

DISCUSSION DRAFT

This Draft does not at this time reflect any official positions of the GCF, its members, or any other individuals or institutions

Governors' Climate & Forests Task Force (GCF)

TASK 1 REPORT:

GCF Design Recommendations for Subnational REDD Frameworks

September 7, 2010

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APPENDIX 1 **TERRA GLOBAL CAPITAL DRAFT PAPER AN INTEGRATED REDD OFFSET PROGRAM (IREDD) FOR NESTING PROJECTS UNDER JURISDICTIONAL ACCOUNTING**

APPENDIX 2 **TOBIAS GARRIT, MAKING GCF/ARB REDD FEASIBLE FOR PRIVATE SECTOR INVESTMENT**

APPENDIX 3 **ERNESTO ROESSING, MULTI-STAKEHOLDER PROCESSES IN BRAZIL**

APPENDIX 4 **JANE DUNLOP, MULTI-STAKEHOLDER PROCESS IN ACEH, INDONESIA (DRAFT)**

I. SUMMARY & BACKGROUND

The GCF is a unique subnational collaboration between 14 states and provinces from the United States, Brazil, Indonesia, Nigeria, and Mexico that seeks to integrate Reduced Emissions from Deforestation and Forest Degradation (REDD) and other forest carbon activities into emerging greenhouse gas (GHG) compliance regimes in the United States and elsewhere.¹ The overarching rationale upon which the GCF is premised holds that any successful effort to bring REDD into climate policy requires multiple efforts at multiple levels of governance. The GCF was therefore conceived as an effort to leverage the fact that certain key states and provinces around the world are in a position to be early movers on the effort to bring REDD into climate policy, thereby bolstering overall momentum for the issue and enhancing national and international efforts to demonstrate how REDD can work in practice. Put another way, the GCF represents an effort to move into what might be called the proof-of-concept stage for REDD.

To this end, the GCF has been working since early 2009 to “put the pieces together” by building a platform for cooperation between GCF states in the U.S. considering integrating international forest carbon offsets in state and regional GHG compliance systems (California, Illinois, and Wisconsin) and tropical forest GCF states and provinces developing subnational REDD programs for compliance market and other financing opportunities (Aceh, Acre, Amapa, Amazonas, Campeche, Cross River State, East Kalimantan, Mato Grosso, Papua, Para, and West Kalimantan).² The goal is to create a common understanding of the key substantive and procedural elements of REDD programs, facilitate the development of interoperable REDD programs in the GCF states and provinces, and provide an important model for national-level linkages in the future.

At the GCF’s last meeting in Aceh, Indonesia, the member states and provinces determined that while the GCF will continue pursue the larger objectives of its Joint Action Plan and three Working Groups over the course of the year,³ the primary focus of the Working Groups and members in the short-term (from now until the 4th GCF Task Force meeting in Santarém, Pará from September 13-17, 2010) will be on 4 Work Tasks and related outputs.⁴

¹ The GCF grew out of 2008 Memoranda of Understanding signed at the 1st Governors’ Global Climate Summit in Los Angeles, CA. The MOU states and provinces initiated the GCF in 2009, which has continued its work with support from the Packard Foundation, Moore Foundation, and ClimateWorks Foundation.

² **Note:** throughout need to consider language focused on compliance markets and ways to open the report up to voluntary markets, fund-based sources of support, etc.

³ The Joint Action Plan and Working Group documents are available at <http://www.gcftaskforce.org/documents.html>.

⁴ The Aceh Meeting Summary is available in English, Indonesian, and Portuguese at <http://www.gcftaskforce.org/documents.html>.

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The primary objective of Task 1 (Subnational REDD Frameworks) is to develop this report presenting GCF design recommendations for subnational (state- and province-level) REDD frameworks. The GCF will consider this Task 1 draft report's initial design recommendations for subnational REDD frameworks at its September 13-17, 2010 meeting in Santarém, Brazil, with final GCF design recommendations ready for circulation at the 16th Conference of the Parties to the UNFCCC (COP-16).⁵

The design recommendations in this report build off of the Options Paper (*Regulatory Design Options for Subnational REDD Mechanisms*) developed by GCF Advisor William Boyd for the February 2010 Technical Workshop on REDD Regulatory Design facilitated by the GCF Secretariat and hosted by the California Resources Agency,⁶ results and follow-up from the Technical Workshop, a draft paper completed for the GCF by Terra Global Capital (*Reconciliation Architectures for Nested REDD Credits in Compliance Markets*) designed to provide some thoughts for the GCF's consideration and attached as Appendix 1 t of this report,⁷ input from the Task Group 1 members, and other REDD developments. ***It does not at this time reflect any official positions of the GCF, its members, or any other individuals or institutions.***

The report provides an overview of some of the key issues and design recommendations for REDD offset program design from both the "demand" and "supply" side perspectives. Although much of the GCF's substantive discussions have to date focused on early signals from the ongoing California cap-and-trade rulemaking, this report endeavors to look beyond California in order to ensure consistency (to the extent possible) with the development of REDD provisions in other fora. To that effect, this report discusses, where appropriate, relevant provisions from ARB's Preliminary Draft Regulation ("PDR") (which will soon be replaced by a final rule for consideration by the Board late this Fall), proposed U.S. federal legislation (using the Waxman-Markey bill for purposes of this report, although other members of Congress have introduced several variations on its international offsets provisions, none of which are currently under

⁵ The members of the GCF Task 1 Group are Barbara Bamberger (California), Ernesto Roessing (GCF Country Coordinator for Brazil), Natalie Unterstell (Amazonas), Fadmi Ridwan (Aceh), Luis Meneses (Acre), Marinah Embiricos (interim GCF Country Coordinator for Indonesia; East Kalimantan), Claudio Flores and Rodolfo Pereira (Para), Toby Garritt (Papua), Tia Nelson and Paul DeLong (Wisconsin), and William Boyd (GCF Senior Advisor; GCF Secretariat). Two Brazilian stakeholders, FAS and IDESAM, expressed interest in participating in this report's development and FAS has provided input on this draft.

⁶ The Options Paper (*Regulatory Design Options for Subnational REDD Mechanisms*) and an ARB background document prepared for the Workshop summarizing key provisions of California's Preliminary Draft Cap-and-Trade Regulation are available at <http://www.gcftaskforce.org/documents.html>.

⁷ The Terra Global Capital paper is not cited at length in this Draft Task 1 Report. Rather, it is attached as a companion piece for review as one possible pathway for nested projects. The GCF may wish to incorporate pieces of the Terra Global Capital paper into the final GCF Task 1 report.

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active consideration), and the UNFCCC discussions and decisions on REDD. In future iterations of this report, the GCF will strive to include additional relevant examples from its member states and provinces and their respective national governments.

In addition, a second objective of Task 1 is to engage with third party standards (e.g. CAR, VCS, CCB+CARE, IPCC Good Practice Guidelines, World Bank methodologies, and Plan Vivo). Thus, where relevant this report includes discussion of how standards and methodologies developed for voluntary markets can inform and/or be incorporated into evolving compliance markets and programs in tropical forest states and provinces.⁸

[note: Fadmi, Ernesto, and Wisconsin offered to help with this. The GCF needs to consider whether and how to add more of these standards into the Current Thinking/GCF recommendation sections of this report, while avoiding turning this report into a Protocol Assessment Report. The GCF also needs to determine whether and if so how this report can encompass market and other financing opportunities for REDD programs. This report is drafted with a compliance market focus (as noted in several Task 1 member reviews). Consequently, the GCF will need to decide on how to proceed on this issue. In addition, a reviewer made the suggestion to include a table of the primary state and provide REDD initiatives in the next iteration of this report—the GCF could consider doing this with the results of the database effort of Task 3.]

The goal is to generate GCF recommendations for the design of cap-and-trade regulations and REDD programs that are workable, flexible, and that meet the social, environmental and other objectives of emerging GHG compliance systems and tropical forest states and provinces.

It is clear from both the U.S. federal legislation and the California PDR that there is a preference for the development of a sector-based approach to offsets as opposed to pure, project-based offsets. Accordingly, REDD could provide one of the first test cases for a sector-based approach to offsets. In response to these signals from California and the U.S. federal government, the recommendations discussed below focus specifically on requirements that would govern the generation of REDD credits on the basis of a jurisdiction-wide approach through multiple pathways, including credits issued to “nested” REDD projects that meet specific eligibility criteria and are reconciled with state/province-level accounting and credits issued by an approved external state or provincial REDD program. The report does not spend much time discussing provisions for stand-alone REDD projects, unless such provisions relate directly to the development of larger architectures for jurisdiction-wide accounting.

