restriction:
The PIA does not require the CAR to lift the deed restriction on the property in the event of voluntary termination by the landowner in accordance with the termination provisions of the agreement. The inclusion of an obligation to lift the deed restriction in such event could solve this issue. **(CE2)**

RESPONSE: See revised PIA Section 3 which explains that the Parties will execute an amendment indicating the termination of the PIA. The Forest Owner may then record a memorandum of the amendment.

57. [6(e)] The primary concern with the subordination clause arises when considering the sale or transfer of lands enrolled under a CAR PIA. To address these concerns, Finite Carbon has held discussions with several financial institutions over the past several weeks and we have been consistently informed that few, if any, lenders would be willing to provide a mortgage to a property where a contract forced a first mortgage to subordinate. This fact means that in order for any transaction to take place that would require third-party financing for the Buyer, a project would be forced to terminate. This would be the case even if the Buyer desires to uphold the current carbon project commitment and continue to practice sustainable forest management on the property. This result contradicts the best intentions of the Climate Action Reserve as well as the landowners who initially enter into carbon projects.

Finite Carbon feels this subordination is not necessary for forest projects to deliver real, verifiable, additional, and permanent offsets to the marketplace. Per the terms of the protocol and the Project Initiation Agreement, landowners who choose to participate in carbon offset projects are making a long term commitment to the creation and maintenance of carbon reductions for a period of 100 years. This commitment is commemorated in a legally binding contract signed by the landowner and is enforceable to the full extent of the law. If a project area is sold or transferred, the subsequent buyer should have the option to assume the PIA as an assignable contract or terminate the project in accordance with the terms and conditions of the PIA.

Furthermore, we believe subordination is not necessary to ensure compensation of committed

emission reduction tons in the event of a default due to the use of the combined project buffer pool approach as outlined in the project protocol. Default risk contributions currently incorporate these concerns and provide an effective mechanism to ensure registered tons can be considered permanent emission reduction tons. **(FC)**

RESPONSE: Noted. See response to comment #3 above.

58. Clarity and Subordination:

It is not clear what the “reasonable discretion” standard means in an unnumbered paragraph after section 6(a)4. Is it different from the covenant to not withhold consent unreasonably? If so, how? Also, it would be helpful if all paragraphs are numbered. Again, later in that group of unnumbered paragraphs the “not be unreasonably withheld” standard is resurrected.

The unnumbered paragraph that makes unapproved transfers void is, like the rest of that section, overly broad. There is no attempt to separate transactions and transfers that have no material effect on the goal of the PIA. Another example of overly burdened transactions would be such items as lot line adjustments.

As a sign of the overly cautious nature of this PIA, in the 3rd unnumbered paragraph after 6(a)4 we find that despite complying with all assignment requirements of the PIA and having some new owner accept all responsibilities with CAR releasing the first owner, CAR still requires the first owner remain obligated to and liable for all Forest Owner obligations which arose during the time that then assigner held an interest in the property or was subject to or liable for any forest owner obligation. **(Landowners)**

RESPONSE: See new definition of "Property Interest" in Section 1 and revised text in Section 7. Section 7 states that Forest Owner remains liable for "Forest Owner Breaches," but not for all Forest Owner obligations, which arose during the time the Forest Owner owned the property.

59. [6(e)] The subordination clause is unreasonable and overly broad. With this provision, our lending institutions indicate that it would be problematic for a forest owner to obtain conventional new or refinancing. Again, there is no attempt to tie these prohibitions to actions that would have some material, adverse effect on the goals of the PIA. We have previously provided a form of a subordination clause that would allow CAR to subordinate as necessary to normal refinancing, etc. **(Landowners)**

RESPONSE: Noted. See response to comment #3 above.

60. [6(f)] Requiring any assignee to become a “Forest Owner” and be subject to the provisions of the PIA, is overly broad and does not tie this prohibition to the goals of the PIA. For instance, granting an easement to a neighbor or settling disputes from old, vague surveys by doing lot line adjustments with neighbors would be unduly burdened. **(Landowners)**

RESPONSE: Noted. This section has been revised. See new definition of "Property Interest."

61. Section 6 should provide for CAR assignment rights, for example to a successor entity that takes over CAR functions. **(Weinstein)**

RESPONSE: See Recital F, which explains that the PIA is binding of successors and

assignments of the Parties, which includes the Reserve.

62. [6(a)(4)] The time periods should be extended to 15 days. **(NAFO et al.)**

RESPONSE: Prompt recording of the Assignment & Assumption Agreement is important in providing notice. In practical terms, this should not be an issue as it should occur at the same time as the recording of the deed or other document transferring the property interest.

63. 6(subparagraph below (4)) This paragraph states that a change to the agreement cannot be made without the Reserve approval, "...which approval may be withheld at the Reserve's reasonable discretion." This provision, as written is overbroad, particularly in the context of the requirement for "Liberal Construction" set forth in Section 17. This authority should be clarified so as to limit the basis for withholding such approval to matters set forth in the PIA. Further, the Reserve should be obligated to advise the Landowner of its decision to approve or deny any change within 10 days of receipt of notice and request for approval of such changes, and any decision to withhold such approval must be accompanied by a clear statement setting forth the reasons why, and the specific elements of the PIA that the Reserve believes will not be honored. **(NAFO et al.)**

RESPONSE: The "Liberal Construction" provisions have been removed from the document. The Reserve retains the right to prior approval of an amendment to the Assignment and Assumption Agreement so that the Reserve can determine if the Forest Owner Obligations are being adequately assumed by a new owner pursuant to a transfer. "Reasonable discretion" is a common term in legal documents. It appropriately limits the Reserve's discretion at the request of the working group.

64. [6(c)] The requirement for 30 days advance notice is unnecessary and would seem to be excessive, given the obligations, including the obligation to provide post transaction notice within ten (10) days, that the landowner will have agreed to in executing the PIA at the project initiation. Many business transactions involving land transfers or the rights to use and actively manage forestland are also often comprised of multiple considerations, many of which have contingencies and rights to extend the transaction date.

In some instances, until certain contingencies are met, the transaction may require confidentiality. This is of particular importance when the land is owned by a publicly held company that is subject to US Federal SEC (and potentially state securities law) disclosure and notice rules. And, in some instances, the transaction may not proceed to completion for matters that can occur within the thirty (30) day period prior to completion. This portends the possibility of the forest owner having to provide continuous notice updates and changes to the Reserve, simply adding to the complexity and costs of the administrative terms of the PIA, while failing to add any material benefit to either party.

