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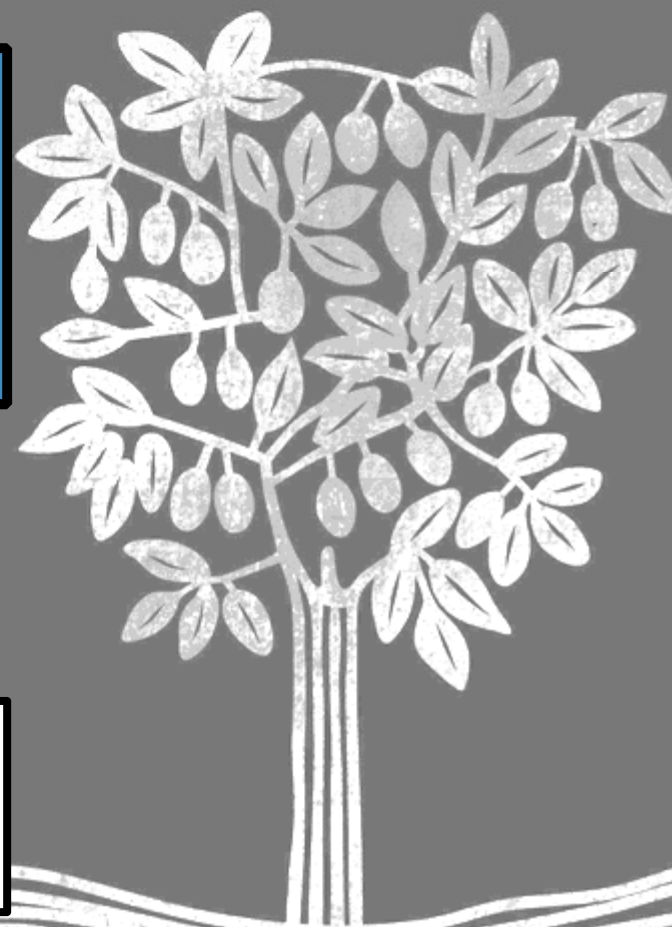


Training Workshop on Payments for Ecosystem Services (PES) and Reducing Emissions from Deforestation and Degradation (REDD+)

Nairobi, Kenya - August 8th, 2011

Contracting for Ecosystem Services

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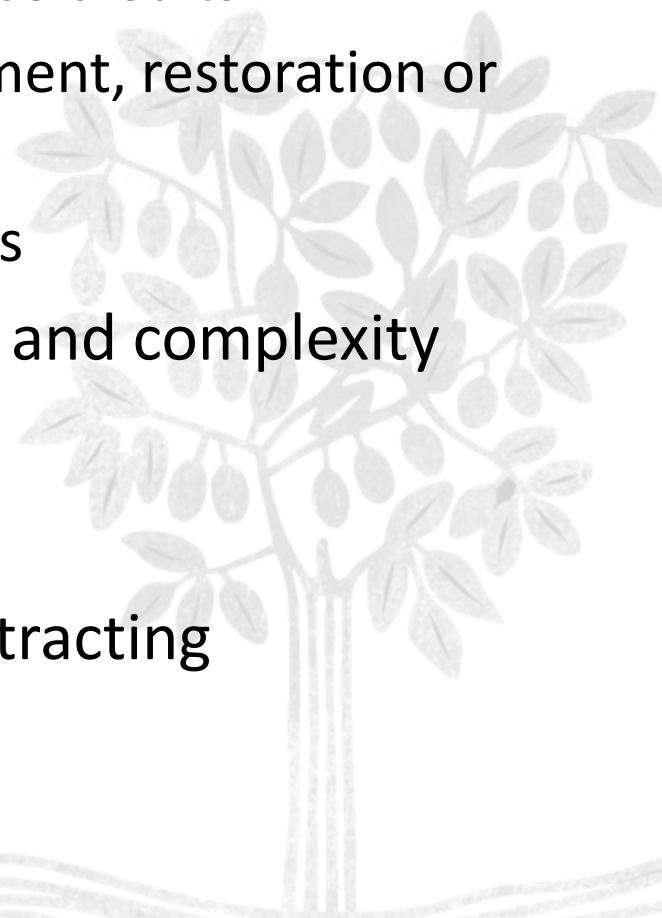