⁸ Some of the key design recommendations are illustrated using examples from existing REDD activities in GCF tropical forest states and provinces, but this report does not include an exhaustive catalogue of these activities.

[Note: several GCF members and stakeholders want to ensure that such an approach continues to attract private sector capital to projects while robust subnational REDD programs are developed. The GCF can consider other ways of taking this into account in the Final Task 1 Report.]

This report strives to drive the discussion to a more granular level of resolution than reached by the GCF to date or provided for in the California PDR, U.S. proposed legislation, or U.N. documents. However, in doing so, the report attempts to frame particular recommendations regarding requirements, criteria, tools, and procedural options in a manner that preserves flexibility, practicability, and modularity to allow the framework to fit under various regulatory architectures (state, federal, international) and respond to different circumstances in tropical forest states and provinces.

II. KEY ISSUES AND GCF DESIGN RECOMMENDATIONS

[open question for Task 1/GCF members: Several GCF members have emphasized a need to provide more specifics on preliminary issues regarding definitions and scope of REDD activities. For example, there is general agreement that the Intergovernmental Panel on Climate Change (IPCC) definitions and frameworks are good starting points and encourage transparency and consistency between regulatory fora.⁹ With respect to scope, the general sentiment is that regulators and early mover states and provinces should consider starting with RED and incorporating degradation (REDD) as more robust methodologies for degradation are available. California, for example, could wait until after 2020 (the deadline for achieving 1990 emissions levels under AB 32) to include degradation. Regulators could also consider developing forest class stratifications to capture degradation and/or use the Carnegie Landsat Analysis System (CLAS) approach. The GCF might wish to expand on the RED versus REDD or REDD+ approach here, explaining the pros and cons of these approaches.]

A. SECTORAL CREDITING PATHWAYS

For REDD activities within states and provinces, there are various options for how, and to whom, REDD credits will be issued, including: (1) direct crediting to project-level activities, perhaps as nested projects within larger state or provincial accounting frameworks; (2) direct crediting to states or provinces based on reductions that result

⁹ Some organizations have suggested revisions to the U.N. definitions to protect natural forests and distinguish natural forests from plantations. See, e.g. Association for Tropical Biologists Resolution, available at http://tropicalbio.org/index.php?option=com_content&view=article&id=172:un-misleading-forest-definitions&catid=51:resolutions&Itemid=79. The GCF may want to review and consider the definitions carefully.

from policies or programs; and (3) recognition of credits issued under an approved state or provincial program, or perhaps some other external program. These options are not mutually exclusive. That is, one could envision REDD regulations that allowed for the possibility of multiple crediting pathways available to different states/provinces depending on particular circumstances.

Getting some clarity on crediting options upfront is important because crediting will determine how regulations are designed and affect the choice of criteria for accounting, safeguards, and other core requirements. Crediting decisions will also influence how issues such as enforceability are handled.

Assuming based on the last signals from California and the U.S. that credits are unlikely to go directly to stand-alone REDD projects (except perhaps in small developing countries or as part of an early offset supply), this report focuses on crediting options that involve some type of state-level accounting and/or performance. Crediting under such systems will be *ex post*; that is, credits will only issue after performance (reductions in deforestation and associated carbon emissions) has been demonstrated.

1. **Current Thinking**

a. **California ARB PDR**

The PDR offsets provisions contemplate two primary crediting pathways for offsets to enter a California system, both of which presuppose an agreement between California and the host state/province. California is expected to release its new regulatory package before the end of 2010 and these elements, as listed below, may be adjusted and reflected in the updated regulation.

- In the first instance ARB would act as the credit issuing body, with credits going to projects (nested projects perhaps) and/or possibly to states or provinces for performance relative to a sector-wide crediting baseline. [note: add more information about what credit issuing body means in the ARB context]
- Second, ARB could recognize credits issued by a Board approved external program, which could be interpreted to include state/province REDD programs or perhaps a credit-issuing standards body. As currently written, such a pathway could fit under both the linked external program sections of the PDR and the sector-based crediting provisions of the PDR.

b. **Proposed U.S. Federal Legislation**

HR 2454 provides that the Administrator “may issue international offset credits for greenhouse gas emission reductions achieved through activities to reduce deforestation

at a state or provincial level” that meet the specific eligibility requirements of the legislation. Elsewhere, the legislation refers to “activities” occurring within the relevant jurisdiction as the basis for generating credits. Thus, there seems to be some flexibility in terms of how the crediting would be designed in the implementing regulations, with no specific requirement that the crediting go either directly to a state or province or directly to a project-level activity that is nested within and reconciled with state/provincial accounting.¹⁰ It also seems plausible that, under the current language, the Administrator could, in similar fashion to sector-based crediting approach contemplated in the PDR, recognize credits issued under a state/province level REDD program and “issue” credits that would be converted from the state- or province-issued credits.

c. UNFCCC

The COP-15 SBSTA decision on methodological guidance for REDD+¹¹ calls for developing countries to create national and sub-national forest monitoring programs that: (i) Use a combination of remote sensing and ground-based forest carbon inventory approaches for estimating, as appropriate, anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks, forest carbon stocks and forest area changes; (ii) Provide estimates that are transparent, consistent, as far as possible accurate, and that reduce uncertainties, taking into account national capabilities and capacities; and (iii) Are transparent and their results are available and suitable for review. The Copenhagen Accord, not adopted by the parties, calls for the creation of a REDD+ Mechanism, but does explain in any detail what, if any, REDD+ crediting pathways would exist.

¹⁰ More recent legislation introduced by Senators Kerry and Lieberman in May 2010 also contains strong provisions for REDD that largely echo the provisions of Waxman-Markey (see American Power Act (APA) discussion draft, available at <http://kerry.senate.gov/imo/media/doc/APAbill3.pdf>). The Kerry-Lieberman bill focuses on deforestation in the near-term, but allows the Administrator to consider degradation and other activities in later rulemakings. This bill recognizes subnational REDD activities and the possibility of nested crediting (see Section 756(c)), and like other introduced climate change bills is unlikely to pass this year. The May 2010 GCF Secretariat powerpoint presentation (*Update on REDD & U.S. Climate Policy*) contains additional information about the APA and is available at <http://www.gcftaskforce.org/documents.html>.

¹¹ UNFCCC 4/CP15. Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries, available at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf#page=11>.

2. GCF Design Recommendations

The GCF recommends preserving multiple pathways to compliance to provide flexibility for compliance and offset generation. Based on the current compliance market thinking noted above, this would mean both sector-based crediting and direct crediting, explained in more detail below. Different states/provinces could choose among the pathways and perhaps move from one pathway to another over time. One significant challenge in considering these multiple pathways is to determine what legal mechanisms and arrangements are available for forming such partnerships. The GCF may wish to explore this issue further.

While this framework and crediting pathways focus on compliance credit generation, by working considering all of these issues and possible requirements, the GCF states and provinces will be better poised to attract public sector REDD+ fast track finance and engage in the voluntary market.

Sector-based Crediting: Regulatory agency (California ARB, U.S. EPA, etc.) recognizes “sector-based credits” issued by an approved state/province or program as contemplated in the current PDR and based on performance relative to specific crediting baseline (see below). Such sector-based credits would be converted to the appropriate offset currency, *e.g.*, California Offset Credit or International Offset Credit under a U.S. federal system, with proper accounting to avoid double counting, before being tendered for compliance purposes in the relevant GHG compliance system. Implementation of this option would generate the largest amount of reductions, “fast-track” the move toward state/province-level systems, and better position these states and provinces to receive REDD readiness funding.

Direct Crediting:

- Regulatory agency (California ARB, U.S. EPA, etc.) issues credits directly to states or provinces for specific program/policy-level activities that are part of an overall state or provincial REDD program and on the condition that the state/province performs relative to specific crediting baseline (see below).
- Regulatory agency (ARB, EPA, etc.) issues credits directly to projects that are “nested” within state/province-level REDD program, reconciled with state-level accounting, and conditioned upon state/province performance relative to specific crediting baseline (see below). Additional clarity is needed on nesting architecture and state-level accounting/reconciliation for projects (see below).

B. STATE/PROVINCE-LEVEL ACCOUNTING

For all of the crediting options discussed above, some type of state/province-level accounting would be necessary, which would ultimately synch up with national-level accounting as it is developed. This report divides the discussion of the GCF's recommendations for state/province-level accounting into the following four areas:

- Reference Level Baselines and Crediting Baselines
- State/province REDD plans and programs
- GHG inventory requirements
- Registry requirements
- Project Nesting and Reconciliation Architectures

This is followed by a separate section on monitoring, reporting and verification of performance (MRV), recognizing that this is a somewhat artificial distinction and that MRV could easily be included under State-Level Accounting.

