Environmental and Social Standard 5. Land Acquisition and Land Use Restriction
ESS5: LAND ACQUISITION AND LAND USE RESTRICTION

I. INTRODUCTION

1. This Environmental and Social Standard (ESS) 5 recognizes that project-related land acquisition and land use restriction (LA/LUR), if unmitigated, could give rise to significant economic and/or environmental and social (E&S) risks and impacts, and may result in long-term hardship and impoverishment. LA/LUR refers to all methods of obtaining land or restricting land use in connection with a project. Project-related LA/LUR may cause physical displacement, economic displacement, or both to affected persons. Affected persons are legal or natural persons experiencing economic or physical displacement or both as a result of project-related LA/LUR. Physical displacement occurs when there is a loss of residential or business premises, residential and/or homestead land, loss of shelter, and/or the loss of essential public facilities, amenities, and utilities, resulting in relocation and resettlement. Economic displacement occurs when there is a loss of land, assets, access to land assets, and resources, and/or loss of income sources and means of livelihood.

II. OBJECTIVES

a. Avoid economic and physical displacement or, when unavoidable, minimize such displacement by considering feasible alternative project designs and sites.

b. Avoid forced eviction.

c. Mitigate unavoidable adverse social and economic risks and impacts from LA/LUR by (i) providing timely compensation for loss of assets at full replacement cost, and (ii) assisting affected persons in their efforts to improve or at least restore their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

d. Improve livelihoods and living conditions of disadvantaged or vulnerable persons, including by providing adequate housing with essential services, utilities, and security of tenure to those who are physically displaced.

e. Ensure that LA/LUR activities are planned and implemented through appropriate stakeholder engagement, including information disclosure, meaningful consultation, and grievance management.

III. SCOPE OF APPLICATION

2. The applicability of this ESS5 is established during the E&S assessment process described in ESS1.

3. This ESS5 applies to the full, partial, permanent, and temporary economic and physical displacement resulting from involuntary LA/LUR undertaken or imposed in connection with a project. LA/LUR is considered involuntary when affected persons do not have the right to refuse LA/LUR that results in displacement.

4. This ESS5 applies to project-related voluntary LA/LUR in accordance with Section IV.C, which describes criteria and due diligence requirements to ensure that such transactions are fair, consensual, and informed. This ESS5 does not apply to voluntary, legally recorded market transactions such as transfer of formal ownership rights through the sale and purchase of land and other assets or other similar market transactions between a willing buyer and a willing seller in which the seller is given a genuine opportunity to retain land/assets and to refuse the transaction, except as set forth in Section IV.C
5. This ESS5 applies to any LA/LUR carried out prior to a project that was undertaken or initiated in anticipation of, or in preparation for that project.

6. This ESS5 covers displacement of persons without formal, traditional, or recognizable property and use rights under the host country’s applicable laws, who occupy or utilize land prior to a publicly established cut-off date as set forth in paragraph 21.

7. This ESS5 applies to LA/LUR that may occur in host communities due to the relocation of persons physically displaced by a project into such communities.

8. This ESS5 does not apply to risks to and impacts on incomes or livelihoods that are not a direct result of LA/LUR. Such risks and impacts will be identified and addressed as part of the E&S assessment process described in ESS1.

9. This ESS5 does not apply to disputes between private parties arising in the context of project-supported land titling or other project activities intended to confirm, regularize, or determine land rights. However, where affected persons are required to vacate land as a direct result of a project-supported determination that the land in question is state land, this ESS5 will apply.

10. This ESS5 does not apply to management of refugees or persons internally displaced by natural disasters, conflict, crime, or violence where the displacement of such persons is not the result of project-related LA/LUR.

11. For purposes of this ESS5, the following definitions apply:

   (i) **Involuntary land acquisition** involves acquisition of formal legal and recognizable legal land rights and/or land use rights through expropriation or other compulsory procedures within the purview of compulsory acquisition, as well as through negotiated settlement, where expropriation or other compulsory procedures under compulsory acquisition can be initiated in case negotiation fails. Involuntary land acquisition may include outright transfer, expropriation of property, and acquisition of access rights, such as easements or rights of way. It may also include acquisition of unoccupied or unutilized land whether or not the landholder relies upon such land for income or livelihood purposes.

   (ii) **Involuntary land use restriction** refers to limitations and/or prohibitions on the use of agricultural, residential, commercial, or other land, that are directly introduced and put into effect as part of a project. This may include repossession of public land that is used or occupied by individuals or households, project impacts that result in land being submerged or otherwise rendered unusable or inaccessible, restrictions on access to natural resources and legally designated parks and protected areas, including those established as part of a project, restrictions on access to other common property resources, communal property and natural resources including waterbodies, such as freshwater and marine environments, and restrictions on land use within utility easements or safety zones.

   (iii) **Voluntary land acquisition and voluntary land use restriction** refers to methods of obtaining land or land use that are not compulsory and involve: (i) the land rights or claims to land or resources relinquished by individuals or communities without provision of full compensation, voluntary donation of land for project purposes by willing donors, or land pooling and land readjustment among consenting members of local communities; (ii) the voluntary transfer of use rights to legally owned land and resources through the lease of land and
other assets or an agreement to grant use rights through an easement; and (iii) voluntary land use restriction for persons and communities consenting to relinquish or limit their right to the use of land and access to resources, such as under a community-based natural resource management project. Where voluntary transactions result in economic or physical displacement of persons, rather than the right holder, who occupy, use, or claim rights to the land in question, such as customary alloitees, sharecroppers, renters, lessees, or persons without recognizable claims to land, such displacement is considered involuntary.

(iv) Livelihood refers to the full range of ways and means that affected persons and communities utilize to make a living such as wages from employment; cash income earned through an enterprise or through sale of produce, goods, handicrafts or services; rental income from land or premises; income from a harvest or animal husbandry, share of a harvest, such as various sharecropping arrangements, or livestock production; self-produced goods or produce used for self-consumption, exchange or barter; self-consumed goods or produce; food, materials, fuel and goods for personal or household use or trade derived from natural or common resources; pensions and various types of government allowances.

(v) Land includes anything growing on or permanently affixed to land, such as crops, buildings, and other improvements, including those located above and below the land, and appurtenant water bodies, including freshwater and marine environments.

