NOTE: This document should be read in conjunction with the proposed ADB Environment and Social Framework, which contains the full text of the Environmental and Social Policy (proposed responsibilities of the ADB), the 10 Environmental and Social Standards (proposed responsibilities of the Borrowers/Clients, and the Prohibited Investment Activities List (activities ineligible for ADB financing). This document is being circulated for consultation purpose only. Guidance from the ADB Board of Directors will be sought on this document as part of the Working Paper, scheduled in Q4 2023.

DRAFT FOR CONSULTATION
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Environmental and Social Standard 8. Cultural Heritage
ESS 8: CULTURAL HERITAGE

I. INTRODUCTION

1. This Environmental and Social Standard (ESS) 8 recognizes that cultural heritage, in its tangible and intangible forms, is a valuable and irreplaceable community connection between past, present, and future.

2. Tangible and intangible cultural heritage are important assets for economic and social development, a source of valuable scientific and historical information, and an integral part of people’s cultural identity and practice.

3. This ESS8 seeks to protect cultural heritage and to encourage its broader use as an enabler of sustainable development.

II. OBJECTIVES

a. Protect cultural heritage from adverse impacts of project activities, and support its conservation;

b. Address cultural heritage protection as an integral aspect of sustainable development;

c. Apply the mitigation hierarchy to avoid and minimize adverse impacts on cultural heritage;

d. Promote meaningful consultation with stakeholders regarding cultural heritage;

e. Promote the equitable sharing of benefits from the use of cultural heritage.

III. SCOPE OF APPLICATION

4. The applicability of this ESS8 is established during the environmental and social (E&S) assessment process described in ESS1. The term cultural heritage encompasses tangible and intangible cultural elements or artifacts, which may be recognized and valued at a local, regional, national, or global level and that merit conservation or protection, as follows:

   (i) **Tangible cultural heritage** includes movable or immovable objects, sites, built heritage, and natural features and landscapes that have archaeological, paleontological, scientific, historical, architectural, religious, or other cultural significance. Tangible cultural heritage may be found in urban or rural settings and may be above or below ground or underwater and may be previously known or studied, or not. Human remains, whether part of an archaeological or landscape feature, graveyard, simple isolated gravesite, or if only a physical memorial of human life, constitute tangible cultural heritage.

   (ii) **Intangible cultural heritage** includes practices, representations, expressions, knowledge, skills, and language as well as the associated instruments, objects, and artifacts, that communities and groups recognize as part of their cultural heritage, and which is transmitted from generation to generation, and which may be constantly recreated by those groups and communities as part of their interaction with nature and their history, and with other human groups.

5. The requirements of this ESS8 apply to intangible cultural heritage only if a physical component of a project will have an impact on such cultural heritage, or if a project intends to use intangible cultural heritage, such as traditional knowledge, innovations, or practices, for commercial or non-commercial purposes.
6. The requirements of this ESS8 will apply to all projects likely to have risks for or impacts on cultural heritage. This will include any project that:

(i) Involves excavations, demolition, earth moving, flooding, inundation, or other changes in the physical environment;
(ii) Is located within a legally protected heritage area or its buffer zone;
(iii) Is located in, or in the vicinity of, a recognized cultural heritage site, whether legally protected or not; or
(iv) Is specifically designed to support the conservation, management, or other use of cultural heritage, including commercial use.

7. Badly damaged, out of context, or inherently minor cultural remains, as determined by a subject-specific cultural heritage expert and in meaningful consultation with project-affected persons, do not constitute cultural heritage.

IV. GENERAL REQUIREMENTS

A. Assessing Impacts on Cultural Heritage

8. The borrower/client will site and design a project to avoid damage to cultural heritage. At an early stage of the E&S assessment process described in ESS1, the borrower/client will use good international practice (GIP) to be agreed with ADB to identify the likelihood of adverse project impacts on cultural heritage, the level of significance of each instance of cultural heritage, and the magnitude of its loss through adverse impacts.

9. The borrower/client will ensure that the assessment of cultural heritage is conducted by qualified and experienced cultural heritage experts, as part of the E&S assessment process under ESS1, and in a manner proportionate to the potential E&S risks and impacts of a project.