1. Reference Level Baseline and Crediting Baseline

a. Current Thinking

(1) California ARB PDR

The provisions for sector-based crediting require “a quantitative crediting baseline” for the sector and outline certain criteria that would apply in establishing such a crediting baseline. A quantitative crediting baseline would be a deforestation (or emissions) level below which a state or province can generate sector-based credits. This could be prescribed by regulatory language or accompanying guidance documents.

- For crediting baselines established on the basis of “an absolute GHG emissions level,” the PDR states that the “crediting baseline must be established at a lower level of GHG emissions than would occur under a business-as-usual scenario.” The PDR concept note on sector-based crediting states further that “[t]o ensure additionality, this baseline must be established below the projected business-as-usual performance level for the target sector.”
- The PDR further provides that “to set the crediting baseline, the country, state, province, or international program issuing the sector-based credit must take into account the relevant current and historical trends in the sector as well as domestic and international policies or incentives to reduce GHG emissions, sequester GHG, or improve technology adoption.”

- Finally, the PDR provides that “the additionality and the performance of the sector will be based on the crediting baseline”

(2) Proposed Federal Legislation

For large states and provinces, the proposed legislation (HR 2454) provides that a state or province deforestation baseline shall:

- be consistent with any existing nationally appropriate mitigation commitments or actions for the country in which the activity is occurring, taking into consideration the average annual historical deforestation rates of the state or province during a period of at least 5 years, relevant drivers of deforestation, and other factors to ensure additionality;
- establish a trajectory that would result in zero net deforestation by not later than 20 years after the state or province deforestation baseline has been established; and
- be designed to account for all significant sources of greenhouse gas emissions from deforestation in the state or province and adjusted to fully account for emissions leakage outside the state or province.

(3) UNFCCC

The COP-15 SBSTA decision on methodological guidance for REDD+ “[r]ecognizes that developing country Parties in establishing forest reference emission levels and forest reference levels should do so transparently taking into account historic data, and adjust for national circumstances, in accordance with relevant decisions of the Conference of the Parties.”¹² The draft decision of the Ad Hoc Working Group on Long-term Cooperative Action requests developing countries to develop a national forest reference emission level and/or forest reference level “or, if appropriate, subnational forest reference emission level[s] and/or forest reference level[s].”

b. GCF Design Recommendations

The U.S. federal and California approach is to establish sector-based crediting provisions by defining a “crediting baseline” (to use the PDR’s phrase) after establishing the initial reference level baseline (referred to as the “business-as-usual scenario” in the PDR). The following recommendations are thus organized in two parts: (a) reference level baseline; and (b) crediting baseline.

¹² See <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf#page=11>, at ¶ 7.

(1) Reference Level Baseline

Based on input from GCF members and technical experts, the GCF recommends establishing a reference level baseline using:

(a) average historical annual deforestation rates based on spatially-explicit activity data from remote sensing¹³ for 5-10 years¹⁴ from a specified period (e.g. 1995-2005). There is also the possibility of adjusting this rate every 5-10 years;

(b) carbon emissions factors for relevant forest classes based on the IPCC tiers 2 or 3 with confidence intervals stated. Forest class emissions factors should use statistically conservative values for offset calculations, where “conservative values” means choosing forest class emissions factors that generate the least amount of credits; and

(c) incorporating an adjustment factor that addresses high forest stock/low historic deforestation scenarios (e.g. Amazonas, Amapá, Papua).¹⁵ This adjustment factor may need to have quantitative limits in terms of how much the adjustment factor can change historical baseline estimates. The GCF may also wish to consider other mechanisms for taking into account low threat/high forest stock scenarios.

[**Note:** Other questions the GCF might wish to consider include whether to recommend that baseline determination be validated by a third party and whether to recommend that historic average is adjusted every ten years] Moving forward, Task 1 and the GCF states and provinces will generate and circulate the information specified in (a) and (b) and propose ideas for resolving (c).]

¹³ **Question for GCF consideration:** the GCF could include more detailed criteria.

¹⁴ **Question for GCF consideration:** will this data requirement unnecessarily exclude certain states/provinces because of lack of available data during the relevant time period? Is it nonetheless the best option?

¹⁵ **Question for GCF consideration:** how should adjustment factor be developed? **Note from post-Technical Workshop:** Andrea Cattaneo suggested that one possibility is not to pre-specify how much stocks should factor into the initial baseline determination, but rather to allow this to be determined through a context-specific negotiation process between states or provinces (where such a process makes sense). The regulatory language could read: “baselines for a state/province will be (a) its [5 or 10-year] historical rate or the average historical deforestation rate for the country, whichever is lowest; or (b) state/province baselines may be negotiated between participating states and will be accepted as long as the baseline rate for the participating states combined is no higher than their combined [5-10-year] historical rate (weighted for stocks) or of the average historical deforestation rate for the country, whichever is lowest.”

(2) Crediting Baseline¹⁶

The GCF states and provinces have to date expressed different viewpoints on how to establish the crediting baseline.

Option 1: Establish a crediting baseline that is a downward straight-line trajectory with step-wise reductions (to be further defined) and a target¹⁷ of 50% reductions in gross deforestation¹⁸ from the reference level baseline by 2020, with the additional requirement to maintain xx% of stocks [note: need to further explain]. Crediting is only possible if emissions are below the crediting baseline in each crediting period.

Option 2: Start with the reference level baseline as the crediting baseline for the first “compliance period” in a statistically appropriate way, using IPCC frameworks for uncertainty analysis and use to generate highly-conservative crediting baselines. For subsequent compliance periods, states or provinces can use performance below the crediting baseline in the first crediting period, and improved (e.g., Tier 3) activity data and emissions factors, as a as new crediting baseline for next crediting period, and so on.¹⁹

[Note: Other questions the GCF might wish to consider include whether and how often to revisit the crediting baseline (every 10 years?) and whether to consider breaking down the reference level baseline and crediting baseline into smaller geographical units or strata based on broad institutional and biophysical conditions.]

2. State-/Province-wide REDD Plan/Strategy/Program

a. Current Thinking

(1) California ARB PDR

The PDR provisions on sector-based crediting (including the concept note) do not say anything explicit about state/province-level sectoral planning. But the PDR does appear to contemplate this possibility, noting that states and provinces will need to adopt

¹⁶ Note from the Technical Workshop in February: there was some questioning of the feasibility or desirability of the federal language regarding a trajectory toward zero “net” deforestation. Need to determine if important to include anything on this.

¹⁷ Note: need to seek clarification from California about what it is currently contemplating.

¹⁸ Note: Task 1 members suggested adding an explanation of net versus gross deforestation and the pros and cons of using each.

¹⁹ Note: Toby Garrit’s memo on “commercial safeguards” (see Appendix 2 at 3) recommends this approach.

policies and measures to achieve performance in the relevant sector as well as MRV systems for measuring performance.

(2) Proposed Federal Legislation

For large states and provinces, the proposed legislation (HR 2454) provides that such states and provinces must have in place a “land use or forest sector strategic plan that— (i) assesses [state/provincial] and local drivers of deforestation and forest degradation and identifies reforms to [state/provincial] policies needed to address them; (ii) identifies the [state/province] emissions from deforestation and forest degradation; (iii) identifies improvements in data collection, monitoring, and institutional capacity necessary to implement a [state/province] deforestation reduction program; and (iv) establishes a timeline for implementing the program and transitioning to low-emissions development with respect to emissions from forest and land use activities.”

(3) UNFCCC

The draft AWG-LCA REDD decision contemplates the development of “a national strategy or action plan and, as appropriate, a subnational strategy.”

b. GCF Design Recommendations

The GCF recognizes that GHG compliance systems and other sources of REDD funding will likely require that any REDD activities (nested projects, programmatic activities, or approved state/province REDD programs) are included within and/or based upon an approved state or province plan for the land use or forest sector (what is referred to in this section as a “REDD plan/strategy/program”).

The GCF recommends that states and provinces develop a REDD plan/strategy/program that includes and addresses the following elements/criteria (or incorporates other state or province legal and policy documents that do):

- the overall objectives of the state/province REDD activities²⁰
- state/province emissions from deforestation and forest degradation²¹
- REDD-relevant policies, measures and activities (state, province, and local), and/or plans for their design and implementation²²
- state/provincial and local drivers of deforestation and forest degradation and reforms to state/provincial policies needed to address them²³

²⁰See CCBA REDD+ Social and Environmental Standards version 1 (June 2010), at 4, available in English, French, Spanish, and Portuguese at <http://www.climate-standards.org/REDD%2B/>.

²¹ U.S. proposed federal legislation.

²² CCBA at 4.

²³ U.S. proposed federal legislation and CCBA at 4.