(vi) Host communities are communities living in areas to which physically displaced persons are relocated.

IV. REQUIREMENTS

A. General Requirements for All Types of Land Acquisition/Land Use Restriction

12. At an early stage of the E&S assessment process described in ESS1, the borrower/client, through screening and scoping, will identify if any physical and/or economic displacement is likely to be caused by a project and assess the likelihood of any future additional land and resource needs of the project. Where displacement impacts are noted during scoping, the borrower/client will then conduct a full LA/LUR assessment as described in this Section IV to characterize the baseline socio-economic circumstances of affected persons and the potential risks and impacts of a project to them. Such full LA/LUR assessment will establish the legal status and asset/resource losses of all affected persons.

13. Affected persons may be classified as follows:

   (i) persons who have formal legal rights to the land or assets, including customary and traditional rights recognized under host country’s applicable laws;
   (ii) persons who do not have formal legal rights to land or assets but have a claim to such land or assets that is recognized or recognizable under host country’s applicable laws. Claims under this category can be derived from adverse possession or from customary or traditional tenure arrangements and land use rights, including customary or traditional use to which ESS7 applies; or
   (iii) persons who have neither formal legal rights nor recognized or recognizable claims to the land or assets they occupy and/or use.

14. Where the E&S assessment has identified that a project may entail LA/LUR risks and impacts, the borrower/client demonstrate that the proposed LA/LUR is limited to direct project requirements for clearly specified project purposes within a clearly specified period. The borrower/client will consider feasible alternative project designs and sites to avoid LA/LUR,
while balancing environmental, social, and financial costs and benefits, paying particular attention to gender impacts, and avoiding adverse impacts on disadvantaged or vulnerable persons. Where avoidance is not possible, the borrower/client will minimize displacement and develop appropriate measures to mitigate adverse impacts on affected persons. In balancing costs and benefits, the borrower/client may consider situations where avoidance may not be an appropriate approach for public health, safety, or similar reasons, and where displacement can bring direct positive development outcomes to affected persons and communities, including improved housing and strengthened security of tenure or other improvements to standards of living of affected persons.

1. Stakeholder Engagement and Information Disclosure

   a. Meaningful Consultation and Information Disclosure

15. The borrower/client will undertake meaningful consultation in accordance with ESS10 and this ESS5 with stakeholders on project design alternatives, as relevant to LA/LUR, and on applicable mitigation measures. The borrower/client will ensure participation of affected persons in the negotiation, planning, implementation, monitoring, evaluation, and reporting on compensation, livelihood restoration, and relocation activities, with special attention to the views of disadvantaged or vulnerable persons. The borrower/client will consult with affected persons on appropriate options and alternatives for the mitigation of adverse impacts, or relocation and livelihood restoration, from which they may choose.

16. The borrower/client will maintain and disclose relevant information about LA/LUR to affected persons, including information on alternative project designs, mitigation entitlements and options, and valuation approaches as well as the results of monitoring, evaluation, and reporting in accordance with ESS10 and this ESS5. Such information will include a description of the stakeholders consulted, a summary of the feedback received and an explanation of how the feedback was taken into account, or the reasons why it was not. The borrower/client will document all such information in the land acquisition plan (LAP) and/or land acquisition framework (LAF), and, as appropriate, in the project monitoring reports and corrective action plans (CAPs), if any.

   b. Grievance Mechanism

17. The borrower/client will establish a grievance mechanism as early as possible in the LA/LUR process and in accordance with the requirements of ESS10, in order to receive, facilitate resolution of, and monitor any concerns and grievances due to LA/LUR. If a grievance mechanism is not yet established for a project, the borrower/client will provide affected persons as early as feasible during LA/LUR scoping and assessment, an opportunity to raise their concerns related to the LA/LUR as part of the stakeholder engagement process. The borrower/client will register and monitor such concerns and document them in a LAP, LAF, Due Diligence Report (DDR) and/or monitoring reports and will also incorporate them into the grievance mechanism once established.

2. Assessment of Land Acquisition and Land Use Restriction Impacts

18. The borrower/client will identify all applicable LA/LUR modes for a project and carry out an assessment of the LA/LUR risks and impacts. The extent of the assessment will be sufficient to characterize the potential risks and impacts and take into account the views of affected persons and other relevant stakeholders. The borrower/client will conduct a census and socio-economic baseline studies of affected persons and an assessment of lost assets and livelihood resources, and valuation once a project’s final detailed engineering design has matured sufficiently to identify and enumerate all eligible persons affected by economic and/or physical displacement due to LA/LUR. The borrower/client will ensure the
synchronization of such LA/LUR assessments with preparation of the final detailed engineering designs.

19. Where LA/LUR is carried out by a borrower/client, or by third parties if relevant, prior to a project but which was undertaken or initiated in anticipation of, or in preparation for, a project, the borrower/client will conduct an audit to identify any gaps and corrective actions to bring LA/LUR into compliance with this ESS5. The borrower/client will prepare a CAP to describe all activities to reach compliance with this ESS5 in the form of a time-bound plan, including a budget, implementation arrangements, allocation of roles and responsibilities, and will be reflected in an environmental and social commitment plan (ESCP)/environmental and social action plan (ESAP).

a. Census and Socio-Economic Baseline Studies

20. The borrower/client will carry out a census to enumerate all affected persons. The borrower/client will conduct socio-economic baseline studies to: (i) record the relevant social, economic, and cultural characteristics of the affected persons, including their ownership and use rights with respect to land and other assets, sources of formal and informal livelihoods and resource use, access to basic services, and vulnerability characteristics as well as severity of LA/LUR risks and impacts; (ii) determine who will be eligible for compensation and assistance; and (iii) evaluate the impact of the mitigation of LA/LUR risks and impacts at the time of project completion. The studies will also address the claims of communities or groups who, for valid reasons, may not be present in a project area during the time of the census, such as seasonal resource users. The borrower/client will recruit qualified and experienced social specialists and will apply appropriate quantitative and qualitative social research methods to conduct the census and the socio-economic studies. The level of detail of the assessment will be proportionate to the nature and scope of LA/LUR risks and impacts of a project. Sensitive or confidential information collected will be managed and protected in accordance with a project’s stakeholder engagement plan (SEP) as described in ESS10.

