FINAL REPORT

on
Compliance Review Panel Request No. 2021/1
on the
North-South Corridor (Kvesheti-Kobi) Road Project
in Georgia
(Asian Development Bank Loan 3803)

18 November 2022

Distribution of this document is limited until it has been considered by the Board of Directors. In accordance with ADB's Access to Information Policy and Accountability Mechanism Policy 2012, ADB will disclose the Compliance Review Panel's final compliance review report, attaching responses to the draft report from Management and, subject to their consent, from the complainants and the borrower, within 7 working days of the Board's consideration of the final report.
CURRENCY EQUIVALENTS
(as of 18 November 2022)

Currency unit – lari (GEL)
GEL1.00 = $0.3671611103
$1.00 = GEL2.723600

ABBREVIATIONS

ADB – Asian Development Bank
AIP – Access to Information Policy
AMP – Accountability Mechanism Policy 2012
BCRC – Board Compliance Review Committee
CHGAP – Cultural Heritage General Action Plan
CHMP – cultural heritage management plan
CLO – community liaison officer
CNA – community needs assessment
COVID-19 – coronavirus disease
CRP – Compliance Review Panel
CWRD – Central and West Asia Department
DIN – German Institute for Standardisation
EBRD – European Bank for Reconstruction and Development
EHS – Environmental, Health and Safety
EIA – environmental impact assessment
EMP – environmental management plan
EMR – environmental monitoring report
ESM – environment and social monitor
GAP – gender action plan
GRM – Georgia Resident Mission
IPAM – Independent Project Accountability Mechanism of EBRD
IPSA – initial poverty and social analysis
LARP – land acquisition and resettlement plan
KVDP – Khada Valley Development Plan
MRDI – Ministry of Regional Development and Infrastructure
NACHP – National Agency for Cultural Heritage Preservation of Georgia
NCP – noise control plan
NGO – nongovernment organization
OGC – Office of the General Counsel
OM – operations manual
PAM – project administration manual
PCR – physical cultural resources
PMCSC – project management and construction supervision consultant
RRP – report and recommendation of the President
SEMP – specific environmental management plan
SMR – safeguards monitoring report
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>SPRSS</td>
<td>summary poverty reduction and social strategy</td>
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<td>SPS</td>
<td>Safeguard Policy Statement</td>
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<td>SSEMP</td>
<td>site-specific environmental management plan</td>
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<td>TA</td>
<td>technical assistance</td>
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<td>TOR</td>
<td>terms of reference</td>
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<td>TSEMP</td>
<td>topic-specific environmental management plan</td>
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<tr>
<td>UBM</td>
<td>Uluslararası Birleşmiş Müşavirlik A.Ş.</td>
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WEIGHTS AND MEASURES

- dB: decibel
- dBA: decibel A scale
- km: kilometer
- m: meter
- m²: square meter
- mm/s: millimeters per second
- ppv: peak particle velocity

NOTE

In this report, “$” refers to United States dollars.

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.
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- the complainants and other project-affected persons
- the complainants' representatives
- the borrower, represented by the Ministry of Finance of Georgia
- the project executing agency, Ministry of Regional Development and Infrastructure
- the implementing agency, the Roads Department of Georgia
- other government agencies in Georgia for their cooperation during the investigation and during our site visits, namely the Ministry of Environmental Protection and Agriculture, Ministry of Culture, Sports and Youth of Georgia and the National Agency for Cultural Heritage Preservation of Georgia
- nongovernment organizations, including Blue Shield Georgia, Caucasus Environmental NGO Network, G. Chubinashvili National Research Centre for Georgian Art History and Heritage Preservation, Green Alternative, Georgia Ecotourism Association, Georgian National Museum, Georgian Adventure Tourism Association, Georgian Tour Operators Association, ICOMOS Georgia, National Trust of Georgia
- individual experts who assisted the CRP with its fact-finding
- the Independent Project Accountability Mechanism of the European Bank for Reconstruction and Development
- the ADB Board of Directors, particularly the members of the Board Compliance Review Committee
- project contractors and consultants
- experts contracted by the CRP
- relevant ADB Management and staff, particularly those from the Central and West Asia Department and Georgia Resident Mission
EXECUTIVE SUMMARY

The Compliance Review Panel (CRP) of the Asian Development Bank (ADB) prepared this compliance review report (Report) in response to a request for compliance review in respect of the ADB Loan No. 3803: North–South Corridor (Kvesheti–Kobi) Road Project (Project) in Georgia. Under ADB's Accountability Mechanism Policy 2012 (AMP), a compliance review investigates alleged noncompliance by ADB with its operational policies and procedures that directly, materially, and adversely affect local people during the formulation, processing, or implementation of an ADB-assisted project. The CRP has focused on ADB’s conduct and not on that of the borrowing country, the executing agency, the implementing agency or any of the private sector companies (contractors or consultants) engaged on the project. As an independent body, the CRP reports to the ADB Board of Directors (Board), which has given it authority to conduct compliance reviews in accordance with the AMP.

The Project

This Project includes (i) the construction of about 23 kilometers (km) of climate-resilient bypass road between Kvesheti and Kobi, and about 5 km of climate-resilient all-weather access roads to roadside towns and villages; (ii) the establishment of a Khada Valley visitor center; and (iii) capacity-building of the Roads Department of Georgia on project and contract management. The road construction, which includes 5 tunnels (with the 9-km tunnel being the first and longest in Georgia) and 6 bridges (one of which is an arched bridge), is a greenfield project that passes through mountainous terrain and stretches over Khada Valley which is known as the Valley of 60 Towers. The Project was classified as Category A both for environmental and involuntary resettlement impacts due to (i) its irreversible impact to the environment and (ii) approximately 158 households (616 people) who will be directly affected by land acquisition for the Project, of which 30 households have been classified as vulnerable.

The Project cost is estimated to be $558.6 million with $415 million loaned from ADB; $60 million loaned from the European Bank for Reconstruction and Development (EBRD); and $83,600 as government counterpart funding. The Board approved the ADB loan on 01 August 2019 and signed on 27 August 2019. The planned project closing date is 31 December 2026. The borrower is the Ministry of Finance of Georgia; with the Ministry of Regional Development and Infrastructure (MRDI) as project executing agency and the Roads Department of MRDI as implementing agency. The project management and construction supervision consultant (PMCSC) is Uluslararası Birleşmiş Müşavirlik A.Ş. (UBM) while the China Railway Tunnel Group Co., Ltd. (Lot 1 Contractor) is the contractor for the Tunnel Section (Lot 1) and the China Railway 23rd Bureau Group Co., Ltd. (Lot 2 Contractor) is the contractor for the construction of the Road Section (Lot 2). For the ADB, the Georgia Resident Mission (GRM) of the Central and West Asia Department (CWRD) is responsible for the Project.

Request for Compliance Review

On 6 January 2021, Manana Kochladze and Mariam Devidze of Green Alternative (a Georgian NGO) submitted the request for compliance review on behalf of a group of more than two (2) complainants living in the Khada Valley. The complaint relates to the construction of a portion of the North–South Corridor, which connects Tbilisi to the Mtskheta–Mtianeti region in the north and to the Kvemo Kartli region in the south. The complainants raised broad issues concerning ADB’s compliance with its policies and indicated probable harm to affected persons
in the Khada Valley through destruction of the Khada Valley and incomplete consideration of alternatives; impacts on livelihood and local benefits; problems of project design and impacts on physical cultural resources (PCR); and the quality of environment and social impact analysis reflected in the environmental impact assessment.

The complainants asked the CRP to study the Project’s impact on the environment and to identify the Project’s impact on the livelihood and quality of life of affected people as well as measures to address these impacts.

Compliance Review Process

The CRP determined that the complaint was eligible for compliance review and the Board authorized a compliance review on 21 April 2021. The CRP submitted terms of reference (TOR) for the compliance review to the Board Compliance Review Committee (BCRC) and these were cleared by BCRC on 5 May 2021. The CRP conducted its compliance review from May 2021 to June 2022. Therefore, June 2022 was the cut-off date for the CRP’s fact-finding. This Report summarizes the CRP’s findings and analysis in accordance with the AMP.

Based on the TOR, the CRP’s fact-finding focused on the following areas (paragraph references are to corresponding findings in the CRP’s eligibility report): (i) EIA study area and project components (para. 36); (ii) air, noise, and vibration impacts (para. 44); (iii) design and deferment of the environmental management plan (para. 51); (iv) physical cultural resources (paras. 65-66); (v) socio-economic impacts and project benefits (para. 82); (vi) gender (para. 94); (vii) involuntary resettlement (para. 108); and (viii) access to information (para. 121). Further to the TOR, the CRP assessed ADB’s compliance with the following operational policies and procedures that were in effect at the time of Board’s approval of the Project: Safeguard Policy Statement (2009); Access to Information Policy (2018); Operations Manual (OM) Section F1 (Safeguard Policy Statement) issued on 1 October 2013; OM Section C2 (Gender and Development in ADB Operations) issued on 6 December 2010; OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on 06 December 2010; and OM Section L3 (Access to Information Policy) issued on 28 January 2019.

The compliance review process included: (i) desk-based review of several and voluminous project files and related documents; (ii) project site visits and observation; (iii) consultation meetings, including one-on-one interviews, with ADB staff and project consultants; (iv) meetings with complainants and with their representatives; (v) individual and group consultations with other affected persons; (vi) meetings with relevant civil society organizations (CSOs) and local experts; (vii) consultations with and review of expert consultants’ analysis commissioned by the CRP; (viii) meetings with the borrower and with executing and implementing agencies, including their project contractors and consultants; and (ix) meetings with other relevant government agencies.

A separate complaint on the Project was also submitted by a Georgian NGO to the Independent Project Accountability Mechanism (IPAM) of the project cofinancier, EBRD. This complaint also addressed PCR issues and the CRP therefore collaborated with IPAM in its review of ADB’s compliance on PCR issues. IPAM and the CRP jointly engaged an international PCR consultant; conducted a joint project site visit; met jointly with some CSOs and affected persons; and participated in a joint project team meeting. The CRP additionally engaged four (4) other technical experts whose inputs helped it to understand the issues in the complaint; crystallize its findings of fact; and support its determinations on ADB compliance.
Findings of the Compliance Review

This executive summary focuses on the CRP’s key findings. The CRP’s findings are presented on each of the eight (8) topics listed in the TOR, and in an additional section on Monitoring and Supervision, which addresses ADB’s overall project oversight function across these topics. For each topic, the CRP examined: (i) how ADB conducted due diligence and reviewed relevant safeguard and other documents prior to Board approval; and (ii) in the period following the Board approval, how ADB exercised its monitoring and supervision responsibilities.

This Report makes findings of ADB noncompliance and assesses whether each noncompliance caused direct and material harm to affected people. When reaching findings on harm, the CRP has considered both relevant provisions of the AMP and guidance provided for its use by the Office of the General Counsel (OGC) in February 2019 at the request of the Board Compliance Review Committee. A public version of the guidance was issued by OCRP in 2020.

A. Environmental Impact Assessment Study Area and Project Components

The complaint states that several villages have not been considered as ‘affected’ in project documents, even though the project impacts on them. In particular, the complaint refers to the improvement of an existing track between Zakatkari and Gudauri for use as an access road during construction, as well as plans to construct a permanent road in the future. These concerns also raise issues regarding the Project’s induced impacts on the Khada Valley as a result of the omission of the Zakatkari-Gudauri road from the scope of the environmental impact assessment (EIA).

The CRP notes that the construction of an all-weather Zakatkari-Gudauri access road was originally part of the Project but was subsequently omitted prior to Board approval. However, the EIA states that the present Zakatkari-Gudauri road will be suitably strengthened for use as an access road. The Zakatkari-Gudauri road (whether it is the proposed all-weather road or the existing road upgraded for construction traffic purposes) will connect Gudauri to the Khada Valley via an arched bridge to be constructed under the Project. This will facilitate the expansion of tourism and development of the Khada Valley. Therefore, ADB should have ensured that induced impacts associated with the creation of the newly established link between Gudauri and the Khada Valley were considered in the Final EIA. The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS, to ensure adequate consideration in the Final EIA of induced impacts relating to the connection established by the Project between Gudauri and the Khada Valley.

Post-Board approval, in May 2021, the Roads Department indicated that it was willing to update the EIA to include the Zakatkari-Gudauri road as an all-weather permanent road. In June 2022, the cut-off for this compliance review report, the first draft of an EIA for a permanent Zakatkari-Gudauri road alignment was available and was under internal review. This EIA included consideration of induced impacts. The CRP does not find additional ADB noncompliance with regard to issues raised by the Zakatkari-Gudauri road in the period following Board approval.

Through technical assistance, ADB has supported the preparation of a Khada Valley Development Plan (KVDP). A strategic environmental assessment will be conducted as an integral element of the process and two separate development regulation plans will form part of the KVDP. However, these will not be ready until 2023. The effectiveness of the KVDP in mitigating the risk of direct and material harm to affected people through induced impacts is not currently assured. However, taking into account the inclusion of induced impacts in a draft EIA in respect of the planned permanent new Zakatkari-Gudauri road that did not form part of the Board-
approved Project; as well as the ongoing KVDP process, and the existence of a Gudauri Masterplan; the CRP has concluded that the risk of harm is not reasonably certain to crystallize. Consequently, there is no requirement for ADB Management to propose remedial actions to bring the Project back into compliance. However, given the remaining risk of direct and material harm the CRP suggests that remedial action be included in the Management remedial action plan for monitoring by the CRP.

B. Air Quality, Noise and Vibration

Air Quality: The complainant expressed concern that no baseline monitoring of air has been conducted in the Khada Valley. The Final EIA states that air quality is good but does not include air quality measurements taken in the Khada Valley. The CRP finds that at Board approval ADB had not taken steps to ensure that the Final EIA contained adequate baseline air quality data on the Khada Valley. The CRP therefore concludes ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS. Following Board approval, the Lot 2 Contractor prepared a comprehensive Air Quality Impact Assessment Report which is dated May 2022. Accordingly, the CRP concludes that ADB noncompliance has not caused and is not reasonably certain to cause, direct and material harm to affected people.

Noise: Similar to air quality, the complainants noted that no baseline monitoring of noise has been conducted in the Khada Valley. The CRP finds that ADB did not ensure that the Final EIA contained adequate baseline noise level data on the Khada Valley. Such data was necessary to understand the incremental increase in noise levels due to construction and operation of the project road. The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS. Regarding operation phase noise, a later March 2022 study included baseline noise monitoring along the project road alignment including at 14 locations in the Khada Valley. The CRP does not find ADB noncompliance regarding assessment and mitigation of noise impacts during the construction phase. Further, the CRP does not have evidence to conclude that there is a risk of harm arising from ADB's pre-Board approval noncompliance.

Vibration: The complaint highlighted the potential impacts of construction-related vibration, particularly on the traditional stone structures in the Khada Valley. The CRP examined the Final EIA's references to vibration monitoring and modeling. The CRP does not find ADB noncompliance with its pre-Board approval due diligence responsibilities. In the period following Board approval, the CRP notes that ADB has diligently monitored project compliance with vibration requirements, but concerns have persisted over extended periods of time on certain occasions. The CRP does not find ADB noncompliance with its monitoring responsibilities in respect of vibration. However, the CRP suggests an expert examination of the approach adopted for vibration impact assessment as there is a risk that the impacts of vibration have been underestimated.

C. Design and Deferment of the Environmental Management Plan

The complainants are concerned that the EIA clearly ‘postpones’ numerous critical decisions from the EIA stage to the construction phase since the contractors’ specific EMPs (SEMPs) are separate from, and not integrated within, the environmental management plan (EMP) that forms part of the project EIA. The CRP notes that two broad approaches are in use at ADB. One makes use of SEMPs and accompanying topic-specific EMPs (TSEMPs) and site-specific EMPs (SSEMPs). The other relies on EIAs and EMPs, without making use of SEMPs or TSEMPs/SSEMPs.
In this Project, the SEMP-SSEMP/TSEMP framework is applied. The Final EIA introduces the concept. In this Project, the different plans included in the framework are required to be submitted to the PMCSC and the Roads Department for approval at least 30 days before taking possession of any work site. The CRP observes that the use of the terms ‘SEMP’, ‘SSEMP’ or ‘TSEMP’ as opposed to ‘EMP’ are not a part of the SPS nor its accompanying OM. Further, there is currently no ADB-wide internal guidance on their use and there is no provision requiring for ADB approval of the different plans arising from this framework.

The CRP does not find ADB noncompliance with its due diligence and review responsibilities in relation to the Final EIA’s EMP. However, the CRP has identified several areas where it would have been helpful for ADB to ask the borrower to strengthen the specificity of the guidance provided by the EMP and its requirements for contractors. Examples of specific areas include the management of tunnel water, topsoil, and landscape.

Post-Board approval, during the construction stage, the CRP notes that detailed internal records on the preparation of the SEMPs, SSEMPs and TSEMPs indicate that numerous contractor plans were not updated to the PMCSC’s satisfaction ahead of relevant construction processes. This reduced the clarity of the Project’s governance arrangements for the management of environmental and social risks.

The use of the SEMP-SSEMP/TSEMP framework in a governance structure that does not allow for explicit ADB approval of many of these documents means that heavy reliance is placed on the contractors’/borrower’s capacity to comply with SPS requirements. Given this, the CRP observes that the explicit inclusion of contractors’ environmental and social management capacity in bid evaluation criteria could be useful to give greater assurance of compliance with SPS requirements during implementation. The CRP additionally suggests that ADB consider developing safeguards compliance guidance to ensure consistent and good practice if the use of such a framework is to be continued. The CRP does not find ADB noncompliance with its responsibilities in respect of the EMP and the use of the SEMP-TSEMP/SSEMP framework.

D. Physical Cultural Resources

The complaint refers to the Khada Valley as unique, and the complainants argue that the EIA does not adequately mitigate severe impacts on cultural heritage or explain its claim that cultural heritage impacts were avoided during the selection of the route.

The project preparation process was preceded by Pre-feasibility and Feasibility studies that were not financed by ADB. These concluded that no cultural heritage sites and monuments would be directly impacted and that all known cultural heritage sites would be bypassed. The EIA process took a preferred alignment through the Khada Valley as its starting point. The EIA Inception Report, dated May 2018, described field surveys that had been conducted, among them an archaeological survey. The walkover survey for the 23 km linear project was reportedly done in a single day. The survey report included two maps identifying 25 PCR objects, described the region’s role in the history of Georgia, and noted that it was not well studied from an archaeological point of view. The archaeological survey report did not state what buffer had been applied for the PCR field survey.

During review of the Draft EIA, ADB noted that PCR is a major concern in Georgia, and feedback included several points on PCR issues, requesting a number of changes to the draft EIA report. Only some of these were actioned. ADB’s comments on certain individual PCR sites...
also referred to a forthcoming second-stage archaeological survey and other studies, but second-stage archaeological work was not conducted prior to Board approval.

The Final EIA recognizes the probability of additional archaeological finds and specifies three areas where additional archaeological investigation is needed. This is fewer than the 6 initially identified in an archaeological survey report appended to the EIA inception report. The PCR impacts of temporary project facilities are largely left unaddressed. During the operational phase, the Final EIA states that “no significant impacts” are anticipated. On landscape impacts, the Final EIA notes that the new alignment would change the landscape ‘substantially’ though the use of tunnels and cut and cover technique in some sections would limit the visual impacts.

ADB Management has acknowledged that PCR baseline assessment prior to Board approval was limited and that it could have led to harm during implementation. ADB argued that the EIA itself acknowledges the limits of the PCR baseline and includes a clear framework to close these gaps through the 5-phase archaeological strategy. The internal project documentation provided to the CRP does not support the argument that the 5-phase strategy was understood to close a gap in the PCR baseline. The CRP concludes that ADB’s due diligence fell short of the requirements of SPS para. 56 prior to Board approval. ADB did not ensure: (i) that the assessment process was based on appropriate baseline data on PCR; and (ii) that the EIA considered landscape’s PCR significance, impacts, their avoidance and mitigation adequately.

Following Board approval, the Roads Department wrote to ADB formally proposing additional work to prepare a Cultural Heritage General Action Plan (CHGAP). The National Agency for Cultural Heritage Preservation of Georgia (NACHP) was appointed to carry out the study. The TOR did not explicitly refer to the relevant requirements of the SPS, and did not provide for ADB to review or approve the outputs. This is striking since the planned work was designed to provide additional baseline assessment of PCR, with outputs that were significant in shaping the Project’s compliance with the PCR requirements of the SPS.

The NACHP’s study involved compilation of a full register of monuments and cultural heritage sites within a minimum 600 m buffer of the road alignment and a statement of their significance; identification of their physical condition; and preparation of recommendations for their protection and conservation; as well as archaeological test trenches and identification of potential archaeological sites and measures for further study; and an assessment of the anticipated impact of the construction on all identified cultural heritage resources in the study area. An inception report concluded that the “cultural social environment” would change, and the Khada Valley was formed as a cultural landscape where cultivated areas have organically merged with the natural environment.

The NACHP’s Second Interim Report was notable for its breadth and identified numerous previously unconsidered objects and sites including 104 within the 600 m buffer. The Final EIA had identified three (3) registered monuments within 300 m of the road, whereas the NACHP study identified 19 registered monuments within 300 m of the road. The report also contained critical information about NACHP granting temporary protection under the Law on Cultural Heritage of Georgia to 70 sites within the 600 m buffer. This was significant because of consequences of listing – whether it is temporary or permanent. Article 34 of the Law on Cultural Heritage describes different types of cultural heritage buffer zones. Physical (minimum 50 m) and visual (minimum 300 m) protection zones are established around listed cultural heritage objects. Certain activities are prohibited within these protection zones, including, in physical protection zones, activities which may cause significant ground vibration. The consent of the Ministry of
Culture, Sports and Youth must be obtained for construction work within them. The CRP understands that the temporary protection was extended once, and expired in December 2021.

The ADB project team provided feedback on the NACP’s Second Interim Report, though not all of the issues raised were addressed in revisions. The NACP’s CHGAP was subsequently finalized in July 2021. It noted that the Project falls within the visual protection zones of a large number of cultural heritage objects, and that their landscape is influenced by the project road. It additionally shows that the permanent project infrastructure encroaches on the physical protection zones of 19 cultural heritage objects and monuments while temporary project infrastructure encroaches on a further 13.

In Annex 2, the CHGAP sets out actions that are required to be taken by the contractors. It stipulates actions for 106 sites within the 600 m buffer, including fencing, vibration monitoring, and additional archaeological work. Reinforcement conservation actions are required at FieldID: 23 before construction, and separately, agreement was reached that conservation and restoration work would be conducted to prevent project construction damage at one site on the Didveli Plateau (FieldID: 10). Otherwise, preventive restoration is not specified, with conservation at a further 35 sites required only if they are affected by construction. The CHGAP stipulates realignments in respect of a road junction close to FieldID: 24; access roads close to FieldID: 29 and 30; and spoil disposal areas close to FieldIDs: 7 and 10. A later report of archaeological excavation works financed under a contract with the Lot 2 Contractor recommended that FieldID: 26, a megalithic tower and adjoining building remains near Benian-Begoni, be disassembled and relocated. ADB will need to ensure that when this is done relevant SPS requirements are followed, including the requirement for ‘best available techniques’ to be employed.

The actions in the CHGAP Annex 2 that are addressed specifically to the contractors do not fully reflect project PCR risks reflected in the NACP’s analysis. For example: (i) mitigation measures at GISID: 36120 (Field ID: 33); and ruins of watermills (GISID:35105; FieldID: 28) in the valley east of Mughure, which is listed at 0 m from project Bridge 6, are identified in the second interim report but not in the CHGAP; (ii) the CHGAP states that during drilling of the Tskere tunnel vibration monitoring is required at the Kviratskhoveli complex but this is not reflected in Annex 2 for contractors; and (iii) some objects and sites are listed for action by contractors in Annex 2 of the CHGAP but corresponding risks are fully described only in the NACP’s Second Interim Report. In light of the available data, there was a need for integrated consideration by ADB of both the CHGAP in its entirety and the NACP’s Second Interim Report. The CRP did not find evidence that ADB ensured that the recommendations and measures in the CHGAP were consistent with an SPS-informed risk assessment and mitigation perspective.

As input to the preparation of the KVDP, ADB has supported a study to develop a Historic-Cultural Reference Plan. This is not an impact assessment, and covers an area that is greater than the immediate project area. However, the draft of this Historic-Cultural Reference Plan identifies further cultural heritage sites and recommends maintaining all 37 existing cultural heritage monument listings, and also recommends listing new cultural heritage monuments at an additional 75 sites, together with 169 new cultural heritage objects, and two ‘national’ sites. All sites earlier granted temporary listing by the NACP (as recorded in its Second Interim Report) are included in these recommended listings. The CRP has not seen clear analysis of the legal compatibility of the Project’s alignment with the recommended listings, but expects ADB to ensure respect for the restrictions included in the provisions of the Law on Cultural Heritage of Georgia on primary protection zones when mitigating construction risk to those objects and sites recommended for listing.
Landscape changes are addressed in draft ‘photomontage’ visualizations of landscape restoration to 2040 that have been prepared as input to the KVDP. However, these do not include changes due to spoil disposal areas nor do they visualize induced development.

The draft Historic-Cultural Reference Plan recommends the establishment of a historical built-up area protection zone at Sviana-Rostiani. The CRP notes that any LARP (discussed in Section G) that involves dismantling or reconstruction of the village’s buildings will need to take account of the recommendations of the Historic-Cultural Reference Plan.

The CRP notes that: (i) ADB did not ensure that the SPS was a reference point for the NACHP’s preparation of the CHGAP as the TOR did not give ADB adequate opportunities to review and comment; (ii) ADB’s review of the NACHP’s work was not adequate to provide it with assurance that relevant risks and mitigation actions were carried forward into actions for contractors; (iii) the Historic-Cultural Reference Plan identified a number of new cultural heritage sites which raises questions in some cases about whether the Project poses risks to these sites; but there is no evidence to indicate that ADB will ensure that additional assessments are initiated accordingly; and (iv) contractors are not required under the CHGAP to undertake preventive conservation or rehabilitation work at all sites where the NACHP has both identified both risks of damage from construction and specific conservation actions. ADB’s review of the NACHP’s outputs was not sufficiently rigorous to identify and correct this. The CRP finds ADB noncompliance with its monitoring and supervision responsibilities under SPS para. 58 after Board approval as (i) it did not ensure adequate assessment and mitigation of potential adverse impacts on additional PCR identified, and (ii) it did not supervise the Project in such a way as to ensure that steps taken to address the risks to PCR from adverse construction impacts reflect the mitigation hierarchy set out in Principle 4 of the SPS Environmental Safeguards.

Notwithstanding the work of the NACHP and the Historic-Cultural Reference Plan and KVDP processes, there is an extant risk of direct and material harm. However, the CRP is unable to conclude that it is ‘reasonably certain’ that direct and material harm will be caused by ADB noncompliances. ADB Management is not required to prepare remedial actions in accordance with para. 190 of the AMP. However, the CRP suggests that remedial action nonetheless be set out in the ADB Management remedial action plan for monitoring by the CRP.

Returning to ADB noncompliance prior to Board approval, the CRP notes that a significant number of studies have been conducted during the construction stage but there has also been further ADB noncompliance. During the CRP’s stakeholder interactions, the CRP gathered that several affected people were concerned that the project would cause physical damage to PCR and some affected people connected the PCR that surrounded them to their own sense of identity. It is appropriate to identify adverse impacts to PCR that are caused by ADB noncompliance, or that are reasonably certain to occur, with harm to affected people. The CRP finds that ADB noncompliance gave rise to doubt and distrust regarding the Project’s respect for PCR among some affected people and that this was in part a manifestation of harm.

E. Socio-economic Impacts and Project Benefits

The complaint addresses both the Project’s negative and positive social impacts. As to negative impacts, the complainants consider that the Project’s socioeconomic impacts are not properly mitigated. They also argue that the Project does not take account of risks including worsened health conditions, reduced safety, and increased workloads due to distances between access points to the roads and villages. As to positive impacts, the complaint asserts that the local benefits of the Project are modest, as it does not address some of Khada Valley’s key socio-
economic problems, and there are no mandatory requirements for employment of local people. The CRP’s analysis considers negative and positive impacts separately.

Negative impacts

Following review, the CRP concludes that ADB failed to ensure that the Final EIA and its EMP were adequate in four (4) respects: (i) identification and mitigation of risks of adverse social impacts arising out of negotiated land acquisition by the contractors; (ii) provision for adequate mitigation of adverse impacts associated with reduced community access to some areas of land; (iii) identification of the wider social implications of the Project’s landscape impacts; and (iv) adequately identifying and mitigating adverse operational phase social impacts, particularly those regarding litter and waste and community safety and security. The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS due to the inadequate coverage of these issues in the Final EIA and EMP.

On negotiated land acquisition by contractors, there were no EMP provisions to address this, and community relations were soured by the Lot 2 Contractor’s subsequent land acquisition process and practices. The CRP finds ADB noncompliance regarding assessment and mitigation of risk associated with temporary land acquisition by contractors caused direct and material harm to some affected people.

On the three (3) remaining areas where the CRP has found ADB noncompliance; namely ensuring continued community access to some areas of land; assessment and mitigation of social dimensions of landscape impacts, and identification and mitigation of operational stage impacts; the CRP is unable to conclude that future direct and material harm to affected people is reasonably certain to occur and does not find that existing direct and material harm has been caused by ADB noncompliances. ADB is not required to prepare a remedial action plan under para. 190 of the AMP in respect of these noncompliances. However, the CRP identifies a remaining risk of direct and material harm, and therefore suggests that remedial actions be included in the Management remedial action plan for monitoring by the CRP.

Positive impacts and benefits

ADB’s operational policies and procedures address the positive impacts and benefits of projects, not only adverse impacts. Thus, Principle 4 of the Environmental Safeguards refers to enhancement of positive impacts, and OM section C3 on the Incorporation of Social Dimensions into ADB Operations provides that ADB’s social analysis is required to identify and formulate measures and implementation arrangements to maximize the project’s social benefits. Prior to Board approval, ADB did not act on its own analysis that without internal village infrastructure development and construction of internal roads, no positive impacts would be realized from the project. At the point of Board approval, construction of internal roads was to be limited to access and service roads, and the project design did not provide for development of village infrastructure. The CRP finds ADB noncompliance with its responsibility under OM section C3 on Incorporation of Social Dimensions into ADB Operations to ensure that in the pre-Board-approval social analysis of the Project, measures were formulated with implementation arrangements to maximize the social benefits of the Project.

Following Board approval, the CRP acknowledges the steps taken by ADB with the support of the Roads Department during project implementation to adjust the project outputs to

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deliver greater positive social outcomes. Nonetheless, despite some promising initiatives, the CRP finds ADB noncompliance with its responsibility to ensure that the project design maximizes the Project’s social benefits. In particular as at June 2022: (i) a planned upgrade of the internal road between Benian-Begoni and Tskere is not yet the subject of binding commitments or detailed implementation plans; (ii) no overall community development plan is yet in place; (iii) the contractors’ community development initiatives appear to have been largely reactive and some have been problematic; and (iv) while a Priority Investment Plan is to be developed under the KVDP, even short-term investments are not due to commence before 2024. As to harm, the AMP para. 187 provides that “unfulfilled expectations” that do not generate direct and material harm compared to the without-project situation are to be excluded from the assessment. The CRP is accordingly unable to make a finding of harm regarding this noncompliance.

F. Gender

The complaint asserts that the Final EIA prepared for the Project does not address the gender impact of the Project on communities within the project area during construction and exploitation. The SPS stipulates that the environmental assessment conducted for each proposed project must identify socio-economic impacts including those arising through gender issues. In this Project, gender outputs are directly referenced in the Project’s outputs, including safety facilities and the visitor center, and a Gender Action Plan (GAP) is being implemented. However, the CRP also notes that the Final EIA refers to contextual challenges faced by affected people regarding issues including access to roads, public transport, and other services. Gender dimensions of these issues are clearly highlighted in ADB’s Gender and Social Analysis Report but ADB did not seek to ensure that the Final EIA recorded and addressed them to explore opportunities for the Project to enhance positive gender impacts. The CRP further concludes that gender dimensions of operational phase impacts were not adequately reflected in the borrower’s Final EIA and its EMP. The CRP finds ADB noncompliance with its due diligence and review responsibilities under para. 56 of the SPS regarding preparation of the EIA.

Regarding ADB noncompliance on gender dimensions of operational impacts, the CRP finds that direct and material harm is not reasonably certain to arise. Regarding ADB noncompliance in relation to exploration in the Final EIA of opportunities to enhance positive gender impacts, the AMP para. 187 provides that ‘unfulfilled expectations’ that do not generate direct and material harm compared to the without-project situation will be excluded from assessment. The CRP is unable to make a finding of harm regarding this noncompliance.

G. Involuntary Resettlement

Land registration

The complainants say that the land registration process in public registry is still problematic. The issue of legalization of land is vital to ensuring that affected persons are compensated in accordance with the SPS. Following compliance review, the CRP does not find ADB noncompliance on land registration. In the course of its review, the CRP was made aware by affected people of an investigation being undertaken by the Prosecutor’s Office regarding potential land registration fraud. Fraud is outside the ambit of the AMP. However, the CRP notes that the investigation may have a chilling effect on land registration. It is important that ADB continue to monitor the land registration in the Project and how this investigation unfolds, and that affected persons are reassured that registration is still available to them.
Restricted Access and Orphan Lands

Involuntary restrictions on land use through orphaned land fall within the scope of the Involuntary Resettlement Safeguards, triggering compensation requirements. The CRP notes that issues about access to orphan lands have been raised in 43% (26 out of 60) of all the community grievances. ADB had recommended that in all instances of orphan land, the Roads Department should acquire the remaining orphaned land plots and compensate affected persons concerned. The Roads Department's priority is to provide access whenever feasible. The CRP notes that the ADB project team is closely monitoring this issue. The CRP does not find ADB noncompliance on management of restricted access and orphan lands.

Income and Livelihood Restoration

There are separate LARPs for Lot 1 and Lot 2. LARP implementation began in September 2019. The CRP notes that an additional livelihood restoration allowance is only to be given to those affected persons losing more than 10% of their agricultural productive assets and to affected persons losing more than 10% of their non-agricultural productive assets or those considered ‘severely affected persons’ as defined in the LARP. ADB Management has asserted that the LARP entitlement matrix makes clear provisions for livelihood restoration beyond the immediate cash value of crops and trees with livelihood restoration allowances paid to all people whose livelihoods are impacted. The CRP is unable to find adequate evidence in the LARPs for this, and notes that the cash compensation entitlements are not adequate to restore the livelihoods of affected people whose land acquired by the Project is used for subsistence.

Aside from cash entitlements for livelihood restoration, the SPS requires provision of assistance; not only for income and livelihood restoration but also income and livelihood improvement. The LARPs do not establish entitlements to such assistance. In May 2022, ADB informed the CRP that it was considering some community development initiatives. However, these had not yet been finalized.

The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS for: (i) failing to ensure provision of adequate allowances for livelihood restoration and (ii) failing to ensure provision of non-cash assistance for income or livelihood restoration and improvement in the LARPs.

Those affected people whose land or assets have already been acquired have been directly and materially harmed by ADB’s two noncompliances. ADB Management is required to propose remedial actions in accordance with para. 190 of the AMP. These should also extend to affected people whose land or assets are still to be acquired.

H. Access to Information

Information dissemination and consultations with affected people and other stakeholders have been a feature of project preparation and implementation. ADB’s appointment of two field-based specialist monitors has facilitated ADB’s engagement with affected persons and has also provided the ADB project team with an effective two-way means of communication. The CRP has three areas of concern. First, the SEMPs/TSEMPs/SSEMPs are safeguard documents, bringing granularity to the EMP and operationalizing the needed mitigation measures. As safeguard documents they are subject to disclosure by ADB, but this has not happened. Second, the NACHP’s outputs for the Roads Department have not been disclosed but contain important information about risks, their mitigation, and recommendations for future actions. These are also
safeguard documents. The CRP finds ADB noncompliance with its responsibility to disclose project safeguard documents under para. 71 of the SPS, read in conjunction with para. 15 (ii) of the AIP on Presumption in favor of disclosure and Annex 3 of OM section L3 with regard to the nondisclosure of the TSEMPs/SSEMPs and of the NACHP’s key final outputs.

The CRP’s third concern is the environmental monitoring reports (EMRs) that have been publicly disclosed. Here, however, the CRP has not seen sufficient evidence of action by ADB to ensure that they provide an adequate picture of the contractors’ environmental and social performance. The CRP finds ADB noncompliance with its review and monitoring and supervision responsibilities, under para. 58 of the SPS, to ensure that the disclosed EMRs are consistent with the SPS requirement for disclosure of relevant and adequate information.

The CRP finds that ADB’s noncompliances undermine informed participation by affected people which harms affected people, but the CRP does not have clear evidence that ADB’s noncompliances have to date caused direct material harm or that future harm is reasonably certain. ADB Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, the CRP expects ADB to take action to ensure the disclosure of TSEMPs, SSEMPs and the NACHP’s Second Interim Report and the CHGAP. Similarly, the CRP expects ADB to take action to ensure that the CRP’s finding of ADB noncompliance is addressed in future EMRs.

I. ADB Monitoring and Supervision

In a concluding section, the CRP brings together insights from its review of ADB’s monitoring and supervision under each of the areas included in the TOR for the compliance review. Compared to other projects that the CRP has reviewed in the past, ADB has done more than usual to ensure good monitoring practice, including through appointment of national experts on community liaison and environment and social monitoring. The CRP also notes that ADB has raised contractor noncompliances regularly with the Roads Department.

Despite ADB’s efforts, many contractor noncompliances have persisted. As at June 2022, the CRP does not have evidence that ADB has taken steps either internally (with ADB’s senior management) or with the borrower to consider additional systemic options available to reestablish and enhance compliance as envisaged by the SPS. Neither does the CRP have evidence that ADB has required the Roads Department to develop and implement a corrective action plan. The CRP finds that ADB’s actions are not commensurate with the Project’s risks and impacts as required by the SPS and thus finds ADB noncompliance with its supervision responsibility under para. 58 (iv) of the SPS. ADB noncompliance caused direct and material harm to some affected people. ADB Management is required to propose remedial actions in accordance with para. 190 of the AMP.
I. INTRODUCTION

1. On 6 January 2021, the Compliance Review Panel (CRP) of the Asian Development Bank (ADB) Accountability Mechanism received a request for compliance review (complaint) in respect of ADB Loan No. 3803: North–South Corridor (Kvesheti–Kobi) Road Project (Project) in Georgia.¹

2. As the complaint fell within the mandate of the compliance review function, the CRP conducted an eligibility determination following the relevant provisions of the Accountability Mechanism Policy 2012 (AMP) and Operations Manual (OM) section L1.² After carefully considering the facts relating to the complaint; ADB Management’s Response; and meetings with the complainants and their representatives; the CRP determined that the complaint was eligible for compliance review. On 24 March 2021, the CRP submitted its eligibility report to the ADB Board of Directors (Board) through the Board Compliance Review Committee (BCRC) and recommended that the Board authorize a compliance review. The Board considered the CRP’s recommendation and authorized a compliance review on 21 April 2021.

3. Following the Board’s decision, the CRP submitted the terms of reference (TOR) for compliance review to the BCRC. The BCRC cleared the TOR on 5 May 2021. The CRP conducted its compliance review from May 2021 to June 2022. This report summarizes the findings and analysis of the CRP on the compliance review in accordance with the AMP.

II. THE PROJECT

4. The complaint relates to the construction of a portion of the North–South Corridor which connects Tbilisi to the Mtskheta–Mtianeti region in the north and to the Kvemo Kartli region in the south. Specifically, this Project includes (i) the construction of about 23 kilometers (km) of climate-resilient bypass road between Kvesheti and Kobi, and about 5 km of climate-resilient all-weather access roads to roadside towns and villages; (ii) the establishment of a Khada Valley visitor center; and (iii) capacity-building of the Roads Department of Georgia on project and contract management. The total project cost is estimated to be $558.6 million with $415 million loaned from ADB; $60 million loaned from the European Bank for Reconstruction and Development (EBRD); and $83 million as government counterpart funding. The ADB loan was approved by the Board on 01 August 2019 and signed on 27 August 2019 with a planned project closing date of 31 December 2026. The borrower is the Ministry of Finance of Georgia; with the Ministry of Regional Development and Infrastructure (MRDI) as project executing agency and the Roads Department of MRDI as implementing agency. The Georgia Resident Mission (GRM) of the Central and West Asia Department (CWRD) is responsible for the Project in ADB.