10. During the assessment process, the borrower/client will consider direct and cumulative project-specific risks and impacts on cultural heritage. The borrower/client will also identify and mitigate indirect impacts that may include visual effects, noise, vibration, and other changes to the setting or surrounding landscape. The borrower/client will ensure that the assessment identifies and considers the significance of each instance of cultural heritage to its primary users, those entrusted with its protection, and project-affected persons. Where expert advice or stakeholder feedback after meaningful consultation indicates the likelihood of cultural heritage, the borrower/client will conduct desk-based research and field surveys to document, map, and investigate such resources. Based on the results of field surveys, expert assessment of the significance of cultural heritage, requirements of national legislation, applicable international conventions, and results of meaningful consultations with stakeholders, the borrower/client may be required to conduct additional studies.

11. The borrower/client will document the location and characteristics of sites and materials discovered or identified during the concept design, preparation, and implementation phases of a project cycle in consultation with international, national, or sub-national cultural heritage authorities. The borrower/client will coordinate with such authorities to either take custody or determine the ownership or custodial responsibility of materials and records in relation to cultural heritage discovered or identified, in accordance with the host country’s applicable laws. Where a project may have unavoidable significant adverse impacts on cultural heritage, both tangible and intangible, that are material to the identity and/or cultural, ceremonial, or spiritual aspects of project-affected Indigenous Peoples, the borrower/client will obtain free, prior, and informed consent (FPIC) of project-affected Indigenous Peoples in accordance with ESS7.
locations of heritage sites, the borrower/client will ensure that the project design process avoids or minimizes risks to and impacts on discovered or identified sites and materials that remain in place.

12. For legally protected cultural heritage, the borrower/client will follow the applicable protection measures specified in associated management documents associated with such cultural heritage. Where absent, the borrower/client will consult those entrusted to protect the cultural heritage and may apply measures recommended through the meaningful consultation process. For cultural heritage assessment based on community values, the level of significance will be determined, and corresponding protection measures will be adopted, in meaningful consultation with the community.

13. In addition to assessing and mitigating direct physical impacts on cultural heritage, considerations of setting may be particularly important to users’ experience in relation to built heritage, landscape features with cultural significance, burial sites, and archeological sites with above-ground features.

14. The borrower/client will evaluate cultural heritage using a methodology that includes local, community-determined values, established levels of legal protection, and the value of the cultural heritage as a resource for future study. The borrower/client will evaluate all cultural heritage in a manner that allows comparison with other resources addressed by the E&S assessment process set out in ESS1.

15. As a part of the E&S assessment process, the borrower/client will carry out meaningful consultation with stakeholders, in accordance with ESS10, to: (i) identify cultural heritage that may be affected by a project; (ii) consider the level of significance of the cultural heritage affected by a project; (iii) assess the potential risks and impacts to that cultural heritage; and (iv) explore avoidance, mitigation, and monitoring and reporting options. The borrower/client will provide information to stakeholders using transparent and appropriate language on the scope, location, and duration of project activities that could cause risks to and impacts on cultural heritage.

16. At any time during the concept design, preparation and implementation phases of a project cycle, the borrower/client may be required to engage additional subject-specific cultural heritage experts to assist in the identification, evaluation, and protection of potentially significant cultural heritage.

17. If there are significant changes to a project, or discoveries that indicate additional risks to and impacts on cultural heritage, particularly where these will impact project-affected persons, the borrower/client will meaningfully consult with relevant stakeholders and appropriate cultural heritage experts on how to mitigate these risks and impacts and determine if any additional mitigation measures would be required.

B. Mitigating Unavoidable Impacts

18. Where avoidance of adverse impacts is not possible, the borrower/client will identify and implement measures to address impacts on cultural heritage in accordance with the mitigation hierarchy described in ESS1. The mitigation hierarchy will be applied, and offsets will only be considered as a last resort.

19. The borrower/client will not remove any cultural heritage unless the following conditions are met:
(i) No alternatives to removal are available;
(ii) The overall benefits of a project substantially outweigh the significance of the cultural heritage to be lost;
(iii) Any removal or excavation is conducted after meaningful consultation and in accordance with the host country’s applicable laws, including those laws implementing host country obligations under international laws, and protected area management plans, and GIP may be considered as necessary.

20. The borrower/client will adopt GIP for desk and field-based assessment, documentation, and protection of cultural heritage throughout the concept design, preparation, and implementation phases of a project cycle. The borrower/client will ensure that contractors and other third parties engaged in a project adhere to this same requirement.

21. To address unavoidable impacts, the borrower/client will, in consultation with ADB, develop a cultural heritage management plan (CHMP). The CHMP will include an implementation timeline and an estimate of resource needs for the management measures that are anticipated. The borrower/client will ensure that the CHMP is developed by an appropriate cultural heritage expert, either as a standalone document or as a part of another document prepared in accordance with ESS1. The borrower/client will implement the CHMP and will ensure that contractors and other third parties engaged in a project comply with the requirements set out in the CHMP.