b. Declaration of Cut-Off Date

21. The cut-off date is established to determine who will be eligible for compensation and assistance based on full and complete LA/LUR assessment, and to discourage ineligible persons, including ineligible affected persons, from claiming benefits. The borrower/client will declare and disclose to affected persons a cut-off date for the eligibility for compensation in accordance with the requirements of the host country’s applicable laws, such as public notification of a project by competent government authorities or, at the latest, at the beginning of the census and assessment of lost assets. Information regarding the cut-off date will be documented and disseminated throughout the project area at regular intervals in a form, language, and manner that is culturally appropriate, gender-responsive, understandable, and readily accessible to affected persons. This will include posted warnings that persons settling in a project area after the cut-off date may be subject to removal. The validity of the cut-off date will be time-limited, and if the completion of the LA/LUR process is significantly delayed, the borrower/client will declare and disclose a new cut-off date following an updated LA/LUR assessment. The borrower/client will declare a separate new cut-off date for any additional unanticipated or omitted LA/LUR risks and impacts not included or inaccurately assessed in a LAP.

c. Inventory of Lost Assets and Livelihood Resources and Access to the Assets

22. The borrower/client will carry out an inventory of affected assets and livelihood resources, as well as a detailed measurement survey. Lost assets may include land, and improvements to the land such as structures and other physical assets attached to the land,
such as buildings, equipment and machinery, or the crops and trees grown on the affected land, and access to such assets; as well as all other resources such as formal and/or informal sources of livelihood and modes of income generation from trade, crafts, manufacturing, services, agricultural and livestock production, and other natural resource-based activities, and employment. The borrower/client will assess the full range of rights held or asserted by affected persons, including those based on custom or practice, access, or use for livelihood purposes, and rights held in common. The detailed measurement survey will provide exact quantitative and qualitative information about the lost assets and livelihood resources, such as their type, size, or weight, use and purpose, and/or property and employment relations, as applicable. The borrower/client will also identify any conflicting claims and disputes over affected assets and livelihood resources and support their legal resolution, as feasible. The detailed measurement survey will be carried out in the presence of affected persons and other relevant stakeholders.

d. Valuation of Lost Assets and Livelihood Resources

23. The borrower/client will conduct valuation to determine the replacement cost of lost assets and livelihood resources. “Replacement cost” is a value sufficient to replace an asset, plus necessary transaction costs, including administrative charges, taxes, legal, land survey and title registration fees, transition costs, and any other applicable payments and provisions associated with asset or livelihood resource replacement. Depreciation of structures and assets will not be taken into account. Where functioning markets exist, replacement cost is the market value as established through competent and qualified real estate valuation plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means such as calculation of output value for land or productive assets, the productive potential and location, and the undepreciated value of replacement material and labor for construction of structures or other fixed assets, plus transaction costs. Where physical displacement results in the loss of residential or business premises, the borrower/client will review valuation and augment it to ensure that it is adequate to enable the purchase or construction of replacement housing/business premises and/or other structures that meet acceptable minimum community standards of quality and safety.

24. The borrower/client will engage competent and qualified valuation experts to undertake an assessment of lost assets and livelihood resources due to the project-related LA/LUR. The valuation methodology for determining replacement cost will be documented and included in LA/LUR management tools. To ensure compensation at replacement cost, the borrower/client may be required to update or confirm planned replacement cost rates in project areas where inflation is high or there are otherwise significant and/or unanticipated adverse fluctuations in the value of assets, the cost of restoring resources, or the period of time between calculation of replacement cost rates and delivery of cash compensation measures is extensive and generally exceeds one year. The borrower/client will ensure that project staff responsible for LA/LUR have an operational understanding of the valuation process and applicable host country and international valuation practices and standards. The cost of all LA/LUR mitigation measures will be included by the borrower/client in the project cost.

e. Loss of Community Facilities, Utilities and Public Amenities

25. Where a project involves the loss of community facilities, utilities, or public amenities, or access thereto, the borrower/client will replace these to ensure an equal or better level of service, based on consultation with affected persons and competent government authorities to identify and agree upon suitable alternatives.

3. Planning of Land Acquisition and Land Use Restriction

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a. Land Acquisition Plan

26. To address the risks and impacts identified during the E&S assessment process described in ESS1, the borrower/client will, in consultation with ADB, prepare a LAP or other management tool proportionate to the nature and scale of the LA/LUR risks and impacts associated with a project, the mode(s) of LA/LUR, and the civil works procurement arrangements under a project. A LAP will be required for all types of LA/LUR. For projects and project components involving civil works which do not result in any LA/LUR risks and impacts, the borrower/client will prepare a DDR instead of a LAP, to confirm the absence of such risks and impacts. The borrower/client will engage qualified and experienced social specialist(s) to assist in the preparation of a LAP. The borrower/client will consider the mitigation hierarchy and document alternatives considered and selected options in a LAP to demonstrate that LA/LUR has been avoided and minimized to the extent possible. All project LAPs and DDRs will be publicly disclosed on the websites of the borrower/client and of ADB in accordance with ESS10.

27. In a LAP, the borrower/client will provide an account of the process and planned outcomes of all applicable involuntary as well as voluntary modes of LA/LUR. A LAP will be based on final detailed engineering designs and include the following: (i) proposed project, considered design alternatives, and the detailed justification of the selected design options; (ii) LA/LUR assessment, including the screening and/or scoping activities, the census and socio-economic baseline studies, and the assessment and valuation of lost assets and livelihood resources; (iii) stakeholder engagement activities in accordance with ESS10 and this ESS5; (iv) planned mitigation measures; (v) legal and policy gap analysis comparing the host country’s applicable laws for LA/LUR with the requirements of this ESS5; (vi) entitlement matrix for all applicable permanent and temporary, full and partial types of losses, eligible affected persons and entitlements for mitigation and compensation; (vii) livelihood and income restoration measures, livelihood improvement measures as applicable, as well measures necessary for relocation and resettlement; (viii) LA/LUR outcomes; (ix) implementation arrangements for the proposed LA/LUR mitigation measures, including sequencing them to synchronize LA/LUR activities and civil works procurement under a project; (x) monitoring, evaluation, and reporting arrangements for LA/LUR; and (xi) implementation timeline and detailed budget proportionate to the mitigation measures.