5. The project management and construction supervision consultant (PM CSC) is Uluslararası Birleşmiş Müşavirlik A.Ş. (UBM) while the China Railway Tunnel Group Co., Ltd. (Lot 1 Contractor) is the contractor for the Tunnel Section (Lot 1) and the China Railway 23rd Bureau Group Co., Ltd. (Lot 2 Contractor) is the contractor for the construction of the Road Section (Lot 2). Further, two individuals were engaged by the Roads Department as external monitors: one for land acquisition and resettlement and another for environment.

6. The planned road is a greenfield project that passes through difficult mountainous terrain. Prior to the start of ADB’s involvement in the Project in April 2018, the final alignment had already been selected by the government following intensive study. With funding from the World Bank, over 2017-2018 the Roads Department of Georgia prepared Pre-feasibility and Feasibility studies including detailed engineering design for the Kvesheti-Kobi road section of the North-South corridor. This involved the engagement of an international team of 20 experts, with support from at least 50 engineers, geologists, and other specialists to identify and assess the best alignment for the Project. The ADB Management’s Response to the complaint stated that a multi-criteria analysis was applied by the government to assess the proposed road alignments and summarized how the final alignment was chosen to achieve the project objectives with the least environmental and social costs.

7. As a top priority project, as early as April/May 2018 the government informed the ADB mission leader that it intended to proceed with advance procurement actions and retroactive financing. ADB’s involvement in the Project began even before approval by ADB of the transaction technical assistance (TA) for the Project. A minor change to allocate uncommitted funds from ongoing/existing Loan No. 2843-GEO Road Corridor Investment Program, Tranche 3 was approved by ADB on 2 March 2018 to carry out environmental due diligence for the Kvesheti-Kobi road. ADB carried out due diligence on the alignment eventually chosen by the government for further assessment while the World Bank-funded Feasibility Study and Detailed Engineering Design were being prepared for MRDI. Much of the detail in the safeguard documents prepared for the ADB loan, especially the environmental impact assessment (EIA) relied on the outputs from the World Bank studies, although ADB did not have direct influence over those studies.

8. ADB took part in the due diligence process including in EBRD-led consultations and briefings on alignment alternatives at the local level and in the preparation of environmental assessment of the preferred alignment. Project preparatory activities relating to the processing of ADB Loan 3803, as well as some current implementation support activities by ADB, were funded under TA 9552 for Preparing the North-South Corridor (Kvesheti-Kobi) Road Project.

9. As the Project was categorized as A for environmental impacts, its Draft Environmental Impact Assessment (Draft EIA) was posted on the ADB website in December 2018, with the Final EIA disclosed on the ADB website in April 2019. The Project was also categorized as A for involuntary resettlement impacts as it will displace approximately 158 households (616 people) who will be directly affected by land acquisition for the Project, of which a total of 30 households have been classified as vulnerable. Draft Land Acquisition and Resettlement Plans (LARPs) for Lot 01 (including the longest tunnel section) and Lot 02 (including the main road section) were prepared and posted on the ADB project website.

10. ADB’s internal review of the Draft EIA resulted in the inclusion in the Final EIA of additional ecological studies and a critical habitat assessment; more details on noise modeling; an illustration/broad description of the Zakatkari Visitor Center Concept; and inclusion of a Specific Environmental Management Plan (SEMP) framework and an occupational, community health and

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6 Footnote 1.
safety plan template. Some of these were undertaken using additional resources provided for project preparation by ADB and EBRD. Aside from the review of the LARP prior to finalization, ADB conducted an independent study of the land market value in the project area through sampling of selected plots in Lot 1 and Lot 2 which found that the compensation offered by the Roads Department equals or exceeds prevailing market value.

11. A Stakeholder Engagement Plan (SEP) was prepared for the Project, as required by EBRD. The SEP documented 45 consultation events which took place from April 2018 to June 2019. It mentioned that 25 of these events covered environment-related concerns and were held to inform and seek the views of affected persons and other stakeholders about the Project. The document also outlined how the process of continuing engagement with the project stakeholders was to take place throughout the project cycle. Table 1 below lists significant project events and documents, including those relating to national permitting requirements and milestones in the loan processing and project implementation with relevance to safeguard implementation.

Table 1. Significant Events and Project Milestones and Associated Documents

<table>
<thead>
<tr>
<th>Year/Month</th>
<th>Event/Milestone/Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-ADB involvement</td>
<td>Final Feasibility Study funded by World Bank</td>
</tr>
<tr>
<td>December 2018</td>
<td></td>
</tr>
<tr>
<td>Pre-Board approval (loan processing phase in ADB)</td>
<td></td>
</tr>
<tr>
<td>23 April 2018</td>
<td>Departmental Review Meeting</td>
</tr>
<tr>
<td>30 April – 04 May 2018</td>
<td>ADB Reconnaissance mission</td>
</tr>
<tr>
<td>Jun 2018</td>
<td>EIA scoping report completed as required by the Ministry of Environmental Protection and Agriculture (MoEPA) of Georgia</td>
</tr>
<tr>
<td>1 August 2018</td>
<td>ADB concept clearance</td>
</tr>
<tr>
<td>01 Aug 2018</td>
<td>Approval of ADB Technical Assistance (TA) on Preparing the North-South Corridor (Kvesheti-Kobi) Road Project (TA 9552-GEO)</td>
</tr>
<tr>
<td>27 Aug – 06 Sep 2018</td>
<td>ADB consultation mission, the internal report of which mentioned complaints by local nongovernment organizations about the Project</td>
</tr>
<tr>
<td>26 Oct 2018</td>
<td>Draft EIA peer review meeting in ADB</td>
</tr>
<tr>
<td>November 2018</td>
<td>Preliminary environmental management plan (EMP) used during call for bids with the stipulation that it would be replaced prior to issuance of Notice to Proceed to contractors by the EMP to be included in the Final EIA) was</td>
</tr>
<tr>
<td>December 2018</td>
<td>Draft EIA posted on ADB project website</td>
</tr>
<tr>
<td>30 Jan – 06 Feb 2019</td>
<td>ADB consultation mission, internal report of which referred for the first time to a Khada Valley Visitor Center as Project Output 2</td>
</tr>
<tr>
<td>1 April 2019</td>
<td>Final EIA posted on ADB and the Roads Department project websites</td>
</tr>
<tr>
<td>April 2019</td>
<td>Draft Land Acquisition and Resettlement Plan for Lot 1 disclosed on ADB project website</td>
</tr>
<tr>
<td>28 Apr – 03 May 2019</td>
<td>Joint EBRD-ADB Fact-finding mission firmed up project cost, readiness of project safeguard documents, and implementation arrangements</td>
</tr>
<tr>
<td>25-Apr-2019</td>
<td>Georgia MoEPA approved project EIA</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Year/Month</th>
<th>Event/Milestone/Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2019</td>
<td>Draft Land Acquisition and Resettlement Plan for Lot 2 disclosed on ADB project website</td>
</tr>
<tr>
<td>28-May-2019</td>
<td>ADB Management Review Meeting which reviewed status of project preparation and readiness for loan negotiations and Board approval</td>
</tr>
<tr>
<td>24-Jun-2019</td>
<td>Project management and construction supervision contract signed between the Roads Department and Uluslararası Birleşmiş Müşavirlik A.Ş. (UBM) as project management and construction supervision consultant</td>
</tr>
<tr>
<td>July 2019</td>
<td>Final Land Acquisition and Resettlement Plans for Lot 1 and Lot 2 disclosed</td>
</tr>
<tr>
<td>1-Aug-2019</td>
<td>Board approval of ADB loan</td>
</tr>
</tbody>
</table>

**After Board approval (implementation phase)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug 2019</td>
<td>Notice to proceed issued to UBM</td>
</tr>
<tr>
<td>Aug 2019</td>
<td>National Agency for Cultural Heritage Preservation of Georgia (NACHP) clearance granted</td>
</tr>
<tr>
<td>15-Aug-2019</td>
<td>CP-02 contract signed between Roads Department of Georgia and China Railway 23rd Bureau Group (Lot 2 Contractor)</td>
</tr>
<tr>
<td>27-Aug-2019</td>
<td>Loan signing</td>
</tr>
<tr>
<td>5-Sep-2019</td>
<td>CP-01 contract signed between the Roads Department of Georgia and China Railway Tunnel Group (Lot 1 Contractor)</td>
</tr>
<tr>
<td>24 Sep - 01 Oct 2019</td>
<td>ADB Inception mission which reviewed contractors’ pre-construction activities, including preparation of topic- and site-specific environmental management plans and implementation of transaction TA 9552</td>
</tr>
<tr>
<td>28-Oct-2019</td>
<td>ADB Loan effectiveness</td>
</tr>
<tr>
<td>From October 2019</td>
<td>Preparation of topic- and site-specific environmental management plans by contractors</td>
</tr>
<tr>
<td>Nov 2020</td>
<td>Draft Second Interim report by NACHP for the Roads Department of Georgia</td>
</tr>
<tr>
<td>6 Jan 2021</td>
<td>Request for compliance review received by the CRP</td>
</tr>
<tr>
<td>Jan 2021</td>
<td>Community Needs Assessment report by REC Caucasus</td>
</tr>
<tr>
<td>9 Feb 2021</td>
<td>ADB Management’s Response received by the CRP</td>
</tr>
<tr>
<td>24 Mar 2021</td>
<td>CRP eligibility report submitted to the Board</td>
</tr>
<tr>
<td>21 Apr 2021</td>
<td>Compliance review authorized by the Board</td>
</tr>
<tr>
<td>5 May 2021</td>
<td>Terms of reference of compliance review cleared by the BCRC</td>
</tr>
<tr>
<td>16 May to 1 July 2021</td>
<td>Archaeological Works on Kvesheti-Kobi Road Project Areas (Didveli, Khada Gorge) Report by NACHP and Ivane Javakhishvili of Tbilisi State University for China Railway 23rd Bureau Group</td>
</tr>
<tr>
<td>Jul 2021</td>
<td>Final Cultural Heritage General Action Plan by NACHP for the Roads Department of Georgia</td>
</tr>
<tr>
<td>Oct 2021</td>
<td>Inception Report for the Development of a historic-cultural reference plan for the Khada Valley by GeoGraphic for ADB</td>
</tr>
<tr>
<td>Oct 2021</td>
<td>Independent Project Accountability Mechanism-CRP mission to Georgia</td>
</tr>
<tr>
<td>Nov 2021</td>
<td>CRP mission to Georgia</td>
</tr>
</tbody>
</table>

12. Use of the advance procurement procedure resulted in the immediate mobilization of the contractors following ADB loan approval. The PMCSC, UBM, was given notice to proceed in August 2019 by the Roads Department, with contract signing between the Roads Department and Lot 2 and Lot 1 contractors on 15 August and 5 September 2019, respectively.

13. Following the Board’s approval of the ADB loan, ADB continued to provide inputs and resources to strengthen safeguards implementation and monitoring of the Project under TA 9552. Following discussion between ADB and the Roads Department, the scope of TA 9552 was amended to enable assistance, *inter alia*, to cover the engagement of a community liaison officer (CLO); and development of a sustainable tourism study. Its closing date was extended to 31 July 2023.
14. A national CLO was engaged by ADB, and several safeguards-related personnel such as environment and social safeguards specialists at the Roads Department, the PMCSC, and Lot 1 and Lot 2 contractors, and national environment and resettlement consultants, and an international resettlement consultant engaged directly by ADB also provided support to the Project’s safeguards compliance. Aside from these personnel, a senior environment specialist and a principal social development specialist, both based in ADB headquarters, have overseen safeguard matters while a national associate safeguard specialist has supported the ADB project team from GRM. These safeguards specialists meet weekly to coordinate, discuss, and to address issues on the ground and respond to the concerns of affected people.

15. ADB has monitored progress with project works, safeguards compliance, and grievances, through its field-based consultants and through tracking systems separately maintained by ADB and by the PMCSC. ADB oversight of project implementation has been tasked to the GRM in Tbilisi. The ADB project officer, who earlier processed the project loan, is also now based at the GRM. The CRP observes that this permits more efficient coordination with the MRDI, the Roads Department, ADB project consultants, and other partners, as well as affected people and nongovernment organizations (NGOs).

16. Alongside these resources, additional studies and reports relating to environmental and social impacts have been commissioned and completed in the period since Board approval. Those that are particularly material to the compliance review are listed in Table 2 below.

**Table 2. Additional Safeguards-related Studies/Reports During Project Implementation**

<table>
<thead>
<tr>
<th>Title of Report/Study</th>
<th>Consultant and Funder</th>
<th>Objective/s</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Needs Assessment</td>
<td>Regional Environmental Centre for the Caucasus for ADB</td>
<td>This document studied “priority areas in conservation, land use and livelihood enhancement at the village level and development of technical inputs to the TOR for the envisaged Masterplan for the Khada Valley”.</td>
<td>Completed in January 2021</td>
</tr>
<tr>
<td>Cultural Heritage General Action Plan</td>
<td>National Agency for Cultural Heritage Preservation of Georgia (NACHP) for the Roads Department</td>
<td>Development of a General Action Plan to provide guidance to contractors, and to be based on the compilation of a full register of cultural heritage sites within a minimum 600 m buffer of the road alignment, as well as preparation of recommendations for their protection and conservation; archaeological test trenches and identification of potential archaeological sites and measures for further study; and recommendations for monitoring. The NACHP was also to review contractors’ Cultural Heritage Management Plans and, if they in compliance with the Action Plan, to approve them.</td>
<td>Inception report October 2020; First Interim Report October 2020; draft second interim report November 2020; Second Interim Report June 2021; Cultural Heritage General Action Plan July 2021</td>
</tr>
<tr>
<td>Title of Report/Study</td>
<td>Consultant and Funder</td>
<td>Objective/s</td>
<td>Status</td>
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</tr>
<tr>
<td>Archaeological Works on Kvesheti-Kobi Road Project Areas (Didveli, Khada Gorge) Report</td>
<td>NACHP and Ivane Javakhishvili Tbilisi State University for China Railway 23rd Bureau Group (CRBG)</td>
<td>The report of the work recorded additional archaeological research at 13 sites within Lot 2 and recommended further action in respect of four (4) sites prior to construction.</td>
<td>Completed in July 2021</td>
</tr>
<tr>
<td>Temporary Facilities Assessment Report</td>
<td>prepared by agreement between ADB and the Roads Department</td>
<td>The report describes the result of the assessment of temporary project facilities and their compliance with Project EIA, lenders' requirements, and national legislation.</td>
<td>Dated October 2021 and published online on 1 June 2022</td>
</tr>
<tr>
<td>Summary of Project Specific Environmental Management Plans</td>
<td>ADB</td>
<td>This set of slides describes the environmental and social management plan for the project and summarizes the various topic and site-specific plans.</td>
<td>Published online on 14 January 2022</td>
</tr>
<tr>
<td>Noise Modeling Study</td>
<td>FREKANS Acoustics &amp; Environmental Laboratory</td>
<td>The report addresses noise impacts that would be caused by the operation of the Kvesheti-Kobi Road.</td>
<td>Completed, March 2022</td>
</tr>
<tr>
<td>Historic-Cultural Reference Plan for the Khada Valley</td>
<td>GeoGraphic for ADB</td>
<td>This assignment to prepare a historic-cultural reference plan and associated general protection zone document was designed to follow the historic-cultural reference plan framework established by Article 42 of the Law on Cultural Heritage. The draft plan and associated documents further amplify the NACHP inventory of cultural heritage sites and monuments. They propose establishment of a number of new protection zones as well as official listing of many new cultural heritage objects and monuments.</td>
<td>Draft final report dated April 2022 submitted to ADB</td>
</tr>
<tr>
<td>Khada Valley Development Plan</td>
<td>BAU Design (Bureau of Architecture and</td>
<td>The Khada Valley Development Plan (KVDP) will provide a spatial planning framework with</td>
<td>Interim report submitted in April 2022. Final Plan to be</td>
</tr>
<tr>
<td>Title of Report/Study</td>
<td>Consultant and Funder</td>
<td>Objective/s</td>
<td>Status</td>
</tr>
<tr>
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</tr>
<tr>
<td>Urban Design) for ADB</td>
<td>the aim of preserving the Valley from unwanted and uncontrolled development whilst maximizing immediate benefits and future opportunities for local communities. The Plan will be divided into two parts; one addressing the nine (9) villages located within the Khada Valley – for inclusion in the Gudauri Recreational Plan, once updated; and a separate Development Regulation Plan for the area including the remaining three villages: Bedoni, Kvesheti, and Arakhveti.</td>
<td>completed by April 2023.</td>
<td></td>
</tr>
<tr>
<td>Priority Investment Plan</td>
<td>BAU Design (Bureau of Architecture and Urban Design) for ADB</td>
<td>The Priority Investment Plan will identify short-, medium- and long-term priority projects and resource needs at the municipal/community level in the Khada Valley. Projects to be included are to aim to preserve the Valley and its cultural heritage, as well as supporting residents in adapting to the changes that the project road will bring when it becomes operational.</td>
<td>To be completed by April 2023</td>
</tr>
<tr>
<td>Khada Valley Masterplan +</td>
<td>Comprised of the Community Needs Assessment; Historic-Cultural Reference Plan for Khada Valley; KVDP; and the Priority Investment Plan (whose respective objectives are summarized above).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Compiled by the Office of the Compliance Review Panel.

17. The Project experienced considerable delays in the mobilization of contractors, arrival of equipment, construction of temporary roads and facilities and commencement of construction of permanent works, due to the coronavirus disease pandemic. As of 31 December 2021, construction of the Lot 1 emergency tunnel and the main tunnel had reached 26.2% and 3.84% respectively, while construction in Lot 2 had reached 1.19% (much lower than the projected progress of 42%).

III. REQUEST FOR COMPLIANCE REVIEW

A. The Complaint and Alleged Harm

18. Manana Kochladze and Mariam Devidze of the Georgian NGO Green Alternative sent a complaint to ADB’s Accountability Mechanism as representatives of a group of more than two (2)

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9 Footnote 8, Table 2, p. 13.
complainants with addresses in the Khada Valley who requested nondisclosure of their identities. (See Appendix 1 of this report.) The complaint raised broad issues that relate to questions of ADB’s compliance with its policies and indicated probable harm to affected persons in Khada Valley as follows:

(i) destruction of the Khada Valley and incomplete consideration of alternatives;

(ii) impacts on livelihood and local benefits;

(iii) problems of project design and impacts on physical cultural resources (PCR); and

(iv) the quality of environment and social impact analysis reflected in the environmental impact assessment.

19. The complaint asserted that non-consideration of project alternatives may lead to the destruction of the physical environment, including the landscape and cultural resources of Khada Valley. The complainants consider that the cost of the Project is out of proportion to the benefits that might accrue to people in the Khada Valley and question the quality of the environmental and social assessment conducted for the Project as well as the project design, which they believe will result in negative environmental impacts, including on PCR. The complainants asked the CRP to study the Project’s impact on the environment and its compliance with ADB’s safety standards, and to identify the Project’s impact on the livelihood and quality of life of affected people as well as measures to address these impacts.

B. Determination of Eligibility

20. To determine the eligibility of the complaint for compliance review, the CRP studied the complaint; checked on the identities of the complainants; reviewed documents that had been submitted with the complaint including additional documents sent to the CRP during the eligibility determination period; and held several virtual meetings with the complainants and their representatives.

21. As required by the AMP, the CRP asked ADB Management to provide a response to the complaint. ADB Management’s Response (footnote 4) discussed (i) the background of the Project prior to ADB’s involvement; (ii) the Project’s compliance with relevant provisions of the 2009 Safeguard Policy Statement (SPS) on environmental and involuntary resettlement requirements; (iii) explained its view on the absence of direct and material harm due to the Project’s noncompliance; and (iv) informed about ADB’s continuing efforts to address complainants’ issues. The CRP met with the ADB project team to discuss ADB Management’s Response and other matters on which the CRP needed clarification.

22. ADB Management informed the CRP that as an environmentally and socio-culturally sensitive project, at the preparatory stage the proposed Project went through broad-based and extensive consultations which included affected persons, civil society organizations, businesspeople, sector experts, academics, and local and national authorities, and that these consultations were ongoing.

23. Based on available information documented in its eligibility report, the CRP determined that the complaint met all eligibility requirements; fell within the scope of the compliance review function; and did not fall among the exclusions listed in paras. 142 and 145-149 of the AMP.
Specifically, the CRP found that there was preliminary evidence of ADB noncompliance prior to project approval with respect to the following:

(i) inadequate assessment of EIA study area and project components due to omission of the temporary upgrading of the Zakatkari-Gudauri road from the full EIA process;
(ii) absence in the EIA of baseline surveys of noise and air in the Khada Valley and assessment and management of noise and vibration impacts;
(iii) use of site-specific and topic-specific EMPs to address known impacts;
(iv) inadequate assessment of PCR and cultural dimension of Khada Valley landscape as an integrated whole;
(v) assessment, avoidance, and mitigation of social impacts and the maximization of social benefits and enhancement of positive social impacts;
(vi) potential positive contribution to addressing gender dimensions in the Project;
(vii) inadequacy in the income and livelihood restoration portion of the LARPs; and
(viii) inadequate disclosure of project information, particularly relating to the SEMP and to topic-specific environmental management plans (TSEMPs) and site-specific environmental management plans (SSEMPs).

24. The CRP further determined that the preliminary evidence of ADB noncompliance was associated with a direct causal link to the harm or likely harm alleged by the complainants in their complaint. The CRP was also satisfied that the complainants had made prior good faith efforts to resolve their project-related issues with CWRD. Given these findings, the CRP recommended in its eligibility report that the Board authorize a compliance review of the Project.

IV. SCOPE AND CONDUCT OF THE COMPLIANCE REVIEW

25. The CRP commenced its compliance review in May 2021 after the BCRC cleared the TOR and completed it in June 2022. Based on the TOR for the compliance review, the CRP assessed compliance by ADB with the following operational policies and procedures that were in effect at the time of Board approval:

(i) Safeguard Policy Statement (2009);
(ii) Access to Information Policy (2018);
(iii) OM Section F1 (Safeguard Policy Statement) issued on 1 October 2013;
(iv) OM Section C2 (Gender and Development in ADB Operations) issued on 6 December 2010;
(v) OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on 06 December 2010; and
(vi) OM Section L3 (Access to Information Policy) issued on 28 January 2019.
26. The TOR set the scope of the CRP’s investigation regarding the following themes and corresponding paragraphs of the CRP’s eligibility report: (i) EIA study area and project components (para. 36); (ii) air, noise, and vibration impacts (para. 44); (iii) design and deferment of the environmental management plan (para. 51); (iv) physical cultural resources (paras. 65-66); (v) socio-economic impacts and project benefits (para. 82); (vi) gender (para. 94); (vii) involuntary resettlement (para. 108); and (viii) access to information (para. 121).

27. The compliance review process has included the following activities:

(i) desk-based review of relevant project files and related documents submitted by the complainants and their representatives;

(ii) project site visits and observation;

(iii) consultation meetings, including one-on-one interviews, with ADB staff and project consultants;

(iv) meetings with complainants, with or without their representatives;

(v) individual or group consultations with other affected persons;

(vi) meetings with relevant civil society organizations and local experts;

(vii) consultations with and review of expert consultants’ analysis commissioned by the CRP;

(viii) meetings with the borrower, executing and implementing agencies, including their project contractors and consultants; and

(ix) meetings with other relevant government agencies.

28. The CRP reviewed major project documents such as the full Draft and Final EIAs; LARPs; related studies listed in Table 2 above, including TOR for these studies; and ADB loan documents (e.g., loan agreement, project administration manual, the Report and Recommendation of the President to the ADB Board of Directors [RRP] and its linked documents). Internal project monitoring reports (e.g., back-to-office reports and weekly and monthly monitoring reports prepared by project team members) and publicly available semi-annual environment and social monitoring reports were also reviewed. Internal communications and comments on these documents as well as meeting minutes or briefs were reviewed by the CRP to understand how ADB complied with the requirements of its operational policies and procedures.

29. To gain a better understanding of ADB’s inputs to the Project, the CRP individually consulted with at least 18 ADB staff and consultants. Several meetings were also held with ADB project team members, and these were often followed by requests for additional documents and/or clarification on certain points raised in the meetings.

30. The CRP met with representatives of the Ministry of Finance, the MRDI and the Roads Department, and additionally with the National Agency for Cultural Heritage Preservation of Georgia (NACHP) and its parent ministry, the Ministry of Culture, Sports and Youth. Project site visits provided the CRP with opportunities to directly observe works and project-related facilities
in Khada Valley and directly discuss issues raised in the complaint with staff from the PMCSC and Lot 1 and Lot 2 contractors.

31. A separate complaint on the Project was also submitted by a Georgian NGO to the Independent Project Accountability Mechanism (IPAM) of the project cofinancer, EBRD. To ensure efficiency, the CRP therefore collaborated with IPAM. To the extent possible and within the boundaries of their respective compliance review TOR and accountability mechanism policies, IPAM and the CRP shared project information; jointly engaged an international PCR consultant; conducted a joint mission in October 2021; met with relevant project stakeholders virtually and onsite in Tbilisi and the Khada Valley; and held a joint meeting with both EBRD and ADB project teams.

32. The CRP conducted two missions in Georgia during the course of its compliance review. An initial fact-finding mission was fielded by the CRP jointly with IPAM from 11 to 18 October 2021. CRP member Halina Ward and an international PCR consultant appointed to provide expert input to both the IPAM and CRP compliance review processes joined the investigation activities in Georgia and CRP member Ajay Deshpande and CRP Chair Elisea Gozun joined the activities virtually. From 15 to 22 November 2021, the CRP fielded a second mission which included all three CRP members together with Advisor, OCRP, Irum Ahsan. In both missions, the CRP met in Tbilisi and the Khada Valley with complainants, the Roads Department and numerous affected persons, and it also met with several experts and representatives of NGOs in Tbilisi.

33. A list of persons met by the CRP for the compliance review is provided Appendix 3. The CRP missions were made possible through the coordination and arrangement of mission activities in Georgia by GRM and overall administrative, logistics and operational support by the Office of the Compliance Review Panel. Follow-up virtual meetings and communication also took place, as needed, during the remainder of CRP’s fact-finding which wound up in June 2022.

34. To assist it in the compliance review, the CRP engaged five (5) technical experts: a physical cultural heritage expert; a noise and vibration expert; an EIA/environmental management expert; a social impact expert; and a lawyer expert in Georgian land law. These experts’ inputs helped the CRP to understand the issues in the complaint; to assess ADB compliance in light of the relevant ADB operational policies and procedures and good international practice; to crystalize the CRP’s findings of fact; and to support its determinations on ADB’s compliance.

35. On 29 July 2022, in accordance with para. 185 of the AMP, the CRP issued its draft compliance review report (in English) to the complainants through their representatives, copying the complainants; the borrower (i.e., the Ministry of Finance of Georgia with copy to executing agency, MRDI); and ADB Management. The CRP requested comments and responses within 45 working days. BCRC was also provided with the same draft report. A Georgian version of the CRP draft report was sent to the complainants and the borrower on 23 August 2022. By the deadline of 30 September 2022, the CRP received comments from the ADB Management and the Roads Department. Comments were received from the complainants’ representative on 3 October 2022. The CRP sought an extension to the deadline for submission of the final report to the Board, and BCRC granted this, with submission on 18 November 2022.

V. FINDINGS

36. Overall approach. Upon completion of its fact-finding in June 2022, the CRP discussed and deliberated on its analysis, observations, insights gathered from meetings and consultations, and inputs from the experts whom it had engaged. The sections that follow summarize the CRP’s
findings on each of the eight (8) topics listed in para. 6 of the TOR for the compliance review. The CRP has additionally included a section on Monitoring and Supervision (i.e., Section I) in this report to highlight issues regarding ADB’s overall project oversight function in relation to issues within the scope of the compliance review’s TOR.

37. This report presents the CRP’s findings on each of the compliance review topics in turn. Analysis of each topic is divided into two parts: ADB’s actions prior to Board approval; and then those after Board approval. For each topic, the CRP describes how ADB (i) conducted due diligence and reviewed relevant safeguard and other documents prior to Board approval; and (ii) in the period following Board approval, how ADB exercised its project monitoring and supervision responsibilities. For those topics raising issues under the SPS, the CRP examined whether “ADB adheres[d] to the objectives of the safeguards and their delivery… assumes[d] the responsibility for conducting due diligence and for reviewing, monitoring, and supervising projects throughout the ADB’s project cycle in conformity with the principles and requirements embodied in the SPS…helps[ed] borrowers/clients manage social and environmental impacts and risks” in accordance with para. 44 of the SPS. It also looked at whether “…ADB’s safeguard due diligence and review emphasize[d] environmental and social impact assessments and the planning process,…confirm[ed] (i) that all key potential social and environmental impacts and risks of a project are identified; (ii) that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design; (iii) that the borrower/client understands ADB’s safeguard policy principles and requirements… and has the necessary commitment and capacity to manage social and environmental impacts and/or risks adequately; …In cases where the assessment and planning process, or the safeguard documents, do not meet ADB’s safeguard requirements, the borrower/client will be required to undertake additional assessment and/or improve the safeguard plans” as required by para. 56 of the SPS.

38. Finally, the CRP’s analysis and findings in this report also reviewed whether ADB ensured that the borrower adhered to the monitoring and reporting requirements in para. 57 and that overall, “ADB’s monitoring and supervision activities will be[was] commensurate with the project’s risks and impacts” in accordance with para. 58 of the SPS. In assessing ADB’s compliance, the CRP also has also considered, where appropriate: (i) SPS Environmental Safeguards Principle 2, on identifying and assessing project impacts “…(including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources…”; (ii) Principle 4 on the application of measures to address adverse impacts to “…[a]void, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management……include mitigation of potential adverse impacts to the level of no significant harm to third parties…”; and (iii) paras. 5 and 9, Appendix 1 of the SPS concerning baseline data in the preparation and implementation of the Project. The CRP similarly presents its findings on ADB’s actions in pre-Board and post-Board approval phases in its assessment of ADB’s compliance with the Access to Information Policy and OM sections on Gender and Development and on Incorporation of Social Dimensions in ADB Operations.

39. Guidance from the Office of the General Counsel on ‘harm’ and ‘likely harm’, February 2019. Paragraph 186 of the AMP requires the compliance review report to ascertain whether alleged direct and material harm exists. If noncompliance is found and the alleged direct and material harm is confirmed, the report will focus on establishing the noncompliance as a cause for the alleged harm. Additional AMP requirements on assessment of harm can be found in para. 187, which stipulates that the without-project situation will be used as the base case for comparison, taking into consideration the availability of information. Paragraph 190 provides that “[i]f the CRP concludes that ADB’s noncompliance caused direct and material harm, Management
will propose remedial actions to bring the project into compliance with ADB policies and address related findings of harm”. Paragraph 187 also provides that “[n]on-accomplishments and unfulfilled expectations that do not generate direct and material harm compared to the without-project situation will be excluded.” A footnote adds that “During the… compliance review, if the CRP finds that the alleged direct and material adverse effect is not totally or partially caused by ADB’s noncompliance, its… compliance review report will state this without analyzing the direct and material adverse effect itself or its causes.”

40. When applying these provisions and reaching findings on harm, the CRP has considered guidance provided for its use by the Office of the General Counsel (OGC) in February 2019 (OGC Guidance) at the request of the BCRC, a public version of which was issued by OCRP in 2020. The present compliance review is the first occasion on which the CRP has sought to apply the OGC’s guidance on ‘harm’ and ‘likely harm’.

41. The OGC’s guidance to the CRP covered several interpretive issues regarding the application of the Accountability Mechanism Policy 2012. Among these was guidance on the uses of the terms ‘harm’ and ‘likely harm’ under the AMP. As noted above, requirements on the CRP’s analysis of harm are set out in paras. 186 and 187 of the AMP. Under para. 190 of the AMP, it is only if the CRP concludes that ADB’s noncompliance caused direct and material harm, that Management is required to propose remedial actions.

42. The CRP’s findings on ADB compliance and on harm, respectively, are presented separately for each of the themes addressed within this report and included within the TOR for the compliance review. On those issues where the CRP has found ADB noncompliance with operational policies and procedures, as further set out in this report, the CRP’s findings of harm in this report are of three kinds:

(i) Findings that direct and material harm has been caused by ADB’s noncompliance, but the actions of other actors have also contributed. Here, Management is required to propose remedial actions in accordance with para. 190 of the AMP.

(ii) Findings that it cannot be concluded with reasonable certainty that direct and material harm will be caused in the future by ADB’s noncompliance; and such harm is in any event unlikely (e.g. because remedial action taken to date is effective). Here, in light of the OGC guidance to the CRP, Management is not required to propose remedial actions in accordance with para. 190 of the AMP.

(iii) Findings that it cannot be concluded with reasonable certainty that direct and material harm will be caused in the future by ADB’s noncompliances but there is nonetheless a risk of future direct and material harm (e.g. because it is unclear whether remedial action taken to date will address the risk of harm). Here, in light of the OGC guidance to the CRP, Management is not required to propose remedial actions in accordance with para. 190 of the AMP.

43. Additionally, the AMP directs the CRP that ‘unfulfilled expectations’ that do not generate direct and material harm compared to the without-project situation will be excluded from assessment. Here, there is no requirement for Management to propose remedial action under para. 190 of the AMP.

44. The third kind of finding above gives rise to special considerations. In past compliance reviews, the CRP has focused on identifying whether future harm is ‘likely’. This is the first time that the CRP has been asked to consider instead whether future harm is ‘reasonably certain’ to occur. This is because the OGC’s February 2019 guidance provides that where harm has not yet arisen, the existence of a potential for ‘direct and material harm’ caused by ADB’s noncompliance must be associated with ‘reasonable certainty’ that the relevant harm will occur in the future.

45. In the present case, ADB Management developed an internal action plan in direct response to the CRP’s eligibility report and has also taken significant steps in the course of the CRP’s compliance investigation to address several of the matters included in the scope of the TOR for the compliance review. This is positive. However, the outcomes, or success, of these steps – particularly the historic-cultural reference plan and the Khada Valley Development Plan that are described further elsewhere in this report – were not in all cases yet fully clear at the cut-off for this report in June 2022.

46. The initiation by ADB project teams of anticipatory remedial action during the course of the compliance investigation – even remedial action with only a modest chance of success – for instance, of 25% or 30% - will displace ‘reasonable certainty’ regarding whether possible future harm associated with ADB noncompliance will occur. One consequence of the ‘reasonable certainty’ threshold for future harm that is established in the OGC guidance for the CRP is thus that ADB project teams can readily avoid triggering a responsibility under para. 190 of the AMP to prepare a remedial action plan that is subject to monitoring by the CRP even when ADB noncompliance has not been fully remedied, or remedial action is incomplete. If some ADB noncompliances that are associated with a risk of harm remain unaddressed by CRP-monitored remedial action, affected people will not have the benefit of the additional assurance that ADB’s independent ‘last resort’ accountability mechanism can deliver that when ADB gets things wrong it works to provide remedy and put things right.

A. Environmental Impact Assessment Study Area and Project Components

47. Complainants’ perspective. The complaint asserts that several villages have not been considered to be ‘affected’ in project documents, even though there are project plans that impact on them. The complaint refers in particular to improvement of an existing track between Gudauri and Zakatkari for use as an access road during construction, as well as plans to make this a permanent road in the future. These concerns also raise issues regarding the Project’s induced impacts on the Khada Valley as a result of the omission of the Zakatkari-Gudauri road from the scope of EIA. The complainants’ representatives also later told the CRP that they were concerned that the villages of Kaishaurni, Jaghmiani and Seturebi, which lie between Zakatkari and Gudauri, had not been treated as affected villages.

48. The CRP’s eligibility report found preliminary evidence of ADB noncompliance due to the omission of the temporary upgrading of the Zakatkari-Gudauri road from the full EIA process. The TOR for the CRP’s compliance review therefore provided for the CRP to address the EIA study area and project components.

49. ADB Management’s perspective. ADB Management’s Response asserts that the existing road from Zakatkari to Gudauri will be temporarily improved during construction to enable access to spoil disposal sites and for other construction purposes subject to all necessary environmental management plan (EMP) requirements. Baseline data was collected and potential impacts were assessed in the EIA for this access road. Specific method statements are to be
prepared by the works contractor for all temporary roads which will then be reviewed and approved by the construction supervision consultant before commencement of the works. As indicated in the EIA and discussed during stakeholder consultation, the existing track to Gudauri is envisaged to be made into a permanent road in the future. ADB’s Management Response explains that this will be discussed and examined in 2021 during preparation of a Khada Valley Development Plan (KVDP). Thereafter, the implementing agency will further study the potential impacts of this road, develop commensurate mitigation measures, and hold additional consultations. The EIA for the road section will eventually be updated and a LARP prepared for associated land acquisition based on property valuations that reflect current market values for land and for replacement of non-land assets.

50. **Relevant policies and procedures.** SPS Environmental Safeguards Policy Principle 2 requires environmental assessment projects “to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic..., and physical cultural resources in the context of the project’s area of influence.” It further prescribes the conduct of strategic environmental assessment, where appropriate. The SPS also contains specific provisions related to the project area of influence and the project study area. SPS Appendix 1, para. 6 deals in detail with the concept of area of influence. An Annex to Appendix 1 which contains an outline of an EIA report provides for Section D, on baseline data, to look at current and proposed development activities within the project’s area of influence, including those not directly connected to the Project.

   a. Pre-Board approval

51. The CRP notes that an all-weather Zakatkari-Gudauri access road was originally part of the Project, but for unknown reasons this component did not eventually form part of the Board-approved project. However, the EIA states that the present Zakatkari-Gudauri road will be suitably strengthened for use as an access road to the Didveli Plateau. The CRP notes that this section of the Zakatkari-Gudauri road (whether it is the proposed all-weather road or the existing road, upgraded for construction traffic purposes) will connect Gudauri to the Khada Valley via an arched bridge to be constructed under the Project, joining the Didveli Plateau to the Khada Valley.

52. A May 2018 EIA inception report prepared for purposes of the Project’s national EIA process notes (at p. 17) that the proposed project road is expected to connect the Gudauri area by means of a new local road (with design speed of 60 kilometers per hour and maximum gradient of 8%). The proposed road between Zakatkari and Gudauri is also referenced in the MoEPA environmental decision on project construction, dated 25 April 2019, as a means to move traffic away from Kazbegi National Park, improve traffic safety, and shorten the access road and travel times.

53. Figure 46 of the Final EIA is a map (reproduced in Figure 1 below) which includes the alignment of a new Zakatkari to Gudauri road as part of a depiction of roads to access Tskere during construction. The Final EIA also includes information about access to the project site during construction, including through the existing track between Zakatkari and Gudauri. Paragraph 267 of the Final EIA, referencing the map shown at Figure 1, notes that access to the Didveli Plateau from Gudauri offers the best access route to spoil disposal areas on the Didveli Plateau. It asserts that it is planned that the access road from Gudauri will now be a permanent road. Paragraph 274 states that as part of the Project, the access road from Gudauri “may be made into a permanent road”, approximately 4.9 km long. Figure 49 shows the alignment of the planned Gudauri road.

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The same paragraph of the Final EIA adds that the potential impacts associated with the road will be studied further and the EIA updated accordingly if the road becomes a permanent road. Paragraph 978 of the Final EIA notes that the construction process will require the movement of a large number of pieces of equipment, causing congestion through more populous routes in the Project area, including “along an access road linking Gudauri to Zakatkari”.

![Figure 1: Roads to Access Tskere During Construction](image)


54. In the Final EIA, Figures 110 and 111 (reproduced in this report as Figures 2 and 3 below) show nine (9) villages in the project area, namely Mughure, Sviiana-Rostiani, Tskere, Begoni/Beniani, Bedoni, Kvesheti, Arakhveti, Zakatkari and Kobi. A summary of consultations in Annex-U of the EIA additionally refers to Kaishaurebi and Jaghmiani villages, which are located near to the Zakatkari-Gudauri access road, as affected villages. However, a Note to Figure 111 of the Final EIA states that the Gudauri access road has not been studied in detail, and as such villages in this area had not been assessed to date.
Figure 2: Villages in the Project Area (Lot 1)

Source: Government of Georgia. 2019. *Environmental Impact Assessment (Part 5, Section E) for Georgia: North–South Corridor (Kvesheti–Kobi) Road Project*. Figure 110. p. 246. Tbilisi.
55. The permanent upgraded Zakatkari-Gudauri road, along the alignment depicted in Figures 46 and 49 of the Final EIA, was not included in the Board-approved project. However, the main project road will nonetheless link Gudauri to the Khada Valley by means of an arched bridge from the Didveli Plateau, close to the village of Zakatkari (Bridge 3). On the Didveli Plateau, even with the omission of the permanent Zakatkari-Gudauri road from the Board-approved project; the road design\textsuperscript{12} clearly retains provision for a junction to be constructed that will allow for the connection of a road to Gudauri. Project maps show that the permanent Zakatkari-Gudauri road is envisaged to be connected by means of this junction.\textsuperscript{13}

\textsuperscript{12} See the junction shown at https://kveshetikobiroad.ge/wp-content/uploads/2021/03/Qvesheti-Kobi-akhali-gzis-marshnutis-nuka_.pdf, pp. 5-15.