Concerns about the integrity of behavior of counter parties with which the Reserve enters into an agreement should be addressed by a proper program of oversight and audit by the Reserve, utilizing its authority to inspect the involved property set out in other clauses of this agreement, rather than creating burdensome reporting requirements. **(NAFO et al.)**

RESPONSE: Note: 30 days prior written notice of transfer has been removed. See revised PIA Section 7.

65. [6(e)] This requirement is overbroad as stated, and should be eliminated for working or managed forests, particularly with respect to mortgages or other forms of financing obligation. Most, if not all, owners of commercial and/or industrial scale managed forestlands utilize debt in their financial structure. It is unlikely that lenders will accept subordination to the Reserves interests, particularly given that the Reserves interests in the forest holding for a managed forest will be marginal compared to the overall asset value. Thus this requirement would effectively preclude such operations from engaging in the program. The requirement also appears to be redundant and unwarranted from a risk management perspective. The PIA provides multiple mechanisms, such as the buffer pool, to ensure the Reserve does not suffer a material loss from reversals of the registered carbon stocks (CRTs). **(NAFO et al.)**

RESPONSE: Noted. See response to comment #3 above.

66. The PIA Should Only be Binding Upon Holders of Property Interests that Could Significantly Affect Obligated Reductions:
Section 6, “Transfer of this Agreement”, opens by stating that “All of the provisions of this Agreement shall be binding upon the Parties hereto and their successors, assigns *and any other party* holding a right, obligation, title, possession or interest in the Property, including without limitation a fee, leasehold, deed, mortgage, or easement interest (the “Interest”)” (emphasis added). This sentence creates two primary issues. First, one right holder in a property cannot bind other right holders in the same property to a contract they do not sign absent some prior agreement to that effect. Simply stating that this Agreement is binding on other holders of property interests in a property will not make it so. Nevertheless, under the substantive intent of this language, a fee or timber right owner who desires to create a carbon project under the FPP would have to secure the express agreement of all holders of any property right to the Property to be bound by all of the terms of the PIA – even entities that own mere utility easements, right of way easements, the right to hunt or fish on the property, and so forth.

Second, securing the agreement of a minor property right holder would require their acceptance of significant liability under the PIA and the FPP. A hunting club that owns an easement to access property for hunting or a neighbor who owns the right to drive across the property on a particular road would seem very unlikely to agree to be bound by “[a]ll of the provisions of this Agreement” and the many potential liabilities that would entail. This language as drafted is simply not sensible. We suggest that the first paragraph in Section 6 be amended to state that “All of the provisions of this Agreement shall be binding upon the Parties hereto and their successors, **and assigns. and any other party holding a right, obligation, title, possession or interest in the Property, including without limitation a fee, leasehold, deed, mortgage, or easement interest (the “Interest”).**”

Similarly, section 6(a) states in part that “Any Forest Owner shall not transfer, assign, delegate or convey any Interest in the Property or any Forest Owner Obligation unless: (1) the party receiving the Forest Owner Obligation or Interest in the Property (the “Assignee”) agrees to assume all of the Forest Owner Obligations unconditionally without modification or amendment”. This section prevents transfers of property interests in the property subject to the PIA that do not ensure that the Assignee assumes all of the Forest Owner Obligations. Once again, consider the situation where a Forest Owner wishes to transfer a simple right of way easement to a neighbor. It is manifestly unreasonable to propose that the neighbor should assume all Forest Owner Obligations, including indemnifying the Reserve and all of its agents for any liabilities in any way connected with the PIA (see §14 of the Agreement), simply for the right of driving her car across the Forest Owner’s property.

We suggest that §6(a) be amended to read: “The transfer, assignment, delegation or conveyance of any Forest Owner Obligation or any Interest in the Property that could reasonably be expected to significantly affect Obligated Reductions shall be void unless: (1) the party receiving the Forest Owner Obligation or such Interest in the Property (the “Assignee”) agrees to assume all of the Forest Owner Obligations unconditionally without modification or amendment [. . .] was fully executed. For the avoidance of doubt, the real property interests described in California Civil Code §801(1), (2), (3), (4), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), and (18) in addition to other similar servitudes and the right of receiving water from the Property, shall all be deemed to have no significant effect upon Obligated Reductions and are therefore beyond the scope of this Section 6(a).”

Please note that the term “Obligated Reductions” is used many times in the FPP and is not defined in the FPP’s glossary. We suggest supplying a definition. (NFA)

RESPONSE: See revised PIA definition of "Property Interest" in Section 1 and revisions to Section 7.

67. [6(a)] Reserve’s Consent to Qualifying Transfers Should Be Non-Discretionary:
The paragraph (pg. 5) that begins “If any Assignor transfers, assigns, assumes, delegates or conveys any Interest in the Property or Forest Owner Obligation, the Assignor shall not be released from any Forest Owner Obligation unless the Reserve gives written consent releasing the Assignor from the Forest Owner Obligations, which consent shall not be unreasonably withheld.” This sentence in effect provides the Reserve with leverage to ensure that the required procedures are followed for assigning Interests in the Property. However, this language would grant the Reserve unreasonable discretion to block assignments or transfers that meet the criteria specified in the PIA – if an assignment or transfer meets the requirements set out in the PIA, the Reserve’s release of the Forest Owner from applicable Forest Owner Obligations should be required and ministerial rather than discretionary. The “consent shall not be unreasonably withheld” language would be cold comfort to a landowner forced to dispute a “reasonableness” claim by the Reserve before binding arbitration in Los Angeles. If a transfer or assignment fails to meet the requirements of the PIA, the Reserve can declare a breach and initiate remedies or resolve the dispute before arbitration if necessary – this is enough protection for the Reserve’s interests. We therefore recommend that this sentence be amended to read that “If any Assignor transfers, assigns, assumes, delegates or conveys any Interest in the Property or Forest Owner Obligation, the Assignor shall **not** be released from any Forest Owner Obligation unless only if the Reserve gives written consent releasing the Assignor from the Forest Owner Obligations, which consent shall not be unreasonably withheld. said transfer, assignment, assumption, delegation or conveyance satisfies all of the applicable conditions and terms of this Agreement.” (NFA)

RESPONSE: See revised Section 7(a). The third unnumbered paragraph explains that Forest Owner shall not be "released" without consent. Consent of the Reserve is required in case Forest Owner is in breach at the time of the transfer or breaches the agreement by not requiring a buyer to assume the obligations of the PIA. This text does not block a transfer, but addresses when a "release" will be provided.