28. In cases of unanticipated LA/LUR risks and impacts occurring during project implementation after the preparation of a LAP, the borrower/client will conduct additional stakeholder engagement and LA/LUR assessment activities, develop appropriate mitigation measures, and prepare an addendum to the LAP, or an updated or new LAP for such unanticipated impacts with an amended entitlement matrix which does not lower the standards of the original and in accordance with the provisions and requirements of the original LAP and this ESS5.

b. Land Acquisition Framework

29. The borrower/client will, in consultation with ADB, prepare a LAF for projects or project sub-components for which the final detailed engineering design of project facilities have not been completed and where the nature and magnitude of LA/LUR are still uncertain during project preparation. The LAF will establish a project’s general principles, approach, and procedures for the assessment and mitigation of all probable types of LA/LUR risks and impacts and for the preparation of a future LAP. A LAF will include the results of an appropriate and feasible scoping to identify potential LA/LUR risks and impacts, as well as indicate all other applicable arrangements as per the LAP structure and incorporate a tentative budget with adequate contingencies. The borrower/client will demonstrate availability of monetary and institutional resources and commitment to undertake all outstanding LA/LUR assessment and
planning activities, should the borrower/client pursue the preparation of a LAF. All LAFs will be publicly disclosed on the websites of the borrower/client and of ADB.

**c. Private-Sector Projects with Government-Managed Land Acquisition and Land Use Restriction**

30. In private sector projects where LA/LUR is the responsibility of the host country government, a borrower/client will: (i) engage the competent government authorities early in the project development process to explore ways and means to reach compliance with this ESS5; (ii) identify gaps between requirements under the host country’s applicable laws and the practices of the competent government authorities against the requirements of this ESS5; (iii) take responsibility for bridging the gaps in a manner that is acceptable to ADB; and (iv) collaborate with the competent government authority, to the extent permitted, to achieve outcomes that are materially consistent with the objectives of this ESS5. A borrower/client will prepare a plan to complement the documents prepared and implemented by the competent government authorities, if necessary to satisfy the requirements set out in this para 30. Such plan will include proposed measures to bridge any gaps with requirements of this ESS5 and the financial and implementation responsibilities of the competent government authorities and the borrower/client in the execution of the plan. The borrower/client will retain the responsibility for providing monitoring, evaluation, and reporting of government-managed LA/LUR activities.

**d. Budget and Fund Flow**

31. The borrower/client will prepare a definitive overall LA/LUR budget proportionate to the required LA/LUR-related planning, mitigation, and monitoring, evaluation, and reporting activities, including: (i) stakeholder engagement, LA/LUR assessment, cash and in-kind compensation, livelihood restoration and livelihood improvement, relocation and resettlement, and other assistance and corrective actions; (ii) LA/LUR staffing and related operational cost; (iii) all LA/LUR-related capacity building measures; and (iv) progress monitoring, including internal and external, evaluation and reporting of all LA/LUR-related activities. The budget will be itemized in line with LA/LUR risks and impacts and activities, and will indicate the unit types, unit rates, the number of units, and the cost. The budget will contain adequate contingencies to finance corrective actions as well as the planning and mitigation of unanticipated impacts, if any. The borrower/client will consider allowances for inflation, population growth in a project area, and any other potential contingencies to meet the replacement cost requirement. The applicable LA/LUR budget(s) will be specified in a LAP and LAF, ESCP/ESAP, and other project documents, as applicable. For projects using a LAF, a borrower/client will prepare an estimated tentative budget based on scoping of anticipated LA/LUR risks and impacts and with sufficient contingency, with a commitment for future allocations of funds for a LAP to be developed and implemented during the implementation phase of a project cycle.

32. The borrower/client will ensure the availability and timeliness of the required funds. In each LAP or LAF, a borrower/client will describe how LA/LUR activities will be financed, including how ADB funding will be applied, if any. The borrower/client will also describe the channels and procedures for the transfer of funds to affected persons. Any cost arrangements with service providers, including non-governmental organizations (NGOs) and community-based organizations (CBOs), and other providers of training and support services will also be described in a LAP or a LAF.

**4. Monitoring, Evaluation, and Reporting**

33. For all projects with LA/LUR risks and impacts, the borrower/client will establish procedures for and monitor progress and outcomes and evaluate the implementation of a
LAP/LAF. The extent of monitoring will be proportionate to the nature and scope of a project’s potential LA/LUR risks and impacts. The borrower/client will carry out stakeholder engagement with the participation of affected persons, including women and disadvantaged or vulnerable persons, as well as other relevant stakeholders, and will consider their concerns and feedback as part of monitoring activities. The borrower/client will report on the status of the delivery of mitigation measures to all affected persons, including disadvantaged or vulnerable persons and provide a gender-disaggregated analysis of mitigation activities. The borrower/client will ensure the availability of designated financial and staff resources to undertake monitoring, evaluation, and reporting. All reports will be publicly disclosed on the websites of the borrower/client and of ADB.

34. The borrower/client will prepare the following monitoring reports:

(i) At least a semiannual internal progress monitoring report, commencing from the start of the implementation phase of a project cycle, at the latest. The borrower/client will confirm implementation of a LAP for relevant project components before commencement of civil works through a conformation review report, to demonstrate that: (i) cash compensation of lost assets and livelihood resources at full replacement cost and additional financial assistance for livelihood restoration and for the relocation of physically displaced persons, has been paid to each eligible displaced person; (ii) entitlements to in-kind replacement of lost assets and livelihood resources at full replacement value, including relocation of physically displaced persons by a project, are provided to each eligible affected person; and (iii) a livelihood restoration program, supported by an adequate budget, is in place. For projects with significant LA/LUR risks and impacts, the borrower/client will hire qualified and experienced external social monitoring experts other than their internal social specialists to undertake external progress monitoring to verify and validate the borrower’s/client’s monitoring information through external monitoring report.

(ii) The borrower/client will undertake completion reporting upon completion of LA/LUR and livelihood restoration activities in order to demonstrate the project’s full compliance with the requirements of this ESS5, and the applicable LAP/LAF. The borrower/client will ensure that a project will not be closed until the LA/LUR completion report is prepared, approved, and disclosed, and related CAPs, if any, are fully implemented. External completion reporting will be required for projects with significant LA/LUR risks and impacts.