\textsuperscript{13} Footnote 12.
56. The CRP notes that the strengthening of the existing Zakatkari-Gudauri track is part of the construction strategy planned for the Project for transportation of construction equipment and materials. The EIA should have assessed the environmental and social impacts of the use of this access road regardless of the omission from the final Board-approved project of the initially proposed permanent Zakatkari-Gudauri road. Section F.7.9 of the Final EIA assessed temporary roads. It provided for the contractor to develop a Temporary Roads Method Statement, alongside certain other mitigation measures in consideration of factors such as dust and disruption to existing local traffic. However, it did not include specific reference to the impacts of the use of the existing Zakatkari-Gudauri track as an access road; though impacts of access roads more generally were identified, and the impacts of some other access roads were individually referenced. Analysis of residual impacts did not include any reference to the use of the existing Zakatkari-Gudauri track on a longer-term basis after the construction of the main project road, one of whose junctions would enable the eventual connection of a road to Gudauri.

57. During its compliance review, the CRP learned that communities alongside the existing Zakatkari-Gudauri track had been consulted in the course of initial plans to prepare a LARP for the permanent Zakatkari-Gudauri road which was not eventually included in the Board-approved project. However, these consultations and accompanying socio-economic analysis were not fully reflected in the Final EIA.

58. The CRP notes that the project road plays a key enabling role in plans for expansion of the Gudauri Recreational Area. Publicly available development plans, which slightly predate the Project’s Feasibility and Pre-Feasibility studies financed by the World Bank, also envisage development in Khada Valley. Without additional road infrastructure, this could not effectively be realized.

59. The analysis of induced impacts in the Final EIA did not take appropriate account of the project context set out in paras. 55 and 56 above. In particular, the design of the road at the Didveli Plateau provides for the construction of a junction to which a road to Gudauri could be connected; as well as an arched bridge that would connect the Khada Valley to the Didveli Plateau, and thence to Gudauri. The location of arched Bridge 3 makes the upper Khada Valley villages more accessible from Gudauri, and vice versa. The Final EIA, para. 1294, is clear that a major area of concern within the project area is uncontrolled development – including development to support tourism - adding that “there is a considerable risk that unplanned developments will be introduced into the valleys around the project by the new road development, as happened in the adjacent village of Gudauri.” However, the Final EIA does not assess the risk of uncontrolled development in terms of its social impacts and implications; or its impacts on PCR objects and sites; on landscape due to project facilities; or on the environment.

60. Internal records of ADB’s review of the Draft EIA in October 2018 reviewed by the CRP clearly indicate that ADB was concerned about the Project’s potential induced impacts. However rather than requesting additional analysis, ADB’s suggested amendments minimized the potential for the EIA to draw attention to induced impacts of the connection between the Khada Valley and Gudauri that would be enabled by the project road.

61. The Final EIA does not examine the induced impacts triggered by the construction of the road in conjunction with other development plans that were in existence during project

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preparation. It does however refer to the effect of the creation of the Gudauri Recreational Area in its analysis of cumulative impacts. This is cited as a mitigation of potential adverse effects from uncontrolled development. The Final EIA notes significant legal restrictions on privatization of property in the boundaries of this and other recreational areas and concludes in para. 1298 that the cumulative impacts of the Gudauri Recreational Area and the planned Khada Valley visitor center are beneficial “as they will help promote conservation and control the potential for uncontrolled development within the Project area and its associated impacts, such as human conflicts…”

62. The CRP notes that a visitor center in Khada Valley is among the principal outputs of the Project\textsuperscript{15} and that this will help to support tourism activities in the wider project area. However, the exact nature of the visitor center is yet to be confirmed and will be developed following the completion of a specific study,\textsuperscript{16} and therefore its impacts, including in driving additional tourism to the Khada Valley from Gudauri, have not been assessed.

63. The CRP notes that the EIA preparation process provided ADB with three key potential points of intervention to ensure adherence to SPS requirements regarding induced impacts, namely: screening/scoping; development of TOR for the EIA study; and review of the Draft EIA. At each of these points, ADB failed to ensure that the Project’s induced impacts were adequately assessed.

64. Although scoping is an implied part of EIA preparation, ADB correctly pointed out to the CRP that it is not mandatory as a separate process under the SPS. The CRP notes however that the term ‘scoping’ is used in both the SPS and its accompanying OM section F1. Furthermore, the SPS does not prohibit scoping, which is widely considered good practice and provides an opportunity for ADB to review the relevance of various studies proposed under the EIA. No scoping study was associated with the EIA prepared for the ADB loan, though a scoping report was prepared as required by the national EIA process.

65. ADB did not seek to strengthen the TOR for the EIA to ensure that the Project’s area of influence and study area ensured that there would be adequate assessment of induced impacts. While amendments were made to the TOR for the EIA to better address biodiversity and climate change aspects, no amendments were proposed or made to ensure that induced impacts were assessed. When ADB reviewed and commented on the Draft EIA, it sought to secure the removal of inferences of induced impacts rather than to strengthen their consideration, as discussed above.

\textbf{b. Post-Board Approval}

66. The Board-approved project did not include the construction of a permanent new road from Zakatkari to Gudauri. However, an internal record of discussions in May 2021 indicates that the Roads Department was willing to update the EIA to include the Zakatkari-Gudauri road as a permanent road. In June 2022, the cut-off for this compliance review report, the first draft of an EIA for a permanent Zakatkari-Gudauri road alignment had been prepared and was under internal review, and the CRP understands that plans were well-developed to conclude an accompanying LARP. Consultations had reportedly been held. However, no decision had at that time yet been taken on bringing the road within the scope of the existing Project.

\textsuperscript{15} Footnote 1.
67. Through TA 9552, ADB initiated the preparation of a Khada Valley Development Plan, which will assist the government of Georgia to find a balance between community development aspirations, regional development, and local conservation goals. The TOR for the preparation of the KVDP were published online from 19 October to 12 November 2021. They provide that a strategic environmental assessment will be conducted as an integral element of the process and that two separate development regulation plans will be prepared as part of the KVDP, with one covering the nine (9) villages (Zakatkari, Tsikhiani, Sharmiani, Sviana-Rostiani, Korogho, Iukho, Benian-Begoni, Mughure, Tskere) that are within the Gudauri Recreational Area and a second for Bedoni, Kvesheti, and Arakhveti. The CRP notes that villages alongside the Zakatkari-Gudauri road including Kaishaurni and Jaghmiani will also experience induced impacts from the project road. The KVDP will not cover this area, but the CRP understands that it falls within the area covered by a separate Gudauri Masterplan (which the CRP has not reviewed).

c. Analysis and Findings

68. SPS Environmental Safeguards Policy Principle 2 requires environmental assessment of projects “to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic..., and physical cultural resources in the context of the project’s area of influence.” It further prescribes the conduct of strategic environmental assessment, where appropriate. The SPS also contains specific provisions related to the project area of influence and the project study area. SPS, Appendix 1, para. 6 deals in detail with the concept of area of influence. The SPS describes the baseline data that looks at current and
proposed development activities within the project's area of influence, including those not directly connected to the Project.

69. Paragraph 6, Appendix 1 of the SPS defines a project's area of influence to encompass "(i) the primary project site(s) and related facilities that the borrower/client (including its contractors) develops or controls, such as ... tunnels, access roads, borrow pits and disposal areas, and construction camps; ... (iii) areas and communities potentially affected by cumulative impacts from further planned development of the project, other sources of similar impacts in the geographical area, ... and other project-related developments that are realistically defined at the time the assessment is undertaken; and (iv) areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location." Together, para. 6, Appendix 1 and Environmental Safeguards Policy Principle 2 define the scope of the environmental assessment that was to be conducted.

70. The CRP's eligibility determination found that there was preliminary evidence of noncompliance regarding the omission of the temporary upgrading of the Zakatkari-Gudauri road from the full EIA process. During compliance review, it became clear that the existing Zakatkari-Gudauri road had wider significance for the project's impacts than simply as a temporary access road. An arched bridge (Bridge 3) to be constructed as an integral part of the new road from Kvesheti to Kobi will create a new link between Gudauri and the Khada Valley. This is because it will link the existing Zakatkari-Gudauri track to the new permanent project infrastructure. This will facilitate the expansion of tourism and of other development plans for the expansion of the Gudauri tourist area and for development of the Khada Valley. Impacts from this new connection will arise, to various degrees, regardless of the quality of the existing road between Zakatkari and Gudauri; and regardless of whether following temporary upgrade to enable its use as an access road for construction vehicles the project scope is eventually amended to include the construction of a permanently upgraded road between Zakatkari and Gudauri. This results in a wider project area of influence. Consequently, ADB should have ensured that the induced impacts associated with the creation of the newly established link between Gudauri and the Khada Valley were considered in the Final EIA.

71. The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS, to ensure adequate consideration in the Final EIA of induced impacts relating to the connection established by the Project between Gudauri and Khada Valley, as required by SPS Environmental Safeguards Policy Principle 2. The CRP does not find any additional ADB noncompliance with regard to issues raised by the Zakatkari-Gudauri road in the period following Board approval.

72. The process of preparing/developing the KVDP will be important in setting a framework for the future development of the Khada Valley. However, it will not deliver final outputs until 2023. Since the EIA addendum for the new Zakatkari-Gudauri road has not yet been finalized and the content of the KVDP is not yet clear, and moreover the KVDP will not address all of the villages in the area adjoining the Zakatkari-Gudauri road which were the focus of the complaint; there remains a risk of direct and material harm to affected people as a result of ADB's pre-Board approval noncompliance in relation to the induced impacts of the connection established by the bridge between the Zakatkari-Gudauri road and the Khada Valley.

73. Paragraph 187 of the AMP requires the CRP to consider harm in relation to the 'without-project' situation. Any harm arising out of adverse induced impacts would not arise in the absence of the project. In turn, had ADB been compliant in relation to the analysis of induced impacts, any
adverse induced impacts would have been identified, assessed, and mitigated through the EIA and EMP.

74. The CRP is aware that the induced impacts of a planned permanent upgrade of the Zakatkari-Gudauri road have been analyzed by the borrower with a view to bringing the permanent upgrade within the scope of the Project. The analysis is contained in an EIA that was finalized after the cut-off for the present compliance review. Furthermore, while some villages alongside the existing Zakatkari-Gudauri road do not fall within the area to be covered by the KVDP, the CRP understands that they fall within the area addressed by a separate Gudauri Masterplan as well as the Gudauri Recreational Area. The CRP notes the potential for these frameworks to mitigate the risk of adverse induced impacts for villages alongside the Zakatkari-Gudauri road.

75. Since the EIA addendum for the new Zakatkari-Gudauri road had not been finalized as at June 2022 and the content of the KVDP was not yet clear, and moreover the KVDP will in any event not address all of the villages in the area adjoining the Zakatkari-Gudauri road which were the focus of the complaint; there remains a risk of direct and material harm to affected people caused by ADB’s pre-Board approval noncompliance in relation to the induced impacts of the connection established by Bridge 3 between the Zakatkari-Gudauri road and the Khada Valley. However, in light of the ongoing preparation of the KVDP, and the existing Gudauri Recreational Area and Gudauri Masterplan, the CRP finds that the risk of direct and material harm is not reasonably certain to materialize. There is therefore no requirement for ADB Management to propose remedial actions in accordance with para. 190 of the AMP. Nonetheless, in light of the remaining risk of direct and material harm, the CRP suggests that remedial action be included in the Management remedial action plan for monitoring by the CRP.

B. Air, Noise and Vibration Impacts

76. Complainants’ perspective. The complaint expresses concern that no baseline monitoring of noise and air has been conducted in villages in the Khada Valley. It refers to higher noise pollution levels due to vehicular traffic during the construction and operation of the Project, and also asserts that for some communities, noise and air pollution levels may be exceed World Health Organization (WHO) standards during construction and operation, which would lead to deterioration of livelihoods. The complainants consider that increased noise will not only cause harm to residents but also reduce the tourism potential of the Khada Valley. Finally, the complaint also highlights the potential impacts of construction-related vibration, particularly on the traditional stone structures in the Khada Valley.

77. ADB Management’s perspective. ADB Management’s Response asserts that in accordance with the SPS, “potential pollution was assessed during development of the EIA, and pollution prevention and control approaches and technologies were applied consistent with international best practice and the World Bank Group’s Environmental, Health and Safety Guidelines 2007 (EHS Guidelines)”. It adds that noise modeling conducted during EIA preparation had found that 19 of the 344 residential receptors would potentially experience exceedances of 1 decibel (dB) or less by 2028, and notes that noise impacts will be mitigated through noise barriers.

78. Various studies have been conducted during project implementation including a noise modeling study of March 2022\(^\text{17}\) which also included noise baseline studies in the Khada Valley.

During road construction and operation, noise impacts will be managed and mitigated through noise barriers, as contemplated in Noise Control Plans that have been prepared by the contractors in accordance with the EMP. As regards vibration, the effects of vibration during construction are managed and mitigated through measures including condition surveys of all buildings within 25m of the road alignment; development of Construction Vibration Management Plans by contractors; trial programs at each works section prior to construction; monitoring and control by the supervision consultant; and lastly, selection of alternative construction methods, should vibration limits be exceeded.

79. **Relevant policies and procedures.** As noted earlier, SPS Environmental Safeguards Policy Principle 2 requires environmental assessment of projects based on screening prescribed in SPS Environmental Safeguards Policy Principle 1 to determine the level of detail and comprehensiveness of assessment commensurate with the significance of the potential impacts and risks. Under SPS, para. 56, ADB is responsible for confirming through due diligence and review “(i) that all key potential social and environmental impacts and risks of a project are identified” and “(ii) that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design”. Further, SPS Environmental Safeguards Policy Principle 9 requires application of “pollution prevention and control technologies and practices consistent with international good practices as reflected in internationally recognized standards such as the EHS Guidelines”. Accordingly in the Final EIA, noise and air quality limits set in the EHS Guidelines are used.

80. **Implications of delay in project implementation.** The CRP notes that in view of the significant delay in Lot 2 project execution, construction may intensify over the remainder of the Project. During discussions with the PMSC, the CRP was informed that one of the options under consideration for expediting the work is to allow the contractor to bring more machinery and equipment to the project area and to work simultaneously at different sites. The CRP notes that the operation of additional equipment on the ground would increase construction activity and consequently result in the degradation of ambient air quality, and higher noise and vibration levels than those originally modeled. Should such a catch-up plan be implemented, it would be necessary to update the initial impact assessments, supplementing them with data from actual emissions and noise and vibration levels generated by construction equipment deployed in the field. Appropriate action would then need to be taken should the modeled or actual ambient air quality and/or noise and vibration levels exceed the standards.

1. **Air Quality**

   a. **Pre-Board Approval**

81. The Final EIA refers\(^\text{18}\) to Georgian air quality standards under the Law on Protection of Atmospheric Air 1999 (also known in English as the Law on Ambient Air Protection\(^\text{19}\)); with Table 30 of the Final EIA\(^\text{20}\) giving details of these standards.

82. The EIA\(^\text{21}\) mentions that air quality in Tskere, as in the entire Khada Valley, is good. No significant point or mobile sources of air pollution are present in the Khada Valley. Vehicle

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\(^{19}\) Legislative Herald of Georgia. 2022. *Law of Georgia on Ambient Air Protection*.

\(^{20}\) Footnote 18, para. 442, p. 155.

emissions are low because of low traffic volumes, and air pollution is rapidly dispersed due to winds. The situation in Kvesheti and Arakhveti areas and in Kobi is different since these settlements are located along the existing main road where exhaust emissions occur from passing vehicles.

83. The EIA records that air quality measurements were taken in Kvesheti, Arakhveti and Kobi to get a better understanding of air quality in the project area. However, measurements were not taken in Tskere and at other locations in the Khada Valley. The CRP therefore observed at eligibility stage that the Final EIA did not incorporate baseline studies for ambient air quality in Khada Valley villages to provide a basis for future impact assessment.

84. The Final EIA also requires the contractors to undertake additional baseline monitoring in line with EHS Guidelines for PM$_{10}$, PM$_{2.5}$, NO$_2$ and CO emissions; including in the Khada Valley; prior to the start of construction. The EHS Guidelines on air quality specify that “emissions do not result in pollutant concentrations that reach or exceed relevant ambient quality guidelines and standards by applying national legislated standards, or in their absence, the current WHO Air Quality Guidelines, or other internationally recognized sources”. It is not clear to the CRP why the EHS Guidelines, rather than national standards, are a reference point in the relevant paragraph of the Final EIA.

b. Post-Board Approval

85. The CRP notes that the Lot 2 Contractor has carried out a detailed air quality monitoring and modeling study, the results of which are contained in a May 2022 Air Quality Impact Assessment Report (Air Quality Impact Assessment Report). This mentions that 24-hour PM$_{10}$ and PM$_{2.5}$ measurements were taken at 15 points, covering 15 villages including at locations in the Khada Valley.

86. For modeling purposes, the May 2022 study considered four (4) scenarios for construction and operational phase emissions; with PM$_{10}$ and PM$_{2.5}$, NO$_2$ and CO emission values were modeled for each. The modeling study was conducted by evaluating the 2049 vehicle traffic load to take the worst case as a reference. The scenarios are:

(i) Scenario 1: emissions caused by construction activities at “Kvesheti site” (in practice covering Lot 2 and the Tskere side of Lot 1);

(ii) Scenario 2: operational phase emissions at Kvesheti site;

(iii) Scenario 3: emissions caused by construction activities at “Kobi site” (in practice covering the remainder of Lot 1); and

(iv) Scenario 4: operational phase emissions at Kobi site.

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22 Footnote 18, para. 528, p. 196.
23 Footnote 4, para. 41, p.8.
24 Footnote 21, para. 532, p. 198.
87. The Air Quality Impact Assessment Report determined that in Scenario 1 PM$_{10}$ and PM$_{2.5}$ emissions; and in Scenario 3 PM$_{2.5}$, will exceed the IFC/WB PM$_{10}$ daily limit value at the highest emissions detected, but will not exceed the annual limit value. In other scenarios, the limit value for all particulate matter emissions (PM$_{10}$ and PM$_{2.5}$) is not expected to be exceeded. The Air Quality Impact Assessment Report suggests that “Considering the development of engine and emission reduction technologies, it should be noted that the emissions determined in this modeling study reflect the worst-case situation. Actual emission levels are expected to be lower than the value determined here.”

88. The Final EIA requires the contractors to prepare an air quality management plan. Plans have accordingly been prepared by the contractors and approved by the PMSC. The CRP notes that both contractors have engaged third party accredited agencies for air monitoring and sampling sites and data is regularly reviewed by the PMSC. Ambient air quality levels mentioned in these reports, as recorded in the July-December 2021 Semi-Annual Environmental Monitoring Report, generally meet Georgian national standards.

c. Analysis and Findings

89. The CRP finds that at Board approval, ADB had not taken steps to ensure that the Final EIA contained adequate baseline air quality data from the Khada Valley. Such data was necessary to understand changes in air quality due to construction and operation of the project road. The CRP finds ADB noncompliance with its pre-Board approval diligence. The CRP notes that under para. 56 of the SPS, to ensure inclusion in the Final EIA of adequate baseline data with regards to air quality in the project area in accordance with relevant provisions in paras. 5 and 9, Appendix 1 of the SPS.

90. Following Board approval, the Lot 2 Contractor prepared a comprehensive Air Quality Impact Assessment Report which is dated May 2022. Accordingly, the CRP concludes that ADB’s noncompliance has not caused direct and material harm to affected people and that future harm is also not likely and is therefore not ‘reasonably certain’, in the language suggested by the February 2019 OGC guidance.

2. Noise

a. Pre-Board Approval

91. The Final EIA identifies ambient noise levels as a critical environmental component where construction activity and operations will have significant adverse impacts on affected people and the environment. Section F.8.5 of the Final EIA deals with noise impact assessment and covers both construction and operational phases noise. The Final EIA, para. 1188 recognizes that construction noise impact will be of high significance and that the dominant source of noise from most construction equipment is the diesel engine. Paragraphs 1191-1193 mention that according to construction phase noise modeling, residential areas adjacent to the Project’s main construction zones in Kvesheti, Arakhveti, Kobi, Begoni, Sviana-Rostiani and Zakatkari are projected to experience noise levels of around average 65-70 decibel A scale (dBA) and 75-80 dBA which are higher than the 55 dBA daytime and 45 dBA night-time limits of the EHS Guidelines. Table 163 of the Final EIA shows those villages which are projected to experience noise levels exceeding limits.

27 Footnote 26, p. 76.
noise levels above the limits set in the EHS Guidelines during the operational phase, both with and without noise barriers. The Final EIA concludes that even after erecting noise barriers, there could be seven (7) receptors who will experience noise above EHS Guidelines limits in 2024, and 19 receptors in 2028. The Final EIA notes that further investigation will be required to establish the occupancy of the properties, and once established, for those properties that are occupied, alternative mitigation may be suggested, including resettlement and waiver. The Final EIA then states that the Roads Department will be responsible for consulting with the remaining affected receptors to determine what option is preferable to them, and provides that this shall be completed during construction and the results of the consultations presented to the ADB for final review and approval. A corrective action plan is envisaged for the project LARP during the construction phase to take account of any properties that may choose resettlement.

92. The CRP has reviewed records of baseline noise monitoring carried out as part of the EIA and notes that while ambient noise monitoring was conducted at Kvesheti and Arakhveti, it was not carried out at villages in the Khada Valley. This means that although the effect of the increase in road traffic noise on residents in these villages has been assessed through comparison with norms, there is no baseline data from which incremental noise change due to project-related activities could be calculated. Similarly, baseline monitoring has not covered areas potentially affected by proposed worker camps or by use of the existing Zakatkari-Gudauri road by construction traffic. These deficiencies in the locations of baseline noise monitoring were raised by ADB in its review of the EIA. However, the Final EIA did not reflect corresponding amendments.

93. The Final EIA lists major noise sources considered. Some potential temporary sources are not considered. These include noise from workers’ camps (where crushing and batching plants may also be located), and noise and vibration from access roads, including access routes that were already known at the time of the finalization of the EIA such as the internal Khada Valley road and the Zakatkari-Gudauri road.

94. The EMP provides for a Noise Control Plan (NCP) in two phases: construction and operation. As to construction phase noise, the EMP states that regular monitoring of noise levels shall be carried out throughout the construction period by the contractor as presented in Appendix B of the Final EIA. As discussed in Section C of this report, the EIA provides that the SEMP and relevant TSEMPs (i.e., noise and vibration control/management plans) and SSEMPs (for workers’ camps) are to be approved by the PMCSC. Paragraph 1224 of the Final EIA includes some general measures for noise abatement including use of temporary noise barriers while working in sensitive locations when exceedance of allowable limits is expected. Paragraph 1226 adds that during the pre-construction phase, the PMCSC shall undertake further refined noise modeling to determine the specification and precise locations of the proposed noise barriers. The Final EIA leaves it to contractors, through their NCPs, to detail such measures at the construction phase.

95. The EMP presents a mitigation strategy for control of noise pollution during the operational phase. Noise mitigation in the form of barriers is modeled at villages where EHS Guidelines on noise levels were originally calculated to be exceeded, though levels at some dwellings remain slightly above the thresholds. The CRP understands that detailed design of barriers is to be

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29 Footnote 16, para. 1227, p. 456-457.
30 Footnote 16, para. 1228, p. 457.
31 Footnote 30.
32 Footnote 16, paras. 1188, 1189 and Table 140, pp. 410-411.
completed during project implementation and notes that this is normal practice for this type of project. The Final EIA in para. 1229 concludes that other forms of mitigation including speed control and low-noise road surfaces are impractical, considering specific project conditions. The CRP observes that to facilitate the attainment of the specified noise outcome, namely compliance with EHS Guidelines standards, it may have been helpful for the EMP to include more guidance for the contractor on options for site-specific control for individual items of equipment likely to be deployed. Thus, for example, the EMP could usefully have included information on when to deploy additional temporary noise barriers; or available standards for mufflers for use on rock-breaking equipment. On balance, however, the CRP does not find that ADB was noncompliant with its responsibilities in relation to the noise provisions in the EMP.

b. Post-Board Approval

96. Following the Final EIA, both the Lot 1 and Lot 2 contractors prepared project construction phase NCPs in January 2020 and April 2020. The NCPs mention several limitations, particularly regarding uncertainty in the location of temporary facilities (e.g., access roads, camps, batching plants, storage locations for blasting materials) and project-related permanent sites (e.g., spoil disposal areas), as these had not been approved at the time of the preparation of the plans. Both NCPs contain similar assumptions and operational recommendations.

97. Both contractors’ NCPs identify the principal noise-generating activities at pre-construction and construction phases of the Project. Like the EIA, they present baseline data for two sites in Kvesheti and Arakhveti, but without measurements for the Khada Valley. Table 3 of the Lot 1 Contractor’s NCP provides assumed noise levels expected from construction equipment. The CRP has therefore compared these levels with values set by two widely referenced sources, namely the U.S. Federal Highway Administration\(^34\) and the U.S. Environmental Protection Agency\(^35\). The figures given in the Final EIA are lower than these values. As such, the figures presented in the Final EIA risk underestimating the actual noise levels. Furthermore, the CRP notes that with the limitations explained in the texts of the two NCPs, it would be technically difficult to reasonably predict the construction phase noise levels and devise suitable mitigation strategies and measures.

98. The CRP notes that the EMP framework for TSEMPs and SSEMPs that is set out in Table 170 of the Final EIA does not require ADB to approve the contractors’ NCPs. Internal project documents indicate that ADB nonetheless reviewed both NCPs and tracked their development through successive iterations, providing written feedback on at least one of the two. As at December 2021, internal project documents show that a further update to one of the two NCPs was expected.

99. Under para. 44 of the SPS, ADB is responsible “for conducting due diligence and for reviewing, monitoring, and supervising projects throughout ADB’s project cycle in conformity with the principles and requirements embodied in the SPS.” The CRP notes that noise pollution was identified as a significant impact in the EIA and that the EMP includes a number of stipulations on the content of contractors’ NCPs. The CRP has reviewed the contractors’ NCPs dated April 2020 for Lot 1 and August 2020 for Lot 2. Both contain references to good operational practices which are themselves referenced in the EIA. The NCPs contain limited detail on mitigation of impacts at temporary facilities; consistent with the fact that many temporary facilities had not been finalized

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when the NCPs were prepared. Neither do they include each contractor’s budget for noise control and its use; or technical details of project execution intensity, and equipment configuration. While the CRP considers that it would be preferable for such measures to be included in the NCPs, and that this would be consistent with the EMP; it does not have evidence of ADB noncompliance in connection with the preparation of the NCPs. Internal records clearly show that ADB reviewed and tracked progress in developing the NCPs in the period to January 2021, while providing feedback on at least one of the two (the Lot 1 NCP), which was then amended. The NCPs, like other TSEMPs, are living documents, and the addition of further site-specific detail in the light of implementation experience is to be expected. As at December 2021, internal documentation shows that an update was planned to the Lot 2 NCP once the layout and location of temporary sites had been approved. The CRP has not identified suggestions that any performance issues on the part of the PMCSC or the Roads Department demanded additional action on the part of ADB. However, the CRP emphasizes the importance of timely updates in NCPs to ensure that their mitigation measures are tailored to known temporary facilities and any intensification of construction operations in the event that catch-up plans are implemented, particularly in respect of Lot 2 where implementation is significantly behind schedule.

100. In May 2022, ADB shared an operation stage noise modeling study dated March 2022 which had been prepared for the Project as required under the Final EIA.36 The report of the study considers four time-series scenarios, namely noise generated from the operation of the project road in the 1st, 5th, 10th, and 15th years. The report considered both 3 dB increase criteria and also the day and night noise level criteria of the EHS Guidelines. It also explained the responsivity and sensitivity of receptors, and the magnitude, scale, and extent of impacts. Since sound propagation is hugely affected by terrain which can act as an obstacle to noise, information on ground topography is integrated within the noise model. For modeling purposes, the study uses projected traffic input data that projects traffic of 90 vehicles per hour in 2025; 115 vehicles in 2030; and 139 vehicles in 2035. The CRP notes that it will be important to verify these numbers in view of the present traffic load on the existing road to Gudauri and also potential induced impacts in the Khada Valley, for example from tourism.

101. During fieldwork, measurement points were selected to represent baseline noise levels for settlements of concern at points closest to the project road. The March 2022 study reports that noise level measurements were carried out at 17 points for 48 hours to assess the baseline noise levels at receiver locations located in the perimeter of the project road. A total of 24 receptors were identified along the project road which were also used as assessment points for impact analysis. The modeling indicates that of the 24 receptor locations the number of receptors likely to experience major adverse impacts is two (2) in 2025, five (5) in 2030, seven (7) in 2035, and eight (8) in 2040. The report therefore suggests a total of 3,348 meters (m) of noise barriers. The report mentions that one of the 24 receptors37 will continue to experience final impacts considered to be ‘moderate’, as the specific terrain makes mitigation measures based on noise barriers ineffective. The CRP notes that based on the data provided; this receptor would therefore attract the provisions of para. 1127 of the Final EIA which as noted above envisages alternative mitigation options including resettlement and waiver.

102. The CRP has reviewed ADB’s internal monitoring reports related to noise and notes that these have regularly raised concerns over the regularity of noise monitoring conducted by the contractors through accredited agencies and the absence of monitoring information required to be provided. Concerns have been raised regarding both the adequacy and the

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36 Footnote 16, para. 1226, p. 456.
37 The point is located near chainage 8.100 km of the proposed road somewhere near Benian-Begoni village.
comprehensiveness of the contractors’ noise monitoring reports. Paragraph 1302 of the Final EIA requires project-level noise monitoring by the contractor (with monthly reports submitted to the PMCSC and the Roads Department). It also requires the Roads Department to hire a contractor to monitor environmental issues during the first year of operation of the project road. Internal documents indicate that ADB regularly reviewed compliance with these monitoring requirements. The CRP’s wider finding on ADB’s systemic supervision of the Project in relation to issues raised by the complaint and included in the TOR for the compliance review can be found in Section I.

c. Analysis and Findings

103. The CRP finds that at Board approval, ADB had not taken steps to ensure that the EIA contained adequate baseline noise data from the Khada Valley. Such data was necessary to understand the incremental increase in noise levels due to construction and operation of the project road. The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS, to ensure inclusion in the Final EIA of adequate baseline data with regards to noise in the project area in accordance with relevant provisions in paras. 5 and 9, Appendix 1 of the SPS.

104. The CRP does not find ADB noncompliance associated with its review of the provisions of the EMP for noise abatement at construction phase, nor with ADB’s monitoring and supervision in respect of the preparation and content of Noise Control Plans addressing construction phase noise. However, the CRP notes the value of ADB oversight to ensure timely updates to the NCPs as and when the locations of temporary facilities are finalized to ensure that at these facilities noise during construction does not exceed applicable standards.

105. Regarding operation phase noise, the March 2022 study was comprehensive. It also included baseline noise monitoring along the project road alignment including at 14 locations in the Khada Valley. The CRP does not find ADB noncompliant regarding assessment and mitigation of noise impacts during operational phase.

106. After Board approval, ADB conducted detailed project operational phase noise modeling. While conditions in the Khada Valley at the time of the subsequent modeling report are not directly comparable to pre-project conditions, the CRP finds that the baseline data that it contains provides a workable, though imperfect, substitute for the absence of pre-project baseline data on noise in Khada Valley. The CRP concludes that direct and material harm to affected people is not likely and is therefore, in the language suggested by the February 2019 OGC guidance, not ‘reasonably certain’ to be caused by ADB’s noncompliance regarding baseline assessment of noise.

3. Vibration

a. Pre-Board Approval

107. Section F.8.6 and Appendix P of the Final EIA contain information about vibration monitoring and modeling. Baseline vibration monitoring was carried out as part of the EIA expressed in millimeters per second (mm/s) which will support the assessment of building damage through the application of the German Institute for Standardisation (DIN) 4150 (for continuous sources) and comparison with the Georgian national vibration standards for human response. However, this procedure does not make provision for calculation of future construction vibration levels and the Final EIA specifies additional monitoring as detailed in Tables B-1 and B-2 of Appendix B as part of a construction program to determine attenuation with distance for local
lithology. This is set out in the EMP (in line A10) as a requirement for contractors’ Construction Vibration Management Plans. It is also noted that four (4) monitoring sites were selected at EIA stage in buildings alongside the existing road through Kvesheti and Arakhveti. The CRP is satisfied that these provide adequate coverage in terms of establishing baseline levels.

108. Consistent with normal practice, a detailed survey of the condition of buildings within 25 m from road alignment is required by the EMP.38 Annex 1 of Appendix P of the Final EIA states that pre-construction surveys within the likely impact zone for 281 buildings have been completed. The Final EIA states in para. 908 that the Project is in a seismically active area. The CRP notes that this is an important consideration when assessing building condition and the likelihood of building damage, since structures in the project area including homes and cultural heritage sites, may have been subject to high levels of ground-borne vibration during past seismic activity.

109. Table 165 of the Final EIA identifies the impact of vibration on PCR as highly significant and Table 168 lists PCR sites within 110 m of the project road and their proximity to piling sites or tunnel excavation areas. However, vibration modeling presented in Annex P of the Final EIA does not present any specific analysis of PCR sites in light of their particular sensitivities. Instead, a vibration velocity guide value of 2.5 mm/s which is specified in the DIN 4150-3 for delicate buildings and listed buildings, e.g., historical monuments, is applied to PCR for purposes of analyzing the effects of continuous vibration. The CRP notes that subsequent to the Final EIA and Board approval, a detailed study of PCR by the NACHP within a 600 m buffer of the road alignment, which also considered temporary facilities, identified numerous additional cultural heritage sites. (See further Section D of this report on Physical Cultural Resources.)

110. To enable comparison of the calculated building vibration levels with building damage criteria, the Final EIA converts DIN guideline levels, which are presented in the DIN standard as peak particle velocity (ppv) into acceleration. However, the CRP observes that it may not be appropriate to apply this weighing to assessment of potential structural damage to buildings arising from ground-borne vibration. The CRP understands that an alternative expert view holds that a better method might be to convert the source data to ppv and retain the German Standard (DIN) or British Standard criteria in their original format, i.e., expressed as ppv (mm/s). In response to queries raised by the CRP on these matters, the EIA approach was justified by ADB with reference to previous work carried out by consultants for the Sustainable Urban Transport Investment Program - Tranche 3 in Georgia.39 The CRP suggests, however, that notwithstanding this earlier work, this aspect calls for further expert examination to gain assurance on the appropriateness or otherwise of conversion of vibration velocity level to acceleration for vibration impact assessment. There is a risk that the impacts of vibration have been underestimated. This is particularly concerning given the large numbers of vulnerable cultural heritage sites and objects within the project’s area of influence.

38 Footnote 33, Appendix A: Page A-83, item 34.
b. Post-Board Approval

111. The CRP has reviewed the Construction Vibration Management Plans prepared for Lot 1 and Lot 2 respectively and observes that the monitoring locations indicated in the Plans relate to the main road alignment only. No temporary facilities or infrastructure or spoil disposal sites are addressed. Both Plans refer to a joint pre-construction phase survey to be carried out by the PMCS and the relevant contractor not later than 28 days before the start of construction works. Details, including the monitoring locations, are to be decided and approved/agreed by the PMCS. There is no specific assessment of the effects of vibration from project construction on persons within their homes or any community facilities, though the use of a more stringent vibration limit of 2.5 mm/s does offer some protection. ADB raised this issue in its review of the Draft EIA, and while it was not eventually addressed in the Final EIA, the CRP does not consider this alone to be evidence of noncompliance.

112. Regarding the omission of temporary facilities and infrastructure from the contractors’ Construction Vibration Management Plans, the CRP notes that temporary facilities and infrastructure are already partially operational. It is not clear from documentation whether any site assessment for vibration impacts of such facilities and infrastructure has been carried out. The CRP notes that ADB’s internal project documentation records that concerns have repeatedly been raised by residents about damage to the existing internal Khada Valley road which is used as a main access road by vehicles from both Lots, and community members also complained in November 2021 that cracks had appeared in some houses in Benian-Begoni. The Construction Vibration Management Plan for Lot 2 indicates that the vibration monitoring locations are related to the design alignment only, and no temporary facilities/infrastructure and spoil disposal sites are covered. It further notes that the location of monitoring points will be verified based on a condition survey to be implemented before commencement of construction.

113. ADB’s internal monitoring records have noted several noncompliances in the contractors’ vibration control monitoring and management. The CRP notes that in a weekly safeguards project meeting in June 2021, ADB recommended additional vibration surveys beyond 25 m of the road alignment where there are risks, stating that it is key to conduct pre-construction surveys, and that this is also relevant to access roads as well as anywhere else where vibration impacts could occur. In internal records of January-February 2022 field visits, ADB monitors noted that the Lot 2 Contractor had failed to conduct vibration monitoring during construction as required. ADB site visits in December 2021 had earlier observed that the Lot 1 Contractor was not conducting continuous vibration monitoring at the required locations in Tskere and the Lot 2 Contractor was not monitoring vibration at required locations, including at certain cultural heritage sites. On several occasions, ADB brought noncompliances in vibration monitoring and pre-condition surveys to the attention of the PMCS and the Roads Department for immediate action. The CRP also notes that in December 2021, ADB raised concerns with the Roads Department regarding contractors’ failure to measure vibration levels near cultural heritage sites. The CRP concludes that while ADB has been closely and diligently involved in monitoring project compliance with vibration requirements, concerns have on occasion persisted over extended periods. The CRP observed that condition assessment prior to the beginning of construction activities is also a precautionary measure for prevention of potential adverse impacts of vibration. However, on balance, the CRP does not find ADB noncompliance with its monitoring responsibilities in respect of vibration.

114. Analysis and findings. The CRP does not find any noncompliance by ADB with regards to vibration. However, the CRP notes a risk that the Final EIA has underestimated vibration levels as a result of use of vibration acceleration as guideline value, as against vibration velocity as
specified in DIN standards. The CRP also underlines the importance of condition surveys, regular vibration monitoring, and continued monitoring and supervision by ADB, particularly considering the risks to numerous cultural heritage sites and objects in the project area.

C. Design and Deferment of the Environmental Management Plan

115. **Complainants' perspective.** The complainants are concerned that the EIA clearly ‘postpones’ numerous critical decisions from the EIA stage to the construction phase since the contractors’ specific EMPs are separate from, and not integrated within, the EMP that forms part of the project EIA.

116. **ADB Management's perspective.** Paragraph 46 of ADB Management’s Response asserts that “the Project has been prepared, and is being implemented, in full compliance with ADB’s policies and procedures.” The CRP has discussed the project approach to preparation of EMPs for various impacts with ADB. Section F of the Final EIA provides a generic impact management framework. The EMP incorporated in the Final EIA then provides for development by the contractor of a Specific EMP (SEMP), and a range of TSEMPs and SSEMPs addressing various issues. ADB informed the CRP that this is an effective approach for meeting environmental and social objectives considering the site-specific uncertainties for various components of the Project and the contractors’ responsibility for meeting the specified standards.

117. **Relevant policies and procedures.** SPS Environmental Safeguards Policy Principles 4 and 6 describe the requirements for formulation, design, and implementation of the EMP that is to be prepared as part of EIA. SPS, Appendix 1, para. 12 establishes the requirements to be met by the EMP. It requires the level of detail and complexity of the environmental planning documents and the priority of the identified measures and actions to be commensurate with the Project’s impacts and risks. SPS, para. 14 states that the EMP is to define expected outcomes as measurable events to the extent possible and to include performance indicators or targets that can be tracked over defined periods. It is to be responsive to changes in project design, such as a major change in project location or route, or in technology, unforeseen events, and monitoring results.40

a. Pre-Board approval

118. The Final EIA introduces the concept of the SEMP-TSEMP/SSEMP framework and the role of the contractor in implementing the EMP through its own SEMP.41 It states that the contractors will be responsible for implementing the requirements of the EMP through his own SEMP which will adopt all the conditions of the EMP and add site-specific elements that are not currently known, such as the contractors’ construction camp locations. Paragraphs 1304-1305 of the Final EIA provide an additional description of the SEMP-TSEMP/SSEMP framework. Paragraph 1304 states that the SEMP is the document that the contractor shall prepare outlining how it intends to implement the EMP and ensure that all the mitigation and monitoring are completed according to the implementation arrangements specified in the EMP and the Final EIA as a whole. Paragraph 1305 of the Final EIA notes that the SEMP will describe the precise location of the required mitigation, the persons responsible for the monitoring, the schedule and reporting methodology. It further specifies that the SEMP and all its topic- and site-specific plans will be

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submitted to the PMCSC and the Roads Department for approval at least 30 days before taking possession of any work site.