C. Confidentiality

22. The borrower/client, in consultation with ADB, cultural heritage experts, and project-affected persons, will determine whether disclosure of information regarding cultural heritage could compromise or jeopardize the safety or integrity of the cultural heritage either through unwanted public visiting or the risk of looting or clandestine excavation. If project-affected persons hold the location, characteristics, or traditional or indigenous use of the cultural heritage as confidential or otherwise sensitive, the borrower/client will put in place measures to maintain such confidentiality and, in consultation with ADB, omit the sensitive information from public disclosure.

D. User Access to Cultural Heritage

23. Where a project may temporarily or permanently prevent user access to previously accessible cultural heritage sites, including for activities such as pilgrimages, festivals, or religious events, the borrower/client will, based on meaningful consultations with project-affected persons, provide for continued access to the cultural heritage site, or will provide an alternative means of access, subject to overriding health, safety, and security considerations. The borrower/client will recognize that user access may be seasonal, intermittent, or undertaken by only a subset of the local population and therefore not be evident to a project team without targeted meaningful consultation on this issue.

E. Chance Find Procedure

24. The borrower/client will ensure that a procedure is in place for managing chance finds or any unanticipated discovery or recognition of tangible cultural heritage during project implementation. Such a procedure will include notification of relevant communities and legal authorities and the identification, documentation, and management of chance finds in accordance with the host country’s applicable laws and the requirements of this ESS8.
25. The borrower/client will include the requirement for a chance finds procedure in relevant physical works contracts and procurement documents, the applicable management tool determined under ESS1, and the CHMP, and will ensure that contractors and third parties engaged in a project comply with these requirements.

26. The borrower/client will not use the chance finds procedure as a substitute for assessment and management of cultural heritage impacts as part of the E&S assessment process described in ESS1 and this ESS8.

F. Legal Protection Status

27. As part of the E&S assessment process, the borrower/client will determine the presence of all recognized, designated, and protected cultural heritage or cultural heritage that is proposed for recognition, designation, or protection. If a project will be located within any such recognized, designated, or protected area or related buffer zone, the borrower/client will:

(i) Comply with the host country’s applicable laws related to cultural heritage, and applicable international, national, and subnational cultural heritage requirements, and any management plans for such areas. The applicability of regional or international cultural heritage requirements to a project will be determined through the E&S assessment process described in ESS1;
(ii) Consult with stakeholders, including the managers of such areas; and
(iii) Implement measures for cultural heritage conservation in accordance with the measures set out in the area’s management plan. This may include additional programs, as appropriate, to promote and enhance the area’s cultural heritage objectives.

V. SPECIAL REQUIREMENTS FOR DIFFERENT TYPES OF CULTURAL HERITAGE

G. Archaeological Sites and Material

28. Archaeological sites comprise any combination of structural remains, artifacts, human remains, paleontological or ecological features and may be located partially or entirely beneath the ground or underwater. Human remains and fossils beds of all types are also considered archaeological material.

29. The borrower/client will determine, in meaningful consultation with archaeological experts and project-affected persons whether archaeological sites and material discovered during the concept design, preparation or implementation phases of a project cycle require: (i) preservation in place; (ii) excavation, study and documentation to standards indicated by the host country’s applicable laws or, if relevant, a GIP; or (iii) targeted and GIP-guided measures to offset unavoidable damage. The borrower/client will determine ownership and custodial responsibility for archaeological sites and material in accordance with the host country’s applicable laws and, until such time as custody has been transferred, will arrange for identification, labeling, secure storage, conservation, and accessibility to enable future study and public appreciation.
H. Underwater Cultural Heritage

30. Underwater cultural heritage includes (i) shipwrecks and associated materials; (ii) former terrestrial cultural heritage now inundated by water including lakes, rivers, or oceans; and (iii) modern conflict-related sunken ships or downed aircraft, which may also contain human remains.

31. If the borrower/client identifies actual or potential underwater cultural heritage, typically accomplished through the review of remote sensing data, the mitigation hierarchy should be applied in prioritizing avoidance by design. When the E&S assessment process indicates the potential existence of underwater cultural heritage, the borrower/client will engage a qualified archaeologist to identify potential underwater archaeological features.