(iii) For projects with significant LA/LUR risks and impacts, the borrower/client will undertake external evaluation, conducted by external social monitoring and evaluation experts to assess the outcomes of LA/LUR mitigation twelve months after the completion of all LA/LUR-related activities or as agreed under the ESCP/ESAP. Should gaps in achieving LA/LUR outcomes be identified, the borrower/client will prepare a CAP.

35. The borrower/client will ensure that the external social monitoring and evaluation experts have full access to all LA/LUR-related information.

36. The borrower/client will develop and disclose a CAP and take corrective actions at any stage of a project cycle when necessary to achieve the objectives of this ESS5. A CAP will describe all cases of non-compliance and respective activities required to reach compliance with this ESS5, and include a budget, implementation arrangements, allocation of roles and responsibilities, and an implementation schedule. Implementation of CAPs will be monitored and documented as part of progress monitoring. The borrower/client will not apply CAPs in lieu of timely LA/LUR assessment and mitigation.
37. The borrower/client will support third-party monitors whom ADB may directly engage to monitor and evaluate the LA/LUR planning and implementation process and outcomes. The borrower/client will share all relevant information and otherwise facilitate access to related project areas for such monitors.

38. For projects involving civil works and assessed to be without LA/LUR risks and impacts, the borrower/client will confirm a continued absence of LA/LUR risks and impacts through available reporting mechanisms. The borrower/client will ensure that any unanticipated LA/LUR risks and impacts are noted, assessed, and addressed in accordance with this ESS5.

5. Institutional Arrangements and Integration with Other Project Activities

a. Organizational Capacity

39. The borrower/client will establish, maintain, and strengthen, as necessary, an organizational structure that defines roles, responsibilities, and authority to plan and implement LA/LUR in accordance with this ESS5. The institutional arrangements for the management of LA/LUR will be reflected in an ESCP/ESAP, LAP, and LAF, as relevant, as well as any other applicable safeguards management tools.

b. Integration with Project Design, Procurement, and Contract Management Activities

40. The borrower/client will prepare a detailed time-bound schedule for all LA/LUR-related activities, and integrate such schedule fully with project design, procurement, and civil works contract management activities. The schedule will stipulate the preparation and completion of a LAP vis-à-vis civil works contract signing depending on procurement modality, and the implementation of a LAP before the commencement of civil works. For projects and project components involving employer design, the borrower/client will award such contracts after a LAP is prepared and cleared by ADB. For projects and project components involving contractor design, the borrower/client will include additional measures in a LAP and procurement documentation to avoid economic and physical displacement prior to LA/LUR risk and impact mitigation. The borrower/client will ensure that project LAP/LAF provisions apply to project components which fall under retroactive financing and advance procurement.

41. The borrower/client will ensure that all provisions related to the assessment, mitigation, and reporting of LA/LUR risks and impacts as well as other impacts which may result in economic and/or physical displacement are included in bidding documentation and contractors’ contracts.

6. Treatment of Disadvantaged or Vulnerable Persons

42. The borrower/client will identify, assess, and address risks to and impacts on disadvantaged or vulnerable persons, while also taking into account gender considerations, in the planning and implementation of LA/LUR throughout the concept design, preparation, and implementation phases of a project cycle. The borrower/client will include gender-disaggregated analysis in the census and socio-economic baseline studies to generate understanding of the gender aspects of LA/LUR risks and impacts. The borrower/client will ensure that disadvantaged or vulnerable persons receive fair and appropriate mitigation measures tailored to their needs and preferences and accounting for gender considerations, as it pertains to modalities of compensation, provision of livelihood restoration and livelihood improvement, and relocation and resettlement measures. When the host country’s applicable laws and tenure systems do not recognize the rights of women to hold or
exchange property, provision will be made to ensure, to the extent possible, that women can gain security of tenure.

B. Mitigation of Risks and Impacts from Involuntary Land Acquisition and Land Use Restriction

1. Compensation and Benefits for Affected Persons

43. To mitigate the risks and impacts caused by involuntary LA/LUR, the borrower/client will offer affected persons compensation at replacement cost, and other assistance as may be necessary to help affected persons improve or at least restore their standards of living and livelihoods. Compensation standards for affected land and assets will be disclosed and applied consistently. In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.

44. Affected persons with a formal legal right to land or assets under paragraph 13(i) or with a claim to land or assets that is recognized or recognizable under the host country’s applicable laws under paragraph 13(ii), are entitled to compensation for the loss of their land and other assets with equivalent replacement land and assets or cash compensation at replacement cost. Affected persons with a recognizable claim to land or assets will be provided by a borrower/client with free legal support to obtain formal recognition of their claim. Affected persons without a formal legal right or recognizable claim to the land or asset as defined under paragraph 13(iii), and who occupy and/or use the land prior to a publicly established cut-off date, are entitled to compensation for their lost non-land assets at replacement cost, but not for land. To enable the re-establishment of residential or business premises and livelihoods of affected persons under paragraph 13(iii), the borrower/client will provide arrangements for access to adequate housing and/or facilities with secure tenure. Based on consultations with such affected persons, the borrower/client will provide resettlement assistance in lieu of compensation for land sufficient for them to restore their livelihoods, standard of living, and/or restore their business at an adequate alternative site.

45. The borrower/client will provide affected persons with compensation for their lost land and other assets at replacement cost or above. Payment of cash compensation for lost land or assets at replacement cost may be appropriate where: (i) livelihoods are not land-based; (ii) livelihoods are land-based but the land taken for a project is a small fraction of the affected asset and the residual land is economically viable; or (iii) active markets for land, housing, and labor exist, affected persons use such markets, and there is sufficient supply of land and housing available through such markets. The borrower/client will give preference to land-based compensation strategies for affected persons whose livelihoods are land-based, or the land is collectively owned. The term “land-based” includes livelihood activities such as subsistence agriculture and related value addition activities, rotational cropping, and grazing of livestock as well as harvesting of natural resources. Replacement land and assets offered to affected persons will be at least equivalent in their material characteristics and use value in terms of their quality, productive potential, quantity, and purpose and will be provided with security of tenure and similar locational advantages. Where there is insufficient suitable replacement land available, the borrower/client will demonstrate and document this in a LAP.