119. The CRP notes that neither the SPS nor its accompanying OM section F1 specifically use the terms ‘SEMP’, ‘SSEMP’ or ‘TSEMP’, as opposed to ‘EMP’. ADB has informed the CRP that it is generally the case in large-scale construction projects that many of the technical details of the project including the details of temporary facilities like stone quarries, access roads, camp sites, batching plants, borrow pits among others are not finalized when bids are invited. The ADB safeguards team also informed the CRP that this is good international practice which has been widely adopted by international development finance institutions.

120. The CRP understands from its discussions with ADB safeguards team members that there is currently no ADB-wide internal guidance on the use of the SEMP-TSEMP/SSEMP model; and that discretion on how or whether to apply it lies primarily with the responsibility of the operations department concerned (in the present instance, CWRD).

121. The SPS notes that significant staff input is expended on preparing draft summary EIA reports to satisfy disclosure procedures for environmentally sensitive projects, but the finalization and implementation of robust EMPs, which are the basis for project implementation, receive substantially less attention. In 2019, CWRD published a document prepared by technical assistance consultants titled “Good Practice Note Impact Assessment Process for Initial Environmental Examination (IEE)”.

122. Aside from this document, in March 2022 ADB’s Procurement, Portfolio, and Financial Management Department issued an internal memorandum to operations departments notifying them of ADB’s Conditions of Particular Application (COPA) to be applied to “2017 Red Book” procurement from July 2022 (i.e., procurement governed by the FIDIC 2017 Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer). The COPA includes a statement that: “As soon as practicable after the Contractor has been given access to, and possession of, the first part of the Site (or the whole Site, as the case may be), the Contractor shall submit to the Engineer for Review a detailed Site Specific Environment Management Plan (SSEMP) which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. The SSEMP shall include measures the Contractor proposes to manage the environmental risks and impacts of the Works. At a minimum, it shall be based on the Environment, Health and Safety Management Plan (EHSMP) and EHS Code of Conduct for Contractor’s Personnel submitted as part of the Contractor’s Tender and agreed as part of the Contract, and address requirements in the Environment Management Plan (EMP) of the project.” The COPA thus describes project safeguard requirements cascading through the EMP to contract-specific requirements set out in the bidding documents for particular contracts. It reiterates the primacy of the EMP. While the document also addresses the role of ADB in project-level safeguards compliance, the CRP notes that it is a procurement guidance document and cannot be considered an internally authoritative source of guidance on SPS implementation.

42 Footnote 40, para. 34, p. 11.
123. The CRP has sought to understand better the ways in which the EMP-SEMP-TSEMP/SSEMP model has been applied in different operations departments of ADB. A random sample of a handful of EIAs and EMPs available publicly on ADB project web pages provides an indication that two broad approaches are in use. One approach, like that followed in this Project, incorporates the use of a SEMP and accompanying TSEMPs and SSEMPs. However, a second approach follows the EIA/EMP model, without making use of SEMPs or TSEMPs/SSEMPs. The co-existence of the two approaches is consistent with the discretion given to operations teams to determine whether the EMP-SEMP-TSEMP/SSEMP model will be followed, based on the specific circumstances of individual projects.

124. The CRP notes that the requirements of paras. 12 and 14 of the SPS are constant, in the sense that they apply to any EMP regardless of whether the SEMP-TSEMP/SSEMP model is applied to the corresponding project in question. In this Project, the CRP is broadly satisfied that ADB’s due diligence and review were adequate to ensure that the EMP in the Final EIA met the requirements of paras. 12 and 14 of the SPS. However, the CRP has identified several areas where in light of the TSEMP/SSEMP model applied to the Project, it would have been helpful for ADB to ask the borrower to strengthen the specificity of the guidance provided by the EMP and, on occasion, its requirements for contractors. This would have been prudent, moreover, given that ADB was not in a position to review the environmental and social management capacity of proposed contractors in advance. Three examples concern tunnel water, topsoil, and landscape:

(i) **Tunnel water:** The EMP requires contractors to prepare Ground Water Management Plans to cover water diversion, treatment (settling) and discharge for each tunnel. However, guidance on issues such as the type and methods of settling including minimum settling (retention) time; or on storage and handling of sediments, which would have facilitated the preparation of a TSEMP, is absent.

(ii) **Topsoil:** The Final EIA requires the contractors to prepare Topsoil Management Plans and Recultivation/Land Restoration Plans. It is understandable that the locations of these temporary facilities were not known earlier. However, the CRP observes that the inclusion of specific guidance on topsoil storage locations in the right of way would have assisted the contractor in both preparation and implementation of the topsoil management plans.

(iii) **Landscape:** The EIA provides for landscape impacts to be mitigated through Recultivation/Land Restoration Plans and a Spoil Disposal Plan. However, the EMP could have provided better guidance for contractors had it provided for landscape impacts to be addressed through a more integrated approach.

125. To better understand how other development finance institutions address post-EIA supplementary EMPs, the CRP commissioned a study from an international EIA expert. Based on interviews with practitioners to review practices at institutions such as the World Bank, EBRD, the European Investment Bank, the Inter-American Development Bank, and the Millennium Challenge Corporation, it appears that the practice of preparing TSEMP/SSEMP (sometimes referred to in other institutions as ‘contractors’ EMPs’) is widely observed. At the same time, however, it is striking that international financial institutions’ policy frameworks do not specifically

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46 Footnote 16, paras. 869-870, p. 316.
refer to these post-EIA supplementary EMPs. Neither do formal policy frameworks refer to consultation on, or approval and disclosure of, these supplementary documents (see Section H of this report).

126. The SPS addresses ADB’s role and responsibility in ensuring the sustainability of the projects it finances. It affirms that through due diligence and review, ADB will confirm that all key potential social and environmental impacts and risks of a project are identified; that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design; and that consultations with affected people are conducted in accordance with ADB’s requirements.

127. Tables 170 and 171 of the Final EIA list the topic-specific environmental management plans (TSEMPs) and site-specific environmental management plans (SSEMPs) respectively and their associated approval process. Many do not require ADB’s approval; among them topic- and site-specific environmental plans that deal with major project impacts including noise, vibration, spoil, temporary roads, and cultural heritage management. Table 3 below lists the TSEMPs/SSEMPs, highlighting in bold those that do not require ADB’s approval.

Table 3. Topic- and Site-specific Environmental Management Plans Not Requiring Approval by the Asian Development Bank

<table>
<thead>
<tr>
<th>Topic/Plan</th>
<th>Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topsoil Management Plan</td>
<td>Waste Management Plan</td>
</tr>
<tr>
<td>Air Quality Management Plan</td>
<td>Waste Water Management Plan</td>
</tr>
<tr>
<td>Traffic Management Plan</td>
<td></td>
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<tr>
<td>Code of Conduct</td>
<td></td>
</tr>
<tr>
<td>Recultivation/Land Restoration Plan</td>
<td></td>
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<tr>
<td>Construction Camp Layout Plan</td>
<td></td>
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<tr>
<td>Asphalt Plant Management Plan</td>
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<tr>
<td>Bridge Construction Plan</td>
<td></td>
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<tr>
<td>Local Content Management Plan</td>
<td></td>
</tr>
<tr>
<td>Tunnel Transition Plan</td>
<td></td>
</tr>
</tbody>
</table>

Note: Those listed in bold are not subject to approval by the Asian Development Bank.

b. Post-Board Approval

128. ADB engaged with the borrower to ensure that the SEMP-TSEMPs/SSEMPs were prepared as envisaged by the scheme presented in the Final EIA and its EMP. Internal project
documents summarize ADB’s review of the SEMP and a number of the TSEMPs and SSEMPs between April 2020 to September 2020, though not all TSEMPs and SSEMPs had been finalized by the contractors at this time.

129. The CRP notes that the SPS entrusts ADB with responsibility for ensuring adequacy and detailing of mitigation measures for the desired outcome criteria through appropriate due diligence as noted in Environmental Safeguards Principles and also, para. 56 of SPS. Paragraph 1305 of the Final EIA states that “[t]he SEMP will describe the exact location of the required mitigation/monitoring, the persons responsible for the mitigation/monitoring, the schedule and reporting methodology. The SEMP and all of its topic- and site-specific plans will be submitted to the Engineer and RD for approval at least 30 days before taking possession of any work site.” However, the CRP notes that not all TSEMPs and SSEMPs were ready when the SEMP was reviewed by ADB. Rather, the TSEMPs and SSEMPs were reviewed and approved by the PMCSC on an individual basis as work progressed. Since ADB only approved individual TSEMPs and SSEMPs in accordance with Tables 170-171 of the Final EIA, reliance on the opportunity for scrutiny afforded by approval of the overall SEMP could not alone ensure effective implementation of ADB’s overall monitoring and supervision responsibilities. Indeed, since ADB’s initial review, many of the TSEMPs and SSEMPs have been the subject of multiple further revisions. The CRP notes that internal documentation indicates that even for those documents not subject to ADB’s approval, ADB continued to monitor and on occasion comment on the development of TSEMPs and SSEMPs.

130. Progress developing and approving TSEMPs and SSEMPs has sometimes not kept up with construction. Internal records show that this has been of concern to ADB. For example, as at the second week of 2022, ADB’s internal monitoring documents show that for Lot 1, spoil disposal plans for sites 3 and 4 were not ready. Moreover, the concrete batching plant management plan as well as Method Statements for temporary river crossings and temporary roads were shown to be out of compliance and this was marked as an issue. The Lot 1 Contractor’s Recultivation Plan/Land Restoration Plan was also marked as ‘under completion’. Twenty (20) weeks later, both the sites 3 and 4 Spoil Disposal Plans and the Recultivation/Land Restoration Plan for the Tskere side were still pending. However, all other Lot 1 TSEMPs and SSEMPs had reportedly been approved.

131. As for Lot 2; as at week 2 of 2022, internal project documents show that numerous plans, including the Topsoil Management Plan, Air Quality Management Plan, Noise Control Plan, Traffic Management Plan, Recultivation and Land Restoration Plan, Cultural Heritage Management Plan and Tunnel Blasting Plans and Temporary Road Method Statement were listed as ‘under completion’. The Wastewater Management Plan, Spoil Disposal Plan and Bridge Construction Plan were all listed as out of compliance. The Construction Management Plan was also among those yet to be completed – with ADB’s internal records associating this with high risk. Twenty (20) weeks later, in week 22, updated data showed a marked improvement in progress, with only the Spoil Disposal Plans for sites 3 and 4 still pending, of those plans that were relevant.

132. The CRP notes that these detailed internal records of progress with the TSEMPs/SSEMPs indicate that numerous contractor plans were not updated to the PMCSC’s satisfaction ahead of relevant construction processes. While the EMP’s provisions nonetheless remained binding upon the contractors, the CRP notes that the absence of updated contractor plans reduced the clarity of overall governance arrangements for management of the Project’s social and environmental risk. It meant that the potential benefits of the topic- and site-specific contractor-led approach in delivering highly tailored SEMP, TSEMP and SSEMP documentation could not be fully realized. Furthermore, the CRP observes that while ADB’s internal monitoring reports use the EMP and
EIA as a reference point, the PMCSC’s communications with contractors often do not refer to either the EMP or to relevant provisions of the SEMP-TSEMPs/SSEMPs. There is a risk that if weak TSEMPs or SSEMPs are approved, then as a result requirements of the EMP could be under-dimensional in monitoring and supervision.

c. Analysis and Findings

133. The conceptual framing of the SEMP-TSEMP/SSEMP model leaves the detail of many mitigation measures to be established only after project approval. The CRP understands that the theoretical framework is that ADB approves the SEMP, which is to include all its TSEMPs and SSEMPs as provided in para. 1305 of the EIA. The assumption is that all TSEMPs and SSEMPs will be available at the time that ADB reviews the SEMP, and that ADB therefore has adequate opportunity to exercise effective safeguard oversight over the borrower’s environmental and social risk mitigation, management, and monitoring; and offer guidance and course-correction where needed. However, in this Project, the CRP notes from the internal documentation that not all TSEMPs and SSEMPs were ready when ADB approved the SEMP. They were developed at different times, and many were not subject to ADB approval at all after they had effectively been separated from the SEMP approval process.

134. The CRP notes that some project facilities, notably the existing internal road in the Khada Valley, are used by both Lot 1 and Lot 2 contractors. The areas of influence of Lot 1 and Lot 2 respectively therefore overlap to a significant extent. The CRP also notes that environmental impacts can be cross-sectoral, necessitating cross-references across environmental attributes as between the different TSEMPs and SSEMPs. For example, the Traffic Management Plan has implications for the Air Pollution Management Plan and the Noise Control Plan; and the Vibration Management Plan has implications for the Cultural Heritage Management Plan. Similarly, spoil management has implications for traffic, noise, erosion, and land, among others. However, the project’s monitoring and supervision arrangements do not provide for integrated approaches; and the piecemeal approach to review and approval of TSEMPs and SSEMPs has, at best, not facilitated cross-referencing across environmental attributes. The SEMP has in practice dealt with various topics and environmental attributes in isolation from one another.

135. ADB’s agreement to the use of the SEMP-TSEMP/SSEMP model to address known project impacts is not inherently noncompliant with its responsibilities under the SPS. The requirements of the SPS continue to apply in full. Following compliance review, the CRP does not find ADB noncompliance with its responsibilities in respect of the EMP and the use of the SEMP-TSEMP/SSEMP framework in the Project. However, the SPS is not designed for the SEMP-TSEMP/SSEMP framework that is currently in use. The CRP suggests that if ADB wishes to continue to use the SEMP-TSEMP/SSEMP model, it should consider developing safeguards compliance guidance to ensure consistent and good practice.

136. The de facto effect of pushing the mitigation and management details of the EMP to SSEMPs and TSEMPs in a governance structure that does not allow for explicit ADB approval of many of these documents, is to place a heavy reliance on the contractor’s/borrower’s capacity to comply with SPS requirements. Given this, the CRP observes that the explicit inclusion of contractors’ environmental and social management capacity in bid evaluation criteria could usefully be considered. The inclusion of such capacity assessment as a criterion for contractor selection would give greater assurance of compliance with SPS requirements during implementation.
D. Physical Cultural Resources

137. **Complainants' perspective.** The complaint refers to the Khada Valley as unique, and the complainants argue that the EIA does not adequately mitigate severe impacts on cultural heritage or explain its claim that cultural heritage impacts were avoided during the selection of the route. It welcomes work by the NACHP to develop a Cultural Heritage Action Plan for the Project but expresses concern that since work on the Project has already begun, new mitigation measures would be late, or it would be impossible to reroute the Project if this were needed.

138. **ADB Management’s perspective.** ADB Management’s Response notes that the final road alignment was selected to avoid impacts to all known PCR, and that six (6) known sites within 50 m of the right of way will not be directly affected. The requirements of the EMP mitigate the impact of vibration on cultural heritage sites, and the EIA includes a chance find procedure; with a cultural heritage monitor as part of the PMCS’s team. Conditional approval for the Project was granted by the NACHP in August 2019. Additional investigations by the NACHP were being carried out under contract to the Roads Department; and if any objects of high significance were identified, road redesign and realignment could be warranted.

139. **Relevant policies and procedures.** As set out in para. 56 of the SPS, ADB is responsible for reviewing the borrower’s social and environmental assessments. The level of detail and comprehensiveness of environmental impact assessment (including of PCR) is to be “commensurate with the significance of potential environmental impacts and risks.” Identification of impacts and risks is to take place at an early stage of project preparation.

140. The SPS covers PCR, which is defined as “movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance.” Cultural interest may be at local, provincial, national, or international level. The SPS provides for the conservation of PCR and for avoiding destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. It also provides for use of ‘chance find’ procedures for materials that may be discovered during project implementation. The borrower’s environmental assessment is to consider all potential impacts and risks of the Project on PCR in an integrated way. No PCR is to be removed unless conditions set out in the SPS are met. These include requirements for any removal to be carried out in accordance with applicable regulatory requirements and to employ the best available techniques.

141. Several provisions of Georgia’s Law on Cultural Heritage Protection (Law on Cultural Heritage) are also relevant to the issues raised for compliance review. Articles 34-46 provide for the establishment of buffer zones around cultural heritage objects and for the establishment of cultural heritage protection zones of various kinds (Articles 35, and 38-42); while Article 15 provides for temporary protection through the listing of cultural heritage objects for periods of up

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50 Footnote 40, Annex to Appendix 1: Safeguard Requirements 1: Environment, p. 41.
51 Footnote 40, Appendix 1: Safeguard Requirements 1: Environment, para. 4, p. 30.
52 Footnote 40, Manila: para. 45, Footnote 16, p. 39.
53 Footnote 40, Appendix 1, para. 39, p. 39.
54 Footnote 40, Appendix 1, para. 5, p. 31.
55 Footnote 40, Appendix 1, para. 49, p. 40.
to 12 months. This allows time to prepare for an eventual decision on listing by the Ministry of Culture, Sports and Youth.

a. Pre-Board Approval

142. The project alignment was informed by analysis in earlier Feasibility and Pre-Feasibility studies for the Jinvali-Larsi highway (Section 2 of which is the Kvesheti-Kobi section) dated November 2017 and December 2018 respectively. The Pre-Feasibility study referred to four (4) alternatives for the Kvesheti-Kobi section. Two (2) were through the Khada Valley. It listed cultural resources in the area of the overall Jinvali-Larsi road, but none of these were in the Khada Valley. As part of the multicriteria analysis, a large-scale map of cultural heritage and water springs showed rough locations of about 10 cultural objects in the Khada Valley. In consideration of alternatives, the report did not refer to cultural heritage impacts.

143. In the later Feasibility Study, all three (3) alignments under consideration were located in a corridor through the Khada Valley. Selection criteria for new bridges included prioritizing options with a greater ability to establish a ‘dialogue’ with the landscape. The Feasibility Study Report included the same lists of cultural heritage sites and monuments as the Pre-Feasibility study, concluding that none would be directly impacted in any of the Khada Valley alignments and that all known cultural heritage sites would be bypassed. The Feasibility Study Report also assessed that there was no risk of impact on cultural heritage during the project’s operational phase. It noted that the road would change the landscape substantially, but asserted that for all alignments, impacts would be medium or low.

144. The EIA process associated with ADB’s finance took a preferred alignment through the Khada Valley as its starting point. The TOR for the EIA, dated 12 February 2018, included multiple stipulations for the EIA’s coverage of PCR. Among these, they required cultural heritage to be covered at an appropriate level of detail. Internationally accepted best practice was to be used throughout the study.

145. The EIA Inception Report, dated May 2018, described field surveys that had by then been carried out, among them an archaeological survey. For the archaeological survey, it stated that the “walkover method was used”, and that “all monuments and potential archaeological sites were registered.” The walkover for the 23 km linear project had reportedly been carried out on a single day, on 12 May 2018. A report on the results included two maps identifying around 25 PCR objects. It noted the project region’s significant role in the history of Georgia, adding that from an archaeological point of view the area had not been well studied. The narrative referred to around 10 PCR sites, illustrated with 10 photographs, but no information was included about their status. Several areas were identified as requiring further archaeological survey work. The archaeological survey report did not state what buffer had been applied for the PCR field survey. Article 34 of the Law on Cultural Heritage describes different types of cultural heritage buffer zones. It distinguishes between those that are automatically established when cultural heritage objects are registered, which are referred to as “primary buffer zones”; and “secondary buffer zones” (considered further later), which can apply to areas with different kinds of historical or cultural heritage significance. A 50 m buffer would have mirrored the minimum 50 m physical protection
buffer for registered cultural heritage objects, whereas a wider 300 m buffer would encompass the minimum visual protection buffer for registered cultural heritage objects.

<table>
<thead>
<tr>
<th>Box 1: Buffer Zones Under the Law on Cultural Heritage of Georgia¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>A buffer zone is an area that surrounds “immovable cultural heritage properties or/and is within the site of their location or influence” (Article 3 (j)). The Law on Cultural Heritage regulates activities in buffer zones.</td>
</tr>
<tr>
<td><strong>Primary buffer zones</strong> apply only to registered PCR monuments and sites. They are of two kinds: physical buffer zones (which protect the physical security of registered cultural property); and visual buffer zones (which protect the visual security of registered cultural property). Physical buffer zones are to be no less than 50 m in radius. The radius of visual buffer zones is a minimum of 300 m from cultural heritage properties that are registered but not designated of national importance or World Heritage properties; and up to 500 m for cultural properties of national importance (Art. 36).</td>
</tr>
<tr>
<td><strong>Secondary buffer zones</strong> are of four kinds: buffer zones of “historical built-up areas”; “built-up areas”; “historical landscape protection”; and “archaeological sites”. Each of these is established by agreement with local self-government bodies upon the recommendation of the Minister and by decree of the Government of Georgia (Article 34(5). The different kinds of secondary buffer zone are addressed in more detail by Articles 37 to 40 of the Law on Cultural Heritage.</td>
</tr>
</tbody>
</table>

146. A month later, a June 2018 scoping report connected to the national EIA process noted that the project region is rich in cultural heritage monuments. It drew heavily on the same survey report that had contributed to the ADB EIA inception report, stating that “[s]ites where the second stage archaeological surveys will be carried out will be specified on the EIA stage.” On 3 August 2018, the NACHP provided feedback to the MoEPA on this scoping report, though the ADB project team informed the CRP that they were not aware of this. The NACHP mentioned that the Khada Valley is distinguished by its unique nature and by cultural heritage monuments that have not yet been fully discovered or examined. The letter stressed the importance of a complete archaeological assessment of the construction corridor and spoil disposal areas and reminded the MoEPA of the legal requirement⁶⁰ to provide NACHP with archaeological survey documents for them to prepare their conclusion on the planned work.

147. A few months later, ADB offered feedback to the borrower on drafts of the EIA. ADB noted that PCR is a major concern in Georgia, and feedback included several points on PCR issues, and requested a number of changes to the draft EIA report. Only some of these were actioned, including requests for a more nuanced description of regulatory requirements for the protection and conservation of PCR; and the addition of analysis on the significance of the cultural heritage sites that might be impacted (directly or indirectly). ADB’s comments on certain individual PCR sites also referred to a forthcoming second-stage archaeological survey and other studies and requested additional information and investigations regarding some. The Final EIA does not appear to have responded to these comments.

148. The Final EIA notes that the Khada Gorge is often referred to as the Gorge of 60 Towers⁶¹ and that despite the project area’s historical role and importance, the archaeology of the area has

⁶⁰ Footnote 56, Article 14(3).
⁶¹ Footnote 21, para. 802, p. 281.
not been extensively studied. It adds that the Project’s impact on cultural monuments was among the main issues raised by residents in the project area. The Law on Cultural Heritage is described in a single sentence.

The Final EIA’s PCR analysis only considers the Khada Valley alignment. It records that baseline data on PCR had been gathered through desk study and survey work supplemented by stakeholder consultations. A team of three people led by a named Georgian expert had spent 2 days on field-based visual survey work in May 2018. The EIA records cultural heritage monuments identified during the survey and discusses the ‘most relevant’ PCR in the project corridor. Figures 129-133 map 10 registered cultural heritage monuments, as well as 27 unregistered cultural heritage sites. These range in distance between 0 and 1,183 m from the project road. Along with a photo, each is given a brief descriptive label (e.g., “tower” or “cross”), together with its distance from the main project road. No coordinates are provided and distances from known temporary project facilities are not set out. No information is provided about the significance, or state of conservation, of the listed sites and monuments.

Turning to the ‘most relevant’ sites, the Final EIA notes that in Kvesheti, the alignment coincides with a St. George niche and that additional engagement will be required between the Roads Department and the Lot 2 Contractor “to confirm relocation options”. No measures are proposed to ensure that any relocation meets SPS requirements – and eventually, it was agreed that an underpass would be built to the site. The Final EIA describes a number of cultural heritage objects and monuments. The remains of a stone structure on the Didveli Plateau near Kvesheti are reported to have locally important significance, though the accompanying text appears to refer to a different site. Elsewhere, the Final EIA confuses a PCR site on the Beniani-Begoni plateau that had been the subject of multiple points of feedback from ADB, with one on the Didveli Plateau. Higher in the Khada Valley, two areas are highlighted for further archaeological work. At Tskere, the EIA highlights the road’s proximity to old and new cemeteries, recording that consultations had led to design changes. At Lot 1 in Kobi, the Final EIA records that there is a registered monument (Giorgistsminda church) on a hill at the tunnel portal site. It also notes that a war memorial in Kobi is in an area identified for potential spoil disposal.

During the compliance review, the CRP became aware that a second Georgian cultural heritage expert had been commissioned through a team responsible for preparing analysis for EBRD’s co-finance of Lot 1. In a 3-day assignment, one day of which was fieldwork, this expert was tasked with the review of aboveground cultural heritage monuments. The one-page report noted that the Khada Valley is rich with cultural heritage monuments and identified multiple areas where further work was required prior to construction. The work was referenced as a source in the EIA.

Footnote 21, para. 802, p. 281.
Footnote 44, Table 180, p. 505.
Footnote 15, para. 422, p. 149.
152. The Final EIA itself recognizes the probability of additional archaeological finds and specifies three (3) areas where additional archaeological investigation is needed before construction works begin. This is fewer than the six (6) initially identified in the archaeological survey report appended to the EIA inception report. The missing areas correspond to those where the ADB project team’s comments had asked for further information to be included in the EIA. Separately, a total of eight (8) “areas of potential cultural heritage impact” and “potentially sensitive PCR sites” are identified in Figures 184 and 185. The Final EIA states that the contractor will ensure that the areas will be examined, and any necessary excavations conducted prior to construction. It further provides for the contractor to develop a Cultural Heritage Management Plan which is to include a 5-phase strategy for assessment and mitigation as set out in Appendix N. Phases 1-3 of the 5-phase strategy envisage that the contractor will review existing data (Phase 1); conduct extensive and intensive surveys including trial trenching if deemed necessary (Phase 2); and conduct pre-construction excavations in areas where damage to PCR is unavoidable (Phase 3). Phase 4 then addresses chance finds during construction; and Phase 5 addresses reporting. The CRP notes that the effect is to provide a contractor-led mechanism for filling any gaps in the EIA’s baseline assessment once the Project is under way.

153. The impacts on temporary project facilities on PCR are largely unaddressed in the Final EIA, with four (4) exceptions below.

(i) The EIA considers PCR implications of potential spoil disposal sites, setting out mitigation measures, particularly in Kobi.

(ii) A mineral outcrop that is located almost adjacent to the internal Khada Valley road which will be used for construction traffic from both Lots. The outcrop forms an attractive area where people come to its spring to collect water and to picnic. The Final EIA provides for the site to be fenced or protected prior to construction (see further below).

(iii) A tower (site #23) just 2 m from a planned slip road that connects to the Benian-Begoni interchange, next to the existing internal Khada Valley road. The EIA notes that the site could be impacted by construction vibration but adds that it is “remains of a tower and therefore no collapse of the tower is anticipated”. It provides that fencing or protection is required, and additionally that it is recommended that the slip road be moved at least 20 m to the north to avoid impacts in both the construction and operational phases of the Project. The site is specified for continuous vibration monitoring.

(iv) An EIA requirement for continuous vibration monitoring for all cultural heritage sites within 110 m of works sites extends to sites in the vicinity of temporary facilities.

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72 Footnote 21, para. 1273, p. 469.
73 Footnote 21, paras. 808-809, p. 291.
74 Footnote 16, para. 1276, p. 472.
76 Footnote 16, Table 129, p. 370.
77 Footnote 21, para. 807, p. 291.
78 Footnote 16, para. 1287, p. 474.
79 Footnote 16, para. 1248, p. 463.
80 Footnote 16, para. 1248, p. 463.
81 Footnote 16, para. 1286, p. 474.
82 Footnote 16, para. 1286, p. 474.
83 Footnote 16, para. 1260, p. 466.
154. The Final EIA records that the project alignment has been selected to bypass monuments “as far as feasible”. Seven (7) exceptions within 50 m are identified. Mitigation measures for these sites include fencing and vibration monitoring, but not structural protection measures. The EMP provides for ‘demarcation’ throughout construction of “known archaeological sites” within 50 m of the road centerline or other construction activity. The Law on Cultural Heritage is cited as the reference point for the use of a 50 m cut-off. The Final EIA additionally applies a 110 m radius trigger for continuous vibration monitoring at PCR sites; giving rise to a vibration monitoring requirement at eight (8) sites. The EIA states that vibration is not expected to result in any structural damage to PCR, save that the tower at site #23 could potentially be impacted by construction vibration. The EIA states that “these are remains of a tower and therefore no collapse of the tower is anticipated.”

155. The SPS definition of PCR includes natural features and landscapes with cultural significance. Certain individual natural features are identified in the EIA, including a sacred forest that surrounds the Giorgitsminda complex in Lot 1 and a mineral outcrop in the lower part of the Khada Valley. However, the EIA’s treatment of landscape issues is almost entirely limited to consideration of the project’s visual impacts, not its wider historic-cultural landscape impacts. The Final EIA does not apply the Law on Cultural Heritage’s minimum 300 m visual protection zone as a guide when setting mitigation measures. ADB’s feedback on drafts of the EIA had encouraged the consultants to add further perspective on landscape, but the final text does not reflect this request. The Final EIA noted that the new alignment would change the landscape ‘substantially’, though the design; notably the use of cut and cover technique in some sections, as well as the use of tunnels; would limit the visual impact. At spoil disposal sites, visual impacts would initially be significant, but design profiles showed that they would be layered into the existing landscape and that once covered with topsoil and revegetated, the visual impacts would be reduced. Given small populations in Kobi and on the Didveli Plateau, the Final EIA considered that the visual impact would be limited to “passengers in vehicles.”

156. At the arched bridge crossing the Khada Valley, the Final EIA suggests that “it may be possible that this bridge will become an attraction for tourists in the future” and “will be a beautiful structure from an engineering point of view.” However, “the landscape will completely change from its origin.” Strikingly, the Final EIA concludes that: “The local community, with time, will get accustomed to the new infrastructure, visual discomfort related to the change will diminish.” The CRP notes that the EMP’s stipulations for the content of Recultivation/Land Restoration Plans are limited. The EMP states that the Recultivation/Land Restoration Plan is to cover all sites temporarily used for the needs of the project and must state the necessity of prohibition the use of alien or invasive plant species and the need/method for control and removal of Exotic Species. A note then adds that the plan can be developed/revised at a later stage or stepwise site by site to provide a schedule of recultivation works and that it must be developed in association with

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84 Footnote 16, para. 1268, p. 467.
85 Footnote 16, para. 1268, p. 467.
86 Footnote 16, para. 1260, p. 466; and Table 168, p. 464.
87 Footnote 16, para. 1243, p. 460.
88 Footnote 16, para. 1248, p. 463.
89 Footnote 40, Glossary, p. 4; and Appendix 1, Footnote 16, p. 39.
90 Footnote 16, para. 1270, p. 468.
91 Footnote 16, para. 1158, p. 400; and para. 1167, p. 404.
92 Footnote 16, para. 1159, p. 400.
93 Footnote 16, para. 1164, p. 402.
biodiversity specialist/s and the state forestry authorities. The EMP incorporates additional provisions to address contractor actions on visual dimensions of landscape change but there is otherwise no provision in the EIA or EMP for monitoring of landscape restoration measures or for a more comprehensive landscape management plan.

157. During operational phase, the Final EIA states that “no significant impacts” are anticipated. At Tskere however, the Final EIA acknowledges that while fencing of the Tskere cemetery will reduce noise and visual impacts to some extent, they will not be completely negated due to proximity to the road. The Final EIA does not assess potential operational phase impacts that result from project infrastructure being located within visual protection zones of some monuments, or through a historic-cultural lens on the landscape changes that will result from the Project. Neither does it discuss risk to PCR arising out of potential theft or vandalism. The Final EIA is clear that a major area of concern within the project area is uncontrolled development – including development to support tourism – adding: “there is a considerable risk that unplanned developments will be introduced into the valleys around the project by the new road development”. However, this overall risk is not addressed substantively in relation to its specific implications for PCR monuments and sites, such as through vandalism or encroachment on visual buffer zones.

158. The EIA provides for appointment of cultural heritage monitors and includes TOR and a budget for the appointment of a national cultural heritage expert on the PMCSC’s team. It does not provide directly for contractors to appoint cultural heritage monitors, though it appears that this was intended and did later happen. The PMCSC is empowered to temporarily stop works pending archaeological examination, if artifacts are found. The EIA also provides for cultural heritage monitors to issue “stop work orders” at chance find locations.

159. Appendix T of the Final EIA sets out a 5-phase archaeological strategy for the progressive assessment and mitigation of the effects of construction, for incorporation in the Cultural Heritage Management Plan. This was developed with substantive input from the ADB project team, though it is not tailored to the project context. Its five phases are: 1) review of existing data; 2) extensive and intensive surveys (though the strategy does not provide stipulations or guidance on methodologies); 3) pre-construction excavations in areas where damage to the resource is unavoidable (here the CRP notes that the strategy does not provide for either in situ preservation or relocation of PCR that would otherwise be damaged); 4) chance finds during construction; and 5) reporting. The CRP notes that Phases 1-3 in the Project’s 5-phase strategy for contractors reflect steps that other regulatory frameworks reviewed envisage for implementation prior to project implementation. Survey work implemented for purposes of the EIA was consistent with early-stage assessment under Phase 1 and part of Phase 2. Phase 2 states that “where possible, the route can be changed or its impact reduced to minimise the damage to PCR features.” However, the CRP notes that avoidance of impacts through significant changes in project

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96 Footnote 16, Appendix A, EMP #29, A-77
97 Footnote 16, para. 1289 (Table), page 475.
98 Footnote 16, para. 1276, p. 472.
99 Footnote 16, para. 1284, p. 474.
alignment is more difficult following project approval when design features of one stretch of alignment naturally also determine parameters for further sections. While Phase 2 text adds that “potentially significant sites have been avoided by the current road alignment,” the CRP notes that the EIA itself identifies areas close to the alignment where a chance of archaeological finds is flagged for further investigation.

160. The EMP collates PCR mitigation measures provided elsewhere in the Final EIA and also provides for the contractor to develop and strictly implement a Cultural Heritage Management Plan to ensure that all of the PCR mitigation measures are implemented, as well as a Chance Find Procedure. An example is provided in an Appendix and key elements are also referenced in the EMP. Issues relating to “archaeological awareness” are to be included in contractors’ induction training. Pre-construction works to evaluate and record known archaeological sites are to be agreed with the Ministry of Culture, Sports and Youth of Georgia. The EMP provides for archaeological surveillance, with a watching brief on the part of the Cultural Heritage Monitor during certain works including topsoil stripping.

161. The summary costs in the EMP, which is incorporated into the contractors’ works contracts, include modest sums for fencing, but do not otherwise include earmarked costs for management of cultural heritage issues such as further archaeological investigations. The CRP did not however find evidence during its compliance review that this had in practice presented an obstacle to assessment and effective mitigation of PCR risk during project implementation and does not find ADB non-compliance on this issue. The CRP observes that other EMP measures including construction vibration management plans also potentially contribute to mitigation of adverse impacts on PCR.

162. On 25 April 2019, the MoEPA issued conditional environmental approval for the project. Condition 22 stipulated that the Project was to obtain a relevant conclusion from the NACHP.

b. Post-Board Approval

163. On the day of ADB Board approval, 1 August 2019, the Roads Department wrote to the NACHP Director General requesting that the NACHP issue a conclusion based on documentation attached to the letter. The attached 4-page report was the same report that a Georgian archaeology expert had submitted as input to the Draft EIA report. On 2 August 2019, the NACHP responded with a conditional positive conclusion. The Agency’s clearance for earthworks to commence was conditional on “supervision by an archaeologist”. The NACHP referred to “the fact that the planned road will pass through an archaeologically relatively unexplored, yet, probably archaeologically rich area in which historical and architectural buildings are located” and stated that the NACHP therefore believed that archaeological monitoring should take place during the entire period of road construction. ADB’s understanding was that this conditional positive conclusion fulfilled condition 22 of the MoEPA approval (referred to above) and that the NACHP’s

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104 Footnote 21, paras. 804-812, pp. 290-292.
106 Footnote 62, Appendix E, Chance Find Procedure.
110 Footnote 48, Section G.11– EMP Summary Costs, p. 497.
condition would be met by the monitoring required by the Final EIA and its EMP. The CRP notes that at the time of the NACHP’s letter, the locations of temporary facilities were not made known to it in the reports and maps provided to it by the Roads Department. Many had not yet been identified.

164. The NACHP had requested full archaeological study in its response to the national EIA scoping report, but no further archaeological work was conducted prior to Board approval. In August 2020, ADB and the Roads Department, together with the contractors, PMCSi, and EBRD, discussed plans for the Roads Department to commission additional cultural heritage work; and to conduct preliminary archaeological studies. Later in August 2020, the Roads Department wrote to ADB formally proposing additional work to prepare a Cultural Heritage General Action Plan (CHGAP) to study, maintain, and preserve the cultural heritage resources along the project area; and to review the Cultural Heritage Management Plans required under the EMP. The Roads Department proposed that the NACHP carry out the work, and ADB obtained internal clearance. A little later, the Lot 1 Contractor’s Cultural Heritage Management Plan was discussed, as well as buffer zones (though the CRP has not identified any internal record of the nature of this discussion).112

165. The NACHP’s TOR provided for development of a Cultural Heritage General Action Plan (CHGAP) to be based on compilation of a full register of monuments and cultural heritage sites within a minimum 600 m buffer of the road alignment and a statement of their significance; identification of their physical condition; and preparation of recommendations for their protection and conservation; as well as archaeological test trenches and identification of potential archaeological sites and measures for further study; and an assessment of the anticipated impact of the construction on all identified cultural heritage resources in the study area, to include an assessment of cumulative impacts and identification of recommendations for proposed conservation measures and monitoring. The stated purpose of the CHGAP was to provide guidance to the contractors. The NACHP was also to review the Cultural Heritage Management Plans (CHMPs) developed by the contractors and, if they were in compliance with the CHGAP, to approve them. The work extended to temporary facilities such as access roads and spoil and camp sites. The TOR did not explicitly refer to relevant requirements of the SPS, and it did not provide for ADB to review or approve the outputs of the assignment. There is no indication in internal records that ADB identified these omissions or asked for any amendments to be made. This is striking since the planned work was designed to provide additional baseline assessment of PCR, with outputs that were manifestly significant in shaping the Project’s compliance with the PCR requirements of the SPS.

166. The CRP has reviewed the NACHP’s Inception Report, its first and second interim reports, and its draft and final CHGAP. As discussed below, the ADB project team provided feedback on only the NACHP’s Second Interim Report.

167. The NACHP’s Inception Report was dated October 2020. It noted that inventorization would be conducted in a 600 m corridor around the road alignment as well as in spoil disposal areas; and described the methodology to be applied in some detail. The NACHP’s Inception Report reviewed cultural heritage analysis in the national EIA that had been prepared to Georgian legal requirements (though not the EIA prepared for ADB finance). It concluded that “[c]ultural heritage…required more in-depth and wider-scale [consideration]” in the process of evaluating alternative alignments. In the NACHP’s view it was clear that cultural heritage sites/objects would

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be affected by the Project, and specifically that the “cultural social environment” would change, and that visual and physical harm would be caused. The NACHP considered that for similar studies, 12-18 months should be allowed, of which at least 2 months should be devoted to field activities. The NACHP considered that preventive activities, not only ex post monitoring, were appropriate; and suggested that the contractors and the PMCSC should secure a multidisciplinary group of experts to conduct monitoring. The NACHP’s Inception Report noted that the Khada Valley was formed as a cultural landscape “where cultivated areas have organically merged with the natural environment.” The NACHP’s work would accordingly consider not only the area immediately surrounding a cultural heritage property, but also its setting and landscape.