I. Burials / Human Remains

32. The borrower/client will prioritize preservation in place of all human remains and their burial sites or monuments.

33. In meaningful consultation with project-affected persons, including descendant individuals and communities, the borrower/client will develop temporary or permanent marking of sites, if none are present and, where applicable, will use protective measures preferred by project-affected persons to avoid and protect remains that are located on or beneath the ground.

34. In cases where it is deemed necessary to identify, remove, and relocate human remains or related monuments from their original setting, the borrower/client will consult project-affected persons, including the descendant communities and individuals as well as, where specific conditions require, experts such as forensic archaeologists and remote sensing practitioners to establish locally appropriate identification and preservation measures.

J. Built Heritage

35. Built heritage refers to individual structures or groups of architectural works and their urban or rural settings that are viewed as representative of a particular historical period, a significant historic development, or a significant event. Built heritage thus includes groups of buildings, other structures, and open spaces constituting past or contemporary human settlements that are recognized as valuable from an architectural, historic, spiritual, or cultural perspective.

36. The borrower/client will determine, in meaningful consultation with built heritage experts and project-affected persons, whether built heritage will be subject to (i) identification and documentation according to the host country’s applicable laws or, if relevant, a GIP; (ii) avoidance; or (iii) targeted and GIP-guided measures to offset unavoidable impacts.

37. During any rehabilitation or restoration of built heritage, the borrower/client will maintain the authenticity of form, construction materials, and techniques of the structures in compliance with the host country’s applicable laws, and where there are no such requirements, in accordance with GIP to be agreed with ADB.

K. Natural Features with Cultural Significance

38. Natural features and landscapes may possess cultural heritage significance including the provision of cultural ecosystem services. Examples of such features include sacred hills,
mountains, streams, rivers, waterfalls, caves, and rocks; sacred trees or plants, groves, and forests; carvings or paintings on exposed rock faces or in caves; and other landscape features. The significance of such heritage may often be localized in small community groups or minority populations.

39. During the E&S assessment process described in ESS1, the borrower/client will document and report the measures taken to identify and protect such features in meaningful consultation with cultural heritage experts and project-affected persons. The borrower/client will coordinate these measures with the application of ESS6 and ESS7, where applicable.

L. Movable Cultural Heritage

40. Movable cultural heritage includes such objects as: historic or rare books and manuscripts; paintings, drawings, sculptures, figurines, and carvings; modern or historic religious items; historic costumes, jewelry, and textiles; fragments of monuments or historic buildings; archaeological material; and natural history collections such as fossils, shells, flora, or minerals. Public knowledge of and access to moveable cultural heritage resulting from a project may increase the vulnerability of cultural objects to theft, trafficking, inappropriate commercialization, or other abuse. The borrower/client will take measures to guard against theft and illegal trafficking, or other misuse of movable cultural heritage items affected by a project and will consult with project-affected persons and experts regarding any such activities.

M. Project Use of Cultural Heritage

41. Where a project proposes to use cultural heritage including traditional knowledge and techniques, or where a project proposes to enhance or develop a cultural heritage site that has long-standing association with a traditional or indigenous community, the borrower/client will:

   (i) Inform project-affected persons, including the traditional or indigenous users of a site or the holders of intangible cultural heritage, of their rights under the host country’s applicable laws, the scope and nature of the proposed commercial or non-commercial use or development, and the potential consequences of such use or development; and

   (ii) Enter into a documented good-faith negotiation process with project-affected persons, including the traditional or indigenous users of a site or the holders of intangible cultural heritage, to reach agreement on an arrangement that provides for fair and equitable sharing of benefits from the proposed use or development of such cultural heritage, consistent with their customs and tradition.

42. The borrower/client will not proceed with project use or development of cultural heritage unless project-affected persons, including the traditional or indigenous users of a site or the holders of the intangible cultural heritage, have agreed to an arrangement as described in para 41(ii).

VI. MONITORING AND DISCLOSURE

43. Depending on the level of risks and impacts with regards to cultural heritage in a project, the borrower/client may, in consultation with ADB, prepare additional studies and management tools that are required through this ESS8 and as relevant to the project and its risks and impacts.
As specified in ESS1, these will support the analysis of impacts and identification of mitigation measures and will be part of or may be annexed to the E&S assessment undertaken for a project.

44. The management tools as required by this ESS8 may include a cultural heritage plan, which may be prepared and disclosed as a standalone plan or as part of the project environmental and social management plan (ESMP).

45. The borrower/client will monitor the implementation of the E&S management tools prepared under this ESS8 in accordance with the requirements in the environmental and social commitment plan (ESCP)/environmental and social action plan (ESAP), ESS1, and ESS10.