46. The borrower/client, at the request of affected persons, will assess and acquire entire land parcels if partial acquisition would render the remainder economically unviable, or make the remaining parcel unsafe or inaccessible for human use or occupancy.

47. The borrower/client will take possession of land and related assets only after compensation in accordance with this ESS5 has been made available and, where applicable, physically displaced persons have been resettled with relevant assistance and entitlements provided. For the relocation of physically displaced persons, the borrower/client will make
relocation sites, replacement properties, and associated public services, amenities, and utilities available before physical displacement. At a minimum and in exceptional cases, a borrower/client will ensure relocation to temporary intermediate premises of equal or better quality and use value for a limited period of time not exceeding one year, and will formally commit, guarantee, and document all necessary arrangements for the transition to permanent relocation sites and replacement property.

48. Persons physically displaced from their residential or business premises temporarily or permanently are entitled to relocation and resettlement measures at full replacement cost. The borrower/client will consult physically displaced persons on their preferences for relocation and resettlement and may offer options for either relocation by the project in resettlement sites or in individual residential and business premises, or self-relocation. The borrower/client may offer a choice between a replacement property of equal or higher value with security of tenure, equivalent or better characteristics, including advantages of location, or cash compensation at full replacement cost. After meaningful consultations on the relocation and resettlement process, the borrower/client will inform physically displaced persons with adequate advance notice of the timing of relocation, taking potential impacts on agricultural and schooling calendars, among other factors, into consideration. Persons whose livelihoods are affected by relocation and resettlement, including lost income during the period of transition to relocation sites, will be compensated by the borrower/client in accordance with the requirements for livelihood restoration and livelihood improvement under paras 53 and 54 of this ESS5. Particular attention will be paid to the differentiated needs of disadvantaged or vulnerable affected persons. The borrower/client will improve living conditions of such affected persons through the provision of adequate housing, access to services and utilities, and security of tenure. Where the borrower/client demonstrates that an affected person derives substantive income from multiple illegal rental units, the compensation and other assistance that would otherwise be available to such affected person for non-land assets and livelihood restoration may be reduced with the prior agreement by ADB.

49. When offering resettlement sites, the borrower/client will ensure that such sites or the locations for individual housing and business premises offered by a project will include comparable or better essential public services and utilities, such as water and electricity supply, schools, health care, shopping, government offices, and the like. The borrower/client will consult affected persons, including host communities, as well as competent government authorities, to identify and agree upon such suitable options. The borrower/client will ensure that the cost of the establishment of new or improved existing public services and utilities will be borne by a project. For the preparation, construction, and occupation of a resettlement site, an E&S assessment will be undertaken by the borrower/client as required by ESS1 and this ESS5, and mitigation plans will be prepared and implemented in accordance with the applicable standards of the Environmental and Social Framework (ESF).

50. All physically displaced persons will be provided by the borrower/client with financial and logistical transition, moving, and relocation assistance. The borrower/client will document all transactions to acquire land rights, provision of compensation, and other assistance associated with relocation activities. All transition and transaction costs, including the cost of transport of personal effects and furnishings of lost residential premises and/or the transfer and reinstallation of the plant, machinery, or other equipment of lost business premises, in addition to logistical and administrative costs, survey and titling costs, as well as the cost of transition housing, if required, will be borne by a project or included in cash compensation.

51. The borrower/client will assess and mitigate any potential risks for and adverse impacts on host communities due to the relocation and resettlement of persons displaced by a project in accordance with this ESS5. The host communities will be fully informed and consulted about a project’s adverse impacts and mitigation measures in accordance with ESS10.
52. The borrower/client will not resort to **forced eviction** of affected persons. "**Forced eviction**" is defined as the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection, including all applicable requirements of this ESS5. The exercise of compulsory acquisition or similar powers by a borrower/client will not be considered to be forced eviction providing it complies with the requirements of the **host country’s applicable laws** and the provisions of this ESS5, and is conducted in a manner consistent with basic principles of due process, including provision of adequate advance notice, **meaningful consultations** and opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate, or excessive force.

2. **Livelihood Restoration and Livelihood Improvement**

53. In projects where **economic** and/or **physical displacement** cause loss of livelihood and/or income sources, the borrower/client will undertake a commensurate livelihood restoration program proportionate to the severity of LA/LUR risks and impacts, and supported by an adequate budget and competent expertise, to ensure that affected persons can transition to and reestablish livelihood and/or income generation activities with at least equivalent or improved earning potential compared to pre-displacement levels. The borrower/client will identify all eligible affected persons prior to taking possession of land and related assets, with adequate budget formally allocated and made available to provide agreed livelihood restoration and improvement.

54. The requirement for **livelihood** restoration applies to all persons affected by livelihood losses, irrespective of the status of legal rights to the land or assets from which they are displaced, including owners, operators, cultivators, employees, lessees, and sharecrop tenants, as well as the users of natural resources located on acquired or restricted land. **Physical displacement** of businesses may cause long-term interruptions requiring appropriate business relocation and transition support measures, while business closures will necessitate comprehensive financial compensation, including adequate staff retrenchment measures and plans. The livelihood restoration program implemented by the borrower/client will include a combination of, but not be limited to, employment and business development, credit facilities, supply of agricultural or manufacturing inputs, skills training, and cash compensation. Income replacement to sustain livelihoods will be provided by the borrower/client until affected persons can reestablish equivalent income generation capacity through new livelihood activities within reasonable time. Livelihood losses due to impacts on income generation activities producing illicit goods and services may be restored by providing opportunities for the economically displaced persons to transition to alternative livelihoods and legal activities.

3. **Use of Escrow or Similar Arrangements**

55. In cases where legal and administrative impediments to the disbursement of cash compensation occur such as the failure of repeated efforts to contact absentee owners, the rejection of fair compensation offers by affected persons, or ongoing legal proceedings due to competing claims to the ownership of lands or assets, the borrower/client, on an exceptional basis and with prior agreement of ADB, may deposit the respective compensation funds indicated in a LAP in an interest-bearing escrow or other deposit account, after demonstrating that all reasonable efforts to resolve such constraints have been made. The borrower/client may then proceed with the relevant project activities provided all other available affected persons have been provided with applicable mitigation measures. Compensation deposited in an escrow account will be indexed for inflation and made available to eligible affected persons in a timely manner as issues are resolved. Through a LAP and progress/compliance monitoring, the borrower/client will inform ADB of the intent to use escrow accounts in lieu of
disbursement of compensation before taking possession of the land and other assets and seek ADB’s approval.

