

## Controlled Wood FSC US National Risk Assessment: Guidance for Control Measure (CM) 4.1

*NOTE: The following guidance for implementation of Control Measure 4.1 includes examples of sources of forest materials that would and would not be considered to fall within the scope of this control measure. These are examples only and are not comprehensive lists of sources.*

### CONTROL MEASURE 4.1

CM 4.1: The organization is required to implement both parts of this Control Measure

CM 4.1.a: The Organization develops and implements **binding written agreements** with suppliers that: i) mitigate the risk that material supplied originates from forest areas converted into plantation or non-forest use; or ii) assure that if some conversion has occurred, that material supplied originates from **limited and legal** sources of conversion (e.g., conversion that results in conservation benefits, publicly approved changes in zoning in urban areas, etc.) and does not come from sources where the conversion threatens High Conservation Values.

CM 4.1.b: The Organization implements CM 4.2.b. [CM 4.2.b: The Organization implements one or more of the actions identified during the collaborative dialogue at the Controlled Wood Regional Meeting, as detailed in the Controlled Wood Regional Meeting Report. When options for action with differential levels of resource investment required for implementation are identified, the action(s) implemented shall be commensurate with the scale and intensity of the Organization's potential impact on the forests in the region.]

### FOREST CONVERSION

*FSC 'FOREST CONVERSION' DEFINITION: Removal of natural forest by human activity, without subsequent regeneration. [From FSC-STD-40-005]*

*FSC 'NATURAL FOREST' DEFINITION: A forest area with many of the principal characteristics and key elements of nature ecosystems, such as complexity, structure and biological diversity, including soil characteristics, flora and fauna, in which all or almost all the trees are native species, not classified as plantations. [Truncated; See FSC-STD-01-002 for full definition.]*

- Ornamental, landscaping and shade trees planted in urban, residential and otherwise developed areas are not 'natural forest,' and therefore their removal would not be consistent with FSC's definition of 'forest conversion.'
- Orchards, Christmas trees and other agro-forestry production systems are not 'natural forest,' and therefore their removal would not be consistent with FSC's definition of 'forest conversion.'
- Plantations (as defined in the FSC US Forest Management Standard) are not 'natural forest,' and therefore their removal would not be consistent with FSC's definition of 'forest conversion.'
- Trees in highway medians typically do not meet FSC's definition of 'natural forest' and therefore their removal is unlikely to be consistent with FSC's definition of 'forest conversion.'
- Forests destroyed by natural disaster (i.e., wildfire, hurricane, wind-shear events) that will be regenerated to natural forest do not meet FSC's definition of 'forest conversion' and therefore materials removed from these areas after the disaster are not considered 'unacceptable materials' in the context of FSC Controlled Wood.



## BINDING WRITTEN AGREEMENTS

‘Binding’ indicates that the agreement must be legally enforceable. Therefore, the following guidance is provided on legally enforceable agreements (i.e., contracts), as shared by the Legal Information Institute at the Cornell Law School (<https://www.law.cornell.edu/wex/contract>), but with some additional explanations.

### **Contract: An agreement between private parties creating mutual obligations enforceable by law.**

The basic elements required for the agreement to be a legally enforceable contract are:

1. Mutual assent – *Agreement by both parties to a contract. Mutual assent must be proven objectively, and is often established by showing an offer and acceptance (e.g., an offer to do X in exchange for Y, followed by an acceptance of that offer).* The agreement must be between at least two parties and acceptance is normally indicated with a signature. Whether it needs to be counter-signed, would depend on the format/language in the agreement.
2. Adequate consideration – *Something bargained for and received by a promisor and a promisee.* Something of value must be exchanged for something else of value (e.g. supplies for money).
3. Capacity – *A person’s ability to satisfy the elements required for someone to enter binding contracts.* The signer must have the authority to enter into the agreement.
4. Legality – *Lawfulness.* Different kinds of agreements may have different requirements for the conditions that make them legal (e.g., notarization is required for some legal documents), and similarly different countries or states may have different requirements. However, for the purpose of the control measure in question, the focus for evaluating conformance should be on Elements 1-3 above.

The above clearly indicates that a supplier declaration individually and on its own would not suffice to fulfill the requirement for a ‘binding written agreement.’

## ‘LIMITED AND LEGAL’

*Please note that the following are EXAMPLES ONLY and do not cover all possible situations where conversion could be considered ‘limited and legal’ or where conversion would not be considered ‘limited and legal.’*

<b>Examples of Limited and Legal Sources of Conversion</b>
Conversion that results in conservation benefits for the landscape in which the conversion occurs (e.g., prairie or savanna restoration, creating and maintaining early successional habitat within landscapes where it is severely underrepresented).
Conversion associated with a utility right-of-way, with the exception of regionally controversial ROW projects that have broad public opposition (See example below that is not ‘limited and legal’). However, if the controversy is focused on a specific part of the right-of-way project, and that part is outside of the certificate holder’s source area, then the right-of-way source would still be an example of a ‘limited and legal’ source of conversion.



### Examples that are Not Limited and Legal Sources of Conversion

Conversion that threatens the status, extent or function of an HCV.

Conversion associated with a regionally controversial issue that has broad public opposition. Such as:

- A large new reservoir that will result in cultural impacts
- A large new landfill or rock quarry that is opposed due to potential social and environmental impacts
- Large pipeline project that will negatively affect a multitude of cultural and environmental values