68. [6(a)] Forest Owner Should Not Be Liable for Forest Owner Obligations Subsequent to Proper Assignment or Transfer:
The paragraph in 6(a) (pg. 5) also states that “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.” Consider a hypothetical Forest Owner who transfers land subject to the PIA to a new owner. The transfer is in accordance with the terms of the PIA and the new owner assumes all of the Forest Owner Obligations. This sentence, however, would seem to force the original Forest Owner to retain liability for all obligations that arose during the period of her ownership of the Property when it was subject to the PIA, including (for example) maintenance of obligated reductions for CRTs that she sold – when she now has no control over the Property. Should she continue to be liable for a wildfire started by a new owner, or for illegal clearcut logging initiated by the new owner? Clearly not.

We therefore recommend deleting this sentence. **(NFA)**

RESPONSE: See revised text in third unnumbered paragraph in section 7(a), which says Forest Owner shall remain liable for "Forest Owner Breaches" not for all Forest Owner obligations.

69. [6(e)] Future Encumbrances Should Be Subordinate to a PIA on Most, But Not All Projects: Section 6(e) states that “Forest Owner shall ensure that any deed, mortgage, lien, lease, or other encumbrance on or affecting the Property that arises subsequent to the Effective Date of this Agreement shall be subordinate to this Agreement.” First, we approve that subordination of encumbrances is limited to future encumbrances under the current language. Approaching current lien holders and convincing them to subordinate to a PIA would inevitably require payments that would render carbon projects uneconomic for many forest landowners with a significant mortgage.

Second, the ability to subordinate future encumbrances to an existing PIA will depend significantly upon the aggregate landholdings of the Forest Owner. Small to medium-size forest owners will very likely be able to convince a bank to subordinate a future mortgage to the PIA, so long as the loan to value ratio is not too high. This has been the case in the past with conservation easements. Large industrial forest owners, however, often mortgage portions of their land holdings to access secured credit on relatively short time periods. The scale of such financing is significantly different than the scale of mortgage financing on small and medium-size properties. The same banker who might be willing to subordinate a US\$1M loan to a PIA given a low loan to value ratio on a small property would very likely be unwilling to subordinate a US\$100M loan to a PIA on a large property, even at a similarly low loan to value ratio. Having more at stake increases risk aversion. Furthermore, large secured credit facilities are often syndicated, with multiple banks holding portions of the loan. The landowner thus faces the prospect of needing to negotiate with multiple lenders rather than a single lender over subordination, which would likely prove prohibitive.

Achieving significant carbon sequestration or avoided land use emissions through forest carbon offsets will require involving the industrial forest sector. If the Reserve wishes to make this Protocol accessible to large forest landowners, it must offer some flexibility around subordination of future encumbrances to the PIA. We suggest two options for creating such flexibility for landowners with more than 100,000 acres:

- a) Allow subordination of the PIA to the new encumbrance, but increase the buffer withholding rate for that Forest Owner by an appropriate amount to reflect the increased risk of reversal should the Forest Owner go bankrupt or default on the senior lien and the property transfer involuntarily to the lien holder with the PIA nullified.

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- b) Creating an option to subordinate the PIA to new encumbrances if doing so would not unreasonably increase risk of reversal or breach of the PIA. The Reserve would have to develop a multi-factor test to assess increased risk of reversal due to subordination of the PIA.

Regardless, without creating some form of flexibility on the subordination issue for large forest landowners, the FPP is likely to have limited impact “on the ground.” **(NFA)**

RESPONSE: Noted. See response to comment #3 above.

70. [6(a)] 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.

6a [previously 5(a), pg. 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 makes 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! **(NCRM)**

RESPONSE: See revised definition of "Forest Owner" in Section 1 and revised section 7. Note the release requirements enable the Reserve to determine if there has been an appropriate Assignment & Assumption executed by the new owner and recorded, prior to a release of the Forest Owner. This ensures that a new owner has assumed the obligations. See revised text in third unnumbered paragraph in section 7(a), which says Forest Owner shall remain liable for "Forest Owner Breaches," not for all Forest Owner obligations.

71. The subordination clause does not allow for the appropriate and regular financing of forest lands. Other financial institutions need the flexibility to be in first position in some circumstances. The reserve needs to accommodate this possibility through better defined methods to possibly subordinate the Reserve's interests. **(Plumas)**

RESPONSE: Noted. See response to comment #3 above.

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72. [This paragraph] is overly broad, unreasonable and unworkable to require that every and all holders of any kind of interest in the Property adhere to the terms of the PIA. It should be sufficient that the Forest Owner shoulders the obligation and that subsequent interests be subordinated or otherwise conveyed subject to the PIA (as in paragraphs 6(d) and 6(e)). **(PFT)**

RESPONSE: Noted. See response to comment #6 above.

73. [6(a)] If the Reserve wants to maintain the "right" to withhold approval, then it should set forth factors or conditions that it is concerned about so any decision to withhold approval is in fact not arbitrary. Moreover, if a dispute arises, a decision maker has guidance as to what is "reasonable". **(PFT)**

RESPONSE: See response to comment #63 above.

74. [6(a)] CAR needs to clarify exactly what it is referring to in the sentence, "Notwithstanding any consent of 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" From our reading, it is a clear inference but an unreasonable requirement to hold the Assignor responsible for the maintenance of CRTs registered during Assignor's term of ownership after that ownership and Assignment have been made given that Assignor will have no control over the Property or Project at that point. **(PFT)**

RESPONSE: See revised text in third unnumbered paragraph in section 7(a), which says Forest Owner shall remain liable for "Forest Owner Breaches," not for all Forest Owner obligations, which arose during the time the Forest Owner owned the property.

75. [6(a)(4)] The grammar does not make sense. In addition, this language does not reconcile with that in [8(e)]. **(PFT)**

RESPONSE: Noted. This has been corrected in the final draft.

76. [6(e)] As to Paragraph 6(e), there needs to be some alternative to formal subordination, which will be overly cumbersome or impossible to obtain in some important instances. There are other approaches, such as described in 6(d). **(PF)**

RESPONSE: Noted. See response to comment #3 above.

Section 7 – Obligations of the Forest Owner Upon a Reversal

77. Consequences of Reversal:
Ecotrust does not feel that Improved Forest Management projects should be the only type of Forest Projects that could suffer additional penalties for early termination. In our opinion, it is sufficient for any group that terminates a project prior to the 100 year requirement to pay back 100% of the credits received rather than a worst case scenario of 140%. There is not currently any indication that these types of projects are more likely to have a reversal than other forest projects. **(Ecotrust)**

RESPONSE: Noted. See response to comment #2 above.

Section 8 – Remedies

78. There is currently no mention of the enforcement costs involved with challenges to terms of the Project Implementation Agreement. There are clear details of how a notice of breach is to be communicated, and the description of how a breach of agreement will be treated as an Intentional Reversal; however there is no mention of who bears the costs of investigating a possible breach. CAR may want to consider a clear statement of who would bear the costs of investigating possible violations prior to arbitration or court action. This is an issue that may differ according to the legal requirements of individual states or tribes.