4. Negotiated Settlement

56. The requirements set forth in Section IV.A and IV.B apply to negotiated settlements, which are defined in paragraph 11(i) and are considered a mode of involuntary LA/LUR. While the borrower/client will offer adequate, fair, and agreeable prices and/or replacement assets for lost assets and livelihood resources, the rates for sale prices will be at least at replacement cost, and in-kind compensation will be at least at replacement value. Compensation rates may be subject to upward adjustment where negotiation strategies are employed. The borrower/client will apply all additional assistance and livelihood restoration measures as appropriate. The borrower/client will ensure that under negotiated settlement the risks of asymmetry of information and bargaining power of the parties involved in such transactions will be mitigated. For this purpose, relevant social monitoring experts will be engaged by the borrower/client to verify and document the negotiation and settlement process and assess its compliance with the requirements of a LAP and this ESS5 in monitoring reports.

5. Land Use Restriction

57. To address the mitigation of livelihood losses caused by land use restriction, the borrower/client will either permit continued, regulated, and/or restored access to project-affected land and resources, or provide access to culturally appropriate alternative resources with equivalent livelihood- and income-earning potential and accessibility. The borrower/client will assist affected persons to enhance the productivity of the remaining land and resources to which they have access. In case of temporary access restriction due to project construction works, the borrower/client will provide alternative access routes with appropriate community safety measures. The borrower/client will compensate the temporary loss to affected persons due to unavoidable access restrictions at replacement cost for the duration of the restriction. The borrower/client will mitigate physical displacement of persons affected by land use restriction through relocation and resettlement measures in accordance with the provisions for relocation and resettlement under this ESS5.

C. Requirements for Voluntary Land Acquisition and Land Use Restrictions

1. General Criteria and Due Diligence Requirements

58. If voluntary arrangements are proposed to be used to acquire land or restrict land use for project purposes, the requirements set forth in this Section IV.C apply. The borrower/client will confirm and provide evidence satisfactory to ADB, as relevant, that the requirements of this Section C have been met.

59. In order for LA/LUR to be considered voluntary, the following criteria apply:

(i) The transaction is conducted in an open and transparent manner, with timely and complete information provided to affected persons sufficient to enable an informed choice.

(ii) Affected persons have the right to refuse the LA/LUR, have been given full opportunity to effectively exercise that right, and have confirmed in writing their decision not to exercise the right of refusal.

(iii) No coercion, intimidation, bribery, or undue influence is used to influence the decision of the affected persons.

(iv) There is no threat of expropriation or other compulsory procedure if parties do not reach an agreement.
The terms of the transaction ensure that affected persons are benefiting from the transaction and receiving fair value in exchange for the rights being voluntarily relinquished.

Affected persons are not rendered disadvantaged or vulnerable as a result of the transfer of their land rights.

Affected persons will not be required to vacate land or relinquish land rights until compliance with the above criteria and with other relevant requirements set forth below is confirmed.

60. Where voluntary LA/LUR may result in the displacement of persons, other than the parties to the transaction, who occupy, use, or claim rights to the land in question, such displacement is considered involuntary and is addressed and mitigated in accordance with Section IV.B.

2. Requirements Applicable to Specific Modes of Land Acquisition/Land Use Restriction

a. Voluntary Land Donation

61. In some projects, it may be proposed that part or all of the land to be used by a project is donated on a voluntary basis without provision or only partial provision of compensation. Subject to prior approval by ADB, the borrower/client may employ voluntary land donation provided the borrower/client demonstrates in a LAP that the criteria in paragraph 59, as well as the following additional requirements are met: (i) the amount of land being donated is minor and will not reduce the donor’s remaining land area below that required to maintain the donor’s current livelihood levels; (ii) no physical displacement is involved; (iii) the donor(s) are expected to benefit directly from project activities; (iv) for community or collective land, donations can only occur with the consent of all individuals using or occupying the land; (v) project components are not site-specific; and (vi) the borrower/client maintains a transparent record of auditable quality of all consultations and agreements reached and reflects them in a LAP. Voluntary land donation is also subject to the General Requirements in Section IV.A, modified as appropriate to reflect the nature of the transaction and proportionate to the risks and impacts involved.

b. Land Pooling and Readjustment

62. In some projects supporting rationalization of urban space or enhanced agricultural productivity, the borrower/client may seek agreement of affected persons to participate in a land pooling or land readjustment arrangement. Participants in such arrangements may elect to accept a partial loss of land or localized relocation in return for improvements that will increase the value of their property after development. A LAP will provide a comprehensive account of the process of reaching agreement and demonstrate the voluntary nature of the transactions agreed, applying the criteria set forth in paragraph 59. It will provide credible analysis and evidence-based calculations demonstrating the expected increase in value that the affected persons will realize. The land pooling and readjustment process will be supported by adequate financial resources for administrative, implementation and construction costs as specified in the budget of a LAP. The borrower/client will ensure transitional arrangements are in place so that affected persons are not disadvantaged nor their livelihoods adversely affected during the period between the initiation of development and the completion of improvements. The physical displacement of persons participating in land pooling and readjustment will be avoided as much as possible and where avoidance is not possible, affected persons will be compensated for asset losses and supported by relocation assistance in cash and/or kind in accordance with this ESS5. Land pooling and readjustment is subject to the General Requirements in Section IV.A, modified as appropriate to reflect the nature of the transaction and proportionate to the risks and impacts involved.