World Agroforestry Centre
TRANSFORMING LIVES AND LANDSCAPES



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- Preconditions
- Type of agreement
 - Purchase/sale of ecosystem service credits
 - Provision of ecosystem establishment, restoration or conservation services
 - Example: Trees for Global Benefits
- Finding the right level of formality and complexity
- Key elements of PES agreements
- Negotiating to get the best deal
- Special considerations for PES contracting



Agreement ↔ Contract

- Parties** The individuals or entities that agree to be bound by the contract terms by signing the contract
- Rights** What an individual or organization signing the contract *may* do
- Obligations** What an individual or organization signing the contract *must* or *must not* do
- Default** Violation of the contract terms (usually defined in a written agreement)



- One or more parties with clear authority to perform ecosystem-enhancing services or sell ES credits
- Free, prior and informed consent (FPIC) from stakeholders and affected communities
- A degree of social, political, regulatory stability and predictability, generally over 20 years or more
- Mechanisms for dispute resolution, enforcement

These topics are covered in more detail in presentation on PES policy issues

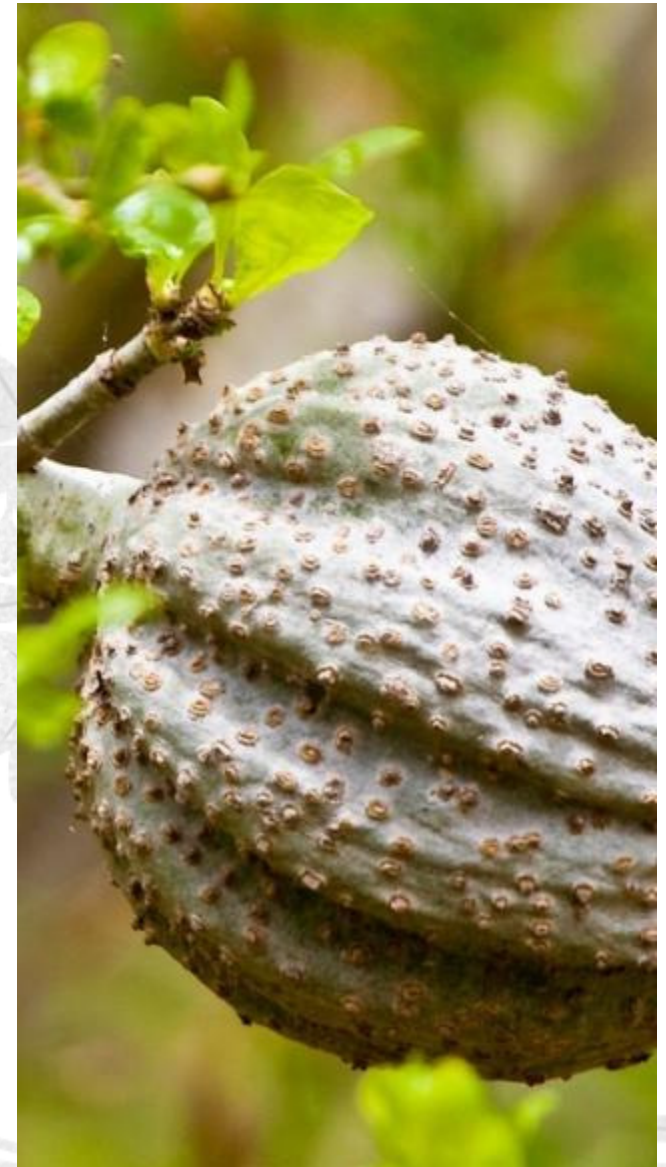
- May structure PES contract as a *purchase agreement* or an agreement for the *seller to provide services* to support healthy ecosystems
 - **Purchase agreement** – buyer pays for credits representing actual ecosystem benefits generated by seller's project
 - **Services agreement** – buyer pays for seller to take actions that are intended to lead to restoration, protection, or enhancement of ecosystem services