168. A later NACHP First Interim Report was also dated October 2020. This noted that the Project would bring significant changes in the landscape environment at a number of sites. It highlighted the particular impact of two (2) bridges on the surrounding historic landscape: the arched bridge across the Khada Valley from the Didveli Plateau, and a second bridge close to Svianaanti. The report noted a number of areas where the planned alignments or locations of project infrastructure should be corrected and/or sites fully studied and identified areas where permanent vibration monitoring was recommended. The NACHP recommended that with earthworks conducted simultaneously in multiple different project areas, the contractors should hire several specialists.

169. A November 2020 progress report prepared by the PMCSC’s cultural heritage monitor, which was shared with ADB in April 2021, recorded that the NACHP had required conservation work to be carried out at the protected Giorgitsminda complex North-East of the tunnel 5 portal in Kobi before commencement of blasting. The work had begun in October 2020 following NACHP approval and was reportedly satisfactory to the PMCSC.

170. In February 2021, ADB suggested a meeting on cultural heritage with the lenders, the Roads Department, the PMCSC and the NACHP. ADB noted a risk that the Project would not comply with national laws unless the process was properly managed and asked once more whether a single PMCSC cultural heritage monitor was sufficient. It suggested that there was a need to get further clarity from the NACHP regarding landscape impacts, noting that at this stage mitigation options were limited. In March 2021, ADB wrote to the Roads Department with a specific request to ask for a cultural heritage training session to be conducted within the following 2 weeks by the NACHP and/or the PMCSC with the contractors.

171. The NACHP’s Second Interim Report is dated November 2020. It is notable for the breadth of its analysis and its identification of previously unconsidered objects and sites in the area around the road alignment and planned temporary facilities. However, the NACHP’s Second Interim Report records a number of areas where topsoil had already been cut, and it was therefore not possible to conduct the survey as envisaged. In a summary of its findings, the NACHP concluded that nine (9) objects fell in the main project road area and “profound investigation” was necessary “in case of starting building activities”. At two, (FieldID: 30 and 24), either the corresponding access road or the Benian-Begoni ‘project road knot’ would need to be corrected; or full-scale archaeological survey would need to be carried out – with any corrected plans submitted to NACHP and vibration monitoring carried out. The NACHP also highlighted a site including ruins of a backed tower that had not been identified in the EIA, directly in the path of the main project road (FieldID: 26), and apparently of great antiquity. The NACHP’s Second Interim Report stated that it was necessary to conduct urgent archaeological excavations and provide the site’s further protection. More generally, the NACHP’s Second Interim Report added that there were many “mounds, groves, heaps of stones” that were not explicitly listed. However, natural cultural heritage sites are not otherwise explicitly referred to in the NACHP’s Second Interim Report.
172. Landscape also received detailed consideration in the NACHP’s work. Thus, the NACHP’s Second Interim Report noted that the project road would impact on the historically established cultural landscape; not limited to the landscape setting of objects very near the project road itself. Here, the NACHP’s Second Interim Report offered the example of a ritual niche near the mineral water spring close to Sviana-Rostiani (described in the EIA as the site of a ‘mineral outcrop’). This is a site that is next to the existing internal valley road, which is intensively used by construction traffic. The NACHP’s Second Interim Report emphasized that for local people, visiting towers, former settlement sites, and niches is part of local tradition. Access roads would also cause a ‘transformed cultural landscape’ – though their impact could become ‘insignificant’ once they were recultivated.

173. The NACHP recognized that the project road would provide a stimulus for additional infrastructure facilities, with development of tourism also expected. It identified a risk of “chaotic” “uncontrollable” construction and accordingly recommended a series of additional measures that were later included in a ‘road map’ set out in the subsequent CHGAP.

174. The NACHP reported that it had identified a total of 208 objects/monuments. One hundred and four (104) fell within the 600 m visual buffer zone that it had applied during its study, with the remainder further afield. Whereas the Final EIA had identified three (3) registered monuments within 300 m of the project road,\(^{113}\) the NACHP study identified 19 existing registered monuments. Eighteen (18) had already been registered at the time of the EIA,\(^{114}\) though the Final EIA had recorded only 10 in total.

175. In a footnote, the NACHP’s Second Interim Report contained critical information about additional protection granted by the NACHP to 70 sites. The footnote recorded that the NACHP had granted temporary protection under Article 15 of the Law on Cultural Heritage to a total of nine (9) new cultural heritage objects in the 50 m physical protection zone of Lot 1 (in addition to the eight [8] monuments already listed in the 300 m zone) and 45 in the 50 m protection zone of Lot 2. In Lot 2, a further 16 had been granted temporary protection in the 300 m zone, alongside the 11 that were already there. Thus, in total, the NACHP had granted temporary listing protection to a total of 70 previously undesignated objects within the 600 m buffer. A further 85 identified through the NACHP’s work were additionally listed.\(^{115}\)

176. The NACHP’s grant of temporary protection was significant because of two consequences of listing – whether it is temporary or permanent. The first is that physical and visual protection buffer zones are established around the listed cultural heritage object. The second is that activities specified in the Law on Cultural Heritage are prohibited within these buffer zones\(^{116}\) (including, in physical protection zones, activities which may cause significant ground vibration) and the consent of the Ministry of Culture, Sports and Youth must be obtained for construction work within them.\(^{117}\) If temporary listings are not subsequently confirmed by the Ministry of Culture, Sports and Youth as provided in the Law on Cultural Heritage, both the temporary protection and the corresponding buffer zones expire. The CRP understands that, in accordance with provisions in

\(^{113}\) Footnote 21, Figure 132, p. 287. Archangel Church in the Begoni section of the road (a complex of three monuments 167 m from the road); the Svianadze complex 183 m from the road near Sviana-Rostiani; and, at Zakatkari, the Makharobliant Tsikhe at 266 m from the road.

\(^{114}\) The remaining monument is a cave in Bedoni, which was registered later.

\(^{115}\) The Legislative Herald of Georgia. 2020. *Director General of the National Agency for Cultural Heritage Preservation, Order No 02/80*. On the inclusion of an object of cultural heritage value in the list of cultural heritage sites.

\(^{116}\) Footnote 56, Articles 36(3) and 36(6).

\(^{117}\) Footnote 56, Article 41(2).
the Law on Cultural Heritage, the NACHP’s initial 6-month period of protection was later extended by a further 6 months, the maximum permissible. Temporary protection would therefore have expired on 6 December 2021.

**Box 2: Temporary Protection Under the Law on Cultural Heritage of Georgia**

Article 15 of the Law on Cultural Heritage provides for temporary protection to be granted to heritage objects to guarantee their protection whilst allowing time to gather additional information about them. Temporary protection may initially be granted for six months, and this may be extended once only for an additional period six months. If the object is then determined to be worthy of listing in accordance with criteria set out in the Article, a Ministerial decision is adopted based on the expert advice of the Cultural Heritage Protection Council (Art. 5, para 4). If no decision is taken within the maximum period of 12 months, temporary protection expires.


177. The NACHP’s Second Interim Report concluded with a preliminary assessment of the physical condition of cultural heritage monuments and objects in the project area, listing 60 that it stated required conservation or restoration works. Restoration, urgent restoration, or conservation was noted as needed at 46. The list was stated to be intended to help the contractors take preventive measures before the start of works; and also to help prepare cultural heritage management plans. Of the 60, six (6) were identified as in need of urgent restoration.

178. The NACHP’s Second Interim Report concluded that assessment had: (i) identified changes in the historical landscape environment of large part of the identified PCR; (ii) indicated that the Project would result in damage and/or physical destruction of one (1) immovable monument/object and nine (9) archaeological objects located in the immediate road corridor (these sites were later the subject of further archaeological investigation); (iii) identified expected construction damage to PCR structures located immediately above project tunnels; specifically six (6) archaeological objects above tunnel 2 on the Didveli Plateau, and the Tskere Kvratshkhoveli close to the Lot 1 tunnel portal; and (iv) identified vibration impacts on cultural heritage resources with a number of sites referenced. A concluding section of the NACHP’s Second Interim Report stated that in order to avoid the risks highlighted, it was advisable to take preventive measures. It also summarized recommendations which included risk mitigation actions for individual objects/sites. Examples are highlighted in Box 3.

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118 One – a Didveli backed tower – GISID #11554 – is listed twice.
Box 3: Recommendations in the National Agency for Cultural Heritage Protection of Georgia’s Second Interim Report

– At FieldIDs: 24 and 30 either archaeological objects have to be studied, or the access road and the Benian-Begoni interchange have to be corrected;
– Correction of spoil disposal site boundaries in regard to FieldID: 7 and 10;
– The archaeological hill near Sviana-Rostiani (FieldID: 23) should be reinforced;
– Earthworks at other sites, including 16 archaeological objects, should be carried out under the supervision of archaeologists.
– Permanent monitoring at those cultural heritage objects which are close to the main and access roads, the road knot, concrete mixing plants, and camps;
– Urgent rehabilitation works should be carried out on Tskere ‘Kviratskhoveli’, Tskere crypts and the backed tower of Kaishaurni (FieldID: 10).
– Prior to starting engineering works in nine (9) areas in the immediate corridor of the project road should be completely investigated (FieldID: 06, 10, 12, 13, 14, 16, 18, 19, 26).


179. Following correspondence between ADB and the Roads Department, the ADB project team eventually received the November 2020 interim report in late April 2021 and provided feedback on 10 May 2021. ADB asked about the following:

(i) the scope of the NACHP’s 2 August 2019 ‘approval’, including in relation to temporary facilities;
(ii) operational implications of the NACHP’s findings for the construction process;
(iii) NACHP’s view on procedures to be followed at three (3) sites where the NACHP’s Second Interim Report had identified a need for rehabilitation work;
(iv) the implications for the Project of the temporary listing of 70 new cultural heritage objects;
(v) clarification on the obligations associated with the 300 m visual buffer zone, as well as the 50 m physical protection zone;
(vi) whether the PMCSC’s cultural heritage monitors could supervise the archaeological earthworks identified by the NACHP as needed; and
(vii) expectations regarding conservation/restoration work, and who was expected to do this.

180. ADB also suggested that the draft second interim report’s analysis of provisions of the Law on Cultural Heritage be expanded to clarify responsibilities and associated actions.
In March 2021, a call took place between the Roads Department, PMCSC, ADB and EBRD, at which a number of actions regarding cultural heritage were agreed. These included preparation of a note by the PMCSC on legal obligations regarding cultural heritage; fencing and demarcation of all sites listed in the Final EIA; and also of archaeological sites included in the NACHP’s interim reports; and preparation and delivery of training by the PMCSC for contractor key staff. The notes and the training were later provided.

The amended final draft of the NACHP’s Second Interim Report was dated June 2021. This was similar to the earlier draft, with the addition of further detail on relevant requirements of Georgian legislation. It also incorporated an Annex (which was later included in the CHGAP), summarizing actions to be taken by the contractors. However, responses to other issues raised by ADB were not integrated in the amended draft.

Around this point, ADB and the Roads Department agreed that the PMCSC would recruit and mobilize a second cultural heritage monitor, who was later mobilized in August 2021. The PMCSC would instruct the contractors to update their CHMPs based on the NACHP’s findings. Progress was also made on plans for the Khada Valley Masterplan. It was agreed that this, financed by ADB under TA 9552, would consist of three separate plans which would include a historic-cultural reference plan, which had been recommended by the NACHP in its Second Interim Report.

The January-June 2021 environmental monitoring report (EMR) noted that between April-June 2021, archaeologists from the NACHP had carried out archaeological excavation works. These works were financed under a contract with the Lot 2 Contractor, not the Roads Department. The report that followed the work made recommendations regarding four sites (three of which fall within the approved project area) on the Didveli Plateau. Prior to commencement of road construction, the entire territory of object N10 should be fenced, and the tower strengthened. FieldID: 26, a megalithic tower and adjoining building remains near Benian-Begoni, “must be disassembled and moved to another location.” The report concluded that if its recommendations were followed, construction could start. Much later however, in April 2022, ADB agreed during a site visit that there were significant concerns that earlier archaeological works had not fully investigated the area in the vicinity of FieldID: 10. It was agreed that an international expert would be mobilized to support the PMCSC’s team to assess risks and recommend actions to be taken by the contractor through a specialist subcontractor.

The NACHP’s CHGAP is dated July 2021, predating the archaeological report. It notes that project infrastructure falls within the visual protection zones of a large number of cultural heritage objects, and that their landscape is influenced by the project road. Even beyond the buffer zone however, cultural heritage sites and objects fall within the indirect impact of the project road, and in Kvesheti, Arakhveti, Beniani, and Zakatkari, the NACHP reports that urban fabric is in ‘some cases’ violated by road construction and living conditions in these villages will alter. Without unified urban development and planning regulations for the entire Khada valley, “chaotic” and “irregular” construction will “unavoidably” follow the project road.

The CHGAP itself encompasses three types of actions:

(i) Restoration and rehabilitation of the immediate settings of cultural heritage resources for their conservation and reinforcement and mitigation of the effects caused by the project alignment. Actions under this heading are considered further below.
(ii) Elaboration of a rehabilitation and recultivation project in order to restore the landscape altered as a result of construction activities on the territory of the project road. The action plan recommends arranging green cover along the road, and also provides for the recultivation of camps.

(iii) Protection of historical settlements and their material and nonmaterial cultural heritage and setting. Among other measures, the CHGAP recommends the elaboration of historic-cultural plans of settled areas together with the creation of cultural heritage general protection zones of cultural heritage and the development of plans for urban regulation of populated areas.

187. Regarding (i) above: the CHGAP prioritizes 60 of the 104 cultural heritage objects identified within the 600 m buffer. The CHGAP reiterates the findings of the NACHP’s Second Interim Report that “there is a high risk of total or partial damage/destruction of the identified monuments in the area of Lot 2 of Kvesheti-Kobi road.” For protected objects or monuments, it notes that the Law on Cultural Heritage does not permit any work in the physical protection zone that will damage them. Actions needed range from none; to various conservation and rehabilitation works, though technical specifications for recommended measures are not provided. For example, at crypts in Tskere, 56 m away from project infrastructure, the CHGAP identifies a risk that large scale construction works, and explosions nearby may cause collapse. Measures specified include urgent rehabilitation, cleaning of the floor, reinforcing and filling in the roof, and drying the walls. The CHGAP refers to the existing EIA requirement for pre-construction condition surveys, adding that “preliminary research” should be extended to all objects and monuments within 65 m of blasting. Taking account of the 50 m physical protection area and applying a 65 m buffer from the point of blasting brings 20 cultural heritage monuments and objects within scope of impact whose ‘sustainability and perception’ may be affected by the project road. The CRP notes that six (6) of 10 cultural heritage objects and monuments described as in need of urgent rehabilitation in the CHGAP are included in this list of 20. One further national status cultural heritage monument identified as needing urgent rehabilitation – an almost entirely preserved tower at Tskere 56 m from project infrastructure but in need of urgent rehabilitation (Naraidze tower, 6606) - was not included in the list. Later, agreement was reached that one monument, i.e., the backed tower on the Didveli Plateau (part of FieldID: 10) would be subject to conservation work by the Lot 2 Contractor. However, the remaining nine (9) objects and monuments identified as needing urgent rehabilitation are not the subject of any immediately planned conservation or rehabilitation actions. The CHGAP warns that given the physical condition of the cultural resources in the project area, the range of impacts may go further than the 25 m, 50 m, and 65 m buffers applied. Thus, for example, at the Beniantkari backed tower and chapel, 90 m from the road, the risk that large scale construction works and explosions near the object may cause its deformation is identified.

188. Aside from actions required of contractors; the CHGAP, like the NACHP’s Second Interim Report, refers to the need to develop a plan for landscape restoration in the project area and recommends elaboration of a rehabilitation and recultivation project in order to restore the landscape altered as a result of construction activities on the territory of the project road. As part of a proposed ‘Road Map’, it also refers to enabling policy and related planning actions to deliver protection and conservation of cultural heritage in the project area after the road has been built. These include development of historic-cultural master plans. Like the Final EIA, the CHGAP does

120 The six (6) are 1165 (Sameba Tower); 13675 (a site in Iukho); 13835 (Tevdore’s Khati); 11554 (backed tower and settlement on the Didveli Plateau); 15247 (Tskere crypts); 11842 (a site in Iukho).
not explicitly set out mitigation measures for operational phase project risk to individual monuments and sites/objects. However, as noted above, it recommends development of a rehabilitation and recultivation project. Separate efforts are under way to address this in the context of the preparation of a Khada Valley development plan. (See further para. 208 below.)

189. The CHGAP also amplifies the findings of the NACHP's Second Interim Report regarding archaeological sites. Among these, the CHGAP notes that 13 archaeological sites are located directly in the alignments of the main project road, project access road, project road junction or in the area of a project camp. Nine (9) archaeological sites in the road alignment would later need to be studied. In the case of the remaining four (4), the project access road (in the case of FieldID: 29, 30), or the project road junction (FieldID: 24) or project camp (FieldID: 32) should either be adjusted or archeologically studied. The NACHP notes that a spoil disposal site is arranged directly near two (2) objects (FieldID: 07 and 10) and its line should be adjusted. The archaeological site close to Sviiana-Rostiani (FieldID: 23) and immediately next to the internal Khada Valley road is identified as at risk of collapse due to vibration caused by the movement of heavy equipment. The CHGAP provides that reinforcement works should be carried out before works begin.121 At a further 16 archaeological objects, the NACHP states that earthworks should be carried out under the supervision of archaeologists and/or by constant monitoring of vibration. Furthermore, in view of earthwork being carried out simultaneously in multiple areas, the contractor should hire several specialists.

190. Annex 2 of the CHGAP is addressed specifically to the contractors, setting out those actions that are required.122 It lists a total of 106 sites within the 600 m buffer including archaeological sites; 60 of which are additionally addressed individually in the report. Fencing is specified for six (6) objects/monuments; vibration monitoring at 58 sites; additional archaeological work at nine (9) sites; reinforcement conservation actions at FieldID: 23 before commencement of construction; and conservation in the event that construction affects a site at a further 35 locations. The CHGAP stipulates realignments in respect of a road junction close to FieldID: 24; realignment of an access road close to FieldID: 30; realignment of spoil disposal in respect of FieldID: 7 and 10, and realignment of the access road close to at FieldID: 29. A total of 11 sites or objects are identified at 0 m from the alignment or other project facilities.

191. Annex 3 of the CHGAP apparently shows the relationship between the project road and individual protection zones of monuments and objects – including those that had been granted temporary protection by the NACHP in December 2020. The CRP has not seen this Annex. However, the CRP has reviewed the version of the Annex that was attached to the earlier draft CHGAP. It shows that permanent project infrastructure encroaches on the physical protection zones of a total of 19 cultural heritage objects and monuments. Temporary project infrastructure additionally encroaches on the physical protection zones of a further 13 cultural heritage objects and monuments.

192. There is no evidence that ADB offered feedback, or sought clarification, on the recommendations and measures in the CHGAP. It was not in a position to ensure that the NACHP outputs were designed optimally from an SPS-informed risk assessment and mitigation perspective. Mitigation measures requested of the contractors following the NACHP's work, with ADB's involvement, focused only on the actions for contractors in Annex 2 of the CHGAP.

122 The process through which the report has drawn a line between those actions identified as required of the contractors and those set out, effectively, as desirable, is not explained.
However, close reading of the NACHP’s Second Interim Report and the CHGAP shows that an integrated approach to mitigation of project PCR risk to individual sites demanded consideration of both reports in their entirety:

(i) Mitigation measures for at least two (2) sites identified in the NACHP’s Second Interim Report as at risk of damage from construction are not fully reflected in the CHGAP. These include object 36120 (FieldID: 33); and ruins of watermills (GISID:35105; FieldID: 28) in the valley east of Mughure, listed at 0 m from project Bridge 6.

(ii) Some project risks highlighted in the CHGAP are not reflected in Annex 2. For example, the CHGAP states that during drilling of the Tskere tunnel vibration monitoring is required at the Kviratskhoveli complex. This is not referenced in Annex 2 of the CHGAP.

(iii) Some objects and sites are listed for action by contractors in Annex 2 of the CHGAP; but corresponding risks are fully described in the NACHP’s Second Interim Report, not in the CHGAP.

(iv) Several objects identified by the NACHP as in need of conservation work or even urgent rehabilitation, and which are associated with risk of adverse impact from construction, are referenced in Annex 2 of the CHGAP for restoration or conservation only ex post, should construction work affect the object or monument concerned. Examples include FieldID: 25, Tevdore’s niche, just 11 m from the project road at the Benian-Bgoni interchange; and in Tskere, crypts that are national monuments 56 m from the project road. Both are identified in the NACHP’s Second Interim Report as in need of urgent rehabilitation.

(v) The NACHP’s Second Interim Report and the CHGAP record that reinforcement works are required for FieldID: 23 (which spans both ruins of a backed tower – 26379 – and the cists immediately adjoining the internal valley road – 35096). However, Annex 2 mentions only the ruins of the backed tower; not the vulnerable cemetery site with its overhanging graves and bronze age archaeological layers at 0 m from the internal Khada Valley road.123

193. Following the development of the CHGAP, in July 2021 the NACHP provided comments on the two contractors’ CHMPs. Neither had at this point been amended in light of the CHGAP. In both Lots, the NACHP identified a number of changes to be made in order to improve the utility of the CHMPs, address inconsistencies, and integrate the findings of its interim reports and the CHGAP. These included that further detail be provided on the 5-phase strategy; that relevant provisions of the Law on Cultural Heritage be incorporated; and that the CHMPs integrate relevant provisions from other management plans, particularly regarding vibration. The NACHP comments on the Lot 1 CHMP included that the CHMP should more explicitly outline the contractor’s responsibilities with regard to protection of cultural heritage. For the Lot 2 CHMP, the NACHP’s comments highlighted a need for greater precision in the marking of certain project infrastructure and corresponding descriptions in relation to identified PCR; and noted that the results of the additional archaeological investigations should be reflected; revisions made to integrate the results of the NACHP work; and multiple corrections to the maps used within the CHMP.

123 Footnote 121, p.8. The Stakeholder Brief on Assessment and Mitigation of Impacts to Cultural Heritage also refers to the stipulation in the Cultural Heritage General Action Plan that reinforcement works are required at the “Rostiana archaeological site” – at page 8.
194. The CRP has not seen the NACHP’s final comments on the CHMPs following further revisions. ADB reviewed the Lot 2 CHMP in July 2021, but its review of the Lot 1 CHMP in 2020 pre-dated the CHGAP. The CRP does not have any record of later ADB feedback on the CHMPs. To assist tracking of cultural heritage mitigation and regulatory requirements, the ADB project team provided the Roads Department with a tracking template in December 2021. The tracker was based on Annex 2 of the CHGAP, but not the entirety of the NACHP’s analysis and recommendations.

195. **Overall monitoring and supervision of PCR.** Internal project records suggest that pre-construction cultural heritage surveys had been conducted by around mid-September 2021. A little later, cultural heritage issues featured in an October 2021 *Temporary facilities assessment report* prepared by agreement between ADB and the Roads Department. This emphasized the need for NACHP recommendations to be followed and referenced the need to update the CHMP to take account of the NACHP recommendations.

196. On 6 December 2021, the temporary protection granted by the NACHP to an additional 155 cultural heritage objects and logged in its NACHP’s Second Interim Report expired without any of the sites being listed as cultural heritage properties under Article 15 of the Law on Cultural Heritage. Consequently, the primary buffer zones for these sites were also extinguished. Before the end of the temporary protection, the CRP obtained an update from both the NACHP and sought additional information on the status of these sites directly from the Ministry of Culture, Sports and Youth. The CRP heard that the Ministry of Culture, Sports and Youth intended to proceed in consultation with ADB. However, the CRP has not seen evidence that the ADB project team engaged directly with the Ministry of Culture, Sports and Youth in the period between becoming aware of the temporary protection and its expiry. Similarly, internal project records shared with the CRP do not record whether any engagement took place between MRDI and the Ministry of Culture, Sports and Youth regarding the temporary protection.

197. Cultural heritage issues were regularly discussed during the ADB project team’s regular meetings with the Roads Department, the PMCSC, and sometimes contractors. The ADB project team also received weekly internal updates from its monitors. No noncompliance reports regarding PCR had been considered necessary by the PMCSC by January 2022. However, the CRP’s review of 4 months’ internal reports by ADB monitors (October 2021-January 2022 inclusive) illustrates challenges in implementation of PCR mitigation measures, including:

(i) Damage to the fencing that formed an original part of a grave at the Svianaanti cemetery below access road 4, which was not repaired over the period of the reports reviewed by the CRP.

(ii) A risk of damage to PCR sites due to heavy sediment run-off from the Mughure batching plant construction area and access road.

(iii) Delays over several months in fencing archaeological site #23 on the internal Khada Valley road with numerous instances of lost or ineffective warning tape at this and other cultural heritage sites.

(iv) Failure on the part of both contractors to conduct continuous vibration monitoring as required; and a 3-month period at one site when the Lot 2 Contractor had conducted monitoring itself. As at 27 December 2021, the PMCSC noted that the Lot 2 Contractor had not started vibration monitoring.
(v) Reported damage to part of the travertine at the mineral outcrop due to contractor vehicles.

198. ADB noted and on occasion followed up on these issues; and even recommended in December 2021 that works in Tskere be suspended until vibration monitors had been installed.

199. **Development of a historic-cultural reference plan.** Terms of reference for work on a historic-cultural reference plan and associated general protection zone document envisage that it will lay the basis for preparation of a Khada Valley Development Plan while addressing concerns identified in the Final EIA to minimize (adverse) induced impacts and the potential for uncontrolled development after the road has been built. The work builds on the NACHP’s earlier assignment and is designed to follow the historic-cultural reference plan framework established by Article 42 of the Law on Cultural Heritage. Under the Law on Cultural Heritage general protection zones encompass four (4) kinds of ‘secondary’ cultural heritage protection zones, namely: historic development protection zone; development regulation zone; historic landscape protection zone; and archaeological protection zone.

200. Georgian specialists GeoGraphic were appointed to carry out the work through a multidisciplinary team. ADB and the Roads Department also agreed to appoint an international cultural heritage expert to support the process, funded by ADB, who started in November 2021. The area considered in the work overlaps partially with the Gudauri recreational area, and also includes Arakhvei, Bedoni and Kvesheti, all of which are outside the Gudauri recreational area. The study area is less extensive than that applied in the NACHP’s work and does not include all of the area around the planned upgraded Zakatkari-Gudauri road.

201. The inception report refers to Khada Valley’s ‘unique cultural landscape’, with its ‘outstanding combination of nature and anthropological presence’. The key charm, notes the report, is its “merging with the environment.” GeoGraphic’s later interim report reported on inventory fieldwork including new cultural heritage sites identified as a result. A workshop on the draft final outputs was held in Tbilisi in May 2022. The draft Historic-Cultural Reference Plan recommends establishment of a single historical landscape protection zone; five (5) historical built-up area protection zones; five (5) built-up area protection zones; and four (4) archaeological protection zones, proposing and justifying boundaries identified for each. The Law on Cultural Heritage provides (Article 42) that historic-cultural reference plans are to include recommendations on activities permitted within buffer zones. Recommendations for each village, and more generally for conservation, restoration, and adaptation; and for replacement and use of empty places are contained in a separate document.

202. Not all of the Khada Valley’s most significant cultural heritage monuments (such as the national monument Begotkari church in Benian-Begoni) fall within the draft Historic-Cultural Reference Plan’s proposed built-up or historical built-up area protection zones. However, the Law on Cultural Heritage requires construction permits for projects within primary as well as secondary cultural heritage buffer zones. The draft Historic-Cultural Reference Plan also recommends listing the entire study area as a historical landscape protection zone, with the exceptions of some

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built-up areas close to the existing international road alignment and the areas of other protection zones.

203. The draft Historic-Cultural Reference Plan recommends establishing “historical built-up area protection zones” at Korogho, Tskere, Iukho, Mughure, and Sviana-Rostiani; and “built-up area protection zones” at Begotkari, Zakatkari, Gomurni, and Benian-Begoni. Finally, the report recommends establishing four archaeological protection zones. Two of these abut the internal Khada Valley road. They correspond with NACHP FieldID: 23 (discussed further above); and the Sviana-Rostiana Early Bronze Age settlement of Rostiani (NACHP ID 32995).127 A further two archaeological protection zones are proposed on the Didveli Plateau. One of these is the area around the site of the backed tower and adjoining settlement remains (FieldID: 10).128

204. Aside from recommendations for secondary protection zones; the report and its recommendations refer to at least 15 sites where additional archaeological investigations are desirable.129 The draft Historic-Cultural Reference Plan recommends maintaining all 37 existing cultural heritage monuments listings,130 (seven [7] of them reportedly national category monuments131); and also recommends listing new cultural heritage monuments at an additional 75 sites, together with 169 new cultural heritage objects, and two ‘national’ sites (presumably national status cultural heritage monuments132). Appendix 2.1 contains data on eight (8) of the 18 villages in the study area. In these villages alone, GeoGraphic recommends listing as cultural heritage objects 93 newly identified objects,133 and a total of 75 objects are recommended for listing at the remaining villages.134 Recommendations are also made for new listings of 84 cultural heritage monuments at 17 of 18 villages.135 The CRP notes that all of the sites in the reference plan area that had earlier been granted temporary listing by the NACHP are included in its recommended listings.136

205. The GeoGraphic report is not an EIA. It raises questions about previously unidentified risk of adverse project impacts but does not itself provide relevant distances or (with a few exceptions) highlight project impacts. However, one example of its direct project relevance concerns possible tunnels on the meadow adjoining Beniani village, directly in the alignment of the new project road. Complainants and community members told the CRP that they were concerned that these had been omitted from archaeological investigation and reporting by ADB’s monitor indicates that ADB was also aware of concern that the site had not been investigated. GeoGraphic considered that additional surveys were required to identify the purpose and function of three (3) spots where a collapsed surface had been found; and where local people had described tunnels; while noting

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127 GeoGraphic. 2022. Project for the establishment of general protection zones of the Khada Valley (historical development, settlement regulation, archeology and protection of the cultural landscape). Zones Explanatory Cards. April (internal).
129 Footnote 127.
131 Footnote 130.
132 Footnote 130.
133 GeoGraphic. 2022. Kvesheti-Kobi Road Project in Georgia. Protection Zones. Appendixes 2.1. May (internal). Zakatkari, Benian-Begoni, Begot-Kari, Iukho, Mughure, Korogo, Tskere, Sviana-Rostiani. Equivalent data for other villages has not been made available to the CRP.
134 Footnote 130.
135 Footnote 130.
136 A total of 30 sites included in the National Agency for Cultural Heritage Protection of Georgia document granting temporary protection fall outside the study area.
that the “tunnel-like” areas could also be caused by groundwater flow. At the cut-off for this report in June 2022, the ADB project team had not followed up to ensure investigation of these potential PCR sites.

206. **Sviana-Rostiani.** The Historic-Cultural Reference Plan recommends establishment of a historical built-up area protection zone at Sviana-Rostiani. Project construction has already damaged a grave site at Svianaanti, an uninhabited village adjoining Sviana-Rostiani. Adverse environmental impacts also occurred through avalanche and water runoff during the winter of 2022, and inhabitants of Sviana-Rostiani have additionally raised concerns. The latter led ADB to develop a draft Sviana-Rostiani Action Plan, dated April 2022. This sets out steps towards a LARP addendum and its implementation. (See further Section G of this report.) Decision-making on Sviana-Rostiani was informed by structural engineers’ reports that the Roads Department commissioned in respect of seven (7) buildings. These concluded that the existing condition of the buildings meant that even small dynamic loads - of the kind to be expected during project construction - could at six (6) properties cause collapse; and at a seventh could cause damage or “dismantling” of part.

207. Any Sviana-Rostiani LARP that involves dismantling or reconstruction of the village’s buildings will need to take account of the outputs of the Historic-Cultural Reference Plan. Article 35 of the Law on Cultural Heritage sets out a limited number of circumstances in which demolition of buildings is allowed within buffer zones. But whereas expert structural analysis concluded that some buildings need to be dismantled; the Historic-Cultural Reference Plan recommends that the same buildings be listed as a cultural heritage object or, in one instance, a cultural heritage monument. The recommendations of the draft Historic-Cultural Reference Plan note that “Sviana-Rostiani is a special case of Khada Valley... In the unusual urban fabric and traditional buildings, it is possible to arrange a live open-air museum.” The draft Historic-Cultural Reference Plan also stresses that “it is essential to pursue the restoration methods specified under the Law on Cultural Heritage, and mostly use authentic construction materials.” ADB’s draft Sviana-Rostiani Action Plan partially recognizes the need for any resettlement to be aligned with cultural heritage considerations should affected people choose to relocate permanently. The ADB project team has expressed an intention to implement the Sviana-Rostiani Action Plan in a way that is consistent with the Historic-Cultural Reference Plan, but at the cut-off for this report in June 2022, no further documentation was available on how this would be achieved.

208. **Khada Valley Development Plan.** In the first quarter of 2022, ADB appointed consultancy BAU Design to develop a KVDP. In early May 2022, workshops were also held with stakeholders and materials were presented and disclosed on the overall focus and vision as well as the planned timeline for the process. According to its TOR, the purpose of the KVDP is to preserve the Khada Valley from unwanted and uncontrolled development while “maximizing immediate benefits and future opportunities for local communities”. The KVDP is envisaged to be divided into two parts: one will address an area including the nine (9) villages located within the Khada Valley – for inclusion in the Gudauri Recreational Plan, once updated; and a separate Development Regulation Plan is to be prepared for the area including the remaining three (3) villages: Bedoni, Kvesheti, and Arakhveti. As described in materials for the May 2022 stakeholder workshops, the KVDP will be prepared on the basis of the Historic-Cultural Reference Plan. Its main goals include protecting and restoring cultural heritage. The CRP understands that a series of photomontages

137 GeoGraphic. 2022. *Project for the establishment of general protection zones of the Khada Valley (historical development, settlement regulation, archaeology and protection of the cultural landscape). Zones Explanatory Cards.* April (internal).


139 Footnote 130.
that have been prepared by GeoGraphic, which visualize landscapes around the Project in 2025 and 2040, will provide input to BAU Design and the KVDP process with a view to informing landscape reinstatement under the KVDP and also the contractors’ own Reinstatement Plans. The CRP has reviewed draft photomontages and notes that these do not appear to depict landscape changes from the spoil disposal areas which are among the Project’s most significant landscape impacts. As inputs to the KVDP, neither do they depict scenarios for the landscape impacts of induced development to 2040; assuming that the only development will be from currently known project infrastructure.

209. **Relocation of FieldID: 26.** Regarding the NACHP conclusions that FieldID: 26, which is in the right of way on the Benian-Begoni plateau, should be “disassembled and moved to another location”; and that conservation works were required to object #10 on the Didveli Plateau; early in 2022, ADB’s monitors reported that a contractor had been selected for both activities and that site #26 was proposed to be relocated to near sites #24 and #25. ADB recommended advance consultation with local people. Paragraph 49 of the SPS sets out requirements on the removal of PCR, including that ‘best available techniques’ be employed. The CRP asked the ADB project team about arrangements for the relocation. They informed the CRP that the methodology would follow national law and that details would be clarified after an agreement had been reached between the contractor and its subcontractor. ADB has assured the CRP that it is continuing to conduct due diligence. However, at the time of writing this report, there was no documentation showing how ADB would ensure that ‘best available techniques’ would be met. The versions of the Lot 2 Contractor’s CHMPs that have been made available to the CRP do not make provision for relocation of cultural heritage objects.

210. **Analysis and findings.** The CRP appreciates the steps taken by the ADB project team, with the active engagement and support of the borrower, to enhance consideration of the Project’s PCR dimensions during project implementation. As a result of work carried out under contract to the Roads Department and ADB, many dozens of additional cultural heritage sites and objects have been identified within the project area, including in its direct 50 m and 65 m physical zones of cultural heritage impact, and in its visual impact.

211. **Pre-Board approval analysis and findings.** SPS Environmental Safeguards Requirement, Annex to Appendix 1, Section B provides for EIAs to discuss “the national and local legal and institutional framework within which the environmental assessment is carried out”. ADB requested, but did not ensure, that the EIA contained more than a single-line summary of the Law on Cultural Heritage of Georgia. This meant that the Final EIA’s description of the legal context for PCR was not tailored to the significance of the Project’s cultural heritage risks and impacts, and additionally, that during project preparation, the ADB project team lacked adequate insight into relevant legal requirements. There is no evidence that the ADB project team engaged with the NACHP or with other experts in Georgian cultural heritage law to ensure that it had fully understood its requirements.

212. The TOR for the EIA did not specify spatial boundaries for data collection on PCR and the Final EIA adopted a 50 m physical protection buffer for mitigation measures other than those on vibration. It did not reference stipulations in the Law on Cultural Heritage regarding visual protection zones. ADB did not ensure that the Final EIA contained adequate baseline assessment of PCR. The Final EIA was insufficiently detailed to identify all, or even most, PCR likely to be affected by the Project; or to allow for documentation on the significance of the PCR identified so as to enable effective impact assessment. It did not assess the relevance of the restrictions on

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Footnote 40, Annex to Appendix 1. p.30.
various kinds of construction within primary protection zones under the Law on Cultural Heritage. There is no evidence that ADB questioned the adequacy of the walkover survey. PCR fieldwork reflected in the Final EIA was reported to have taken place over a total of 3 days. With a 23 km linear project in an area rich in cultural heritage, this was manifestly inadequate to ensure SPS-compliant baseline assessment. 141

213. The SPS provides for the identification of impacts and risks at an early stage of project preparation. 142 However, the EIA and EMP deferred full identification of both above-ground PCR and archaeological research and investigation to after project approval, relying for this purpose on a 5-phase strategy that was stipulated in the EMP for implementation by the contractors. Furthermore, the EMP did not make provision for costs of further archaeological investigations that were explicitly envisaged in the 5-phase strategy. The CRP considers, based on review of other regulatory frameworks referenced earlier, that good practice would have seen Phases 2 and 3 of the 5-phase strategy implemented, for known project facilities, as part of the EIA prior to project approval. This would have ensured that baseline assessment of PCR met the requirements of the SPS, enabling identification of all key potential impacts and risks.

214. The SPS clearly indicates that a cultural heritage-informed approach to landscape is required. But ADB did not ensure that the assessment of impacts was informed by identification of the landscape’s PCR significance as an integrated whole. Part F of the Final EIA on Environmental Impacts and Mitigation Measures did not address the landscape from a cultural perspective, even after ADB feedback, and additional design opportunities to further mitigate adverse landscape impacts were not identified or assessed. Neither did ADB ensure that the operational implications of the Project for PCR were adequately assessed. Consequently, mitigation of impacts in the period leading to Board approval was not informed by understanding of the Project’s impact on the cultural heritage significance of the landscape.

215. ADB Management acknowledges that PCR baseline assessment prior to Board approval was limited and that had this been left unremedied it could have led to likely harm during implementation. It has argued that the Final EIA itself acknowledges the limits of the PCR baseline; but that it includes a clear framework to close these gaps through the 5-phase archaeological strategy. Furthermore, ADB Management argues that para. 56 of the SPS does not require all due diligence to be completed prior to project approval, but rather only that due diligence must be completed. Following careful review of project documents and internal records, the CRP concludes that these arguments are not convincing for at least six (6) reasons:

(i) Internal project records made available to the CRP do not contain any record to show that the ADB project team was aware that the baseline assessment conducted prior to Board approval was insufficient to meet the requirements of the SPS, or evidence that the ADB project team scrutinized the 5-phase strategy (which it was directly involved in developing) for its adequacy in filling the resulting gap.

(ii) Paragraph 56 of the SPS provides that in cases where the assessment process does not meet ADB’s safeguard requirements, the borrower/client will be required to undertake additional assessment. Had this provision been considered applicable by ADB, the CRP would have expected to find this reflected in internal project documents. Internal records of ADB’s feedback on drafts of the EIA indicate that Phase 2

142 Footnote 40, Appendix 1: Safeguard Requirements 1: Environment, D-1, p. 30.
assessments were at that stage expected for a number of sites – but such assessments did not form part of the Final EIA. But there is no recognition of the inadequacy of the baseline assessment in the internal Safeguard Policy Compliance Memorandum of 28 May 2019; in the minutes of an internal ADB Management Review Meeting that took place to review the Project; or in the RRP.

(iii) The Final EIA does not contain the ‘comprehensive’ baseline data that is envisaged by the SPS. The SPS requires environmental assessment to be conducted as early as possible in the project cycle. Neither internal project records, nor the CRP’s discussions with project team members, have convincingly shown that it was not possible to conduct SPS-compliant baseline assessment prior to Board approval.