Two other topics have not been treated in this agreement: 1) insurance requirements and 2) liability of CAR or third party verifiers under CERCLA or other environmental legislation.

Insurance: There is no mention of insurance that would cover individuals performing a site visit, so it is unclear whether this topic was considered in the process of drafting the Agreement. For many organizations, any contract that involves working on a specific property requires some type of insurance that would cover those groups while they are on the site. Given that many sites may have active logging operations during the verification process, it is in the interest of the Reserve to at least consider this subject in the PIA.

Environmental Legislation: Given the strict interpretations of many environmental laws such as CERCLA (Comprehensive Environmental Response, Compensation, and Liability), it may be in the interest of the Reserve to specifically state that they are not an owner, operator, or responsible party that could be liable under the terms of this legislation as a result of this Agreement. **(Ecotrust)**

RESPONSE: Noted. Insurance requirements for the Reserve have been included in Section 6. Other comments are noted and may be incorporated in subsequent drafts.

79. [8(b)] This section on damages payable by Forest Owners is not clear. **(ES)**

RESPONSE: Noted. This section has been revised to provide additional clarity.

80. The Reserve's unilateral ability to find a project developer in breach of the PIA presents another likely barrier to landowner participation. It is customary for agreements such as the PIA to contain dispute resolution mechanisms that ensure equal protection for all interested parties. Further, the Reserve has the opportunity to reaffirm the rights of project participants by evenly distributing all legal damages and expenses arising from disputes related to this Agreement. The inability to justify project activities or defend against inaccurate claims will deter landowners from developing program participation. Additionally, the Reserve's right to terminate the PIA at their sole discretion regardless of proper fulfillment of termination remedies again denies project proponents of appropriate contractual rights. Project developers require the confidence that successful completion of early project termination requirements will automatically remove future obligations and invalidate the PIA in order to participate in forest carbon projects. Also, many landowners depend on the ability to restructure their debt to achieve their management goals. Requiring the PIA to subordinate any other mortgage or title against the project land base would eliminate landowner's ability to participate in forest carbon projects by preventing the refinancing or replacement of existing debt. We believe the current remedies for early termination of the PIA

would significantly prohibit meaningful participation by landowners in California as well as throughout the United States. A protocol which allows for only small boutique projects that fit narrow ownership types will prevent the necessary scale of participation to adequately address the problems of climate change. **(Equator)**

RESPONSE: Noted. See response to similar comments above.

81. This is a unilateral process, no dispute process or mediation process is described, when dealing with very complex protocols and processes. The only option is directly to binding arbitration? **(Landowners)**

RESPONSE: In the case of an Avoidable Reversal, Section 8 has very detailed provisions regarding how the Reserve shall notify the Forest Owner, which require a written description and accounting, and in effect give the Forest Owner 4 months to comply prior to any breach notice being sent pursuant to Section 9. These requirements and time periods serve as a form of informal mediation. During these 4 months, the Forest Owner is free to request additional informal mediation. However, requiring formal mediation adds an additional expense and will result in additional delay. Furthermore, Section 9 provides an additional 60 days after a Breach Notice to cure. Moreover, A Forest Owner has an additional 120 days after receipt of the Breach Notice to Retire CRTs. See Sections 8 and 9.

82. Why if the protocol and PIA provide for project termination and once those obligations are met does CAR reserve the right to terminate at its option? **(Landowners)**

RESPONSE: In the case of unforeseen circumstances or a transfer to a regulatory program, the Reserve maintains the right to terminate.

83. [8(b)] Seems to be missing language:
- a) It is unclear that the Forest owner is in fact obligated to pay damages under Section 7 of the Forest Project Protocol.
 - b) Although Section 4 requires compliance with the FPP, the FPP are not incorporated by reference.
 - c) The meaning of the measure of damages now in the agreement is unclear.
 - d) As this is a 100 year agreement, referencing an external document, especially by specific section reference, is suboptimal; the FPP may, for example, be renumbered or superseded by a different protocol.
 - e) It is unclear how the stated damages meet the provisions of the referenced statute and what happens if that statute is amended in the next 100 years.
 - f) Rather, there should be specific language providing for damages, and stating what those damages are and how they are calculated. **(Weinstein)**

RESPONSE: a) See revised PIA Section 8(a)(b) which explains the obligations upon an Avoidable Reversal. If such obligation is violated then the Forest Owner is in breach. b) See Recitals and Section 4. See section 22 which states that: "Incorporation of Recitals and Exhibits. The recitals stated in this Agreement are fully incorporated herein by this reference with the same force and effect as though restated herein. All exhibits attached hereto are deemed incorporated into this Agreement by reference." c) See revised Section 9. d) The relevant FPP will be attached. See recitals. e) See revised text in Section 9(b). f) See revised Section 9(2).

84. Forest owners should be given a minimum of (sixty) 60 days to respond to a notice of a breach, or threatened breach. Certain matters may require physical, on the ground actions of a silvicultural management nature to cure the alleged or threatened breach. In such instances, the Forest Owner should only be obligated to provide a plan on the how breach will be remedied within a reasonable time frame that is consistent with state-of-the-art forest practices and forest practice laws that would apply to the land involved. To the extent that a breach or threatened breach involves a reversal, the PIA’s reversal provisions should apply. **(NAFO et al.)**

RESPONSE: In the case of an Avoidable Reversal, Section 8 has very detailed provisions regarding how the Reserve shall notify the Forest Owner, which require a written description and accounting, and in effect give the Forest Owner 4 months to comply prior to any breach notice being sent pursuant to Section 9. Section 9 provides an additional 60 days after a Breach Notice to cure. Moreover, a Forest Owner has an additional 120 days after receipt of the Breach Notice to Retire CRTs. See Sections 8 and 9.

85. The language under the section should also be amended to incorporate language that holds the Forest Owner harmless and not in breach of any requirement when any action or condition thought by the Reserve to be a breach or threat of a breach, is the result of, or caused by a need to comply with any other federal, state, or local law or rule for the protection of life, the environment, and or property. For example, certain actions that could be deemed to constitute an intentional reversal may have to be taken to address the risk of, or actual harm from fire. In such instances, the landowner should be allowed to remove from the baseline the quantities of carbon stocks lost from such actions, and be allowed to replace them over time through regeneration. Carbon stock gains from the regeneration would not be deemed additional, but rather would be added back into the baseline until the entire reversal (carbon stock loss) is replaced. This safe harbor approach has been adopted by the US DOE in its 1605 (b) inventory rules as a reasonable means to address force majeure losses and would appear to be a reasonable cure in this instance as well. **(NAFO et al.)**

RESPONSE: The FPP (Section 3.9.3) allows reversals to occur for reasons of maintaining forest health, among other things. Language has been added to clarify that decreases in stocks as required by law is also allowed. The work group did not consider the quantity of carbon stocks associated with managing safety concerns to be a significant issue. Reversals associated with the reductions in stocks must be remedied as described in the PIA, but do not constitute a breach.