- improvements in data collection, monitoring, and institutional capacity necessary to implement a state/province deforestation reduction program²⁴
- a timeline for implementing the program and transitioning to low-emissions development with respect to emissions from forest and land use activities
- the geographical areas in which REDD activities will be implemented²⁵
- the institutional arrangements for REDD program design, implementation and evaluation²⁶
- evidence of delegated authority from the national government to state or provincial governments for key parts of the sub-national REDD+ plan/strategy/program
- documented and mapped land tenure/land use rights for the state/province²⁷
- state/province laws that support accountability and enforcement of land tenure/land use rights²⁸
- stakeholder participation and other procedural requirements (see Safeguards discussion below)
- Other?

The GCF recommends that the REDD plan/strategy/program be reviewed and approved by an outside entity, whether that is direct approval by regulator, approval by stakeholders, and/or independent third-party certification remains to be determined.

The GCF recommends that the REDD plan/strategy/program be updated and re-approved every (5, 10) years.

3. GHG Inventory/Tracking and Registry Infrastructure

a. Current Thinking

(1) California ARB PDR

The PDR provisions on linkage to external programs and sector-based crediting require tracking and registrations systems and related infrastructure. Specifically, the provisions regarding linkage to external programs specify that in order to be approved by ARB for linkage, a GHG offset crediting system must “require that each issued offset credit is registered in a publicly accessible registry, with individual serial numbers assigned to each offset credit; be capable of transferring information on all transactions between

²⁴ U.S. proposed federal legislation.

²⁵ CCBA at 4.

²⁶ *Id.*

²⁷ *Id.* at 11.

²⁸ *Id.*

systems; and have a tracking system which serves as a repository of issuance, ownership, and retirement information on all offset credits it issues.” Similarly, the PDR provisions for both linkage to external programs and sector-based crediting require that any MOU between ARB and the external program or jurisdiction must provide for “sufficient tracking and registration systems and related infrastructure that will record and track GHG emissions and GHG emissions reductions.”

(2) Proposed Federal Legislation

The HR 2454 international offsets provisions do not contain any registry or tracking requirements specific to states, provinces, and countries participating in the offsets program. The general offsets provisions, including those for early action, contain some general registry requirements.

(3) UNFCCC

N/A. The relevant REDD+ texts address the need for robust and transparent national forest monitoring and reporting systems, but do not discuss registries and tracking specifically.

b. GCF Design Recommendations

The GCF recognizes that regulatory agencies (e.g. California ARB, U.S. EPA) may ultimately develop and require use of their own compliance tracking registry systems or may approve state/province- or third party-developed registries.²⁹ The GCF and other states and provinces are starting to consider how to develop their own state- and province-wide registries to position them to respond to these and other emerging opportunities. This is a big undertaking that has never before been tackled and will take time and resources. One option for states and provinces is to work with existing registries.³⁰

The GCF recommends the following general criteria for state- and province-wide tracking and registry systems in the GCF states and provinces to ensure consistent and robust tracking and registry systems across the GCF states and provinces that respond to signals to date from compliance markets such as California (as reflected in the PDR):

- Ability to track issuance, ownership, and retirement information on all offset credits

²⁹ **Note:** this sentence alludes to Option 1 from the Options Paper. The 2 Options were not discussed at the Technical Workshop. The recommended path described above reflects Option 2.

³⁰ Several Task Members and Terra Global Capital recommend using existing registries such as Markit.

- Assignment of individual serial numbers to offset credits
- Public accessibility
- Capability to transfer information on all transactions to external registries and tracking systems
- Links to national-level registry
- Third-party certification or auditing
- Links to all project and MRV information
- Other [?]

In addition, as a next step, Task 1 members suggested this area as one for which a Technical Workshop would be useful.

4. Project Nesting and Reconciliation Architectures

Placeholder note: At the moment project nesting is referenced in each of the sections of this report where it may be relevant. However, Terra Global Capital has prepared a draft paper on this topic that it is attached as Appendix 1 to this report for the GCF's review. The GCF may wish to summarize relevant portions of the Terra Global Capital paper here and continue to attach the full paper as an Appendix.

The GCF may also want to consider other sources of thinking on nesting, e.g. TNC and Baker & McKenzie, A Nested Approach to REDD+: Structuring effective and transparent incentive mechanisms for REDD+ implementation at multiple scales (2010), available at http://www.nature.org/initiatives/climatechange/files/nested_paper_final_60110.pdf, at 29-45 (while this paper focuses on the nesting of subnational REDD activities in a national framework, it contains analysis relevant to nesting projects to subnational frameworks).

The Task 1 members have suggested that project nesting mechanisms be flexible and should correlate with state and province spatial planning activities. They also noted that a visual diagram or conceptual examples of how this would work would be very helpful.

a. Current Thinking

[to be developed for Final Report from above-noted and other sources]

b. GCF Design Recommendations

[to be developed for Final Report from above-noted and other sources]

C. MONITORING, REPORTING, VERIFICATION OF PERFORMANCE

MRV is important at two levels: (1) state/province-level performance and (2) project-level performance (in the case of a nested approach). In addition, GCF recommendations regarding MRV – at either the state/province or project-level – need to address whether and, if so, how much MRV should be subject to independent third-party verification.

Under a nested project pathway, it is important to avoid to the extent possible any redundant accounting requirements that are more appropriately handled at the state/province level. For example, under a nested pathway, project-level leakage can be accounted for at the state/province level. Likewise, additionality, which would derive from the overall performance relative to the pre-established crediting baseline, should not matter as much under a nested approach if the project performs and the state performs below the crediting baseline. Permanence (or reversals) might also be handled differently under these pathways (see Enforceability discussion below).

1. MRV of State/Province Performance

a. Current Thinking

(1) California ARB PDR

The PDR provides that sector-based credits can be approved only if the “country, state, province, or program issuing the sector-based credit has implemented substantive and procedural requirements for the relevant sector that would provide equal or greater assurance of the integrity of such sector-wide GHG reductions or avoidances, or GHG sequestration as is provided by the requirements for other offset credits approved under this article.” The PDR concept note on sector-based crediting states that “it is essential that adequate monitoring, reporting, and verification (MRV) systems be in place” to ensure that no credits will be earned “until the crediting baseline is reached and surpassed.” [note: it is unclear at this time how this will be accomplished. The GCF might consider investigating what types of MOUs, linkage agreements, or other arrangements are possible and compare the benefits and drawbacks of each based on selected criteria]

Presumably, specific MRV requirements regarding project-level performance would be spelled out in a “quantification methodology” and/or additional guidance documents rather than in the regulations themselves. For approved external credit-issuing programs, some of the MRV criteria/requirements may also be elaborated in the governing linkage agreement or other arrangement with the program (i.e., state/province or other body) as contemplated under the PDR.

(2) Proposed Federal Legislation

For large states and provinces, the proposed legislation (HR 2454) provides that eligible states and provinces must have

- “the technical capacity to monitor, measure, report, and verify forest carbon fluxes for all significant sources of greenhouse gas emissions from deforestation with an acceptable level of uncertainty, as determined taking into account relevant internationally accepted methodologies, such as those established by the Intergovernmental Panel on Climate Change”

(3) UNFCCC

The COP-15 decision on methodological guidance for REDD+ requests developing country Parties

- “To use the most recent Intergovernmental Panel on Climate Change guidance and guidelines, as adopted or encouraged by the Conference of the Parties, as appropriate, as a basis for estimating anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks, forest carbon stocks and forest area changes;”
- “To establish, according to national circumstances and capabilities, robust and transparent national forest³¹ monitoring systems and, if appropriate, sub-national systems as part of national monitoring systems that:”
 - “Use a combination of remote sensing and ground-based forest carbon inventory approaches for estimating, as appropriate, anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks, forest carbon stocks and forest area changes;”
 - “Provide estimates that are transparent, consistent, as far as possible accurate, and that reduce uncertainties, taking into account national capabilities and capacities;” and
 - “Are transparent and their results are available and suitable for review as agreed by the Conference of the Parties;”

³¹ The decision contains the following footnote here: “Taking note of, if appropriate, the guidance on consistent representation of land in the Intergovernmental Panel on *Climate Change Good Practice Guidance on LULUCF*.”

The AWG-LCA draft decision on REDD+ also states that the development of national and/or subnational forest monitoring systems should include information on how social and environmental safeguards (see below) are being addressed.

b. GCF Design Recommendations

The GCF recommends criteria for MRV of state/province performance that retain the flexibility to incorporate further technological developments. MRV criteria for different crediting pathways, if allowed by GHG compliance systems and others, will clearly contain overlapping criteria.