(iv) ADB Management’s argument is not consistent with the exclusion of CHMPs from the list of topic-specific management plans which are subject to ADB’s approval as shown in Table 170 of the Final EIA. If the contractors’ implementation of the 5-phase strategy through the CHMPs was relied upon by ADB to meet the baseline assessment and mitigation requirements of the SPS in respect of PCR, ADB should have ensured that it was closely involved in review and approval of the CHMPs.

(v) The 5-phase strategy that ADB Management relies upon lacks project specificity or guidance for contractors on methodologies to be followed in Phase 2 and 3 assessment to meet the requirements of the SPS. Furthermore, it is not appropriate to rely on a ‘chance finds procedure’ for mitigation of impacts to PCR that would have been identified through proper baseline assessment. Such PCR objects are not appropriately described as ‘chance finds’.

(vi) The CRP notes that the actions reflected in the 5-phase strategy were indicated regardless of the quality of the baseline assessment conducted for the EIA, because the locations of temporary project facilities were not all known at the time of project approval. The SPS (Appendix 1, para. 48) also clearly required development and implementation of a chance finds procedure for the Project, which forms part of the 5-phase strategy.

216. Rather than reflecting a properly planned strategy for meeting SPS PCR requirements, the CRP concludes that ADB’s due diligence fell short of the standard required of it under para. 56 of the SPS. ADB did not confirm prior to Board approval that all key potential environmental impacts and risks of the Project were identified; or that measures for avoidance, minimization, and mitigation of adverse impacts to PCR were adequately incorporated into safeguard plans and project design; as it was required to do by para. 56 of the SPS. In particular, as elaborated above, ADB did not ensure: (i) that the assessment process was based on appropriate baseline data on PCR in accordance with para. 5 of Appendix 1 of the SPS and that the EIA included comprehensive baseline data in accordance with para. 9 of Appendix 1 of the SPS; and (ii) that the EIA’s assessment of landscape impacts and their avoidance and mitigation reflected the integration of landscape in the PCR provisions of the SPS by means of the definition of PCR provided in footnote 13, para. 45, Appendix 1 of the SPS. In consequence, ADB was not in a position to assure itself that the level of detail and comprehensiveness of the Final EIA was commensurate with the significance of the potential impacts and risks with respect to PCR as required by Annex 1 to Appendix 1 of the SPS.
217. **Post-Board approval analysis and findings.** Following Board approval, significant steps were taken to improve the project’s assessment and mitigation of cultural heritage impacts. However, the CRP notes the following:

(i) ADB did not ensure that the SPS provided a reference point for the NACHP’s work, or that the TOR gave ADB adequate opportunities to review and comment on outputs. ADB was subsequently insufficiently involved in the process to ensure that the work’s relevance for the Project’s SPS compliance was adequately identified and brought to bear in the subsequent assessment of impact and design of mitigation measures.

(ii) The GeoGraphic work has led to inventorying of many new cultural heritage sites. In some cases, this raises additional questions about potential project risks regarding PCR. There is no evidence that ADB has considered these questions, nor of an intention on the part of ADB to ensure that additional assessment of associated project impacts on these PCR sites takes place in accordance with the SPS, including consideration of whether any further measures are needed for avoidance or mitigation of adverse impacts.

218. Additionally, the CRP observes that it was not clear at the cut-off for this report whether the CHMPs had been amended to reflect the requirements and recommendations for contractors arising out of the NACHP’s CHGAP and Second Interim Report.

219. Based on para. 217 (i) and (ii) above the CRP finds ADB noncompliance with its monitoring and supervision responsibilities under para. 58 of the SPS as at the June 2022 cut-off for this report. ADB did not ensure in the period following Board approval that there was adequate assessment and mitigation of potential adverse impacts on PCR as required by Principles 2 and 4 of the Environmental Safeguards of the SPS in light of the findings of the additional work conducted by the NACHP and GeoGraphic in the course of project implementation.

220. Conservation and restoration work to prevent project construction damage is planned at one site on the Didveli Plateau; and reinforcement work prior to construction is stipulated at one other location (FieldID: 23). However, preventive conservation or rehabilitation work is not planned at other sites where the NACHP has identified both risks of damage from construction and specific conservation actions. This analysis has not all been carried forward into the recommended requirements on contractors, in Annex 2 of the CHGAP, which now form the basis for follow-up action during project implementation. While Annex 2 requires contractors to alter the alignment of project facilities at six (6) different locations to avoid identified cultural heritage objects; at 35 locations it mandates preservation and/or enhancement work by the contractors only should construction work actually affect the cultural heritage resource concerned; i.e. *ex post*. The CRP has concluded in light of the complete body of NACHP analysis that ADB’s endorsement of this approach does not adequately reflect the hierarchy set out in Principle 4 of the SPS Environmental Safeguards, which starts with avoidance, and provides for minimization and mitigation of adverse impacts where avoidance is not possible. Based on those results of the NACHP’s analysis that are not included in Annex 2 but are included in its other outputs, there is a risk that implementation of measures set out in Annex 2 of the CHGAP will not achieve mitigation of potential adverse impacts to the level of no significant harm to third parties as provided in Principle 4 of SPS Environmental Safeguards. Consequently, the CRP concludes that following Board approval, the CRP finds additional ADB noncompliance with its responsibilities under para. 58 of the SPS to supervise the Project in such a way as to ensure that steps taken to address the risks to PCR from adverse construction impacts reflect the hierarchy set out in Principle 4 of the SPS Environmental Safeguards.
221. ADB’s stated intention to ensure that relocation of the megalithic site at FieldID: 26 accords with national legislation is not alone adequate to meet the requirements of the SPS. Further due diligence will be required for ADB to be in a position to assure itself that the relocation will meet the requirement of the SPS, para. 23 that ‘best available techniques’ be used. The CRP expects ADB to ensure that this requirement is met. At Sviana-Rostiani, the CRP notes that any LARP that involves dismantling or reconstruction of the village’s buildings will need to respect the restrictions of the newly recommended historic built-up area protection zone. ADB has indicated an intention to resolve the issue and the CRP does not find ADB noncompliance.

222. Returning to the CRP’s finding that ADB was noncompliant with its due diligence and review responsibility in respect of PCR impacts and their mitigation prior to Board approval, it is clear that the Final EIA and EMP do not adequately identify, assess, and mitigate the Project’s PCR risks. ADB has not ensured that the Final EIA and EMP reflect: (i) integration of the risks, impacts and mitigation measures revealed by and implicit in the NACHP’s assignment; (ii) assessment of the potential adverse project impacts on sites and objects newly inventorized through the Historic-Cultural Reference Plan process and identification of associated mitigation measures; (iii) assessment of the Project’s impacts on possible tunnels in the right of way at Benian-Begoni; (iv) inclusion in the EMP of measures to address the planned relocation of the FieldID: 26 megalithic site; and (v) mitigation measures to ensure that the cultural heritage value of Sviana-Rostiani village is fully reflected in implementation of any LARP addendum. The CRP suggests that ADB work with the borrower to remedy these shortcomings by means of an update to the EIA and EMP.

223. Finally, while the CRP makes no finding of noncompliance on this issue, it is concerned that a significant portion of the project road may be constructed in a period between the end of the temporary protection afforded through the NACHP’s December 2020 listings of many cultural heritage objects and sites within a 300 m buffer of project facilities; and adoption of the Historic-Cultural Reference Plan’s listing recommendations for many of the same objects and sites. The Law on Cultural Heritage prohibits certain activities within the primary protection zones of listed cultural heritage objects and monuments. The CRP has not seen clear analysis of the legal compatibility of the project’s alignment with these prohibitions in light of the recommended listings. Given the sensitivity of the project area, the CRP expects ADB to ensure that project implementation accords proper respect to the restrictions included in the provisions of the Law on Cultural Heritage on primary protection zones; particularly when mitigating construction risk that may adversely impact on objects and sites that were previously temporarily listed and that have again been recommended for listing in the historic-cultural reference plan process.

224. Regarding ADB’s noncompliance during pre-project due diligence and review, the CRP notes that a significant body of new work has now been conducted which addresses some of the gaps. However, this additional work has itself been associated with the further ADB noncompliances identified in paras. 217–218 above. The additional work has not completely remedied ADB’s earlier noncompliance with para. 56 of the SPS.

225. During the compliance review process, several affected people in separate discussions expressed their concern that the Project would cause physical damage to PCR in the project area. The CRP also heard concern that not all PCR that would be affected by the Project had yet been identified and properly considered by experts. Community uses of PCR were described by affected people in some conversations with the CRP, and the CRP formed the view that many,

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143 Footnote 52, Article 35.
even if not all, affected people connected the PCR that surrounded them in the project area to their own senses of identity. In these circumstances, the CRP considers that it is appropriate to identify adverse impacts to PCR that are caused by ADB noncompliance, or that are reasonably certain to occur, with harm to affected people.

226. It is evident from the CRP’s observations and its review of internal weekly reports that there have been occasions when damage has already occurred at a small number of individual PCR sites; for example to the original fence of a grave in Sviannaanti; to the archaeological site immediately adjoining the internal Khada Valley road; and to the ground in the area surrounding the mineral outcrop. However, the CRP is not able to conclude that this damage is causally connected to the ADB noncompliances on PCR that it has identified. (See Section I, for the CRP’s conclusion on ADB’s compliance with its supervision responsibilities in relation to the issues included in the TOR for the compliance review.)

227. The CRP finds that ADB’s noncompliance regarding assessment of PCR during project preparation gave rise to doubt and distrust regarding the Project’s respect for PCR among some affected people and that this was in part a manifestation of harm associated with ADB’s noncompliance. However, other factors aside from ADB’s noncompliance also contributed to community doubt and distrust regarding the Project. ADB Management is required to propose remedial actions in accordance with para. 190 of the AMP.

228. Regarding ADB’s noncompliances in the period following Board approval; extensive further steps have been taken by the borrower to assess PCR in the project area and beyond, and in the light of this assessment to identify additional mitigation measures. ADB has also taken significant steps through support to the development of the Historic-Cultural Reference Plan and KVDP process to ensure that the Project enables future preservation and rehabilitation of PCR. However, there is an extant risk of direct and material harm and the CRP is not reasonably certain at this point that the steps taken by the borrower and ADB will adequately address that risk. Notwithstanding this finding, since the CRP is unable to conclude that it is ‘reasonably certain’ that direct and material harm will be caused by ADB’s noncompliances regarding PCR, ADB Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, the CRP suggests that remedial action nonetheless be set out in the ADB Management remedial action plan for monitoring by the CRP.

E. Socio-economic Impacts and Project Benefits

229. Complainants’ perspective. The complaint addresses both the Project’s negative and positive social impacts. As to negative impacts, the complainants consider that the Project’s socioeconomic impacts are not properly mitigated. They also argue that the Project does not take account of risks including worsened health conditions, reduced safety, and increased workloads due to distances between access points to the roads and villages. As to positive impacts, the complaint asserts that the local benefits of the Project are modest, as it does not address socioeconomic problems including absence of educational and medical facilities, nor does it clearly address the need to ensure that the internal road within the Khada Valley is functional year-round and easily accessible for villagers. The complaint states that the Project’s potential to bring benefits through employment of local people is not reflected in mandatory requirements for project contracts. The project plan to construct a visitor center is acknowledged, but the complaint points out that this was decided before later committing to develop what it calls a “sustainable land use” plan.
230. **ADB Management’s perspective.** ADB Management’s Response asserts that the impact assessment is considered robust; and that a dedicated social specialist prepared relevant EIA sections. Regarding the Project’s social benefits for affected communities, ADB Management points to the integration of a tourist visitor center as a project output; and to improvements to 5 km of roads within the Khada Valley that will serve as access roads for the project road. It asserts that by improving connectivity, the Project would also improve access to public services in neighboring villages and bring greater livelihood opportunities. ADB Management’s Response also states that financing is allocated in the project scope to work with the local community to "best improve local livelihoods, provide training, and build additional infrastructure (e.g., trails or signage)." It notes work on a community needs assessment; adding that the Project includes development of a community development plan, and additionally referring to ADB’s mobilization of a full-time community liaison officer.

231. **Relevant policies and procedures for adverse social impacts.** Paragraph 56 of the SPS requires ADB to confirm through due diligence and review (i) that all key potential social and environmental impacts and risks of a project are identified; and (ii) that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into safeguard plans and project design. Paragraph 14 of OM section F1/OP provides further details on the scope of ADB’s responsibility by mentioning that the ADB project team coordinates due diligence processes to ensure “that social impacts related to environmental media are appropriately addressed.” Paragraphs 57 and 58 of the SPS establish ADB’s monitoring and supervision responsibilities in respect of social impacts.

232. **Relevant policies and procedures for enhancement of positive impacts.** Environmental Safeguards Policy Principle 4 of the SPS indicates that impacts considered during EIA may be positive. It refers to “enhance[ing] positive impacts by means of environmental planning and management”. The objectives of SPS (para. 43), do not refer to positive impacts. Neither do the detailed environment safeguard requirements set out in Appendix 1. However, an Annex to Appendix 1 sets out an outline of an EIA report in which Section E “predicts and assesses the project’s likely positive and negative direct and indirect impacts…” and “explores opportunities for enhancement”. Together, these references indicate that the EIA must include an assessment of positive impacts; and that it should also explore opportunities for enhancement of positive impacts. However, the SPS does not require mandatory actions to capture opportunities for enhancing positive impacts through project design, EMPs, or management of project implementation.

233. **Operational procedures on Incorporation of Social Dimensions into ADB Operations.** The CRP has also considered relevant provisions of OM section C3 on the Incorporation of Social Dimensions into ADB Operations. ADB operations incorporate social dimensions to ensure development outcomes such as a greater sense of security and ability to manage risks. In pursuing these outcomes, ADB has an overall responsibility to ensure that the project design maximizes social benefits and avoids or minimizes social risks. To this end, ADB’s social analysis is required to identify and formulate measures and implementation arrangements to maximize the project’s social benefits. In addition, both project design and implementation arrangements are to include actions to ‘enhance benefits’. No guidance is

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144 Footnote 4, Appendix 2, ADB Management’s Response. p. 3.
145 Footnote 40, Annex to Appendix 1, p. 41.
147 Footnote 146.
148 Footnote 146.
149 Footnote 146.
offered in the operational procedures on what actions are sufficient to ‘maximize’ or ‘enhance’ social benefits.

1. Adverse social impacts

a. Pre-Board approval

234. ADB’s gender and social analysis identified several potential negative impacts from the new road – particularly for people whose homes, businesses or land would be adversely affected. The importance of properly planned land registration and compensation for loss of income, or provision of alternative opportunities to existing small businesses suffering loss, were highlighted.

235. Project documentation prepared by the borrower, including the EIA and its EMP, provides information about the potential negative impacts on affected people of issues such as noise, vibration, and air pollution and their mitigation. This section addresses seven (7) issues that are among the Project’s negative social impacts. Separately, noise and vibration issues are considered in Section B of this report. Concerns regarding the gender implications of the Project are considered further in Section F of this report. Involuntary resettlement and ADB’s associated operational responsibilities are addressed in Section G of this report. Complainants’ concerns regarding the Project’s impact on cultural heritage are considered in Section D of this report. Many of the Project’s potential adverse social impacts for affected people during construction arise out of the construction and use of temporary facilities. Systemic issues regarding the use of SSEMPs/TSEMPs to address these project facilities are addressed in Section C of this report.

236. Acquisition and use of private land for temporary facilities and spoil disposal areas.

During the CRP’s site visits, several community members expressed their dissatisfaction with contractors’ use of their land for temporary project facilities. Issues raised included the Lot 2 Contractor’s alleged failure to properly respect a verbal commitment to upgrade a village access road in return for use of certain land for an access road; use of land by contractors for temporary facilities without seeking agreement from owners in advance; and (in the case of Lot 2) offering sums for temporary use that affected people did not consider appropriate.

237. At the time of project approval, the locations of many temporary project facilities were not known. Private negotiations between contractors and affected persons were needed to meet the Project’s land access needs. ADB project team members informed the CRP that these negotiations were a private contractual matter between contractors and affected persons. The LARPs do however include one provision that is applicable to temporary land take by contractors through negotiation. They state that “[a]ny temporary impact caused by the use of land for camp or as a temporary disposal area, will be regulated by private agreements between the Contractor and the land owners” and add that “should such temporary impacts also affect persons using pasture lands other than the owners, adequate livelihood assistance for loss of hay and grazing grounds will also be assessed and provided during implementation”. Permanent impact on land “caused by the use of land for permanent disposal of unsuitable material or debris remaining after demolition of existing parts of the road” is however to be “adequately compensated as per the provisions set up in the LARP. In addition, adequate livelihood assistance for loss of hay and grazing grounds, if any, will be assessed and provided during implementation.” Voluntary processes of negotiation for temporary land takings for project facilities such as camps, access roads, storage facilities, and spoil disposal areas are otherwise not directly addressed in the LARPs. The CRP understands that ADB Management’s position is, however, that if land acquisition by contractors were effectively involuntary; for example in the event that contractors appropriated or caused impacts to land without the prior agreement of land owners; then the
LARP entitlement matrix would be applied. One of the ‘allowances’ set out in the LARPs covers this eventuality. It includes a heading for “Unforeseen impacts during construction, including temporary impacts and impacts on livelihoods not otherwise assessed”; and provides that the application of this heading is “Unforeseen impacts during construction, including temporary impacts and impacts on livelihoods not otherwise assessed”, and that compensation is to be assessed and paid when the impacts are identified based on the provisions of the LARP and the requirements of the SPS. The LARPs do not contain due diligence requirements to be followed by the contractor when acquiring private land for temporary use; and the LARP entitlement matrix does not establish affected person’s entitlements where land is acquired by contractors through private agreements; or contain provisions on mitigation of social risk or capacity-building alongside such negotiations.

238. Turning to the EIA and EMP, the CRP notes that the EMP requires contractors to avoid siting ancillary facilities on agricultural land as far as possible. However, the Final EIA was silent on the evident social risks associated with asymmetry of information and bargaining power of the parties involved in transactions for temporary use of land for project purposes. Neither the Final EIA nor its EMP provided for actions to be taken by the borrower or by contractors to provide information to affected persons on issues such as market rates for leases, or what to expect when discussing possible lease arrangements. No good practice framework was established for the contractors on how to conduct due diligence in respect of land acquisition in the Project’s challenging land registration context; nor on principles for negotiating with affected persons to achieve fairness and manage risk.

239. The SPS Involuntary Resettlement Safeguards do not establish requirements for the negotiated acquisition of land for temporary use by contractors. In contrast, in circumstances where the SPS Involuntary Resettlement Safeguards do apply to negotiated land acquisition (that is, in cases of involuntary acquisition of land), SPS Appendix 2, para. 25 provides for negotiated settlement to be based on an adequate and fair price for land and/or other assets; and for negotiations with displaced persons openly to address the risks of asymmetry of information and bargaining power. With specific provisions on voluntary land acquisition for temporary project facilities absent from the SPS, any social risks and impacts of temporary acquisition that is not ‘involuntary’ under the SPS Involuntary Resettlement Safeguards need to be addressed in accordance with the provisions of the SPS Environmental Safeguards.

240. **Community access to land.** The Project’s implications for community access to land are among its key dimensions. Aside from relocation of project facilities, infrastructure design is a key tool for mitigating such impacts. The CRP notes that ADB requirements do not establish clear procedures for ensuring that ADB safeguards expertise is brought to bear in ADB’s scrutiny of designs of project facilities. However, a World Bank-financed Detailed Design Report of 5 January 2018 that preceded the EIA process noted that the locations of pedestrian and animal crossings had been studied to ensure the “permeability” of the road to existing flows, with particular attention paid to “urban areas”. Culverts and protective fencing had been designed with consideration for animals.

241. During EIA preparation, consultations with communities led to the inclusion of several crossings for people and animals in the design. The Final EIA states in para. 1116 that an overpass or underpass should be provided near Zakatkari to allow continued access by community members to land to the east of the alignment. Paragraph 680 of the Final EIA notes

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150 Footnote 33, Appendix A: Page A-50, item 17.
that, otherwise, fruit and nut trees that are harvested between the Khadistkali river and the village will be cut off from access, with the only alternative route entailing a 2 km walk.

242. Design documents reviewed by the CRP show that underpasses are located at km 0+700, km 1 + 000, km 2 + 200, km 2 + 600 and a cattle crossing is to be provided at km 5 + 900. The CRP understands from the Roads Department that designs for additional two (2) underpasses close to Zakatkari village near Didveli Plateau are to be prepared by the Lot 2 Contractor’s engineer for approval by the PMCSC, but it has not seen detailed engineering designs. In exchanges with the borrower’s EIA consultant during project preparation, ADB requested the inclusion of commitments regarding the design of crossings in the EIA and EMP. The consultant responded that these would not be referenced as they were part of the detailed engineering design.

243. Impacts on water supplies and internal roads in the Khada Valley. Complainants are concerned about the Project’s impacts on access to water in some villages. The Final EIA records that maintenance of critical services was a key concern for communities.151 It notes that a spring located to the north of Tskere supplies water both to Tskere and other lower villages within the project area.152 The Final EIA suggests that the flow is stable.153 The EIA’s preliminary estimate is that no springs are located in the ‘impact zone’ for tunnel construction, but for avoidance of impact, “mitigation measures will be identified on a case-by-case basis”.154

244. The Final EIA requires all gas supply and electricity networks to be kept operational during construction,155 but there is no equivalent provision for water supply.156 The EMP also provides that to avoid impact on groundwater users the water flow in springs used by the local community for water supply will be monitored.157 The conditions of project approval from the MoEPA also include a requirement not to disturb communities’ water supply networks.158

245. During construction, the internal valley road between Benian-Begoni and Tskere is used extensively by contractor vehicles from both lots. Paragraph 1137 of the Final EIA requires access roads to be paved to minimize dust. The Final EIA also sets out mitigation measures including regular watering of access roads to minimize dust.159 The loan agreement provides for the borrower to ensure that works contracts require reinstatement of pathways, other local infrastructure, and agricultural land to at least their pre-project condition at the end of construction.160 The EMP provides that as part of each contractor’s Traffic Management Plan, a complete pre-construction survey of the condition of all roads included in the Traffic Management Plan is to be conducted by the PMCSC. The survey is to be repeated before project completion to determine which, if any, roads need to be repaired by contractors.161

151 Footnote 16, para. 980, p. 356.
152 Footnote 18, para. 560, p. 211.
153 Footnote 18, Figure 94, p. 211.
155 Footnote 16, para. 987, p. 357.
156 Footnote 33, Tables A-1 and A-4.
157 Footnote 33, p. A-34.
159 Footnote 33, A-22.
246. **Safety and crime.** The Final EIA identifies a risk that the Project could increase crime in the project area both during construction and operation.\(^{162}\) An affected person whom the CRP met expressed fear that the Project could introduce crime that they associated with the nearby Gudauri resort; disturbing and changing Khada Valley’s closely knit social fabric.

247. As to construction risk, the EMP refers to assessment and management of risks and impacts from the Project’s security arrangements. Specific issues associated with construction camps are identified.\(^{163}\) Risk mitigation centers on a requirement for contractors to prepare Codes of Conduct outlining acceptable workforce behaviors, supported by induction training.\(^{164}\)

248. During operation, the Final EIA suggests that it *may be possible*” that the greater mobility of traffic on the new road will ensure that opportunist crime is minimized in comparison to the existing road, where vehicles can experience long delays due to poor road conditions.\(^{165}\) The CRP understands that long delays of up 2 weeks are also frequently caused not by bad road conditions, but by the closure of Russian border crossings. Identified mitigation measures for minimizing possible crime and security issues on the road include: “coordination with police” by the Roads Department, and “facilitating planned rest areas along the route to enable better control of spaces within the project area that receive visitors.”\(^{166}\)

249. During ADB’s review of the Draft EIA, ADB noted that impacts on community and community safety were discussed in a very general manner. It asked that the EIA indicate areas of sensitivity on a map and then indicate risks and impacts on those communities in relation to the Project. The EIA team said that the requested maps would be provided as part of the contractors’ occupational and community health and safety plan. A template accordingly appears in Appendix R of the Final EIA,\(^{167}\) but it does not include maps, simply noting the potential for an improved road to bring greater crime.

250. No design-led operational-stage mitigation of the community security and safety risk reflected in the potential for greater crime is proposed in the Final EIA. More project-specific (as opposed to generic) security risks such as risks of theft from unoccupied homes; or risks to the personal security of winter residents of sparsely populated villages; are not identified.\(^{168}\)

251. **Litter and waste.** The Final EIA acknowledges that littering with waste is a problem along the existing alignment and that its continued use would see this situation continue.\(^{169}\) There is an implicit suggestion that this is among the justifications for the new alignment. During construction, the Final EIA proposes regular cleaning of project sites. The Final EIA acknowledges the potential impacts of litter during operation, but a recommendation that the Roads Department shall ensure clean up and waste removal from carriageway and roadsides is included only in the Final EIA’s analysis of impacts on water.\(^{170}\) Provisions of the EMP on waste generation provide for installation of sanitary facilities and waste bins in rest areas; use of bins fitted with lids; and disposal of waste in accordance with agreements with Kazbegi and/or Dusheti waste management utilities.\(^{171}\)

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\(^{162}\) Footnote 16, paras. 1129 and 1133, pp. 394-395.

\(^{163}\) Footnote 16, Tbilisi: paras. 1082-1083, p. 380.

\(^{164}\) Footnote 16, para. 1088, p. 381.

\(^{165}\) Footnote 16, para. 1133, p. 395.

\(^{166}\) Footnote 16, para. 1134, p. 395.


\(^{168}\) Footnote 16, para. 1134, p. 395.

\(^{169}\) Footnote 154, para. 327, p. 120; and Footnote 16, para. 1044, p. 375.

\(^{170}\) Footnote 16, p. 326.

\(^{171}\) Footnote 33, EMP (Table A-6) at page A-168.
252. **Visual and landscape impacts.** The Final EIA acknowledges that the landscape will completely change, providing illustrations of this; while describing ways in which the project design limits this impact – including through tunnels and cut and cover sections. Regarding operational phase visual impacts, the Final EIA presents a new arched bridge across the Khada Valley as a potential future attraction for tourists. It also suggests, without evidence, that “*the local community, with time, will get accustomed to the new infrastructure*”, adding that “perception of the viewers may differ”. Similarly, while landscape visual impact is highlighted in the Final EIA’s consideration of adverse factors associated with the ‘with project’ alternative, the Final EIA states that “*this is subjective.*” The Final EIA does not address use of the landscape for traditional farming or religious or other community practices. It does not address landscape as a source of identity for its traditional residents nor the possible implications of landscape impacts for affected peoples’ identity or resilience. There is no record that ADB requested any change in this aspect of the EIA.

b. Post-Board approval

253. This section addresses two aspects of ADB’s monitoring and supervision: contractors’ acquisition and use of private land for temporary project facilities and spoil disposal; and adverse impacts of shared use of existing community infrastructure.

254. **Acquisition and use of private land for temporary facilities and spoil disposal areas.** Affected people told the CRP about grievances regarding encroachment by the contractors onto lands that they owned, including: (i) contractors occupying land plots for which no lease agreement had yet been finalized; (ii) occupying more land than was covered by lease agreements; and (iii) land/assets damaged by actions of the contractors.

255. The CRP’s review of internal monitoring documents showed that the PMCSC, the Roads Department, and ADB project team were aware of problems with contractor-negotiated access to land for temporary facilities and with encroachment and damage to land. But many follow-up actions had taken significant time to implement, and violations of project boundaries by the Lot 2 Contractor have occasioned two noncompliance reports issued by the PMCSC. Some disputed issues had stemmed from contractor use of unregistered plots that were later registered by community members under sporadic registration procedures. The CRP also heard that initially, staff of the Lot 2 Contractor who had been sent to resolve land access issues were not able to communicate in Georgian. This had soured community relations.

256. In July 2021, ADB’s international resettlement consultant recommended in an internal report that ADB and the Roads Department agree on a process and a format to manage negotiated land issues between the contractor and the affected persons to avoid problems during project implementation. During the compliance review, the Roads Department informed the CRP that it did not get involved in disputes regarding negotiated land access between the contractor and affected people as it considered them to be purely private transactions; though the CRP also understands that in instances where damage had occurred due to contractor activities, this impediment to intervention did not apply.

257. ADB’s internal monitoring documents expressed concern on different occasions that lease agreements were one-sided in favor of the contractor; and not all agreements were initially written. Widely differing sums had been requested by affected persons, and widely different agreements reached. In some instances, third party valuations had been obtained when agreement on rental amount or (in instances where encroachment damage had occurred) compensation, proved elusive for extended periods of time. Some affected persons’ grievances have been lodged with
the project level grievance redress mechanism. Based on the UBM Action Tracker on Community
Grievances from the time of commencement of the Project to December 2021, 25% of all
grievances received pertained to this issue. While 66% of these complaints were logged as
resolved, some had remained pending for months. The CRP understands that to address
continuing inaction, the ADB project team withheld acceptance of Compliance Report CR 2-3
when it was submitted by the Roads Department. This also withheld clearance of the
corresponding area for construction.

258. ADB has a responsibility to ensure that projects respect and follow international and local
laws as stated in para. 47 of the SPS. Taking of privately-owned lands without a signed contract
and/or compensation to the landowner is illegal in Georgia.172 Use requires the permission of the
owner, and trespass is considered a crime under Article 160 of the Criminal Code of Georgia.173

259. In April 2022, ADB, the Roads Department and the PMCSC discussed contractors’
negotiation of land lease agreements with affected persons. ADB recommended that the PMCSC
continue to closely monitor the contractors to ensure they did not use private lands without lease
agreements. The PMCSC was tasked with reviewing agreements to verify that they were properly
drafted, dated, and signed; and to check that sums due were paid in a timely manner. The
following month, ADB noted that there was limited demarcation of project footprint and so
extensive minor land damage was occurring. ADB recommended that the Lot 1 Contractor
demarcate worksites in Tskere village and that the Lot 2 Contractor demarcate worksites on the
Didveli Plateau and Khada Valley.174 At the time of writing, the CRP understands that
encroachment is still a challenge across both Lots.

260. Impacts on water supplies and internal roads in the Khada Valley.
During both CRP missions, affected persons raised concerns about damage caused to local roads
by contractors’ vehicles, which the CRP also observed firsthand. In ADB’s internal monitoring,
pre-construction survey reports for the construction of temporary access roads were noted by
ADB’s monitor to have been prepared only after the roads had been constructed. Internal project
roads also show that internal Khada Valley roads were repeatedly in poor or impassable condition
during the winter of 2021/2022, with many grievances regarding local road conditions raised by
affected people.175 The surface of the Tskere section of the internal road, as well as the local road
to Mughure, were consistently recorded to have been poor and problems with the Tskere-Begoni
section were also recorded. The EIA requirement for access roads to be paved has not been
effective in securing maintenance of surfaces in a state that is adequate for construction traffic.
ADB has monitored these issues and corrective actions have been requested and taken; but
problems have sometimes persisted due to the nature of the road surfaces. On at least two
occasions, contractors were asked to, and did, make special efforts to upgrade local roads before
community events.

261. At a May 2022 ADB and Roads Department workshop with community members,
agreement was reportedly reached that during construction, the Tskere-Begoni road would be

174 ADB (Central and West Asia Department). 2022. Mission for Georgia: North-South Corridor (Kvesheti-Kobi) Road
Report (July-December 2021). Tbilisi: Table 4-9.
graveled and maintained in good condition. The CRP notes that this agreement effectively reflected existing requirements under the EIA and its EMP.

262. Disruption in villagers’ access to water due to construction damage has also been a problem. During the CRP’s mission in November 2021, the CRP heard directly about several instances when water supplies to Beniani and Begoni had been interrupted or pipes damaged by contractor vehicles. Village water supplies in Tskere and Bedoni have also been adversely affected on different occasions. Villagers in Benian-Begoni were also concerned about the implications of planned connection of contractor infrastructure to the same water supply as them. ADB’s monitor recorded in January 2022 that the contractors were to provide a water balance to the PMCSC for its approval.

263. Some repairs on occasion took considerable time to resolve, with ADB noting that delay in the contractor’s action was inconsistent with para. 987 of the Final EIA. Thus, residents of Benian-Begoni suffered extended interruptions in water supply in 2021/2022 following contractor damage to pipelines. In February 2022, community members stated that they would block the Lot 2 Contractor’s activities in Tskere if water supply to the village was not reinstated. Later that month, the Lot 2 Contractor agreed with villagers that remaining repair works would be postponed until spring when weather conditions were more favorable. However, in May 2022 there were still ongoing problems with water pipes in Benian-Begoni. Agreement was reportedly reached that the water supply systems in Benian-Begoni would be replaced, and in May 2022 the layout of a proposed new 2 km pipeline was presented to residents. These developments all received attention during ADB’s monitoring.

c. Analysis and Findings

264. Regarding identification and mitigation of adverse social impacts, the CRP finds that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS as it failed to ensure, as required by Principles 2 and 4 of the SPS Environmental Safeguards, that the Final EIA and its EMP:

(i) identified and effectively mitigated risks of adverse social impacts arising out of negotiated land acquisition by the contractors;

(ii) provided for adequate mitigation of adverse impacts associated with reduced community access to some areas of land;

(iii) went beyond simplistic assertions regarding the project’s visual impacts to identify the wider social implications of the Project’s landscape impacts; and

(iv) provided for adequate identification and mitigation of adverse operational phase social impacts, particularly those regarding litter and waste and community safety and security.

265. These four (4) sets of omissions meant that ADB was not in a position to confirm prior to Board approval that all key potential social impacts and risks of the Project were identified; and

177 Footnote 175, p. 27.
178 ADB (Central and West Asia Department). 2022. Kvesheti-Kobi Road Project (Lot 1 and Lot 2) Weekly Environmental and Social Monitoring Report. 27 May (Internal).
that measures for avoidance, minimization, and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design; as it was required to do by para. 56 of the SPS.

266. Regarding ADB’s monitoring responsibilities during project implementation; the CRP notes that contractor encroachment onto private land plots without prior acquisition by negotiation with affected people; the poor state of internal roads; and damage to water supplies have presented ongoing challenges. However, ADB has diligently monitored these issues, and the CRP does not find ADB noncompliance in this regard.

267. Turning next to whether direct and material harm has been caused by the four distinct omissions associated with ADB’s noncompliance with para. 56 of the SPS; the CRP finds that ADB’s noncompliance regarding assessment and mitigation of risk associated with temporary land acquisition by contractors (para. 261 (i) above) caused direct and material harm to some affected people. The actions of other actors also contributed. The CRP expects ADB to ensure that outstanding issues are addressed as a matter of urgency and looks forward to monitoring whether this has been done as part of a remedial action plan. Management is required to propose remedial actions in accordance with para. 190 of the AMP.

268. On ADB’s noncompliance in ensuring community access to some areas of land (para. 264 (ii) above), the detailed engineering designs that had been made available to the CRP at the time of writing have not permitted the CRP to verify whether current project designs wholly remedy this. However, the CRP is unable to conclude that future direct and material harm to affected people is reasonably certain to occur. Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, the CRP suggests that remedial action nonetheless be set out in the Management remedial action plan for monitoring by the CRP.

269. On ADB’s noncompliance regarding assessment and mitigation of social dimensions of landscape impacts (para. 264 (iii) above), as further explained in Section D, additional work on landscape impacts carried out by the NACHP and GeoGraphic, and preparation of the KVDP which is currently under way, do not yet provide assurance that ADB’s noncompliance regarding the social implications of landscape impacts during project preparation will be remedied. There is a remaining risk of direct and material harm. The CRP is unable to conclude with certainty that the steps taken by the borrower and ADB will adequately mitigate this risk. However, for future harm, the February 2019 OGC guidance requires the CRP to consider whether direct and material harm is ‘reasonably certain’ to occur. The CRP is not reasonably certain of this. In consequence, Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, the CRP suggests that remedial action nonetheless be set out in the Management remedial action plan for monitoring by the CRP.

270. Finally, the CRP finds that ADB’s noncompliance with its due diligence and review responsibilities regarding operational stage risk mitigation (para. 264 (iv) above) could cause direct and material harm to affected people in relation to litter/waste and the visual impacts of the road once operational. It also gives rise to a risk of direct and material harm in relation to community safety, though the CRP is not reasonably certain that this harm will crystalize. Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, the CRP suggests that remedial action nonetheless be set out in the Management remedial action plan for monitoring by the CRP.
2. Positive impacts and benefits

271. As described in project documentation, the Project will improve connectivity and traffic safety; increase trade and boost tourism; create jobs; and improve living standards for local people. A visitor center is also among the Project’s outputs and is presented to bring social benefits to meet community needs.

272. Information material on the Project website notes that villages are cut off for around 98 days during winter, and also that the villages of the Khada Valley are “almost empty”. During severe winter conditions the current road is impassable, and residents must walk if they want to get to the existing main road at Kvesheti. The absence of social infrastructure is highlighted. However, information materials promise that “the new Kvesheti-Kobi road will solve all these problems”, adding that “[m]any activities are planned to help the locals such as medical care and entrepreneurship trainings.”

a. Pre-Board approval

273. Contextual analysis and framing of benefits. ADB’s analysis in early pre-project appraisal focused on the Project’s benefits through improving connectivity, access, and safety, and removing bottlenecks along the corridor. Its wider strategic benefits were also highlighted in the EIA. The focus of the CRP’s analysis however is on the Project’s impacts on, and its potential benefits to, affected people.

274. The Initial Poverty and Social Assessment (IPSA), developed by ADB at an early stage of project preparation, stated that improvements to the project road will enhance access to markets and social services for local communities, and “stimulate economic activities that, in return, will create more job opportunities and, improve the region’s living standards”. The local population was referenced as among the potential beneficiaries through “improved mobility and access to socio-economic opportunities.” There was no direct reference in the IPSA to the Project’s role in stimulating tourism, but by the time of project approval, one of the three (3) principal project outputs included a visitor center (discussed further below).

275. Following the IPSA, ADB prepared a gender and social analysis and a summary poverty reduction and social strategy (SPRSS). The November 2018 gender and social analysis report noted that both men and women face employment problems, and that they do not have much support in income-generation. It identified potential for initiatives to support local livelihood development. Lack of services was identified as a further challenge. Internet connections were reportedly largely absent and there were also problems with electricity supply. Some villages were identified as completely isolated, with a few people without any income and without access to social infrastructure or telephones. The analysis warned that absence of cooperation to solve local problems and provide relevant services “would lead to migration… and poverty of remaining population”. Significantly, the analysis concluded that it was arguable “whether and how women
and men can benefit from improved road networks unless certain conditions are met considering the needs of the local population”.

276. Local employment during the construction phase was identified as of crucial importance. With tourism as main source of income for women, the report identified a need for a safe and accessible place for women to sell their products. Transportation issues in the region, while clearly problematic, were assessed to be ‘partly resolved’. Municipalities reportedly provide a free transportation service once a week from local villages to the center of municipalities. Few women have cars and schools are far from some villages. Some families rent apartments closer to schools, which itself causes problems, including of a financial nature. Some members of the population expressed concerns about road safety.

277. The gender and social analysis indicated that without internal village infrastructure development projects and without land registration and construction of internal roads, no positive impacts would be visible from the Project. Nihilism and lack of trust made greater communication and involvement of the population “of utmost importance”.184

278. The SPRSS identified the local population as among the project beneficiaries. It asserted that the Project would “open up income and livelihood opportunities for the local population through provision of all-weather local access roads and the Khada Valley visitor center.” The latter would provide “business training opportunities; and create employment for the local population.” The SPRSS further recorded that the Project is expected to enhance connectivity while ensuring road safety through the incorporation of safety design features.

279. **EIA analysis of context and benefits.** The Final EIA reported that anticipated project benefits articulated by affected communities during stakeholder engagement events included enhanced livelihood opportunities; better access to health, education, markets and other facilities; availability of public transport; shorter and more comfortable travel; and promotion of the overall economic and social development of the project area.185 The EIA identified temporary deterioration of transport conditions during the construction phase and short term noise-, air quality- and vibration-related impacts during construction as among the Project’s adverse factors.186

280. In its assessment of ‘with the project’ positive and adverse factors, the EIA identified positives including creation of jobs during construction and operation; improved access to villages; potential improved winter tourism potential in the Khada Valley; and potential to make living in the villages viable all year round.187 The Final EIA noted that several villages in the project area contain abandoned houses. A high percentage have only semi-permanent occupancy, which limits investment in social infrastructure support.188 The Final EIA added that outward migration of young people from the Khada Valley to study or to secure work has also contributed to an aged population.189 Young people in the project area mostly work in nearby Gudauri, and most work is seasonal.190

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186 Footnote 154, p. 118.