86. Termination for Breach:
This section sets forth requirements related to certain terms of the PIA that have not been completed. (They are addressed in the CRET.) Until such time as these “gaps” are remedied, it is not possible to provide a reasonable critique of this provision. **(NAFO et al.)**

RESPONSE: Noted.

87. [8, 13] Create an Incremental Dispute Resolution System:
Section 8(a) enables the Reserve to declare a breach of the Agreement in its “sole and reasonable discretion”; the forest Owner then has 30 days to cure. No provision is made for negotiations over reasonable disagreements as to the existence and extent of an alleged breach. If the Forest Owner wishes to challenge a determination of breach, he or she must initiate binding arbitration proceedings in Los Angeles.

This hawkish, one-sided dispute resolution procedure has been a material concern for many of the landowners with whom we have spoken. We would recommend creating an incremental dispute resolution system. If the Reserve or the Forest Owner alleges a breach, the Reserve and the Forest Owner should have 10 business days to discuss the matter and try to reach agreement on the presence or absence and extent of a breach of contract. If no agreement is reached, CAR should create an internal appeals process to appeal the decision if it was the Reserve that alleged breach. If disagreement continues to exist after a decision via the internal appeals process, the Parties may proceed to a court of law or binding arbitration. The location of such arbitration or the venue for the lawsuit should be the decision of the party who did not allege breach of contract. CRT sales could reasonably be frozen throughout the dispute resolution process. **(NFA)**

RESPONSE: In the case of an Avoidable Reversal, Section 8 has very detailed provisions regarding how the Reserve shall notify the Forest Owner, which require a written description and accounting, and in effect give the Forest Owner 4 months to comply prior to any breach notice being sent pursuant to Section 9. Furthermore, Section 9 provides an additional 60 days after a Breach Notice to cure. Moreover, A Forest Owner has an additional 120 days after receipt of the Breach Notice to Retire CRTs. See Sections 8 and 9. These requirements and time periods serve as a form of informal mediation and constitute an incremental dispute resolution system. During these 4 months, the Forest Owner is free to request additional informal mediation. However, requiring formal mediation or an internal appeals process adds an additional expense and will result in additional delay.

88. The Reserve Cannot Retain Legal and Equitable Remedies While Compelling Binding Arbitration:

This section [previously section 6(d)] states that “Notwithstanding anything to the contrary herein . . . the Reserve shall have the right to: (i) seek all remedies available at law or in equity for any breach of this Agreement or the Forest Protocols subject to Section 13”. Section 13 states that any dispute must be submitted to binding arbitration in Los Angeles, and that “the decision of the arbitrator shall be the exclusive remedy for any Dispute, final, conclusive and binding upon the Parties.” Furthermore, if a Party pursues a Dispute by any method other than arbitration (e.g. pursues legal or equitable remedies in a court of law) then “the responding Party shall be entitled to recover from the initiating Party all damages, costs, expenses and attorney fees incurred as a result of such action or proceeding.”

If the Reserve proposes a contract that compels binding arbitration as the only mechanism of dispute resolution, and provides that damages awarded pursuant to any other claim in an alternative forum must be compensated by the plaintiff, it makes no sense to reserve all remedies available at law or in equity. We suggest deleting 8(e) [previously section §6(d)(i)]. **(NFA)**

RESPONSE: Noted. We have declined to remove this provision 9(e) at this time.

89. The 30 day period to cure a breach should be expanded to sixty (60) days in order to allow for the Forest owner to conduct needed field activities which may be weather dependent or otherwise difficult from an environmental or wildlife standpoint to cure immediately (within 30 days). The assumption in this section that the Forest Owner is in breach if the Reserve notifies them of such an alleged breach. This process is too draconian and should be much more iterative for broad landowner use to be accomplished. **(Plumas)**

RESPONSE: See revised section 9(a) which provides 60 days notice to cure.

Section 9 – Representations, Warranties and Covenants

90. Consider a general rule of construction to the effect of “References to any natural person, governmental authority, publication, website, regulatory proceeding, corporation, partnership or other legal entity include its successors and lawful assigns.” **(Weinstein)**

RESPONSE: See section 28.

91. [9(b)(c)(d)] Should insert “in the trees and standing timber located on”, to use the Uniform Commercial Code term of art (UCC 9-102(44)(ii)). **(Weinstein)**

RESPONSE: Noted. See also revised definition of Property Interest.

92. 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. **(NCRM)**

RESPONSE: See explanatory footnotes 1, 4 and 5.

Section 10 – Conservation Easements Permitted

93. Paragraph 10 should be modified to clarify that Property already encumbered by a conservation easement is suitable for generating CRTs. Perhaps the paragraph could be modified to read: “Conservation Easements Permitted. Nothing in this Agreement shall prevent the Forest owner from encumbering the Property with a conservation easement pursuant to California Civil Code Sections 815 et. seq. or other similar statutory scheme or registering a Project with the Reserve on Property that is already subject to a conservation easement granted pursuant to California Civil Code Sections 815 et. seq. or other similar statutory scheme. **(LS&AS)**”

RESPONSE: Existing Conservation Easements will need to be evaluated on a case by case basis, in accordance with the Forest Protocols.

94. It is not clear if conservation easements would replace this PIA or not – or what the relationship between the two are. **(NCRM)**

RESPONSE: The PIA is required for all projects whether bound by conservation easement or not. A conservation easement would therefore be in addition to the PIA.

Section 11 – Notices

95. Language should be added to this provision to clarify just what are considered to be normal business days. It is recommended that this term be defined as Monday through Friday, between

the hours of 8:00 a.m. and 5:00 p.m. (NAFO et al.)

RESPONSE: It is generally recognized that business day means Monday to Friday, prior to 5 pm, but excludes certain holidays. We will consider a further definition for future drafts.

Section 12 – Costs

96. 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). (NCRM)

RESPONSE: See revised Section 3 for provisions re early termination.