The GCF recommends that general MRV criteria include [all listed below are for discussion purposes and feedback only. The GCF should develop more coherent and possibly less detailed MRV criteria]:

- The use of spatially explicit remote sensing for assessing land cover change (activity data)
- The use of field measurements in the activity area
- Consistency of MRV approach with IPCC guidance and guidelines and use of IPCC emissions factors
- MRV for social and environmental safeguards and benefit flows (public and private)
- Verification of MRV by accredited third parties
- Public availability and transparency of MRV data (see inventory/registry discussion above)
- Mechanisms for accounting for leakage including, where relevant and feasible, links to national-level accounting
- Quantification of uncertainty and incorporation of additional flexibility on uncertainty levels, for example possibly adopting a conservative approach that uses the bottom of an uncertainty range to avoid having to meet offset level uncertainty requirement that may be unworkable for some states and provinces³²
- Specific guidance on frequency of MRV
- Other [?]

³² **Note:** this comment was a result of the February Technical Workshop, where some participants expressed concern that the +/- 5% offset level uncertainty requirement in the current PDR is difficult to impossible to achieve. +/- 10-20% may probably more realistic, with the natural consequence being that uncertainty has to be stated, defended and only conservative estimates of credit generation can be used, thus encouraging states and provinces to reduce uncertainties over time.

[note: several Task 1 members commented that if the GCF is going to recommend more specific MRV requirements, it should build off of existing MRV approaches —should the GCF could get more specific and/or reference relevant elements of VCS/CCBA, CAR, CDM and/or other MRV approaches?]

2. MRV of Nested Project Performance

a. Current Thinking

(1) California ARB PDR

The general provisions on offsets require that all offset credits issued by ARB result from “an offset quantification methodology adopted by the Board.” The PDR then includes a set of requirements (§96240) for offset quantification methodologies. If ARB decided to develop regulations for nested REDD projects where ARB was issuing the offset credits to the project activity, these provisions would presumably provide some guidance for the development and approval of such quantification methodologies in the context of nested projects.

(2) Proposed Federal Legislation

Under HR 2454, the provisions for international offset credits reference the general requirements for domestic offsets, including the development of specific methodologies (with due consideration given to existing methodologies) for listed project types to determine additionality, establish baselines, quantify reductions or sequestrations, account for and mitigate potential leakage, and account for reversals. If the federal program developed in a manner that allowed for nested REDD projects, these provisions might provide some guidance regarding the development of appropriate methodologies for such projects.

(3) UNFCCC

N/A.

b. GCF Design Recommendations

[note: need GCF input; will incorporate any relevant Terra Global Capital information into Final Report] The GCF recommends that any credits issued to nested projects be based on project-level performance as determined by the application of an approved “quantification methodology,” with additional and/or modified requirements specific to nested projects. These additional or modified requirements could be suggested by the GCF, developed by compliance market regulatory bodies, or left to the discretion of other 3rd party methodology developers.

Additional nested project MRV requirements could/should include:

- Specific provisions regarding accounting for leakage at the state/province level
- Specific provisions stating that project will satisfy additionality if performance is demonstrated at both project and state level
- Specific provisions regarding accounting for reversals tied to state-level performance over time

D. SAFEGUARDS: GENERAL

Safeguards, particularly those involving protection of rights and benefit sharing, is an important and sensitive area and one that poses particular implementation challenges. As noted above, MRV could be required for all safeguards and on the revenue and other benefit flows (public and private).³³ Safeguards are under development in a variety of ongoing multi-stakeholder processes in a number of GCF states and provinces (e.g. Acre, Amazonas, Mato Grosso, Brazil Social & Environmental Principles and Criteria for REDD+, and Aceh) and other fora, including the Forest Carbon Partnership Facility, UN-REDD,³⁴ and CCBA and Care International.³⁵ In Copenhagen, negotiators came close to agreeing on language regarding seven safeguards that should be promoted or supported by parties when undertaking REDD+ activities to contribute to mitigation actions in the forest sector.³⁶

³³ Regulators could incorporate safeguards principles and criteria already under development via stakeholder processes in states and provinces in tropical forest countries. In addition, potential investors will be looking to the regulations to provide clarity regarding the safeguards review/certification requirements.

³⁴ A report prepared for the *Expert Workshop on Monitoring Governance Safeguards in REDD+* sponsored by Chatham House and the UN Collaborative Programme on REDD

³⁵ See also J. Saunders and R. Reeve, *Monitoring Governance Safeguards in REDD+ Expert workshop*, Chatham House (May 2010), available at <http://illegal-logging.info/uploads/Paper1REDDplusGovernanceMonitoringMeeting2425May2010.final.pdf>, at 15 (discussing CARE and CCBA standards and principles).

³⁶ FCCC/AWGLCA/2009/17 (5 February 2010), available at <http://unfccc.int/resource/docs/2009/awglca8/eng/17.pdf>. Specifically, the decision text discussed at COP-15 included the following language: “when undertaking activities referred to in paragraph 3 below, the following safeguards should be [promoted] [and] [supported] (a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements; (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty; (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples; (d) Full and effective participation of relevant stakeholders, including in

The CCBA and Care International's recently issued REDD+ Social and Environmental Standards, version 1 (June 2010)³⁷ lays out "generic" "principles and criteria" for social and environmental safeguards (including benefit-sharing) that apply across countries. It then provides a generic "framework for indicators" that are used to meet the principles and criteria, focusing on measuring elements of effective and accountable governance, rightly identifying them as essential institutional pre-conditions for achieving the positive outcomes the institutions wish to see. While originally designed for forest-carbon projects, they are now developing standards that can be used to design and implement REDD+ programmes at national or state level. The idea is for countries, states, provinces, and others to use this framework for indicators to develop a tailored implementation approach that responds to its particular context and circumstances. [Note: Depending on how specific the GCF wishes to get in its design recommendations for safeguards, this document provides a detailed source for potential environmental, protection of interest/rights, benefit-sharing, and multi-stakeholder process safeguards. Some have expressed concerns that these standards were written be more stringent than anticipated requirements for compliance markets.]

To the extent possible, the GCF will draw upon these and other existing efforts in developing its recommendations.

The safeguards discussion below is divided into five subsections: (1) Environmental Safeguards; (2) Protection of Rights/Interests; (3) Benefit Sharing; (4) Multi-Stakeholder Processes; and (6) Operational Provisions.

1. Safeguards: Environmental

The relevance of certain environmental safeguards may depend upon the scope of eligible activities, for example REDD+ has different environmental implications than REDD. Defining environmental safeguards in a way that maintains flexibility to address activities as they become eligible may help address this issue. Moreover, to the extent that a crediting baseline is tied to a "zero net deforestation" target (as it is in the

particular indigenous peoples and local communities in actions referred to in paragraphs 3 and 5 below; (e) Actions that are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 3 below are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits; (f) Actions to address the risks of reversals; and (g) Actions to reduce displacement of emissions.

³⁷ CCBA REDD+ Social and Environmental Standards version 1 (June 2010) at 3, available in English, Indonesian, Spanish, and Portuguese at <http://www.climate-standards.org/standards/using.html>.

proposed U.S. federal legislation), specific environmental safeguards may be necessary to demarcate what types of forest activities can count toward meeting such a target.

a. Current Thinking

(1) California ARB PDR

The sector-based crediting provisions do not have any specific language on environmental safeguards. The general offsets provisions in the PDR contain a “no net harm” requirement, stating specifically that any approved “quantification methodology” must “ensure that the offset project type does not cause or contribute to adverse effects on human health or the environment.” ARB will conduct California Environmental Quality Act (CEQA) reviews of compliance protocols it is considering for approval/adoption.

(2) Proposed Federal Legislation

HR 2454 provides that to be eligible to receive international offset credits for REDD activities, the activity must be “designed, carried out, and managed—(i) in accordance with widely accepted, environmentally sustainable forest management practices; and (ii) to promote or restore native forest species and ecosystems where practicable, and to avoid the introduction of invasive nonnative species.”

(3) UNFCCC

The AWG-LCA draft decision on REDD includes environmental safeguards, namely that REDD+ activities should be “consistent with the conservation of natural forests and biological diversity, ensuring that [such activities] are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.”

b. GCF Design Recommendations

Recognizing the importance of environmental safeguards, the GCF recommends the following general principles for REDD activities:

- REDD activities must be designed and implemented to maintain and restore native forest species and ecosystems where practicable, and to avoid the introduction of invasive nonnative species.³⁸

³⁸ This may not be as relevant if the focus is exclusively on REDD rather than REDD+.

- REDD credits must not be issued for activities that result in the conversion of natural forests or other ecosystems.
- In determining state/province-level performance relative to a reduced deforestation target within a certain time period, increases in forest carbon stocks associated with certain defined forestry activities cannot be used to meet such target.
- Other?