- Purchase of **credits** for quantified ecosystem benefits that were actually generated:
 - VER (carbon)
 - Biodiversity offsets
- Payment depends upon proven, verified ecosystem outputs or results
- Used to **offset** buyer's environmental impacts in concrete, quantifiable way

- Purchase of ecosystem restoration, protection, enhancement **services**
 - Tree planting
 - Habitat protection
 - Streamside restoration
- Payment depends upon verified provision of labor and/or raw materials (inputs)
- Suitable where contracted services are *very likely* to result in environmental benefits



- **Purpose:** removal of CO₂ from the atmosphere
- **Mechanism/Activities:** Coordinated by ECOTRUST, 909 participants in Uganda's Albertine Rift (1) plant trees, (2) implement agro-forestry, (3) practice improved forest management, (4) assist forest regeneration
- **Output:** CO₂ credits, independently validated/verified by Plan Vivo & Rainforest Alliance, for up to 80,000 tons of CO₂ per year

Validation – Early assessment that project as designed is *likely to generate* claimed ecosystem benefits.

Verification – Later confirmation that ecosystem benefits were *actually generated* by project activities

- **Buyers:** organizations or companies want to reduce carbon impacts for philanthropic or public relations purposes

- Ecosystem services agreements can vary widely in formality, length, and complexity

Oral “Handshake”
Agreement



Non-Binding
Memorandum of
Understanding
(MOU)



Legally-Binding
Written Contract

- Formality generally increases: specificity, clarity, complexity, cost to negotiate and draft
- Written agreements almost always required for PES
 - Important to minimize misunderstandings, reduce risk and overall costs
 - Absolutely necessary in well-established markets, as for carbon

- Clearly-defined rights & obligations
 - What is the ecosystem service?
 - What each party must do, may do, may not do
- Payment amounts, timing, based on:
 - Cost of providing services or creating offsets
 - Market prices
 - Risks for each party
 - Other costs allocated to each party
- Definition of and consequences for failure to perform



Non-negotiable

Fairly negotiable,
set parameters

Highly negotiable
custom contract

- Negotiation is a balancing act between getting the best deal and successfully coming to an agreement
- PES negotiation issues and pitfalls
 - Unequal bargaining power
 - Buyer's lawyer represents the buyer, not both parties

Consideration	Potential Challenges
Multiple sellers, community sellers	Coordination, benefit distribution, project governance
Monitoring	Balancing costs vs. need for accurate measurements and monitoring
Verification	Selecting the standards body, time, cost
Long-term obligations	Unforeseen ecosystem disruptions, sellers' successors
Consequences of default	Small-scale seller inability to pay damages, buy replacement credits, etc.
Role of local, national government	Extensive state ownership/regulation of natural resources raises challenges for PES

1. Type of agreement
 - a) Purchase agreement generally used for carbon, biodiversity PES – produces measurable outcomes that can offset other ecosystem impacts
 - b) Services agreement may be suited to watershed PES, where certain upstream actions are *almost certain to* produce downstream benefits
2. PES agreement must be written
3. Basic elements of a PES contract are straightforward: (a) rights and obligations, (b) payment terms, (c) consequences of default
4. Yet, complexity arises because of:
 - a) Complexity of underlying project and transaction – diverse costs and risks to be allocated between the parties through agreement terms
 - b) Special considerations for PES projects, such as numerous participants, novelty of PES projects, and rapidly-evolving regulatory framework

For more information: www.katoombagroup.org/legal_contracts



THANK YOU!

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