Section 13 – Dispute Resolution

97. [13, 14] These require indemnification of CAR, but also provide that the prevailing party receive its costs, expenses and attorney fees. The remedy provided does not mention mediation, which we think should be pursued first in the event of a dispute before binding arbitration. (Landowners)

RESPONSE: See modifications to Sections 14 and 15 re dispute resolution and indemnification. Furthermore, in the case of an Avoidable Reversal, Section 8 has very detailed provisions regarding how the Reserve shall notify the Forest Owner, which require a written description and accounting, and in effect give the Forest Owner 4 months to comply prior to any breach notice being sent pursuant to Section 9. Furthermore, Section 9 provides an additional 60 days after a Breach Notice to cure. Moreover, A Forest Owner has an additional 120 days after receipt of the Breach Notice to Retire CRTs. See Sections 8 and 9. These requirements and time periods serve as a form of informal mediation and constitute an incremental dispute resolution system. During these 4 months, the Forest Owner is free to request additional informal mediation. However, requiring formal mediation or an internal appeals process adds an additional expense and will result in additional delay.

98. Replace Mandatory Arbitration with Access to Courts of Law:
Section 13 requires mandatory arbitration in Los Angeles of all disputes pertaining to this Agreement. Arbitration can be capricious, does not necessarily afford the same procedural safeguards as litigation in American courts, and does not necessarily offer a more rapid resolution of disputes than litigation. We would recommend that Section 13 (i) incorporate an incremental dispute resolution process, as described above; and (ii) not restrict access to courts of law for dispute resolution. We therefore recommend deleting the current text of §13 and replacing it with “The Parties agree that, in the event the dispute resolution procedures specified in Section [x] of this Agreement fails to resolve a dispute, all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of [X], State of California. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it

may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the County of [X], State of California shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.” (NFA)

RESPONSE: The Reserve believes that binding arbitration is an appropriate means of dispute resolution that limits potential costs. See also response to comment #97 above.

99. 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. (NCRM)

RESPONSE: The location of the binding arbitration is necessary to limit the Reserves' costs given that Forest Owners may be located anywhere in the United States and potentially internationally. Binding arbitration will limit to costs of both the Reserve and Forest Owners. Likewise, the provision includes an award of costs to the prevailing party. See also response to comment #97 regarding the steps required before arbitration.

100. While we are glad dispute resolution language is being added, the requirement for binding arbitration is not what we and others are looking for. We recommend a staged process that is oriented to actually resolving the problem out of court, but does not do away with access to court. We suggest that at the end of the 30 day cure period, if the alleged breach is still outstanding, but after the Project Account is frozen, CAR allow 15 day “appeal” process within CAR as the first step and, if this doesn’t resolve the dispute, then require mediation within 30 days by a mutually agreeable third party, and if still not resolved the parties can go to court and CAR can avail itself of its permitted Remedies. Arbitration in a complex and novel area such as that covered by the PIA does not provide any greater ease or lower expense, but it has greater potential of abuse with no right of appeal. (PFT)

RESPONSE: See modifications to Sections 14 and 15 re dispute resolution and indemnification. Furthermore, in the case of an Avoidable Reversal, Section 8 has very detailed provisions regarding how the Reserve shall notify the Forest Owner, which require a written description and accounting, and in effect give the Forest Owner 4 months to comply prior to any breach notice being sent pursuant to Section 9. Furthermore, Section 9 provides an additional 60 days after a Breach Notice to cure. Moreover, A Forest Owner has an additional 120 days after receipt of the Breach Notice to Retire CRTs. See Sections 8 and 9. These requirements and time periods serve as a form of informal mediation and constitute an incremental dispute resolution system. During these 4 months, the Forest Owner is free to request additional informal mediation. However, requiring formal mediation or an internal appeals process adds an additional expense and will result in additional delay.

Section 14 – Indemnity

101. Subsection (a) should be modified to clarify the extent of Land Owner indemnity in instances of Unintentional Reversals, in which the Reserve, under the draft terms of the CRET, indicates that it will remedy Unintentional Reversals through the use of CRTs from the Reserve-administered Buffer Pool. This language can be construed to suggest that the Land Owner is able to rely on that remedy for such losses so as to render the Land Owner free from liability for such losses, whether or not the Reserve can fully cover the exposure in any given case. In effect, in the case of unintentional losses, the Reserve could be assumed to be the liable party to any third party to remedy any CRTs that are alleged to be uncovered by the Reserve's Buffer Pool CRTs. **(NAFO et al.)**

RESPONSE: See significant revisions to section 15 regarding limits on indemnification in the event of prevailing in arbitration, damages by verifiers and the Reserves' negligence. See also section 16.

102. The Indemnity Provision as Drafted is Excessive and Unreasonable:
The indemnity provision as drafted in section 14 will be unacceptable to any landowner, large or small, regardless of location or temperament. Leaving this provision unaltered will result in zero uptake of the new FPP. As drafted, this provision would require the Forest Owner to indemnify the Reserve and its agents for a broad range of unacceptable actions. Consider a verifier, agent of the Reserve, who negligently starts a fire on a Forest Owners' property that spreads to neighboring properties and causes \$10M in damage. Should the Forest Owner indemnify the Reserve for such damage? No. Consider a dispute between the Parties, pursued according to the current section 13 in arbitration. The Forest Owner wins in arbitration and is entitled under §13 to recover its costs and expenses, but in §14 has indemnified the Reserve for any penalties and costs "arising from or in any way connected with this Agreement," and therefore arguably must pay for the Reserve's legal expenses even after winning an arbitration dispute!

We strongly recommend amending the language in §13 to limit the Forest Owner's indemnity to a narrowly defined, reasonable extent. **(NFA)**

RESPONSE: See significant revisions to section 15 regarding limits on indemnification in the event of prevailing in arbitration, damages by verifiers and the Reserves' negligence.

103. 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! **(NCRM)**

RESPONSE: Noted. The indemnity provisions have been revised to provide additional fairness. See significant revisions to section 15 regarding limits on indemnification in

the event of prevailing in arbitration, damages by verifiers and the Reserves' negligence.

104. The indemnity language is unacceptable. It is not mutual and has the Forest Owner paying for CAR's choice of lawyer, and potentially paying for CAR's negligence because it covers anything "arising from or in any way connected with this Agreement". A more reasonable provision would say the following:
- a) "Forest Owner shall hold harmless, indemnify, and defend the Reserve and its directors, officers, employees, agents, contractors and representatives (collectively the "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including reasonable attorney fees and legal costs, arising from the gross negligence or willful misconduct of the Forest Owner in connection with this Agreement, provided however, that this provision shall not apply to any of the forgoing to the extent caused by the gross negligence or willful misconduct of any Indemnified Party."
 - b) We also propose adding to the beginning of (c) the following: "The Indemnified Parties shall, to the extent possible, reasonably mitigate damages and fully cooperate with Forest Owner with respect to any claims or proceedings arising hereunder." **(PFT)**

RESPONSE: Noted. The indemnity provisions have been revised to provide additional fairness. See significant revisions to section 15 regarding limits on indemnification in the event of prevailing in arbitration, damages by verifiers and the Reserves' negligence.