In the absence of clear signals from the compliance markets, the GCF will in the near-term consider whether, and if so how, to elaborate on these general principles, in part by engaging with third-party standards organizations in the process of developing environmental safeguards (which may eventually be approved and used by compliance market regulators and other entities).³⁹ [Note: how does the GCF want to proceed? Does it want to consider adding other principles, criteria, and indicators itself, e.g. among those in the recently released CCBA and Care International REDD+ Social & Environmental Standards ver. 1 (June 2010)?⁴⁰]

2. Safeguards: Protection of Rights

(a) Current Thinking

(1) California ARB PDR

The sector-based crediting provisions do not have any specific language on protection of rights and interests. As noted above, the general offsets provisions in the PDR contain a “no net harm” requirement, which is limited to avoiding adverse impacts on human health and the environment.

(2) Proposed Federal Legislation

³⁹ [Note: development by 3rd parties was the preferred option at the February Technical Workshop, with independent third-party certification of nested projects and/or programs against the approved standards. In the other option, the regulatory agency would identify the safeguards and assess whether nested project or state-level activity has met the environmental safeguards. Some Task 1 members and Terra Global Capital Report recommend using the CCBS REDD+ Social & Environmental Standards in drafting safeguards.

⁴⁰ Available in English, Indonesian, Spanish, and Portuguese at <http://www.climate-standards.org/standards/using.html>.

HR 2454 provides that to be eligible to receive international offset credits for REDD activities, the activity must be “designed, carried out, and managed—(iii) in a manner that gives due regard to the rights and interests of local communities, indigenous peoples, forest dependent communities, and vulnerable social groups; [and] (iv) with consultations, and full participation of, local communities, indigenous peoples, and forest-dependent communities, as partners and primary stakeholders, prior to and during the design, planning implementation, and monitoring and evaluation of activities;”

(3) UNFCCC

The AWG-LCA draft decision on REDD+ includes safeguards for protection of rights, namely that REDD+ activities should be undertaken in a manner that promotes and supports: “[r]espect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples; [and] [f]ull and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities.”

b. GCF Design Recommendations

The GCF recognizes that REDD programs and projects must adhere to strong protection of rights safeguards, both in their design and implementation. While the definition and framing of these safeguard requirements may vary depending on whether they apply to nested projects or to a state/province credit-issuing program, they will generally cover the same areas. The GCF recommends the following general protection of rights safeguards for REDD activities for further elaboration in the future:

- REDD must be designed and implemented in a manner that gives due regard to the rights and interests of local communities, indigenous peoples, and vulnerable social groups. More specifically, these safeguards requirements could include:
 - Identification of stakeholders whose rights are potentially affected;
 - No involuntary relocation of stakeholders;⁴¹
 - Establishment of public and transparent grievance documentation and resolution process;
 - Prohibition of “uninvited” encroachment by REDD activities on private property, community property, or customary rights unless free, prior informed consent is obtained from those whose rights to lands, territories, or resources will be affected.

⁴¹ Workshop participant noted that RED lines up well with rights/interests of indigenous peoples; REDD+ poses more challenges. [Luis: “Why? In would like to understand.”]

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- REDD activities must be designed and implemented with full and effective participation of local communities and indigenous peoples that are affected or benefitted by the REDD activity [project, program, etc.] prior to and during the design, implementation and evaluation of REDD activities. More specific safeguards could the GCF could consider include:
 - Procedures to ensure that stakeholders have access to adequate information, in local or indigenous languages where appropriate, about the relevant REDD activities;
 - Procedures to ensure that stakeholders have access to adequate legal advice about the rights with respect to REDD activities;
 - Procedures to ensure the opportunity to participate in the planning, implementation, and evaluation of REDD activities;
 - Public and transparent grievance documentation and resolution process (see above);
 - Prohibition of “uninvited” encroachment unless free, prior informed consent (see above).

As with environmental safeguards, in the absence of clear signals from the compliance markets, the GCF will in the near-term consider whether, and if so how, to elaborate on these general principles, in part by engaging with third-party standards organizations in the process of developing environmental safeguards (which may eventually be approved and used by compliance market regulators and other entities).⁴² [Note: how does the GCF want to proceed? Is it feasible for the GCF to agree on these or other principles and standards? At what level of specificity? Does it want to consider adding other principles, criteria, and indicators, e.g. from those in the recently released CCBA and Care International REDD+ Social & Environmental Standards ver. 1 (June 2010)⁴³, UN REDD, FCPF, and other relevant program documents?]

⁴² Note: like with environmental standards, development by 3rd parties was the preferred option at the February Technical Workshop, with independent third-party certification of nested projects and/or programs against the approved standards. The other option was regulatory agency identifies in regulations and assesses whether nested project or state-level activity has met the social safeguards.

⁴³ Available in English, Indonesian, Spanish, and Portuguese at <http://www.climate-standards.org/standards/using.html>.

3. Safeguards: Benefit Sharing

a. Current Thinking

(1) California ARB PDR

The sector-based crediting provisions do not have any specific language on benefit sharing. As noted above, the general offsets provisions in the PDR contain a “no net harm” requirement, which is limited to avoiding adverse impacts on human health and the environment.

(2) Proposed Federal Legislation

HR 2454 provides that to be eligible to receive international offset credits for REDD activities, the activity must be “designed, carried out, and managed—(v) with equitable sharing of profits and benefits derived from offset credits with local communities, indigenous peoples, and forest-dependent communities.”⁴⁴ Similarly, the state or province must have “the institutional capacity to reduce emission from deforestation, including strong forest governance and mechanisms to equitably distribute deforestation resources for local actions.”

(3) UNFCCC

As noted above, the AWG-LCA draft decision on REDD includes safeguards for protection of rights and interests, but does not include anything specific about benefit sharing.

(4) Indonesia [note: this is an example of where other illustrations from “supply” programs might be incorporated—consider whether and how to best do this here and throughout]

In early July 2009, Indonesia's Ministry of Forestry released what are believed to be the world's first set of revenue-sharing rules governing forest carbon projects, P.36/Menhut-II/2009 Regarding Procedures for Licensing of Commercial Utilisation of Carbon Sequestration and/or Storage in Production and Protected Forests (dated May 22, 2009).⁴⁵ Attachment III to the regulation provides a revenue-sharing chart, where

⁴⁴ There is no definition or guidance regarding what would constitute “equitable” sharing in this context, opening up the possibility of significant disputes between various stakeholders and, perhaps, litigation – all of which raises considerable challenges from the standpoint of the regulator or standards body tasked with ensuring that a safeguard framed in this way has been met by a particular REDD activity.

⁴⁵ P.36/Menhut-II/2009, available at http://www.dephut.go.id/files/P36_09.pdf; unofficial English translation available

the distribution occurs to three categories: (1) government; (2) community; and (3) developer. The government share ranges from 10-50%, community share 20-70%, and developer share 20-60% depending on the permit holder/developer type. The government's share is divided between the central government (40%), the provincial government (20%), and the district government (20%).

(5) Brazil

[note: need to incorporate the following information received from Ernesto (if Task 1 determines this information is useful and well-placed in this report. Otherwise, it can be placed in the database and Appendices to this Report)]

Amazonas - According to State Complementary Law # 53, under its article # 49, paragraph 1, at least 50% of the REDD revenues generated in a State Protected Area must be employed in income transfers, environmental conservation programs and programs to reduce poverty that benefit the people living in such Protected Area and around it. Remaining revenues are to be applied in other state protected areas in Amazonas.

Brazil - In the national proposed legislation on REDD (introduced on July 30th before the Commission on Environment and Sustainable Development of the Chamber of Deputies),⁴⁶ one of the principles of the national REDD+ system must be the "full and effective participation of the different segments from the Brazilian society in the REDD+ actions, emphasizing the indigenous peoples, traditional populations and small scale farmers, in such actions that affect their territories and surroundings, considering and recognizing their role in the conservation of natural ecosystems."

According to article 12, within the programs or REDD+ projects developed in indigenous lands and protected areas, at least 70% of the project revenue must be applied in the respective area of the project, prioritizing protection and sustainable development actions aimed at the population legally living in such areas. (Paragraph 1 allows for a reduction of such percentage in the case of low demographic density in the area or reduced risk of imminent deforestation and degradation risk, as long as the revenue not applied in the area is applied in other areas pertaining to the same category for similar purposes).

www.climatechange.ca.gov/forestry_task_force/documents/belem/INDONESIA_Permenhut_36_09_Voluntary_Carbon_unofficial_translation_English.pdf; see also S. Creagh, Indonesia issues first forest-carbon revenue rules, Reuters (July 10, 2009), available at <http://www.reuters.com/article/homepageCrisis/idUSJAK485584.CH.2400>.