187 Footnote 154, p. 118.

188 Footnote 18, para. 710, p. 260.

189 Footnote 18, para. 760, p. 271.

190 Footnote 18, paras. 706-707, p. 259.
281. The LARP for Lot 1 notes that there are no schools or health care facilities in Lot 1, with access to these services approximately 10 km away, and no public transport.191 The LARP for Lot 2 notes that mobility of people from project villages is heavily constrained by bad roads and villages’ winter inaccessibility, when family members “are often separated for 6-7 months.”192

282. **Khada Valley visitor center.** A summary of the Project describes the visitor center as the project component through which “the residents of Khada Valley will directly benefit from the project”.193 The visitor center is referred to in the RRP as a means to help realize the tourism potential of the region, helping to enhance the experience and length of stay of visitors to the region and provide training and business opportunities for local communities.194 A risk assessment and risk management plan appended to the RRP195 records that the visitor center would be operated by the GNTA, [the Georgia National Tourism Association], and that “[r]ecurring expenditures will be recovered from renting space and fees for tourist services.” It added that “[a] study is being carried out (in liaison with local authorities and communities, and tour operators) to further define the operation and maintenance arrangements.” At the cut-off for this report in June 2022, the study had not been initiated.

283. The Final EIA noted that a need for sustainable tourism development within the region was identified during consultations in 2018 and 2019. The proposed visitor center, which the Final EIA envisaged as located in Zakatkari, would serve this need as a flagship from which “other sustainable development can be networked into the region.” The visitor center would also be focused on supporting local livelihood improvement for residents of the Khada Valley and along the project road.196 The Final EIA proposes Zakatkari as the location, without explanation, and states that “The exact nature of the visitor centre is yet to be confirmed and will be developed following the completion of a specific study.”197 The CRP understands that the visitor center will be subject to separate due diligence and approval by ADB once its location has been decided. In turn, services to be delivered through the visitor center will be determined following the development of a Khada Valley development plan (considered further below). The Final EIA simply lists “elements that have been tabled”, including a marketplace, a booking hub, and a craft center in pp. 354-355 and some photos in Appendix Z to illustrate the visitor center concept. It does not specify operational details and describes the proposed eco-tourism component of the Project as a ‘recent initiative’ still in ‘the early stages of planning’.198 However, six (6) tourism consultation events had reportedly already been held, including a consultation held near the Didveli Plateau where participants were also asked for their views on the proposed tourist hub.199

284. The Final EIA provides tourist figures for the two municipalities in the project area, but not for the Khada Valley specifically. However, it states that infrastructure development is identified as a condition for further tourism enhancement. The EIA also identifies interest during stakeholder engagement in Kobi in establishing a market area next to the road with residents reportedly expressing an interest in using excess spoil material for “car parking/cafes/market stalls.”

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194 Footnote 99, para. 16, p.4.
195 Footnote 99, Risk Assessment and Risk Management Plan (accessible from the list of linked documents). Manila.
196 Footnote 16, para. 972, p. 354.
197 Footnote 16, para. 973, p. 354.
199 Footnote 16, para. 975, p. 355.
Income and local economy. The Final EIA analyzes the local economy in the project area as well as the project’s potential to generate jobs and other economic opportunities for local community members. It highlights the importance of livestock husbandry and use of pastures. Focus group discussions reportedly suggested that livestock husbandry is a primary financial source for affected persons; but the Final EIA noted that it does not generate significant cash income, which in turn limits investment. A majority of households cultivate at least some vegetables; predominantly for subsistence or household consumption; with the excess, when this is available, sold to generate income. In some instances, hotels in Gudauri and Kobi purchase locally produced goods, and some are also sold in Tbilisi.

The Final EIA summarized a household survey undertaken during social baseline surveys. The figures provided are different to those included in the LARPs (see Section G). They state that a majority of income in the project area comes from pensions; with wages from salaries a main income source for 43% of respondents, particularly along the existing road. Little agricultural income is recorded. Incomes are relatively low, with 70% of respondents receiving less than GEL600 per month, and incomes of greater than GEL1,000 per month only in Kvesheti and Arakheti, near the existing road. Some 24% were unemployed.

In consideration of project alternatives, the EIA highlights several ‘with project’ positive factors, which include job creation; improvement of access; development of roadside services and entrepreneurship; and improved tourism potential in the Khada Valley for winter sports, as well as the potential to make living in villages viable all year round. The EIA highlights potential opportunities for ‘repatriation’ to the area of people who had moved elsewhere in search of work, citing this as a major potential benefit of the Project. The Final EIA and its EMP also envisage the creation of marketplaces for local traders as part of the Project, and identify possible locations.

There is no reference in the Final EIA or other preparatory documentation to any planned or proposed activities relating to how the project road may address poor access to services such as healthcare or education, or address lack of reliable water supply or village-level wastewater infrastructure.

Employment and local sourcing. The EIA notes that despite losses of land by some households, the Project’s employment impacts are expected to be beneficial. It includes estimates of total workforce needs during construction and operation and highlights livelihood and business development opportunities that are expected as a result of new transport links created by the Project.

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200 Footnote 18, Section E.3.1, p. 247.
201 Footnote 18, para. 665, p. 248.
202 Footnote 18, para. 670, p. 249.
203 Footnote 18, para. 665, p. 248.
204 Footnote 18, Figure 116, p. 56.
205 Footnote 18, Table 79, p. 257.
206 Footnote 18, Table 80, p. 257.
207 Footnote 18, para. 706, p. 259.
208 Footnote 18, para. 706, p. 259.
209 Footnote 18, para. 991, p. 358 and para. 965, p. 353.
210 Footnote 18, para. 991, p. 358 and Footnote 48, para. 1370, p. 503.
211 Footnote 18, para 970, p. 354.
213 Footnote 16, paras. 962-964, p. 353.
290. The CRP notes that ADB policies and procedures do not provide for mandatory requirements for local employment or sourcing. However, the EMP provides that the contractor shall set targets for local employment of unskilled and semi-skilled workers. It also provides for procurement policies to encourage use of local suppliers from within Dusheti and Kazbegi municipalities. A labor and working condition management plan to be prepared by contractors is to address promotion of local employment opportunities, and the Final EIA and its EMP also provide for the development of a local content management plan by the contractor. The Final EIA does not however provide for these plans to be reviewed or approved by ADB.

291. **Community development and other project benefits.** The Final EIA, the gender and social analysis and the SPRSS all refer to poor community access to services including public transport; schools and nurseries; healthcare and internet connectivity; and to poor electricity supply. The Board-approved project did not improve the access of Khada Valley residents to these services directly, though access to the project road may ease access to some services indirectly.

292. Regarding community development initiatives in affected communities, the ADB project team informed the CRP that an indicative budget of $500,000 for small-scale social infrastructure had been included under works contracts, with provision for an additional sum of $250,000 for capacity building activities under a separate consulting services contract. The CRP has not been able to verify these amounts, but notes that works contracts for Lot 1 and Lot 2 contractors respectively show an allocated sum of GEL625,000 for each contractor earmarked for ‘social community development’ (approximately $200,000). No associated planning or management documents are included in the EMP to provide for the use of this budget line item.

293. **Access to the project road.** The provision of all-weather local access roads was among the project benefits referred to in the SPRSS. The Final EIA states that within the Khada Valley, access for local people would be significantly improved as the existing track in the Khada Valley would link to the project road at the Benian-Begoni interchange. However, the complainants have raised specific concern about the distance of the nearest access point to the new road from the village of Tskere, in the upper Khada Valley. To get to the access point, villagers would need to travel around 3 km along the internal Khada Valley road to the Benian-Begoni interchange. Summaries of public consultations in the EIA pointed to technical reasons for the lack of a nearer access point.

294. Maps and graphics provided to the CRP by ADB under the rubric ‘access roads’ depicted a total of some 5.9 km of ‘local roads’ and ‘service roads’ immediately adjoining the main project road. Excluding ‘service roads’, the combined length of all-weather access roads constructed by the Project was 4.6 km, divided across 16 separate stretches of the project road. Other local roads that would be used by adjacent communities to access the new road would not be improved, according to the project design when the Project was approved.

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214 Footnote 16, Section A-47.
215 Footnote 16, paras. 966-967, p. 354.
216 Footnote 16, para. 1113, p. 391.
b. Post-Board Approval

295. After approval of the loan, ADB engaged with the Roads Department and other stakeholders to secure identification and integration of additional means for improving the Project’s positive social impacts within its design and implementation. There have been significant developments regarding the wider planning context for the proposed visitor center, as well as commitments to rehabilitate additional lengths of local roads to provide for all-weather surfaces. The ADB project team has recognized that some affected people are very poor and may need greater assistance. A May 2022 Stakeholder Brief: Community Development and Livelihood Improvement (Brief on Community Development and Livelihood) summarizes certain project initiatives and describes agreements reached with local communities on some project implementation issues. However, as described in the succeeding paragraphs, opportunities to maximize community development benefits do not yet have a clearly established strategic framework.

296. Tourism and spatial development. In its inception mission in September 2019, the ADB project team recorded discussion of possible ADB support for the preparation of a tourism study that would develop approach that was suitable for the project area, and sensitive to the needs of the local communities as well as to nature-based and cultural heritage values. As explained in the Brief on Community Development and Livelihood, the Khada Valley Masterplan evolved over time beyond a sector-based plan focused solely on tourism to a “Khada Valley Masterplan+” which would include: (i) the Community Needs Assessment; (ii) the Historic-Cultural Reference Plan; (iii) a spatial development plan; and (iv) a Priority Investment Plan to guide immediate and future investments and assist Khada Valley residents with adapting to the changes and opportunities brought by the Project. Collaborating with MRDI and the Roads Department on these initiatives, ADB agreed to finance the development of the Masterplan and the process is scheduled for completion in April 2023.

297. With funding from ADB, the Regional Environmental Centre for the Caucasus (REC Caucasus) undertook community assessment in Khada Valley resulting in the publication of the Community Needs Assessment (CNA) report in January 2021. The CNA’s analysis broadly complements information included in ADB’s earlier gender and social analysis report and the EIA and LARPs. It was in part formulated to help develop the TOR for the envisaged Masterplan for the Khada Valley and its surroundings by revealing priority areas in (among other areas) livelihood enhancement at the village level. It was also intended to offer input to community development initiatives under the Project.

298. The CNA identified development aspirations in areas including tourism and agriculture. Sixty five percent (65%) of survey respondents saw tourism as an alternative to traditional livestock breeding, but views varied on individual villages’ tourism potential. The absence of adequate infrastructure was widely referred to by survey respondents as an impediment to tourism development, whereas rehabilitation of cultural heritage was considered a precondition for tourism development by almost half of those surveyed (45%).

299. In March 2022, through TA 9552, ADB engaged BAU Design to develop a KVDP. In para. 7 of the TOR for the preparation of the KVDP, it is described as a means to guide transformation in the Khada Valley by preventing “unwanted and uncontrolled development while maximizing immediate benefits and future opportunities for local communities”. The TOR further states that the Priority Investment Plan (PIP) component is envisaged to serve as a guiding framework to identify, select, and prioritize sustainable projects suitable for government and/or private financing with implementation over the ‘short’ (2024), ‘medium’ (2027) and ‘longer’ term (2032).
300. On the planned visitor center, ADB has explained that the planned form and the strategy and content of initiatives to be undertaken by it will be further developed following the completion of the KVDP. The KVDP is to define the development framework for a tourism strategy, and development of a tourism scoping study is still a project commitment under the Gender Action Plan.

301. **Access to the project road.** In March 2021, a meeting took place between the Roads Department, ADB and residents of Tskere to discuss residents’ concerns regarding access to the project road. The Roads Department then began to assess the feasibility of upgrading the internal road connecting Tskere to other villages.

302. In June 2021, a meeting was held for community members from villages in the project area to validate the findings of the CNA. At the meeting, the Roads Department informed participants that underpasses under the new road would be constructed every 3 km, rather than the 5 km spacing normally applied. It also confirmed that it was ready to improve the existing road in the Khada Valley to an all-weather access road and informed participants that an engineering design was being prepared. ADB and the Roads Department subsequently agreed that on receipt of the engineering design, the Roads Department would conduct due diligence which would lead either simply to a due diligence report, or, if extra land needed to be acquired, a LARP.

303. At the time of writing this report, the CRP had not seen the engineering design. The CRP understands from ADB that improvements will be made at the end of the construction process. The Project does not provide for other portions of the internal road between Bedoni and the new Benian-Begoni interchange to be paved with an all-weather surface.

304. **Employment of local people.** The CRP observed during its two missions that job opportunities with both contractors are advertised on notice boards in villages in the project area. The CRP has reviewed local content management plans (LCMPs) prepared by each of the contractors. Each includes provisions on maximizing, or preferring, employment of local people in different kinds of role. The Lot 1 LCMP includes targets at different phases of project implementation. The Lot 2 LCMP provides for setting targets based on initial assessment of the labor market for unskilled and semi-skilled workers, but no specific targets are established in the LCMP itself. Social monitoring reports summarize figures for employment of international and national workers collated by the PMCSC as well as discussion of employment opportunities that took place during contractors’ meetings with community members.

305. **Community development.** The CNA identified numerous social challenges in villages in the project area, which vary from village to village. In order of priority, these were improvement of healthcare services; education including provision of kindergarten facilities; limited internet access; road infrastructure and transportation; irregular water supply and lack of a centralized sewage system; and lack of shops.

306. Regarding road infrastructure and transportation, the CNA highlighted lack of pedestrian safety and noted that “internal roads suffer dire conditions in all villages”; that “there is no storm water system”; and that not only is there no public transport in the Khada Valley, but “public transport passing along the highway... is full when it passes through villages...”

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218 Footnote 176.
220 ADB and EBRD. 2021. *Construction of Kvesheti-Kobi Road (Tunnel Section) under North-South Corridor (Kvesheti-Kobi) Road Project. Local Content Management Plan for Lot 2, second revision. 6 March* (internal).
221 Footnote 175, Tables 5-1 and 5-2, pp. 36-38.
307. The June 2021 CNA validation workshop aimed to confirm or adjust priority areas for community development and livelihood improvement and to present anticipated outputs in this regard during construction (which were summarized as “visitor center and small-scale social infrastructure”). Participants also identified a list of priorities for consideration in the development of the Masterplan. ADB and the Roads Department explained that projects proposed in the Masterplan could be supported by various institutions. ADB indicated that it could support some projects and planned to act as a broker, providing information to potential funders.

308. As at May 2022, no overall project community development strategy or action plan had been developed to cover the period before the start of Priority Investment Plan implementation under the KVDP. The Brief on Community Development and Livelihood summarized the project’s approach by stating that “community development initiatives are being formulated, based on the findings of the community needs assessment and in accordance with the unfolding Masterplan”. The Brief on Community Development and Livelihood reiterates that the Project has allocated loan funds to “develop social infrastructure and build capacity of local communities such as helping residents start businesses, and training to become tour guides”.

309. As mentioned in the Handbook on Poverty and Social Analysis: A Working Document (2012), ‘Social Action Plans’ exist within ADB’s project implementation toolkit but the CRP understands from interviews with staff that ADB projects in the Central and West Asia region do not ordinarily include a community development component. Even so, budget lines for ‘social community development’ were included in works contracts, and several activities undertaken by the contractors and other project implementers have potential social benefits. For example, in 2021, with the support of the Roads Department, residents of the Khada Valley were given access to free medical prophylactic examinations and medicines as part of a nationwide initiative. This initiative was repeated in June 2022 and the CRP understands that it will again be done in October 2022. Elsewhere, internal records indicate the willingness of the Lot 1 Contractor to discuss community uses for excess spoil. ADB encouraged further exploration of this possibility in January 2021. That month, the Lot 1 Contractor had also reportedly considered transferring one of its Tskere accommodation camp buildings to the community; but after considering the EIA’s reinstatement requirements, it instead decided to “provide possible support”. In the Lot 2 area, several requests had been made for the contractor to provide in-kind support through the use of its machinery, and some had received positive responses. In one example from early 2022, the Lot 2 Contractor had reportedly assigned equipment to clear snow from the road between Seturebi to Zakatkari.

310. Against these positive examples however, the CRP has found that several potentially positive initiatives had been associated with grievances or with compliance issues of various kinds. These include the following:

(i) Contractor-led improvement to the Zakatkari internal road following agreement with local landowners that work would be carried out in return for a lease on certain land plots on the Didveli Plateau that were needed by the contractor for an access road. Villagers were not happy with the standard of the work and resolution of the resulting grievance took several months. ADB monitored the process.

223 Footnote 175, Table 4-9, p. 25.
(ii) Discussions between Bedoni villagers and the Lot 2 Contractor on use of spoil to create a buffer between the river and nearby plots that were susceptible to flooding. In October 2021, the Lot 2 Contractor reportedly dumped spoil in Bedoni without obtaining a permit or informing the PMCSC. Some villagers were concerned that the deposits could cause flooding. ADB recorded internally that discussions would take place to address the issue.

(iii) A septic tank in Tskere village was built by the Lot 1 Contractor in October 2021, after complaints to deal with wastewater treatment needs from a house in the village rented by 12-15 workers. However, the construction materials used were considered inadequate by the PMCSC. Remedial work remained outstanding over many months, and meanwhile raw sewage from the rented house continued to discharge into the ground in the middle of the village. ADB closely monitored the situation but did not ask that the contractor’s workers move elsewhere.

c. Analysis and Findings

311. Regarding SPS provisions concerning the identification of positive impacts and identification of opportunities to enhance positive impacts, the CRP finds that the Final EIA identified positive impacts related to the Project and several opportunities to enhance positive impacts. The CRP does not find ADB noncompliant in this regard. Similarly, the CRP has not found evidence of ADB noncompliance regarding mandatory targets for employment of local people.

312. However, regarding maximization and enhancement of positive social impacts, at the time of project approval, project design elements that would determine whether the social benefits of the Project will be maximized, or positive impacts enhanced, were not yet in place. ADB did not act on insights in its own analysis that without internal village infrastructure development and construction of internal roads, no positive impacts would be realized from the Project. At the point of project approval, construction of internal roads was limited to access and service roads and the project design did not provide for development of village infrastructure. The CRP finds ADB noncompliance with its responsibility under OM section C3 on Incorporation of Social Dimensions into ADB Operations to ensure that in the pre-Board-approval social analysis of the Project, measures were formulated with implementation arrangements to maximize the social benefits of the Project.

313. During project implementation, concern about the accessibility of the new road from upper Khada Valley has been addressed, but a planned upgrade of the internal road between Benian-Begoni and Tskere is not the subject of binding commitments or detailed implementation plans. No overall community development plan is yet in place, and while a variety of small-scale actions have been initiated, those undertaken by the contractors largely appear to have been reactive and some, of problematic quality. The planned visitor center has been framed as a key means to deliver benefits to local communities. However, project documents provide only general indications of how it will be brought to fruition. A Priority Investment Plan is to be developed during the formulation of the KVDP, but even short-term investments are not due to commence before 2024. The KVDP may improve the enabling environment for securing the Project’s potential benefits, but it remains to be seen whether the support essential to its success will be forthcoming.

314. Taking account of these facts, the CRP acknowledges the steps taken by ADB since project approval, with the support of the Roads Department, to adjust the project outputs to deliver
greater positive social outcomes. ADB met its responsibility under para. 6(iv) of OM section C3/Bank Policy (BP) to ensure that project implementation arrangements included actions to enhance benefits. Nonetheless overall, despite some promising initiatives, in the period since Board approval the CRP finds ADB noncompliance with its responsibility under para. 6(iii) of OM section C3/BP to ensure that the project design maximizes the Project’s social benefits.

315. As to harm, para. 187 of the AMP states that “unfulfilled expectations” that do not generate direct and material harm compared to the without-project situation will be excluded from assessment. The CRP is accordingly unable to make a finding of harm regarding these noncompliances.

F. Gender

316. Complainants’ perspective. The complaint asserts that the Final EIA prepared for the Project does not address the gender impact of the Project on communities within the project area during construction and operation. The complaint further refers to socio-economic problems including absence of “kindergarten, school, ambulatory and etc.” The latter are not referenced directly as gender issues, but publicly available project documentation points to their gendered implications, as described further below.

317. ADB Management’s perspective. ADB Management’s Response states that the Project will address the gender issues identified during project preparation, including enhancing connectivity of the villages through all-weather access roads, increasing road safety features and awareness, and support for tourism-related job and training opportunities. The response notes the contents of the Project’s Gender Action Plan (GAP).

318. Relevant policies and procedures. ADB’s Policy on Gender and Development (1998) and accompanying provisions of OM section C2 on gender and development give specific attention to gender issues in ADB operations. ADB has made a commitment to promote the mainstreaming of gender considerations in projects,225 though this commitment itself is not subject to compliance review. However, other documents and procedures that operationalize it contain responsibilities that are subject to compliance review – including a requirement to ensure consideration of gender issues at all stages of the project cycle.226 Detailed gender analysis and preparation of a gender action plan are required for those projects with potential to correct gender disparities or significantly mainstream gender equity concerns; or that are likely to have substantial gender impact. During project implementation, monitoring of gender concerns and components is required.227

319. Gender analysis is additionally an essential component of ADB’s IPSA. If the IPSA indicates that the project has potential to mainstream gender concerns significantly, or is likely to have a substantial gender impact, then ADB undertakes detailed gender analysis. This informs development of a project-specific Gender Action Plan.228 Requirements on the content of an IPSA are set out in operational policies on gender and development. An Appendix includes a guide to gender considerations in project design (Appendix 2).229

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227 Footnote 226, Section G, p.2.
228 Footnote 226, Section I, p. 3.
229 Footnote 226, Appendix 2.
320. ADB has also adopted procedures which set out responsibilities for Incorporation of Social Dimensions into ADB Operations, OM section C3 dated 6 December 2010. These are considered separately in Section E in relation to the project’s wider social impacts, while gender dimensions are considered in this Section.

321. ADB’s SPS also contains gender provisions. Principle 2 of the Environment Safeguards provides that the environmental assessment conducted for each proposed project must identify socio-economic impacts including those arising through gender issues. Principle 4 of the Environmental Safeguards states: “Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management.” This Policy Principle is considered separately in Section E of this report in relation to enhancement of overall positive social impacts, while its gender implications are considered in this Section.

322. An Annex to Appendix 1 of SPS provides an outline of an environmental assessment report. In the outline, Section E, on anticipated impacts and mitigation measures, predicts and assesses the project’s likely positive and negative direct and indirect impacts, including on gender issues; identifies mitigation measures and any residual negative impacts that cannot be mitigated; and explores opportunities for enhancement.

323. At operational level, project teams benefit from specialist input on gender issues. Safeguard specialists focus on implementation of the SPS. Gender specialists focus on implementation of ADB’s Policy on Gender and Development and its associated procedural and operational requirements. Input on gender dimensions of safeguards is led by ADB social specialists.

a. Pre-Board Approval

324. The Kvesheti-Kobi Road project is categorized as an ‘effective gender mainstreaming’ project. This means that ADB determined during project preparation that the “project outputs are designed to directly improve women’s access to social services, and/or economic and financial resources and opportunities, and/or basic rural and urban infrastructure, and/or enhancing voices and rights, which contribute to gender equality and women’s empowerment.”

325. Gender considerations are directly referenced in the Project’s outputs, which include “safety facilities fitted for the elderly, children, women, and differently abled” in the project roads; the development of a “gender-sensitive road safety awareness campaign to roadside villages and schools”; and the “construction and set-up of a multipurpose visitor center with gender-friendly facilities” which will also “include socially inclusive and gender-sensitive training on tourism-related business development”.

326. The project IPSA states that the Project will not have an adverse impact on women and/or girls or widen gender inequality; and that it will ensure inclusion of gender-sensitive safety features and explore possibilities for improving women’s access to income-generating opportunities. The IPSA adds that studies show that women are most likely to be passengers and users of public transport.

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230 Footnote 146.
231 Footnote 40, Environmental Safeguards, Policy Principle 4. p. 16
232 Footnote 1.
234 Footnote 99, Project Administration Manual (accessible from the list of linked documents). Manila: paras. 2 (i) and (ii).
transport systems to access schools, health centers or markets, and that improved roads, especially in rural areas, will facilitate women’s access to education, jobs, services and to markets to sell their goods. 235

327. Following the IPSA, a Gender and Social Analysis Report on the proposed project was prepared by a consultant under contract to ADB. This was finalized in November 2018.236 Strikingly, this report concluded that it was arguable whether and how both women and men can benefit from improved road networks “unless certain conditions are met considering the needs of the population”.237

328. The recommendations of the Gender and Social Analysis Report set out several gender entry points for the Project.238 These included safe access roads to the new highway and entrepreneurship training for women living in Kazbegi and Dusheti municipalities. The CRP notes that the recommendations were all capable of implementation within the scope of the Project in the form in which it was approved by Board. However, several other insights into the project’s gender context and potential impacts which are set out in the Gender and Social Analysis Report were not directly addressed in its recommendations. These included that unfavorable transport and roads increase the burden upon women; that car ownership is mainly male; and that women hitchhike, which is difficult in winter, or rely on neighbors’ cars, when available. The Gender and Social Analysis Report noted that it is unsafe to wait for cars on roads, particularly in winter. The poor state of some village roads is referred to several times, as is women’s concern for lack of access to medical care and the inaccessibility of schools. As to livelihoods, the Gender and Social Analysis Report stated that women mostly stay at home taking care of households, and selling handicrafts and forest and agricultural products, including dairy products. However, tourist locations where women sell these products can be difficult to reach due to lack of transport options. The Gender and Social Analysis Report noted that without creation of internal village infrastructure and construction of internal roads, as well as steps to address land registration issues, the improvement of secondary, feeder and access roads will have no visible impact on women’s livelihoods and access to services. As discussed further below, the Gender and Social Analysis Report’s contextual and impact analysis is not fully reflected in the draft and final EIAs disclosed on the ADB project website.239

329. ADB developed a GAP for the Project in discussion with the borrower.240 It included three (3) clusters of Outputs; among them the following:

(i) (associated with Project Output 1): installation of EWCD-[elderly people, women, children, and people with disabilities] friendly safety facilities “along the project roads”, including pedestrian crossings, road lighting, and bus stops “where needed”; conduct road safety awareness campaigns for roadside villages; and

(ii) (associated with Project Output 2): design and set-up a gender-sensitive multipurpose visitor center; design and implement a female-friendly tourism development program.

237 Footnote 236, Section on Conclusions.
238 Footnote 236, Section on Conclusions.
239 Analysis of gender issues in the final EIA does not differ substantially from that in the draft EIA.
240 Footnote 99, Gender Action Plan (accessible from the list of linked documents).
330. The summary of the GAP in the Project Administration Manual (PAM) refers to installation of elderly-, women-, children-, and differently-abled-friendly safety facilities “along the project roads” “where needed” and states that the GAP includes a commitment to “gender-responsive and socially inclusive design features across all infrastructure built under the project.”241 Both the PAM and the GAP are legally binding on the borrower.

331. Finally, the SPRSS summarizes the livelihood activities of women in the project area and highlights women’s economic empowerment needs, pointing to the role that development of tourism-related activities could play in this. It asserts that “[t]he project is expected to enhance connectivity while ensuring road safety, especially for women and children, through the incorporation of safety design features;” and that “[t]he construction of the Khada Valley visitor center will provide livelihood and income opportunities, especially to the women in the villages in the Khada Valley; provide business training opportunities; and create employment for the local population.”242 Aside from these references, the SPRSS does not identify or analyze the gender implications of community safety and security during construction and operation; and it does not draw on the Gender and Social Analysis Report to address women’s access to infrastructure and services including water, sanitation, medical care, education, and public and private means of transport.

332. The CRP underlines that the IPSA, the Gender and Social Analysis Report, the GAP, and the SPRSS were all prepared by ADB. The EIA and EMP, on the other hand, were prepared by the borrower; but were reviewed by ADB in the course of its pre-project due diligence and review. ADB’s requirements for EIAs and EMPs include gender-related provisions of the SPS.

333. The Final EIA includes a number of references to gender-related issues and impacts.243 It also provides for mitigation measures that could address risks of adverse gender impacts. These include a Code of Conduct to be developed by contractors244 articulating acceptable behaviors of the workforce with local communities; and provision in the EMP for Camp Management Plans for an accommodation risk assessment. This in turn is to include considerations of family life, such as whether local workers can go home on a daily basis.245 Here, the CRP notes that ADB expressed concern in its review of a draft of the EIA that impacts on community safety were discussed in a very general manner (discussed further in Section E of this report). The Final EIA also states that the visitor center has been included as a project component to ensure that residents of the Khada Valley, particularly women, get “some direct benefits from the project”.246

334. The Final EIA incorporates data on other issues that are also relevant to gender, as demonstrated by ADB’s Gender and Social Analysis Report. For example, it includes an overall description of village infrastructure and services247 and it also describes problems of lack of access to services including education, healthcare, and public transport. But these are not addressed for their potential to enhance the Project’s positive impacts for women.

335. Road design to address gendered impacts and implications of the Project is not addressed in the Final EIA or its EMP. These ‘gender entry points’ for the Project, as identified in the Gender

241 Footnote 99, Project Administration Manual (accessible from the list of linked documents), para. 51, p. 22.
244 Footnote 16, para. 995, p. 359.
245 Footnote 16, para. 995, p. 359.
246 Footnote 16, para. 1298, p. 477.
and Social Analysis Report, are also only partially addressed in the project GAP. No clearly stated means is established by which ADB and the Roads Department will establish when, and whether, ‘women-friendly’ safety features are ‘needed’ (in GAP language) or ‘gender-responsive’ (in PAM language). Furthermore, while the design of project infrastructure can mitigate potential adverse gender impacts; the CRP understands that ADB safeguards specialists are not ordinarily involved in review of detailed engineering designs, and that gender specialists were not involved in ADB’s review of the Draft EIA. ADB did not review the project’s detailed engineering design from a gender perspective prior to Board approval.

b. Post-Board Approval

336. The CNA, described in Section E of this report, broadly aligns with ADB’s gender and social analysis. Reporting on a rapid needs assessment survey of 185 households conducted during the assessment, the CNA notes that the main reasons for seasonal migration from Khada Valley are lack of access to health care services; the poor condition of roads in winter; and the absence of a school. These issues had all earlier been identified in ADB’s social and gender assessment. The CNA notes that migration has decreased in recent years, as families return to the Khada Valley to take up work opportunities associated with nearby Gudauri, or to establish new businesses. These opportunities are expected to be enhanced during project operation.

337. Evaluating tourist potential, the CNA notes that most women in the villages make traditional handicrafts that are in demand by tourists and sell them in Gudauri. The CNA also discusses views on small enterprise development and agriculture in project-affected villages, and constraints and potential for their further development. Women surveyed are reported to think that it is important to create a traditional textile art center/studio, and establishment of a tea/dried fruit enterprise is “considered to be a source of income for local population, especially women”.

338. ADB’s engagement with implementation of the planned visitor center has also evolved during the course of project implementation, with plans to develop a Khada Valley Development Plan as one of the outputs of a ‘Masterplan +’ (see Section E of this report) that will also include the CNA. In the loan agreement the visitor center is described as a “multipurpose visitor center with gender-friendly facilities in the Khada Valley”. The PAM and other internal project documents reviewed by the CRP indicate that there would be measures to enhance women’s access to job and training opportunities in the visitor center. The GAP also provides for the visitor center to be associated with multiple activities designed to integrate gender considerations. These include design and implementation of a “female-friendly tourism development program” associated with, among other outputs, a tourism scoping study that includes gender-sensitive features.

339. Following project approval, the tourism development program that is referred to in the GAP was superseded by a wider initiative to develop a KVDP (see Section E of this report). Implementation of the visitor center is now set to be framed by the KVDP. The CRP has reviewed the TOR for ADB’s commissioned input to develop the KVDP together with inception materials.

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Footnote 16, paras. 952, p. 352 and para. 963, p. 353.

Footnote 160, Schedule 1, 2(b), p. 9.


Footnote 99, Gender Action Plan (accessible from the list of linked documents), p.2.

prepared in conjunction with a May 2022 workshop. The TOR refer to separate focus group discussions with women, and require identification of the specific needs, concerns and aspirations of women when preparing the Priority Investment Plan. This provides some assurance that gender issues will be integrated in the development of the Priority Investment Plan. The existing GAP commitments are not referred to, though it is clear from an inception stage presentation that the KVDP will define a framework for many of the issues included in the GAP and identified in the earlier Gender and Social Analysis Report; including a mobility plan; an economic strategy “in support of the population”; and a tourism strategy.253

340. The Roads Department’s first GAP report covered the period May 2020 to May 2021. No actions were reported (or due) in relation to the Khada Valley visitor center or installation of safety facilities along the project road. During an ADB project mission in mid-2021, it was agreed that the Roads Department would instruct the PMCSC to kick-start all GAP activities that are not related to construction; and that the Roads Department would address project activities contributing to gender mainstreaming in later GAP reports.254

341. In May 2022, the ADB project team provided the CRP with an update in which it asserted that ‘project roads’ in Output 1 of the GAP refers to the 23 km highway and the 5 km of access roads initially planned. The update pointed out that the highway has been designed to European Union standards and directives, and road signs and furniture will meet these standards. Pedestrian crossings, lighting and potentially bus stops, at access roads, including the Tskere-Begoni upgrade, will be discussed during consultation meetings “to ensure that access is improved for all communities”. Possible bus routes and stops will be discussed and agreed as part of the preparation of the Khada Valley Masterplan process, with input from a transport/mobility specialist as envisaged in the TOR. The CRP understands from an update on Output 1 of the GAP that implementation will take account concerns raised by the local population, including regarding the need for sufficient roadside infrastructure such as sidewalks, street lighting and sanitary facilities.

342. As to mitigation of gender risks during construction, the CRP has confirmed that ADB reviewed the Codes of Conduct for each contractor prior to their finalization, as provided for in the Final EIA.255 Project documentation shows ADB monitored and took seriously workforce conduct issues as they arose. The CRP does not have evidence of gender-based violence or harassment by contractors’ workers.256

343. In contrast, construction traffic and the existence of many unfenced construction sites in the Khada Valley have implications for the childcare burden on carers who are predominantly women. Internal project records as well as the information gathered during CRP’s missions point to multiple project safety noncompliances, including lack of fencing or inadequate barriers; lack of safety warnings; and hazardous rockfall. While the CRP is satisfied that the ADB project team members have diligently monitored and followed up on these issues, this needs to be placed in the context of ADB’s overall supervision of the Project during implementation. (See Section I of this report.)

255 Footnote 48, Table 170, pp. 479-483.
256 For example, the Social Monitoring Report for June-December 2021 did not record any complaints about gender-based violence or harassment.
c. Analysis and Findings

344. The CRP is broadly satisfied that gender dimensions of project risks and adverse impacts have been appropriately identified at various points in the project documentation as a whole. However, gender dimensions of operational phase impacts were not adequately reflected in the borrower’s Final EIA and its EMP as required by Principles 2 and 4 of the SPS Environmental Safeguards. This is consistent with the omission of ADB gender specialists from the safeguards review process. The CRP finds ADB noncompliance with its due diligence and review responsibilities under para. 56 (i) and (ii) of the SPS in this regard.

345. Aside from the Final EIA and its EMP, the GAP also offers a means to mitigate operational phase gender risk. Output 1 of the GAP addresses gender dimensions of project infrastructure design, but its language is imprecise and ADB has not reviewed project infrastructure design from a gender perspective. The ADB project team assured the CRP in May 2022 that the infrastructure is designed to European Union standards, with the implication that it will therefore meet the requirements of GAP Output 1 regardless of whether ADB reviews the design from a gender perspective or not. The CRP notes that in this instance other characteristics of the project design will also serve implementation of GAP Output 1. However, the CRP observes that where a GAP addresses detailed infrastructure design, integration of gender issues into project implementation would be strengthened by the inclusion of ADB gender specialists, and preferably both safeguards and gender specialists, in review of infrastructure design and in monitoring and supervision of its implementation from a gender perspective.

346. The Final EIA refers to contextual challenges faced by affected people regarding issues including access to roads, public transport, and other services. Gender dimensions of these issues are clearly highlighted in ADB’s Gender and Social Analysis Report but have not been carried through into the borrower’s Final EIA. ADB did not seek to ensure that the Final EIA recorded and addressed them to explore opportunities for the Project to enhance positive gender impacts, as required by Policy Principle 4 of the SPS Environmental Safeguards read in conjunction with para. E of the Annex to Appendix 1 of the SPS. Accordingly, the CRP finds ADB noncompliance with its due diligence and review responsibilities under para. 56 of the SPS regarding preparation of the EIA.

347. The CRP takes note of ADB’s intention to integrate gender considerations in the Priority Investment Plan. The TOR for the KVDP itself do not clearly provide for this, but the ADB project team is in a position to ensure that the process fully reflects on gender considerations. As a result, the CRP does not find ADB noncompliant with gender dimensions of its responsibilities regarding maximization of social benefits in project design, and their maximization and enhancement in project implementation, under OM section C3 on Incorporation of Social Dimensions into ADB Operations. However, the CRP notes that it will be important for ADB to ensure that its gender objectives are fully reflected in the development of the KVDP, and that resources are found to implement gender-relevant dimensions of the Priority Investment Plan. The CRP also notes that during project implementation, ADB diligently monitored a number of safety issues with gender implications. The CRP does not find ADB noncompliant in this regard.

348. Regarding ADB’s noncompliance in relation to operational impacts; the CRP finds that direct and material harm is not reasonably certain to arise as a result of ADB’s noncompliance in relation to operational impacts. Regarding noncompliance in relation to exploration in the Final EIA of opportunities to enhance positive gender impacts, para. 187 of the AMP states that ‘unfulfilled expectations’ that do not generate direct and material harm compared to the without-
project situation will be excluded from assessment. The CRP is accordingly unable to make a finding of harm regarding this noncompliance.

G. Involuntary Resettlement

349. The SPS clearly sets out the objectives of the Involuntary Resettlement Safeguards (at page 17) which are “[t]o avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.” The SPS Involuntary Resettlement Safeguards are triggered by physical or economic displacement resulting from the involuntary acquisition of land or from involuntary restrictions on land use or on access to legally designated protected areas. All these impacts are to be avoided, minimized, mitigated, or compensated. Resettlement is only considered involuntary when people have no right to refuse land acquisition. Paragraph 25 of Appendix 2 of the SPS explains that this may also occur when lands are acquired through expropriation due to the failure of negotiation. The safeguard is thus of limited application to negotiated access to land by private actors (such as the contractors) unless these conditions are met.

350. Based on LARP surveys conducted for the Project, 288 land plots and 158 households were identified as affected by involuntary resettlement. The complainants have raised many issues related to involuntary resettlement. These are addressed in detail in the succeeding subsections.

351. Relevant Policies and Procedures. Paragraph 8 of Appendix 2 of the SPS requires the borrower to “provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance” prior to relocation. Paragraph 10 of the same appendix clarifies that the rate of compensation for acquired housing, land and other assets should be calculated at full replacement cost. It further provides that “qualified and experienced experts will undertake the valuation of acquired assets.” Policy Principle 7 of the Involuntary Resettlement Safeguards of the SPS includes provisions to “ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.” The SPS Involuntary Resettlement Safeguards covers (ii) involuntary restrictions on land use whether such involuntary restrictions are full or partial, permanent or temporary. It further provides that if the remaining part of a particular plot becomes inaccessible or unviable for cultivation or for any use after the acquisition, then the remaining land will be acquired, if the owners/user so requests. The SPS Involuntary Resettlement Safeguards Policy Principle 4 states that both physically and economically displaced persons are to be given needed assistance which includes transitional support and development assistance. Appendix 2, para. 12 of the SPS provides that “In the case of economically displaced persons regardless of whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels”. Further, Appendix 2, para. 21 of the SPS requires the borrower to provide detailed measures for income restoration and livelihood improvement in the resettlement plan and to make every attempt to improve the incomes of displaced persons.

257 Footnote 40, Appendix 2, D. Requirements. para. 10, p.45.
1. Land Registration

352. **Complainants’ perspective.** The complainants claim that the land registration process in public registry is still problematic. They also raised concern that the Government of Georgia had registered 845,775 square meters (m²) of land in the name of the Roads Department which they considered had been traditionally owned by the residents of Khada Valley.