Section 15 – Recordation

105. Section 15 should provide that the Memorandum is to be executed and notarized and delivered to CAR along with the PIA, and that CAR can record the Memorandum, if the FO doesn't record it, any time after the 10 days. **(Weinstein)**

RESPONSE: Noted. We will consider this suggestion for subsequent drafts.

106. The requirement for Recordation in paragraph 15 appears to create a cloud on the title due to the terms of California Civil Code Section 1220. While the Code language pertains to timber and the creation and maintenance of the Project and CRTs are not a recognized property right nor directly grounded in the timber, the Project does have the effect of limiting the management of the timber, so an argument could be made. This is a gray (dark gray) area where existing law and emerging arrangements could collide. We believe that the other provisions of the PIA are strong enough that this or other recordation requirements do not strengthen CAR's position, but, if included, could severely deter landowner participation. **(PFT)**

RESPONSE: Noted. The Reserve believes that recording and notice is important to advise potential buyers of property that it is subject to the provisions of the PIA and protocol.

Section 16 – Governing Law

Section 17 – Amendments

107. This section states, “For any CRTs issued in the future, the Term of the Agreement may be extended in accordance with this Section 17” This sentence is confusing. It seems to imply that any CRTs issued after the PIA is executed will require an amendment with respect to the PIA’s “Term”, as set forth in “Section 3 Term” This should be clarified as to meaning and intent. (NAFO et al.)

RESPONSE: Each vintage of CRTs issued will require amendment of the PIA to extend the term by 100 year to ensure the permanence of that sequestration.

Section 18 – Liberal Construction

108. The rule of construction set forth is vague, unreasonable and overly broad. In effect, it provides a license to an arbitrator or judge to rewrite any provision of the Agreement in such a way as to “give effect to the purpose” of the agreement. I have no idea what this means. If this is the case, there is no point to even having a written agreement. How is this supposed to connect with the covenant to not unreasonably withhold consent or the covenant allowing CAR to withhold consent in the exercise of reasonable discretion? (Landowners)

RESPONSE: Noted. The provision has been removed.

Section 19 – Severability

Section 20 – Incorporation of Recitals and Exhibits

Section 21 – Captions

Section 22 – No Third Party Beneficiaries

Section 23 – Definitions

Section 24 – Terms of this Agreement Govern

Section 25 – Entire Agreement

Section 26 – Counterparts

Draft Consequences for Reversals and Early Termination (CRET)

109. Contract Termination: Section 8 of the Agreement (Termination for Breach), notes that only those reasons for termination cited in the Protocol can entitle either party to terminate the project. Of concern is that the final draft Protocol’s provisions only address the right of the Reserve to automatically declare a project terminated when an intentional reversal occurs. The CRET documents set forth the consequences for unintentional and intentional reversals, and for early termination. Thus, the provisions of the Protocol, as drafted, are narrower than the PIA and CRET documents. This lack of alignment should be remedied to ensure consistency and

clarity in the Protocol and the PIA. As a contract, removing this ambiguity will be necessary to ensure that there is a “meeting of the minds” of both parties, which is a fundamental element of any enforceable contractual agreement. **(NAFO et al.)**

RESPONSE: Additional revisions to the Protocols have been made in terms of alignment. See also Section 26 of the PIA which explains that: "In the event that any definitions, terms and provisions in this Agreement conflict with the definitions, terms and provisions in the Forest Protocols, the definitions, terms and provisions in this Agreement shall govern."

110. Standard of Reasonableness: A reasonable contract between two parties should have provisions setting forth the terms under which either party may terminate the contract. This is especially important for a contract that is intended to be in force for 100 years. Further, provisions for termination should be fair and equitable, rather than punitive, unless there is a breach of the terms of the contract by one party, for which there is no reasonable remedy, or for which the liable party fails to avail himself of the remedies provided, thereby causing harm to the other party in excess of the nominal harm, to wit, the offsetting of a metric ton of GHG emissions.

In this context, in the event of a reversal, so long as the landowner replaces any sold offset (CRT) obligations, there should be no additional penalty for a reversal or early termination, as there will be no harm with respect to the atmospheric GHG reduction obligation, which is the objective of the Protocol and therefore the PIA. Note that unsold CRTs that reside in the Forest Owner's Reserve Account, if deemed to be unsupported due to the Reversal, should not be subject to replacement, as they have not been “retired” due to their sale and use by a buyer as an offset to GHG emissions. They are in effect unencumbered and therefore should simply be extinguished (unregistered) without cost or liability to the Forest Owner.

However, appears biased, in that the CRET contains punitive requirements for intentional reversals and early termination without any information that justifies either provision with respect to environmental or financial harm, or any other basis. Thus, the requirements appear to be arbitrary and contrary to the intent of the ARB's decision to develop the Protocol's revisions so as to encourage greater participation of managed forestland owners.

It should be noted that the Reserve is developing the revisions to the Protocol, the PIA and the CRET in response to a request to assist the ARB in addressing the need to encourage greater industrial forest owner participation. In this regard, the Reserve essentially is “standing in the shoes” of the ARB, which is seeking to provide a viable offset program as part of its framework to cost-effectively implement the cap-and-trade elements of its strategy to carry out AB32.

Thus, it should be incumbent on the part of the Reserve to take into consideration these broader aspects of the carbon market and trading process in which the Reserve's offset program will be engaged, and to allow the expected elements of such a larger program to be available to the offset program's participants. In this context, the following paragraphs further amplify the apparent bias that appears to run counter to this future state. **(NAFO et al.)**

RESPONSE: The PIA provides terms for project termination. Project termination can occur at any time during the project life. Improved Forest Management Project do have to compensate for CRTs at a rate that exceeds 1:1 for the first 50 years of the project. The rationale for this compensation is described in the response to comment #2. The PIA enables project CRTs to be compensated with other viable CRTs, which include a

given project's unsold CRTs.

111. Intentional Reversal Bias: The first bias is the requirement that CRTs lost from an intentional reversal must be replaced by Reserve CRTs, either from the project or from other projects. This provision is not consistent with the intent of Cap and Trade programs, which seek to encourage the use of offsets as a means to reduce program costs. A forest owner should be afforded the option, at the forest owner's discretion, to replace any CRT reversal (loss) with any CRT or other offset or carbon credit registered under a program in which the credits are real, additional, measurable and verifiable.