⁴⁶ One of the Houses of the Brazilian National Congress, comparable to the American House of Representatives

According to article 13, REDD+ projects or programs developed in "quilombola" territories (territories occupied by descendants of slaves), in areas legitimately occupied by traditional populations (within or out of protected areas and other public areas) and in indigenous territories must assure the participation of such legally resident populations in all phases of the decision-making process, including those related to the definition, negotiation and sharing of the benefits, through a previously informed term of free consent obtained through an assembly or public hearing organized specifically for that purpose.

According to article 15, paragraph 2, REDD+ projects in private lands must respect eventual rules allowing for their access by traditional populations, which, in such case, must also obtain a share of the revenues if it can be proved that they are contributing for the REDD+ actions.

b. GCF Design Recommendations

As with protection of rights/interests, what constitutes an effective and fair benefit-sharing mechanism (for credits/revenues and other direct benefits REDD activities generate) are likely to vary under different state/province circumstances.

In light of the desire to retain some flexibility in implementation approaches, the GCF recommends the general benefit-sharing principles specified below and will in the near-term consider whether, and if so how, to elaborate on these general principles. To do so, the Task 1 members will engage with third-party standards organizations and other entities considering how to design and implement fair and effective benefit-sharing mechanisms.⁴⁷

General safeguards provisions on benefit-sharing might include the following:

- REDD activities must be designed and implemented in a manner that generates direct benefits for the local communities and indigenous peoples (and other relevant stakeholders) that are affected by the activities.
 - Nested projects must provide for distribution of some portion of offset credits and/or revenues and other direct benefits to affected local communities and indigenous peoples (and other relevant stakeholders involved in the particular project activity)
 - Approved state/province credit-issuing programs must include institutional mechanisms (stakeholder-targeted projects, trust funds, revenue distribution programs, etc.) to ensure distribution of offset

⁴⁷ **Note:** like with environmental and protection of rights/interests standards, the February Technical Workshop preferred development by 3rd party (with independent third-party certification of nested projects and/or programs against the approved standards) over development and assessment by regulatory agency.

credits and/or revenues and other direct benefits. Such requirements could include reference to a particular allocation “rule” or “methodology” for distributing credits or revenues, such as the stock-flow approach.

- REDD activities must include procedures to ensure that specific benefit distribution mechanisms or programs are objective, transparent, accountable, auditable, etc.

4. Safeguards: Multi-Stakeholder Processes

Multi-stakeholder consultation processes are one tool for ensuring that the above-noted safeguards and REDD activities more generally are developed and implemented in a way that is transparent and responsive to the concerns and needs of governments, local communities, indigenous peoples, NGOs, the private sector, international organizations, and other stakeholders. These processes can provide a forum for sharing information, discussing needs, building capacity, and jointly developing solutions for improving REDD activities and frameworks and ensuring more equitable and sustainable forest use. They are widely viewed as essential to successful, equitable, and sustainable forest management activities, particularly where there is uncertainty about land ownership and forest rights.

a. Current Thinking

(1) California ARB PDR

The sector-based crediting provisions do not have any specific language on multi-stakeholder processes.

(2) Proposed Federal Legislation

HR 2454 provides that to be eligible to receive international offset credits for REDD activities, the activity must be “designed, carried out, and managed—(iii) in a manner that gives due regard to the rights and interests of local communities, indigenous peoples, forest dependent communities, and vulnerable social groups; [and] (iv) with consultations, and full participation of, local communities, indigenous peoples, and forest-dependent communities, as partners and primary stakeholders, prior to and during the design, planning implementation, and monitoring and evaluation of activities.”

b. GCF Design Recommendations

(i) Elements of multi-stakeholder processes in tropical forest states and provinces

As with other key elements of REDD activities discussed above, the GCF recommends general criteria for safeguards and multi-stakeholder processes that retain some flexibility in how states and provinces demonstrate compliance. This will allow for legal, cultural, and other differing circumstances in the states and provinces.

The GCF recommends building upon nine standard best practice and internationally recognized principles for such processes: (1) transparency; (2) inclusivity; (3) information; (4) timeliness; (5) representation; (6) flexibility; (7) clarity; (8) accountability; and (9) continuity.⁴⁸ The GCF also recommends that states and provinces develop a Consultation and Participation Plan before and/or while they develop their REDD Strategy, as countries participating in the Forest Carbon Partnership Facility Readiness Mechanism are requested to do. Implementation of the Plan could be part of the MRV process for safeguards.

[note: Task 1 should also cross-check with other mechanisms that are more specific to REDD, e.g. Forest Carbon Partnership Facility National Consultation and Participation for REDD, available at <http://www.forestcarbonpartnership.org/fcp/> under “Templates and Guidance” as well as the CCBA standards, and determine how much detail the GCF recommendations wish to contain.]

(ii) Existing Examples from GCF States and Provinces

[note: The GCF states and province have spearheaded several multi-stakeholder processes for their REDD activities. Examples from Brazil and Indonesia are provided in Appendix 3 and 4. Task 1 can hone these examples so that they are useful to the GCF in further developing/finalizing its recommendations for multi-stakeholder processes.]

⁴⁸ See Dow, Jocelyn, V. Radzik, and D. Macqueen, Review of Guyana LCDS Consultation Process (International Institute for Environment and Development (2007), at 30-31, available at <http://www.iied.org/pubs/pdfs/G02590.pdf>. Pages 103-104 of the Review explain the FPIC process, page 122 contains additional references on stakeholder consultation, which may also be useful. Pages 30-31, 113-114 provide more information on how these nine standards were built out and approached.

5. Safeguards: Accountability

a. Current Thinking

No accountability-forcing provisions yet appear in the California PDR, U.S. proposed federal legislation, or final UNFCCC texts. The CCBA and Care International REDD+ Social and Environmental Standards Initiative is in the process of considering different MRV options that achieve participation, ownership by stakeholders, enhanced transparency and accountability, and improved performance.

Several provisions in the draft UNFCCC LCA REDD+ text relate to MRV and monitoring, but all remain bracketed. There are two key provisions on MRV and monitoring in relation to the safeguards. One provision requests that developing countries aiming to undertake REDD+ activities develop a: “robust and transparent national forest monitoring system for the monitoring and reporting of” REDD+ activities and safeguards “with, as appropriate, subnational monitoring and reporting as an optional interim measure.”⁴⁹ Paragraph 9 requests SBSTA to develop modalities relating to the measuring, reporting, and verifying system. Paragraph 10 requests SBSTA to develop modalities for measuring, reporting, and verifying the support provided by developed countries for implementation of both “safeguards and actions.”

b. GCF Design Recommendations

The GCF recommends that compliance with the above-described safeguard principles and more detailed standards developed by third-party standards organizations be subject to independent third-party certification, with the recognition that states and provinces will need certainty about what that review and certification process will entail in order to retain the interest of investors.

[note: The CCBA and Care International REDD+ Social & Environmental Standards Initiative plans to approach MRV of safeguards as it does its implementation indicators; in other words while CCBA and Care International may establish more general principals and criteria, the MRV process will be defined by the participating jurisdictions themselves to ensure that it is culturally responsive and effective.]

⁴⁹ FCCC/AWGLCA/2009/L.7/Add.6 (15 December 2009) at ¶ 5(c).

E. ENFORCEABILITY, LIABILITY, AND RISK MANAGEMENT

There are many risks associated with REDD projects and programs. For example, a REDD project or program may not for various reasons deliver real, additional, verifiable emissions reductions, it may experience reversals (intentional or unintentional) over time, or it may encounter other legal, regulatory, market and political risks. An added risk for nested projects is that the project will perform but the state or province will not. Companies with private capital and communities with traditional land rights will not invest in or commit to REDD if return on investment is contingent upon large-scale collective action (regional/national emissions performance) without the appropriate assurances and safeguards, especially if such large-scale collective action either at an ARB or state/ province level remains under development without clear monitoring and reporting mechanisms and agreement on baseline scenarios. In order to address these risks (including their implications for private sector and local community investment),⁵⁰ emerging compliance markets and other REDD regimes are exploring various enforcement, liability, and risk mitigation mechanisms.

Enforceability poses distinct challenges in the international context. In a compliance market context, where the credits are issued by an approved external program, it may be possible to handle some elements of enforceability through whatever agreement governs the relationship with the external program. But this becomes problematic when the external program is a state or province in a foreign country.⁵¹

One alternative is to handle enforceability through a liability rule that imposes liability for reversals on the regulated entity that tenders an international offset credit for compliance purposes, an option that may be unpopular with regulated entities and otherwise problematic. Other options for addressing the reversal problem include insurance, credit reserves/buffers, sovereign guarantees, mitigation payments, and/or temporary crediting (about which many states have expressed concern). Such approaches may not be enough by themselves to satisfy any “enforceability” requirements that may emerge and thus may have to be used in combination with a liability rule. Finding a solution to the enforceability challenge in the context of international sector-based crediting without imposing unduly burdensome transactions costs will be very important.