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c. Voluntary Land Use Restriction in Community-based Natural Resource Management

63. Community-based natural resource management projects may entail voluntary collective agreement by a community to restrict access to resources that are being managed or conserved. In such cases, the borrower/client will ensure that a project engages the participating community, and especially all of the economically displaced community members with landownership or use rights, in a participatory and consensus-based process, to design and establish land use restrictions and alternative land use practices which simultaneously protect natural resource bases and affected persons’ livelihoods. The borrower/client will document the commitment of a community, with special attention to those most affected, to the agreed land use restrictions and modified land use practices and clarify how the livelihoods of the community members will be protected, restored, and improved. The borrower/client applies the criteria in paragraph 59 and confirms in a LAP that the agreement reached reflects voluntary, informed consensus through a transparent and fair decision-making process. Because conservation measures may have livelihood implications, particularly for disadvantaged or vulnerable households, a LAP will assess the nature and extent of such adverse impacts and appropriate mitigation measures will be agreed with the community and supported by the borrower/client. General Requirements in Section IV.A apply to such transactions, modified as appropriate to reflect the nature of the transaction and proportionate to the LUR risks and impacts involved.

d. Voluntary Sale and Purchase of Land through Legally Recorded Market Transactions

64. Voluntary land acquisition may entail voluntary, legally-recorded market transactions such as transfer of formal ownership rights through the sale and purchase of land and other assets or other similar transactions between a willing seller and a willing buyer in which the seller is given a genuine opportunity to retain land/assets and to refuse such transaction. The requirements in Section IV.A and IV.B do not apply to such transactions, provided the following conditions are met. Through the E&S assessment process described in ESS1, the borrower/client will transparently document the process and outcomes of the transaction, demonstrate the free consent of the sellers to the sale of land and/or other assets, and confirm that the voluntary sale will not render the sellers disadvantaged or vulnerable. For this purpose, the borrower/client will agree with ADB on meaningful consultation processes, policies, the host country’s applicable laws, qualified third-party validation, mechanisms for calculating the replacement cost of land and other assets affected, and record-keeping requirements. For market transactions which occurred prior to ADB involvement in a project, including those done by a third party, the borrower/client will conduct due diligence to confirm the sale was consistent with the above characteristics.
Annex 1. Land Acquisition Management Tools

This Appendix is part of this ESS5 and provides guidance for the documentation required to be prepared and publicly disclosed on the websites of the borrower/client and of ADB under this ESS5. Projects may use alternative nomenclature, depending on the scope and types of land acquisition transactions.

I. Land Acquisition Plan

The scope of requirements and level of detail of a LAP may vary with the magnitude, complexity, and types of land acquisition transactions. The plan is based on up-to-date detailed engineering designs-based information about LA/LUR risks and impacts as determined under the scope of this ESS5.

Outline

A. Executive Summary
   - Provides a summary of the project scope, the purpose of the LAP, the key findings of the assessment of LA/LUR risk and impacts, the modes of land acquisition adopted and the planned mitigation measures, the institutional arrangements for project and LA/LUR planning and implementation and the overall budget for LA/LUR.

B. Project Description
   - Summarizes a project and project area, including its E&S context.
   - Documents design alternatives considered to avoid and minimize LA/LUR risks and impacts, with detailed justification of the selected design options considering E&S, technical, and financial costs, and benefits.

C. Land Acquisition/Land Use Restriction Assessment

Reports on the methodologies, findings and conclusions of the census and socio-economic baseline studies carried out and the magnitude and types of LA/LUR-related losses caused by a project, as well as the social and valuation specialists engaged to undertake the LA/LUR assessment, including the following:

   - Summary of screening and scoping activities conducted in accordance with ESS1, to determine the scope of the social impact assessment and the modes of land acquisition to be adopted.
   - Results of the census and socio-economic baseline studies based on detailed engineering designs to: (i) define, identify, and enumerate the number and types of all affected persons and communities, including host communities, if any, as well as their relevant social, economic, and cultural characteristics; and (ii) to ascertain their ownership and use rights with respect to land and other assets to determine their eligibility to compensation and assistance. All data and information are disaggregated by gender and for disadvantaged or vulnerable groups, and are supported by tables and diagrams, as applicable.
   - Inventory, detailed measurement survey, and valuation of all losses, to identify and value the loss of land and other assets, land use rights and sources of livelihood.
   - Synchronization of LA/LUR assessments with the preparation of a final detailed engineering design of project facilities.
   - Identification of impacts with a pending assessment.

D. Stakeholder Engagement
Documents stakeholder engagement activities during LA/LUR planning and those to be undertaken during LAP implementation, including stakeholder identification, information disclosure, and grievance mechanism.

E. Legal and Policy Framework
Provides a legal gap analysis comparing the host country’s applicable laws with the requirements of this ESS5 and indicates measures adopted to fill any gaps. The analysis focusses on the land acquisition process, eligibility criteria for compensation and assistance, and valuation methods and entitlements relevant to a project’s assessed LA/LUR risks and impacts.

F. Planned Mitigation Measures
Documents mitigation measures for all applicable permanent and temporary, full and partial types of LA/LUR-related losses, including:

- Entitlement matrix for all applicable types of losses, eligible affected persons, assistance, and entitlements.
- Measures for compensation for all lost assets and access to assets and livelihood resources.
- Options for livelihood and income restoration and improvement.
- Options for relocation and resettlement, including a detailed description of principle and process of site selection and preparation.
- Measures to address the specialized needs of the disadvantaged or vulnerable.

G. Outcomes of Land Acquisition/Land Use Restriction
Summarizes outcomes of the mitigation measures for LA/LUR, which will serve as indicators for monitoring and evaluation.

H. Implementation Arrangements and Timeline for Implementation of a LAP
Describes institutional roles, capacities, and responsibilities for LA/LUR planning and implementation as well as the arrangements to align the LA/LUR with procurement and commencement of civil works.

I. Monitoring, Evaluation, and Reporting
Documents requirements and indicators for internal and external monitoring and evaluation of the implementation of a LAP, as applicable.

J. Budget and Timeline
Indicates itemized LA/LUR budget and the flow of funds and includes a timeline for LAP implementation.

K. Appendix of the Land Acquisition Plan
Provides documentary evidence to support the results of the assessment of LA/LUR risks and impacts, and any other relevant information such as minutes and attendance lists of consultation events, detailed impact and compensation registers for all affected persons, baselines questionnaires, valuation reports, cut-off date notification, maps and photographs for the locations of planned project facilities and affected properties, etc. Local language documents will be translated into English.

II. Land Acquisition Framework
The purpose of a LAF is to: (i) establish principles, approach, and procedures for the assessment and mitigation of all potential types of LA/LUR risks and impacts in a project, and for the preparation of required future LAPs; (ii) present results of the scoping assessment to identify potential LA/LUR risks and impacts if preparation of a LAP is not yet feasible; and (iii)
estimate a budget based on such proportionate and feasible scoping. The LAF structure follows the same outline as that of a LAP.