The CRET, as written, may also leave a forest owner in the situation where the Forest Owner's inventory of registered, but unsold CRTs are not adequate to cover the reversal. Indeed, some of these CRTs would likely be invalidated by the Reversal, reducing the Forest Owner's inventory of banked CRTs. By having to buy only Reserve CRTs, the Forest Owner can be forced to purchase CRTs from other project owners at unreasonable prices. This subjects the forest owner to a captured or restricted market, rather than being able to avail him/herself to potentially lower cost remedies from the larger Cap and Trade market under AB 32, and potentially under the WCI's or any future federal initiative. Yet the Reserve has not set forth any rationale as to why this restriction should apply. Further, this restriction is contrary to the intent behind cap-and-trade concepts, and presumes that the forest owner's decision to pursue early termination is a malicious act that deems punishment.

The restriction wherein CRTs must be used is also in conflict with provisions in the Protocol that indicate that other "insurance" measures to address reversal (loss) risk will be allowed as they are developed. As we have commented previously in other submissions, there are many viable reversal risk management options that will involve the direct or indirect purchase of other offsets and credits (allowances). This conflict should be remedied, and the bias of the remedy should be towards encouraging the cost mitigation aspects of cap and trade programs, such as that being developed under AB 32 in California, and by the WCI.

The remedy should also be constructed so as to enhance the ability of managed forest owners to cost-effectively participate in an offset program rather than punish them for doing so. And finally, the breadth of options afforded to a forest owner should be designed to enhance the full fungibility of a forest offset in the larger market. Restricting the replacement requirement to CRTs will have just the opposite effect. This is counter to the many other provisions in the Protocol itself which have been designed to enhance the fungibility of forest offsets, such that a CRT will meet what is often referred to as the "a ton is a ton" test of the market.*

* In the international policy arena, the discussion about the role of offsets in general, and forest offsets in particular, are often framed around the need to be able to ensure an offset buyer that any offset of any type from any program fully offsets a metric ton of CO₂e GHG emissions. **(NAFO et al.)**

RESPONSE: The Reserve program is designed today for the voluntary carbon market and thus does not recognize credits from other programs. When a compliance offsets program is established, the Reserve may revisit the PIA to allow compensation using compliance instruments. Provisions have been included that allow early termination.

112. Early Termination Bias: The second bias occurs in the situation involving a decision by a landowner to pursue early termination of the project. In this instance, the landowner is obliged to both use only CRTs, and to replace any CRTs that will be lost at a rate greater than 1:1. The bias to use only Reserve CRTs suffers the same deficiency as noted above. The obligation to

replace the CRT at a rate greater than 1:1 is simply without any reasonable explanation or justification. So long as any lost CRTs are fully replaced, there is no loss with respect to the level of expected GHG mitigation and therefore no harm to the Reserve or any buyer of a CRT registered with the Reserve. There is also no real cost to the Reserve, as the landowner is charged fees to compensate the Reserve for all program costs. Finally, early termination does not mean immediate loss of the sequestered carbon, if at all.

The imposition of a penalty in the form of an obligation to replace CRTs at a rate greater than 1:1 due to an early termination implies that the early termination has resulted in harm to another party that would go uncompensated. Neither the CRET, the PIA, nor the Protocol set forth any rationale of additional harm to any party that justifies this additional penalty. For this reason, the penalty provision for early termination can only be viewed as being arbitrary in nature and as biased against participation of managed forest landowners. This is not in keeping with the intent of this revision to the Protocol – to encourage greater participation by managed forest landowners – and therefore, as noted above, this element of the early termination requirement should be eliminated. **(NAFO et al.)**

RESPONSE: See response to comments #1, #2, and #110 above.

113. Consequences for Intentional Reversals Should be Limited to Replacing CRTs Sold and Should be Symmetric Among Project Types:

The supplementary document to the PIA draft suggests that intentional reversals must be compensated with CRTs issued by the Reserve to other Forest Projects registered with the Reserve; if unobtainable, as determined by the Reserve, the reversal may be compensated for with other CRTs. Similarly, to terminate a project the Forest Owner must retire CRTs issued to Forest Projects unless unobtainable as determined by the Reserve. For Reforestation and Avoided Conversion projects, the Forest Owner must retire an amount of CRTs equivalent to the number of CRTs issued by the Reserve to that project since the project's initiation. For Improved Forest Management projects, the Forest Owner must retire a higher number of CRTs if the project is terminated within 50 years from its initiation.

First, we recommend that the Reserve not require replacement with Forest Project CRTs and not place itself as the arbiter of Forest Project CRT "obtainability". The only rationales for requiring replacement with Forest Project CRTs are to (a) retain co-benefits or (b) retain a premium price for forest carbon offset tons. While forest conservation goals are undeniably important, CAR and the Forest Project Protocol have climate mitigation goals, not land conservation goals. If the climate is "made whole" through the replacement and retirement of CRTs equivalent to the amount issued to the project, some land use change should be acceptable to CAR.

Conferring economic rents to Forest Project CRT owners by artificially increasing demand for their product should also not be a goal of CAR, and it should not be the judge of whether Forest Project CRTs are obtainable. Should a Forest Owner terminating her project be compelled to buy and retire the last 100 Forest Project CRTs on the market simply because they exist? What if the owner of those CRTs does not want to sell, or will only sell at \$10,000/CRT? CAR will in practice only be able to verify the existence of Forest Project CRTs, not true practical availability. It should therefore not establish itself as an arbiter of availability.

Second, there is no reason to discriminate between Reforestation and Avoided Conversion projects and Improved Forest Management (IFM) projects by requiring IFM projects to purchase

a higher number of CRTs to terminate a project. If any forest project terminates, they are all equally likely to do so due to higher returns from an alternate land use. An Avoided Conversion project may, for example, choose to convert the land to housing or agriculture, causing significant reversals. There is therefore no stronger reason to “game” Reforestation and Avoided Conversion projects than IFM projects, and they should therefore all be subject to the same requirements for early termination.

Third, to terminate a project, a Forest Owner should only be required to replace and retire CRTs equivalent to the amount issued to that project. If a federal or state compliance cap and trade system exists that issues allowances, Forest Owners should be required to purchase allowances rather than CRTs to replace CRTs sold from their Project to terminate their projects. **(NFA)**

RESPONSE: See responses to comments #1, #2, #110, and #111 above.

114. [Section 2(ii)] 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. **(NCRM)**

RESPONSE: See responses to comment #2 above. Termination of a project is defined as a reversal as once the project is terminated, it is no longer subject to provisions of the protocol or PIA and thus the permanence is no longer guaranteed.