⁵⁰ Local communities as much as private companies should be seen as ‘investors’ in REDD, with communities being the ‘core’ investor given the substantial opportunity costs for communities to divert their landholdings from traditional exploitation in the form of oil palm and logging to REDD.

⁵¹ Terra Global Capital draft paper at 11 states that participating states/provinces must submit themselves to the laws of the Compliance Mechanism and to international arbitration.

[note: the GCF can consider (1) whether it has additional or more specific recommendations?; and (2) whether it would like to add more about possible MOUs/Linkage Agreements/Other Legal Arrangements/Interoperability]

1. Current Thinking

a. California ARB PDR

The PDR concept note on “Reversals of Offset Credits” states that ARB staff is evaluating enforcement options for reversals. The note states further that “ARB’s preferred approach would be to require the covered entity using the flawed offset credit to meet its surrender obligation by making the system whole and replacing the lost tons.” Covered entities would then manage their liability through commercial contracts with offset suppliers. The PDR concept note on “International Offset Credits and Sector-Based Crediting” contemplates the development of “cooperative (MOUs) for verification and enforcement” with the relevant foreign jurisdiction and includes within this the possible establishment of a joint MRV committee that would include California representatives.

b. Proposed Federal Legislation

The REDD provisions in HR 2454 do not include specific provisions on enforceability. Presumably enforceability would be handled to some degree under the bilateral and/or multilateral “agreement or arrangement” between the United States and the foreign country in which the offset activity takes place, which is a pre-requisite for all international offsets. The general provisions on offsets address the issue of reversals for listed project types and direct the Administrator to establish requirements to account for and address reversals, including the possibility of specific allowance-holding requirements for compensation purposes, assignment of responsibility for compensation, insurance mechanisms, and an “offsets reserve” mechanism that sets aside a portion of offset credits proportionate to the risk of reversal.

c. UNFCCC

N/A.

d. Other Sources

[Task 1/the GCF needs to streamline/further assess for final report]

VCS and CAR use pooled buffer accounts to address the risk of reversals. For *avoidable* reversals, CAR’s Forestry Protocol (version 3.1) specifies that the project must surrender unsold credits.

The Terra Global Capital draft paper (see Appendix 1 at 16-17, 42) suggests creating performance pools.

TNC and Baker & McKenzie offer variations on these options in their paper A Nested Approach to REDD +: Structuring Effective and Transparent Incentive Mechanisms for REDD+ Implementation at Multiple Scales (2010), available at http://www.nature.org/initiatives/climatechange/files/nested_paper_final_60110.pdf, at 20-25. Variations include insurance policies for non-catastrophic changes (possibly with deductibles to avoid perverse incentives), partial risk guarantees, performance reserve accounts, procurement of replacement REDD credits, state or provincial government (or national government if feasible) guarantees, a global fund (from levies placed on subnational activities) that can be used to purchase REDD credits or insurance, and combinations thereof.

2. GCF Design Recommendations

The GCF recommends retaining flexibility to structure risk mitigation structures that respond to different state and province circumstances, while at the same time outlining a framework for robust mechanisms that will provide assurances to regulators, private sector and community investors, and other stakeholders. For example, if a GHG compliance system (e.g. California or the U.S.) establishes sector-based crediting, specific risk mitigation instruments and/or mechanisms could be specified in any required Linkage Agreement, Memorandum of Understanding, or other legal arrangement to ensure that the system is “made whole” in the event of a reversal.

These instruments could include one or more of the measures noted above, including (1) buffer reserves/ performance reserve account - a portion of credits issued to the country or sub-national actor during times of performance would be retained in a reserve account and could not be traded or retired. In the event of sub-national performance and country non-performance (or project performance and sub-national non-performance), credits from the buffer reserve would be automatically issued to the performing entity; (2) sovereign guarantees – payment default guarantee from host national/ state/ provincial government could be done as actual payments or provision of replacement credits; (3) residual liability rules (possibly imposing liability on the state/province issuing the credits or on the covered entities); (4) insurance – such as the Multilateral Investment Guarantee Agency (MIGA), part of the World Bank, which offers risk assistance and insurance products for project investors in developing countries; and (5) other safeguards (such as mitigation payments, establishment of a global fund mechanism to protect performing REDD actors, etc.). [note: the GCF might consider adding more detail on these mechanisms]

Note that commercial safeguards adopted by states/ provinces could and most likely should be a combination of the above approaches. The GCF also recommends that

states and provinces develop a Consultation Plan whereby they coordinate with national bodies to harmonize the development of such safeguards. Such safeguards should be linked with monitoring mechanisms to detect reversals.

For nested projects, potential reversals could be managed under the project accounting standard or the sectoral accounting framework. In other words, if the reductions required from projects are deep enough, this can mitigate or negate the impact of any reversals.

F. EARLY ACTION/PHASED-APPROACH PATHWAYS

Given that a number of states and provinces in tropical forest countries may not be ready for full sectoral accounting and crediting for several years, some have proposed that compliance market and other systems include provisions that would allow for a “phased approach” in order to catalyze immediate emissions reductions for crediting in initial compliance periods, retain private sector and community investment interest in these projects, and to incentivize the development of full sectoral frameworks over the longer term. Such an approach might take a number of forms, from identification of key elements of an early action window for eligible project-based credits to come into the initial compliance period to the encouragement of nested project and/or programmatic pilot activities in early mover states and provinces (or both).

1. Current Thinking

a. California ARB PDR

The PDR recognizes that sector-based crediting mechanisms “are still being developed internationally, and may not be ready when the California cap-and-trade program begins in 2012.” It further provides that “[b]ecause appropriate cost control mechanisms will be needed for regulated entities at the outset of the program, an early supply of international offsets may be needed from other sources. In order to establish an early supply, ARB staff is considering allowing entities to use a limited amount of CERs issued under the CDM, or other approved project-based credits from other systems, for compliance purposes for a limited period of time.”

b. Proposed Federal Legislation

The HR 2454 REDD provisions do not contain any specific language on early action/phased approach pathways. The Tropical Forest and Climate Coalition (“TFCC”) has developed some early action language and has been working with members to

insert this into climate legislation. There is also some general language in the HR 2454 offsets provisions regarding early action.

c. UNFCCC

The AWG-LCA draft decision on REDD+ does not explicitly address this issue but does recognize that governments will implement REDD activities “in phases,” including the development and implementation of national strategies or action plans, policies and measures and capacity-building, followed by “as appropriate, subnational strategies, that could involve further capacity-building, technology transfer and results-based demonstration activities, and evolving into results-based actions [that shall be fully measured, reported and verified].”

2. GCF Design Recommendations

[note: the February Technical Workshop did not reach this issue, so the GCF has 2 options presented intact for consideration; the GCF may also wish to review the proposal by Terra Global Capital in its revised paper (see Appendix 1 at 43-45), which contains a three-phase approach for transitioning from a project-based to a fully functioning, state-wide sectoral program. The GCF could also consider adding something here on readiness funding.]

Option 1: As a prerequisite for participation in a “phased approach” pathway, require states and provinces to establish: (1) specific forest sector GHG targets; (2) a plan to reduce forest sector emissions across the state and move to full sectoral accounting and crediting (see discussion above) within a limited number of years, which many GCF states and provinces have done or are in the process of doing; and (3) a state/province-wide monitoring program to track progress towards achieving GHG targets. These commitments could be secured through agreements with the relevant jurisdictions. During the first compliance period, REDD projects in these states and provinces would be eligible for crediting based on individual project emissions reductions as independently verified using best-practice, pre-approved carbon accounting standards or protocols that ensure the credited emissions reductions are real (including accounting for potential leakage), additional, permanent, etc. After the first compliance period, no credits would be issued directly to projects unless accounted for under a full sectoral accounting framework as elaborated in the regulations.

Option 2: Establish limited window into first compliance period for early pilot/demonstration nested pathways and/or state/province-level programs, perhaps as identified through the GCF process. Identify key elements in regulations that would apply to such pilot activities, including project-level accounting on the basis of best-practice, pre-approved standards or protocols and certain initial elements of

state/province REDD program (*i.e.*, GHG target, REDD plan, state/province monitoring program, etc.).

III. NEXT STEPS FOR GCF RECOMMENDATIONS

[to be completed by Task 1, the GCF, and stakeholders at and after the Santarem meeting. Will include resolution of the questions/notes posed above]