353. **ADB Management’s perspective.** In its response, ADB Management states that it ensured that the safeguard requirements are met through the inclusion of persons without titles to land or any recognizable legal rights as eligible for resettlement assistance and compensation for loss of land and non-land assets.

   a. Pre-Board Approval

354. Based on LARP surveys, 288 land plots will be affected by the project including 218 legal land plots, 64 legalizable land plots, and 6 non-legalizable land plots. To support the affected persons with legalizable lands to have their land plots registered with the National Agency of Public Registry (Registry), ADB also ensured that the affected persons would be assisted to legalize their ownership rights. Additional compensation was committed by the borrower to cover the land registration fee and this was included in the LARPs.

   b. Post-Board Approval

355. The CRP understands from ADB that as at March 2022, 58 of the originally identified 64 legalizable land plots had been registered and registration of the other six (6) legalizable land plots was ongoing.

356. During project implementation, the number of affected land plots increased because some land plots had not been registered by the locals at the time of the inventory studies conducted for the LARPs and neither had they been identified as lands used by the non-registered users.

   Other reasons cited in the Compliance Reports are: (i) errors in the original survey that were subsequently corrected; (ii) some plots originally marked as single plots were eventually determined to be multiple plots; (iii) a plot in Lot 1 originally thought to be privately owned/used turned out to be state land; (iv) plots originally considered state land were subsequently claimed and registered by the landowners; and (v) additional requests for inclusion in the LARP (as documented in the Community Grievance log).

357. The issue of registered lands is material to the affected persons since only registered lands are entitled to full compensation of the land in accordance with the approved Entitlements Matrix. Non-legalizable land plots are only eligible for compensation for assets such as crops, trees, houses, fences and others.

358. Based on the Law on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State

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260 Footnote 258, para. 20, p. 17.

Project (2016 Law), land registration in Georgia can occur through either a ‘systemic’ or a ‘sporadic’ process. Systemic Registration is commenced by either the Registry which is responsible for registering land plots in Georgia; or in case of major state projects, by the project implementers. Under sporadic registration, a person need not wait for systemic registration to reach their area but can instead proactively request registration. The applicant provides a new cadastral map of the land, and the Registry then seeks out all necessary information to complete the registration. The applicant pays a registration fee, whereas registration under the systemic process is free.

Under both procedures, when the Registry is unable to find documents evidencing lawful possession, it sends the case to the municipality to recognize property as “arbitrarily occupied” as provided by the Law of Georgia on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law (2007 Law). Customary use of land is similarly recognized under this Law. The procedures provide that neighbors can attest to the location of the land and also that its configuration and coordinates match the map submitted by the applicant. Where land has been “arbitrarily” used without documentary evidence of ownership, neighbors can also attest to the fact of continued use prior to 2007 and thereafter. This is in accordance with the 2007 Law on Lawfully and Arbitrarily Occupied Lands which provides that lands arbitrarily used or occupied prior to its enactment and continue to be used/occupied are subject to recognition. The municipality, through its representative, ensures the identification and approval of the neighbors’ testimonies. It can also attest that land was historically given to a person to build a house (homestead), and that such land was considered registrable property by the Civil Code, regardless of other land reform laws, but was not registered because there were no available procedures for registration at that time. In all these cases, after the Registry receives this information, it proceeds to register the land.

To facilitate land registration, a simplified registration procedure for land plots was implemented nationwide in 2020. The CRP was informed by the Roads Department that an authorization agreement was signed between them and the Registry, whereby the Roads Department was given access to the Registry’s website application (NAPRWEB 3.5P) for registration and was authorized to certify the signatures of the parties to agreements entered into with the participation of the Roads Department.

On the issue of the Government of Georgia registering 845,775 m² of land in the name of the Roads Department, it appears that this did not create a barrier to land registration by affected persons. During 25-26 September 2019 meetings attended by the Roads Department, Gamma (a consultant of the Roads Department), ADB and EBRD representatives, and a complainant who raised this issue, the Roads Department explained that any affected person who can present the required documents for land legalization is still eligible for full compensation, payable once their land plots are registered.

The CRP also understands based on analysis it commissioned from a Georgian land law expert, which was consistent with information provided by the Roads Department, that it is usual practice in Georgia for project proponents of special projects, like the Kvesheti-Kobi road project,

264 Footnote 263.
265 Footnote 263.
to register unregistered land in their name to expedite project implementation and that this is without prejudice to the rights of anyone who may claim the land plots in the future. In November 2021, the Roads Department also informed the CRP that the simplified process of registration had resulted in an additional 47 land plots which were not part of the original land plots identified in the LARPs being registered since project implementation.

363. **Recent developments.** Allegations of fraudulent land registration were brought to the attention of the CRP during its mission to Georgia in November 2021. From an initial two (2) affected persons, about 20 affected persons were already being investigated. The CRP met with a group of affected persons from Arakhveti, Zakatkari and other villages in Khada Valley together with a lawyer representing four (4) affected persons. The affected persons told the CRP that actions taken by the government included: (i) interrogation of some affected persons who had recently registered their land plots by the Prosecutor’s Office; (ii) questioning of the representative of the Municipality regarding certification provided to support the affected person’s applications for land registration; and (iii) demand for the return of compensation paid to some affected persons and threat to sequester their land plots. The CRP suggested that the affected persons raise the matter officially with the ADB Georgia Resident Mission and with the project team.

364. During a mission debrief on 22 November 2021, the CRP mission raised this matter with the ADB Country Director and the Project Team Leader. The CRP mission was informed that ADB was aware of this ongoing investigation and that this was also being done in other projects of the Roads Department as part of the government’s effort to address corruption. Some suspicious and fraudulent cases had reportedly been found earlier in some regions of Georgia including the Mtskheta-Mtianeti region where the Project is located.

365. Subsequently, affected persons sent a letter (in Georgian) through a lawyer addressed to ADB and to the CRP on 23 November 2021. However, the CRP later learned that the GRM and ADB had not received it. The CRP shared the letter with ADB in both Georgian and English on 8 February 2022.

366. Follow-up communications and documents which were shared with the CRP by ADB explained that the investigation was self-initiated by the Roads Department after some newly registered land plots had been found in doubtful locations. Since determining the legality of registration does not fall within the competence of the Roads Department, it asked the Prosecutor’s Office of Georgia to investigate. The investigation covers the land plots in the villages of Kvesheti, Arakhveti, Zakatkari, Sviana-Rostiani and Benian-Begoni and involves 31 affected persons. The CRP understands that on 15 December 2021, two (2) affected persons were arrested and that a hearing was initially set for 7 February 2022 but later rescheduled. The CRP understood as at June 2022 that the investigation was still ongoing.

367. On 27 December 2021, the Land Law of Georgia\(^{266}\) was amended. The role of municipalities in land recognition and land registration was removed from the sporadic registration process up to 2025, and systemic registration is now extended across almost the entire country except for Tbilisi, Batumi, Kutaisi, Rustavi, and Poti. It is no longer limited only to specific areas set by a list from the Ministry of Justice and some special project areas. Sporadic registration remains available, but because of the latest amendment, the process now relies solely on the Registry without additional municipality input.

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\(^{266}\) Footnote 262.
c. Analysis and Findings

368. The issue of legalization of land is vital to ensuring that affected persons are compensated in accordance with the SPS. The LARPs clearly identified the status of the land plots to be affected by the Project. Aside from registered (legal) lands, legalizable lands were also identified. This is in line with SPS Involuntary Resettlement Safeguards Policy Principle 7. The CRP also notes that the LARPs included additional compensation to cover land registration fees. ADB has monitored LARP implementation through bi-weekly meetings with the Roads Department and the PMCSC; through its review of the semi-annual social monitoring reports (SMRs) and Compliance Reports; and through its CLO who works in the project area.

369. The CRP has no information on action taken by ADB on the letter from a lawyer acting for a number of affected persons about the investigation being undertaken by the Prosecutor’s Office. The CRP notes that while the ongoing investigation by the Prosecutor’s Office is looking into potential fraud, which is outside the ambit of the AMP, the investigation may have a chilling effect on land registration in the project area. It is important that ADB continue to monitor the land registration in the Project and also how this investigation unfolds. It is also important to reassure affected persons that sporadic registration is still available to them in accordance with the amended Land Law. There is no finding of noncompliance on this issue.

2. Restricted Access and Orphan Lands

370. Complainants’ perspective. The complainants say that in cases where the Project acquires parts of affected peoples’ land, access to remaining land plots will become difficult for some. They claim that the new road may prevent some people from accessing their own lands.

a. Post-Board Approval

371. The CRP Eligibility Report noted that the access-to-orphan-land-related concerns of the affected persons needed to be validated on the ground. The CRP notes that issues about access to orphan lands have been raised in 43% (26 out of 60) of all the community grievances in the UBM Tracker on Community Grievances as of December 2021. Specific grievances identified in project documents include: (i) remaining land plots becoming unavailable or unusable because of their shape or dimensions; (ii) remaining land plots becoming difficult to cultivate for being too close to a ravine; (iii) remaining plots becoming unavailable for living conditions as construction of the blocked by the road; and (iv) in one instance, that access to a remaining land plot will be temporarily blocked during construction. In the last case, since access to the remaining land plot would only be blocked temporarily during road construction, the Roads Department committed to provide the affected persons a temporary container house during construction, which the affected persons found acceptable.267

372. The CRP understands that the practice is for the Roads Department to refer grievances regarding orphan land to its Design Service to assess whether access can be provided. Where access cannot be re-established, the Roads Department has offered to buy land plots at the same compensation rate provided in the LARP Entitlement Matrix. When access can be provided and the remaining land plot is still viable, the contractor concerned is tasked to prepare the detailed design and submit same for the Roads Department’s approval. Once approved by the Roads Department, negotiations with the concerned affected person are undertaken. If an agreement is

reached, then a contract is signed either to build the permanent quality access road or for the Roads Department to acquire the remaining land plot.  

373. The CRP understands that ADB’s position has been that orphaned land plots should be acquired by the Project. However, the Roads Department has committed to either provide access or buy them. Land plots have been considered on a case-by-case basis and negotiated with the concerned affected person. The Roads Department also confirmed its position to the CRP during the November 2021 mission. An internal ADB monitoring report shows that, as of 7 July 2022, six (6) grievances on this remained unresolved.

b. Analysis and Findings

374. Involuntary restrictions on land use through orphaned land are not prohibited under the SPS and fall within the scope of the SPS Involuntary Resettlement Safeguards, triggering its compensation requirements. Although ADB had recommended that in all instances of orphan land, the Roads Department should acquire the remaining, orphaned land plots and compensate the affected person concerned; the Roads Department prioritizes provision of access whenever feasible so that access to land is not involuntarily restricted. ADB has agreed to this since solutions are discussed and negotiated with the concerned affected persons and are consistent with the Involuntary Resettlement Safeguards of the SPS.

375. The ADB project team is closely monitoring resolution of this issue as part of its monitoring of the LARP implementation. There is no finding of noncompliance on this issue.

3. Income and Livelihood Restoration

376. Complainants’ perspective. The complainants assert that the EIA report poorly addresses the direct impact of land acquisition on affected people. They point out that the EIA claims that local households’ income would increase through the development of tourism opportunities but that tourism plans had not yet been developed at the time of project approval.

377. ADB Management’s perspective. ADB Management pointed out that compared to other ADB-financed projects in Georgia, the LARPs for this Project include more extensive due diligence and valuation requirements. They include additional compensation for severely affected households and provisions for additional livelihood restoration in case of unforeseen impacts. Additionally, a recommendation to give preference to the employment of as many residents as possible was included in the Final EIA but not in the LARPs. The project road will also provide Khada Valley communities with improved access to work opportunities in other locations. Furthermore, the inclusion of the proposed visitor center in the Project, while still to be defined, will serve as an effective hub from which direct economic benefit can be gained.

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268 ADB (Central and West Asia Department). 2021. UBM Action Tracker on Community Grievances (internal).
270 Footnote 4, Appendix 2, ADB Management’s Response. p. 58.
a. Pre-Board Approval

378. During LARP preparation, socio-economic surveys and census of 158 affected households were conducted to identify impacts on public and private property, infrastructure, agricultural, industrial, and commercial land. Vulnerable and severely affected households were also identified in accordance with the project definition of these terms. Both LARPs (at p. 8 for Lot 1 and p. 9 for Lot 2) similarly define severely affected households to include affected households (i) losing 10% or more of their productive/income generating assets which is the total land holding of the affected household compared to the affected land by the Project; (ii) physically displaced households; and (iii) households losing commercial/business establishments.

379. The information collected by the socio-economic survey shows that the major source of income for most affected households is wages and salaries, and that half have secondary sources of income, mainly from pensions. The average monthly household income of affected households in Lot 1 is GEL876 and for Lot 2, it is GEL1,184.49. The Final EIA noted however that incomes above GEL1,000 per month are only found among some affected households in Kvesheti and Arakhveti.

380. Affected households grow vegetables and fruits and raise livestock mainly for household consumption. Hay, which is also produced in project villages, is mainly fed to their own livestock. The Final EIA noted in para. 694 that little agricultural income was recorded, with respondents noting that small-scale exchanges of money, or barter, with neighbors of the family were not considered income.

381. The LARPs include provision for valuation of the different affected assets as assessed by an accredited valuer. They provide for the market value of crops to be determined as the net market rates at the farm gate for the first-year crop. If more than one year’s compensation is due to the affected persons, crops after the first year are required to be compensated at gross market value. Fruit trees are compensated differently depending on whether they are productive or yet to become productive. Houses, buildings, and structures are to be compensated in cash at full replacement cost without deductions for depreciation and salvaged materials, based on the cost and transport of materials, labor and construction taxes and fees regardless of the registration status of the affected land. ADB also informed the CRP that although the socio-economic survey did not identify agriculture as a primary income source for any affected person interviewed, the importance of home gardens has been acknowledged and the corresponding compensation is specified in the LARPs. The CRP has reviewed the LARPs and found that they make provision for compensation for annual crops and vegetables.

382. To reconcile differences between Georgian laws/regulations, ADB’s SPS, and EBRD’s Environmental and Social Policy and related Performance Requirement 5, the Roads Department has adopted a policy for the Project which ensures compensation at full replacement cost of all

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271 Based on the Land Acquisition and Resettlement Plans of Lot 1 and Lot 2, it is 50% for Lot 1 and 66.29% for Lot 2.
272 This is below the national average monthly income of a household in Georgia of GEL1,175.3 in 2019 as reported by the National Statistics Office of Georgia as stated in para. 64 of the Land Acquisition and Resettlement Plan for Lot 1.
273 Footnote 192, para. 85, p.32.
276 Footnote 191, para. 135, p. 45.
277 Footnote 191, para. 134, p. 45.
278 Footnote 191, Table 9-3, p. 63.
items; the rehabilitation of informal settlers; and the provision of subsidies/allowances for affected households. The final LARP Entitlements Matrix lists the types of affected persons entitled to compensation for project-affected assets as follows:

(i) all affected persons losing land covered by a legal title/traditional land right, legalizable land, or land without legal status;

(ii) tenants and sharecroppers whether registered or not; and

(iii) owners of buildings, crops, plants, or other objects attached to the land regardless of the legal status; and affected persons losing businesses, income, and salaries.\(^{279}\)

**Table 4: Entitlement Matrix**

<table>
<thead>
<tr>
<th>Land</th>
<th>Application</th>
<th>Definition of AH/APs</th>
<th>Compensation Entitlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural land: Permanent land loss, access or damage</td>
<td>AP losing productive land regardless of impact severity</td>
<td>Registered Owner/Legal: Owner with full registration</td>
<td>Cash compensation at full replacement cost based on current market value. If the residual plot becomes unviable for cultivation, the project will acquire it if the owner so desire.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Legalizable Owner: (APs with title formalization pending and Aps who are not registered but legitimately use the land and have residential land or agricultural plots adjacent to the residential land)</td>
<td>The ownership rights of these Aps will be recognized, the land registered in NAPR and the Aps provided with cash compensation and full replacement cost</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-legal/Informal Settler: Aps that are not legitimate land users or squatters</td>
<td>Non-legalizable Aps losing agricultural land plot will be compensated with one-time allowances in cash equal to a minimum monthly subsistence allowance for a 5 member family for 12 month period where land is actively cultivated, or 3 month period where land is barren/unused.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Agricultural Tenant</td>
<td>Full compensation of income of lost crops x the remaining years (up to 4 years) of lease, unless otherwise provided by the lease agreement. In case of tenancy, no crop compensation will be given to the land owner, and implementing</td>
</tr>
</tbody>
</table>

\(^{279}\) Footnote 191, para. 19, p.10.
agency, in consultation with local government, will provide assistance to the tenant with the search of replacement lease/tenancy

<table>
<thead>
<tr>
<th>Non-Agricultural land</th>
<th>AP losing their commercial/residential land</th>
<th>Registered Owner/Legal: Owner with full registration</th>
<th>Cash compensation at full replacement cost.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legalizable Owner: (Legalizable owners according to active legislation)</td>
<td>The ownership rights of these Aps will be recognized, the land registered in NAPR and the APs provided with cash compensation at full replacement cost.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-legal/Informal Settler (Without registration/valid document using land permanently.)</td>
<td>Non-legalizable Aps losing a land plot, which is the only land plot used for residence or providing the main source of income for the AH, will be compensated with one-time allowances in cash equal to a minimum monthly subsistence allowance for a 5 member family for a 12 month period. This only applies to physical displaced Aps who do not have other residence.</td>
<td></td>
</tr>
<tr>
<td>Temporary Impact on land plot</td>
<td>N/A</td>
<td>N/A</td>
<td>Temporary land impacts will be compensated based on the productive value of the plot during the period of impact and after their use will be re-established by the EA at the pre-impact productive conditions.</td>
</tr>
</tbody>
</table>

**Buildings and Structures**

<table>
<thead>
<tr>
<th>Residential and non-residential structures/assets</th>
<th>All AHs regardless of their legal ownership/registration status (including legalizable and Informal Settlers)</th>
<th>Cash compensation for loss of buildings/structures at full replacement costs free of depreciation and transaction costs</th>
</tr>
</thead>
</table>

**Loss of Community Infrastructure/ Common Property Resources**

<table>
<thead>
<tr>
<th>Loss of common property resources</th>
<th>Community/Public assets</th>
<th>Community/Government</th>
<th>Reconstruction of the loss of resource/asset in consultation with community and restoration of their functions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crops</td>
<td>Affected standing crops or agricultural land, used permanently for crop cultivation</td>
<td>All APs regardless of legal status (including legalizable and informal settlers)</td>
<td>Crop compensation in cash at market rate for gross crop value of expected harvest</td>
</tr>
<tr>
<td>Trees</td>
<td>Trees affected</td>
<td>All APs regardless of legal status (including legalizable and informal settlers)</td>
<td>Cash compensation at market rate on the basis of type, age and production value of trees (based on expected yield of the tree, multiplied by the number of years required to grow a tree of equivalent productivity).</td>
</tr>
<tr>
<td>Business/Employment</td>
<td>Business/employment loss</td>
<td>All APs regardless of legal status (including legalizable and informal settlers)</td>
<td>Owner: (permanent impact) cash indemnity of 1-year net income or in the absence of income proof, or in cases where APs have paid tax based on a flat rate, they will receive compensation equal to 12 months minimum subsistence allowance. (Temporary impact) cash indemnity of net income for months of business stoppage. Assessment to be based on tax declaration or, in its absence, minimum subsistence allowance in cash for months of business stoppage; Permanent workers/employees: indemnity for lost wages equal to actual wage for 3 months or in case of absence of tax declaration, one-time minimum subsistence allowance in cash for 3 months. For all the above, some acceptable official documents need to be presented, i.e.. Salary payment document, account/financial report.</td>
</tr>
</tbody>
</table>

### Allowances

<table>
<thead>
<tr>
<th>Livelihood restoration</th>
<th>APs losing more than 10% of their agricultural productive assets</th>
<th>All severely affected households AHS including informal settlers</th>
<th>Agricultural livelihood restoration: Two times annual harvest yields (at verified market rates) for all types of crops (inclusive of hay) and trees from the area affected by the land take, for all severely affected households. If this amount is less than 3 months minimum subsistence allowance, 3 months of minimum subsistence allowance will be paid instead.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>APs losing more than 10% of their non-agricultural productive assets</td>
<td>All severely affected households including informal settlers</td>
<td>Non-agricultural livelihood restoration: A livelihood restoration package of 3 months of minimum subsistence.</td>
</tr>
<tr>
<td>Relocation/Shifting</td>
<td>Transport/transition costs</td>
<td>All AHS to be relocated</td>
<td>An allowance covering transport and livelihood expenses for the transitional period. (200 GEL as vehicle hire charge + minimum subsistence allowance for 3 months.</td>
</tr>
<tr>
<td>Vulnerability Allowance</td>
<td>AHS below poverty line, Ahs headed by women, Ahs headed by disabled people and refugee households/internally displaced people.</td>
<td></td>
<td>One-time minimum subsistence allowance in cash for 3 months and employment priority in project related jobs where feasible. Additional assistance in kind will be provided to facilitate relocation or transition – this may include (logistics, relocation planning,</td>
</tr>
</tbody>
</table>
Unforeseen impacts during construction, including temporary impacts and impacts on livelihoods not otherwise assessed

| Impacts during construction to properties or assets out of the corridor of impact or RoW | All APs | Due compensation to be assessed and paid when the impacts are identified based on the above provisions and on the requirements of SPS 2009 [and EBRD PR 5 for Lot 1] |
| Impacts related to spoil disposal areas and construction camps | Temporary impacts | APs using affected pasture lands | Any temporary impact caused by the use of land for camp or as a temporary disposal area, will be regulated by private agreements between the Contractor and the land owners. Should such temporary impacts also affect persons using pasture lands other than the owners, adequate livelihood assistance for loss of hay and grazing grounds will also be assessed and provided during implementation. |
| Permanent Impacts | | Any permanent impact on land caused by the use of land for permanent disposal of unsuitable material or debris remaining after demolition or existing parts of the road, will be adequately compensated as per the provisions set up in the LARP. In addition, adequate livelihood assistance for loss of hay and grazing grounds, if any, will be assessed and provided during implementation. |


b. Post-Board Approval

383. A Community Needs Assessment (CNA) was commissioned by ADB in late 2020 to “reveal priority areas in conservation, land use, and livelihood enhancement at the village level and provide technical inputs to the TOR for the envisaged master plan for the Khada Valley and its surroundings.” Its findings mentioned that (i) agriculture is the main livelihood of the affected households; (ii) livestock raising and vegetable production are mostly for home consumption, and (iii) agricultural and apiary activities are mainly for subsistence with some excess bartered with neighbors or sold. Butter and boiled butter are sold locally, while cheese is stockpiled

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281 Footnote 280, p. 20.
282 Footnote 280, p. 3.
during the summertime and sold in winter or exchanged for other products. Other reported informal sources of income include the sale of handicrafts, wild produce, and honey, at roadside markets along the existing road.

384. In July 2021, ADB’s international resettlement specialist recommended that since many of the affected persons are very poor, the Project may want to consider delivering additional assistance for livelihood restoration such as providing implements to cultivate new fields, seeds and agricultural technical services.

385. The SMRs report instances when affected persons were dissatisfied with the compensation offered and asked for revaluation. These grievances have been recorded and handled on a case-by-case basis. The Roads Department tasks its consultants with reviewing complaints and submitting its findings, then the Grievance Redress Committee established in the concerned municipality, or the Grievance Redress Commission of the Roads Department decides, followed by negotiations with the concerned affected person. Monitoring reports show that all complaints under the LARP from the start of the Project up to May 2022 have been resolved.

386. In discussion with the CRP, ADB explained that for livelihoods to be restored, they must exist in the first place. ADB pointed out that the two LARPs and the CNA confirmed that affected persons were not dependent on the land for their income and livelihood. Thus, there was no need for other measures for livelihood restoration. The CRP was further informed that other assistance which the Project is considering to provide to affected persons is regarded by ADB as community development rather than as a livelihood restoration program under the LARP. However, the CRP notes that subsistence production of vegetables and fruits is part of affected persons’ livelihoods. Thus, loss of croplands is also loss of livelihood.

c. Analysis and Findings

387. LARP implementation began in September 2019. The LARPs provide that no land plot is to be turned over to the contractors until corresponding compensation has been paid to the affected persons. This is confirmed in Compliance Reports which an External Monitoring Consultant prepares for the Roads Department, in which LARP compliance is documented for each road segment before it is turned over to the contractors. Submission of the Compliance Reports to the lenders then provides a basis for ADB and EBRD to issue a letter of no-objection to early civil works implementation in the relevant road segment. This is in accordance with SPS Involuntary Resettlement Safeguards Principle 11. The Compliance Reports ensure that each affected person is compensated in accordance with the Entitlement Matrix. Any discrepancy is explained.

388. The CRP notes that while affected persons’ informal sources of income, other than letting part of their backyards to tourists, were not identified during the LARP preparation, there is a provision in the Entitlement Matrix for ‘Unforeseen impacts during construction, including

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283 Footnote 280, p. 22.
284 Footnote 280, p. 3.
286 Footnote 258, para. 21, p. 18.
287 Footnote 40, Involuntary Resettlement Safeguards Policy Principle 11, p. 17. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation’.
temporary impacts and impacts on livelihoods not otherwise assessed: Impact will be identified and assessed and due compensation paid based on the provisions agreed for this Project and in agreement with requirements of SPS 2009’. ADB informed the CRP that informal sources of income such as those identified in the CNA may thus be covered under the LARPs and appropriate compensation/allowances may be provided.

389. On livelihood restoration, para. 21 of the Involuntary Resettlement Safeguard Requirements of the SPS states that “The borrower/client will include detailed measures for income restoration and livelihood improvement of displaced persons in the resettlement plan. Income sources and livelihoods affected by project activities will be restored to pre-project levels, and the borrower/client will make every attempt to improve the incomes of displaced persons so that they can benefit from the project…” (emphasis added). It is important to note that the SPS does not state that livelihood restoration will only be provided to severely affected persons. However, the CRP notes that in the third column of the Entitlements Matrix of both LARPs (see Table 4 above) on “livelihood restoration”, the allowance is only to be given to those affected persons losing more than 10% of their agricultural productive assets and to affected persons losing more than 10% of their non-agricultural productive assets or those considered ‘severely affected persons’ as defined in the LARP.

390. ADB Management asserts that the project LARPs include detailed measures for income restoration, adding that the entitlements matrix makes clear provisions for livelihood restoration beyond the immediate cash value of crops, with livelihood restoration allowances paid to all people whose livelihoods are impacted. The CRP is unable to find adequate support for these assertions in the LARPs. It is clear in the Entitlements Matrix that all affected persons losing land, crops, trees, buildings and other structures are compensated for their losses. But livelihood restoration goes beyond that. Taking the example of an affected person who uses part of their land for a vegetable patch and/or as an orchard, relevant compensation entitlements in the LARPs include the cash value of crops; cash compensation for affected trees based on the expected yield of the tree multiplied by the number of years required to grow a tree of equivalent productivity; and cash compensation for loss of agricultural land at full replacement cost based on current market value. These entitlements are not adequate to restore the livelihoods of affected people who use land that is acquired for the Project for subsistence production to their pre-project levels, as required by the SPS. This group of affected people will need to prepare replacement land before it can be turned to production, including through ploughing or digging, the addition of manure or other fertilizer, and acquisition of fresh seeds or seedlings. All affected people losing land on which they rely for part of their livelihood; regardless of whether it represents modest subsistence production; should be entitled to receive an allowance to compensate them for the work required to transition to production on a new plot. Then their livelihoods would have been restored to pre-project levels. Yet the LARPs’ ‘livelihood restoration’ allowance is payable only to affected people losing more than 10% of their agricultural or non-agricultural productive assets. There is no qualification in para. 21 of the Involuntary Resettlement Safeguards Requirements that limits the applicability of this entitlement to severely affected persons only.

391. The CRP’s Eligibility Report noted that LARP allowances for livelihood restoration provide only for cash compensation.288 The CRP notes that the provision of cash is allowed in the SPS and the CRP does not question this. The CRP further recognizes that the provision in the Entitlements Matrix for Livelihood restoration refers to additional allowances. The CRP’s concern is the additional requirement provided under the Involuntary Resettlement Safeguard Requirements para. 12 that “[i]n the case of economically displaced persons regardless of

288 Footnote 4, para. 107, p. 20.
whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels.”²⁸⁹ (Emphasis added). The CRP notes that the SPS does not only require livelihood restoration but also livelihood improvement.

392. In view of the above discussion, the CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS for: (i) failing to ensure provision of adequate allowances for livelihood restoration; and (ii) failing to ensure provision of non-cash assistance for income or livelihood restoration and improvement under the LARPs, contrary to paras. 12 and 21 of Appendix 2 of the SPS Involuntary Resettlement Safeguards.

393. In May 2022, ADB informed the CRP that it was considering some community development initiatives, such as: (i) helping residents start businesses; (ii) training to become tour guides;²⁹⁰ (iii) training on dairy production and beekeeping; and (iv) use of organic fertilizers. Training options were at that time being explored with a regional agricultural training center and the Food and Agriculture Organization.

394. Section D2 on Livelihood Development of the Stakeholder Brief: Community Development and Livelihood Improvement posted on the project website noted that ‘[a]lthough consultations with relevant organizations and experts have indicated that there is very little potential for livelihoods development based on agriculture in the Khada Valley. Notwithstanding this, the possibility of potential benefits through training in niche areas of dairy and beekeeping or improved use of organic fertilizer is being explored discussed with specialized agencies” (emphasis added). Section E2 of the Brief on Community Development initiatives: Community Needs Assessment further notes that “Community development initiatives are being formulated, based on the findings of the community needs assessment and in accordance with the unfolding Masterplan+. The project has set aside funds under the loan to develop social infrastructure and build capacity of local communities such as helping residents start businesses, and training to become tour guides. Improved local roads, and connectivity to Gudauri and Kvesheti, are also essential requirements to enable the facilitation of training and business development opportunities” (emphasis added). However, the Stakeholder Brief does not provide further details of these planned community development initiatives. This may be contrasted with section G of the same Stakeholder Brief which refers to specific agreements reached with the local communities in Tskere and Sviana-Rostiani.

395. The CRP notes that these developments are not sufficient to remedy ADB’s pre-Board approval noncompliance in relation to assistance for livelihood or income restoration or improvement. The LARP entitlements have not been amended to include the entitlement to assistance for income or livelihood restoration or improvement. The CRP is not satisfied on the evidence before it that there is any clear justification for the de facto sequencing of cash compensation and non-cash assistance in such a way that access, and even entitlements, to livelihood and income restoration or improvement assistance have not been settled some two years after the commencement of involuntary acquisition of land and assets.

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²⁸⁹ Footnote 40, Appendix 2: Safeguard Requirements 2: Involuntary Resettlement, para. 12, p.46.
²⁹⁰ Footnote 176.
396. Turning next to whether the noncompliances directly and materially harm affected persons, the CRP notes with regard to ADB’s noncompliance in relation to livelihood restoration that limiting the entitlement to a livelihood restoration payment only to severely affected persons means that other affected persons are not entitled to receive, and in consequence have not received, this allowance.

397. ADB’s noncompliance relating to the absence of entitlement in the LARPs to non-cash-based programs for income or livelihood restoration or improvement means that affected people are not aware that they have a right to receive such assistance. It is not surprising, therefore, that it appears that no project grievances have been raised regarding this issue. Affected persons have been deprived of much-needed assistance which could improve their livelihoods or open opportunities for other sources of income. The CRP notes that this is also significant considering that the average income of affected persons in most of the project area is below Georgia’s national average.

398. Affected peoples’ entitlements under the SPS include both compensation, and assistance to improve or at least restore incomes and livelihoods. These entitlements are integrated within the safeguards that the SPS provides for application when there is involuntary acquisition of land or assets. The CRP finds that those APs whose land or assets have already been acquired have been directly and materially harmed by ADB’s two noncompliances regarding cash entitlements for livelihood restoration; and assistance for livelihood and income improvement and restoration. The without-project situation would be one in which relevant affected people’s land and assets had not been acquired. Management is required to propose remedial actions in accordance with para. 190 of the AMP. These should extend should also to affected people whose land or assets are still to be acquired.

4. Sviana-Rostiani

399. Sviana-Rostiani is one of the villages within the Khada Valley which was excluded from the LARP, based on the assessment that it would not be affected by the Project. Very few people live there and most migrate to more accessible areas during the winter months, except for one elderly couple.

a. Post-Board Approval

400. The SMR for July-December 2020 noted that ‘construction works on access road 4 were obstructed by residents of village Sviana-Rostiani because of the risk of avalanche and landslide.’ In its response, the Roads Department promised to construct a dam to halt the snow to be designed by the Engineering team. As to landslide, the Roads Department noted that it was assumed that the village is located on a hard rock layer and that there is therefore no such threat.

401. On 4 November 2020, representatives of the Roads Department, the PMCSC, and the contractor visited the village for a public consultation meeting concerning construction of access road. On 19 July 2021, a resident sent a letter to the Roads Department about this to which the

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291 Footnote 192, para. 64.
293 Footnote 292.
Roads Department replied in August 2019 that the resident's land is outside the highway development project area, citing the distance of over 200 m between the resident's house and the planned access road. The Roads Department explained that the impact of construction work on houses had earlier been discussed between officials of the Roads Department and residents in early spring of 2021. Thereafter, the Roads Department requested the Forensics Bureau to study the technical condition of houses and buildings in the village; assess the impact of the construction of the Kvesheti-Kobi highway on them; and determine whether it would still be safe to live in them or should the Roads Department acquire them.

402. The Forensics Bureau concluded that a number of houses and buildings in the village are damaged and have some inconsistencies with respect to seismic norms. Dynamic loads generated during the construction of the Kvesheti-Kobi section could damage the houses and cause the collapse of some agricultural structures. The Forensics Bureau added that the highway would act as a protective shield from avalanches from the mountain slope.

403. The Roads Department expressed its willingness to include the houses in an updated LARP and, in June 2021, tasked an independent certified audit company with determining the replacement value of the houses. Based on the findings of the Forensics Bureau and the audit company, the Roads Department offered to buy the affected person’s houses, but owners declined because they considered the compensation rates to be too low. Some asked for full redemption of the land and everything on it. A total of six (6) meetings were held with the affected persons but no consensus was reached. On 23 September 2021, the affected persons stated that they would submit a letter to the Roads Department after they had the chance to review the property evaluation report in detail.

404. The CRP observed in November 2021 that the slope rising behind Sviana-Rostiani is quite steep and saw two precautionary measures being taken by the Project. First, provision of stormwater drains at higher elevation than the road, to streamline and channel the water (from rain or melting snow) from the top of the mountain; and second, construction of an embankment (to be completed) on the downside towards the village. The CRP was further informed that the ADB project team planned to construct stone pitching to stabilize the embankment, which would channel stormwater and stop erosion resulting from inflow of water containing rocks, sediments, and other materials towards the village.

405. During its two missions, the CRP met with affected persons who expressed their reluctance to leave the village but also feared for their safety due to avalanches and falling rocks. They were uncertain about what may happen to them.

406. The CRP reviewed a December 2021 report that stated that the Roads Department had commissioned the National Environment Agency (NEA) to identify and evaluate avalanche prone areas in the Project, including above Sviana-Rostiani. On 22 February 2022, the NEA sent its assessment to the Roads Department stating that “the change of terrain relief (cutting through the slope) performed by the contractor company for the arrangement of the access road, in terms of avalanche danger, represents the creation of a small terrace and low land in the avalanche transit zone, which will reduce the level of pre-avalanche risk”.

407. On 5 March 2022, a landslide occurred on access road 4. Work stopped while the spoil generated from the landslide was being removed. During its April 2022 mission, the ADB project team visited the affected village and met with two (2) elderly residents to discuss their concerns.

295 Footnote 175, para. 48, p. 12.
A draft action plan shared with the CRP reiterated that the safety concerns of the villagers were supported by the study commissioned from the Forensics Bureau by the Roads Department. As a result of that site visit, ADB concluded that “the buildings in Sviana-Rostiani will need to be compensated and to satisfy the requirements of SPS 2009, a LARP addendum for the village needs to be prepared and implemented as soon as possible.” Three (3) different resettlement options are being considered, i.e., temporary relocation, permanent full relocation, and permanent relocation of buildings but no economic displacement.

ADB informed the CRP about the process that will be followed before finalizing the LARP Addendum. It is worth noting that a planned impact assessment as part of the process includes assessment of “cultural heritage items and will identify the reinforcement work needed to permit their preservation”. This is planned to be done for items which are both acquired or not acquired from affected persons. The LARP Addendum will follow the model of the LARPs prepared for this Project but with additional new chapters – the detailed designs and infrastructural layout of the houses to be constructed and the detailed temporary relocation plan. This chapter of the LARP Addendum will provide specific information on the location and the features of the rental premises and will provide a copy of the rental contract indicating rental costs and rental period. The costs of house reconstruction and of the temporary relocation plan will be added to the LARP costs. It is planned instead that “[t]he implementation of the LARP Addendum will consist of two separate processes. The first will be the delivery of compensation and allowances to the AP. The second, will be the construction of new houses for AP opting for options 2 and 3 and the implementation of the temporary relocation plan.” The duration of the temporary relocation will be dependent on the completion of the house construction.

b. Analysis and Findings

ADB is aware of affected peoples’ concerns and project impacts at Sviana-Rostiani and has been engaging with the Roads Department about these. The CLO has held several meetings with residents, and other ADB team members have also joined meetings between the Roads Department and residents. ADB has also fielded its international safeguards specialist and its international consultant on cultural heritage to visit and assess the village.

The decision to prepare a LARP Addendum for Sviana-Rostiani village is a welcome development. The affected persons themselves will choose from the three (3) options and have been provided a framework to provide assurance that appropriate compensation and assistance will be given.

There is no finding of noncompliance on this issue. Even before the decision to prepare a LARP Addendum was taken, ADB had recommended to the Roads Department that temporary resettlement be offered to the affected people, even if this was only during construction. However, the CRP observes that the decision to prepare a LARP Addendum for the village should have been taken earlier, given the Forensics Bureau’s report on the condition of the houses and buildings that are likely to be damaged or collapse during construction.

As part of its due diligence on any resettlement from Sviana-Rostiani, the CRP stresses that ADB should ensure that the design of any replacement houses (and/or demolition of the existing houses) fits with what is emerging from work reflected in the Historic-Cultural Reference Plan. (See Section D of this report on PCR.) This will ensure that the work on involuntary

resettlement complements what is being done on cultural heritage. At the same time, the ADB must ensure that the details of the temporary relocation contracts which are still being considered are in line with the SPS.

H. Access to Information

413. Complainants' perspective. The complainants assert that they lack project-related information including detailed project design and information on local employment.

414. ADB Management’s perspective. ADB Management argues that project-related information was disseminated widely, and that both the Draft and Final EIAs were disclosed in English and Georgian on both the ADB website and the Roads Department website, with hard copies in both languages made available at Dusheti and Kazbegi municipal offices as well as in Kvesheti and Kobi. The Georgian language version of the Draft EIA was also available at the MoEPA from 17 October 2018. Similarly, the draft LARPs for Lot 1 and Lot 2 were also disclosed on the ADB and the Roads Department websites and made available at the Roads Department offices and at Dusheti and Kazbegi municipal offices.297

415. Relevant policies and procedures. The SPS highlights ADB’s commitment to work with the borrower/client to ensure that relevant information is made available in a timely manner, in an accessible place, and in a form and language(s) understandable to affected people and to other stakeholders, including the public.298 Complementing this, the AIP aims to promote stakeholder trust in ADB and increase the development impact of ADB activities. It recognizes the right of people to seek, receive, and impart information about ADB’s operations. Among its guiding principles are clear, timely, and appropriate disclosure; a presumption in favor of disclosure; proactive disclosure; and providing information to project-affected people and other stakeholders. Paragraph 1 of Appendix of OM section L3 (Implementation Arrangements) provides that “[i]n line with the presumption in favor of disclosure in the Access to Information Policy (AIP), ADB discloses information, unless that information falls within the exceptions to disclosure…. The AIP applies to documents and information that ADB produces, requires to be produced by its borrowers or clients, or are produced and provided to ADB by other parties in the course of ADB operations”.

a. Pre-Board Approval

416. The CRP notes that there was extensive public information disclosure on the Project prior to Board approval, as evidenced by the disclosure of the Draft and Final EIAs and the LARPs; production of a video graphically showing the location of the planned infrastructure in relation to affected villages; consultations with stakeholders documented in the disclosed Stakeholder Engagement Plan; and the development and dissemination of a Project Factsheet as well as Frequently Asked Questions. ADB has also published on its website in July 2019 a Stakeholder Brief on Assessment of Alignment Alternatives in response to requests by project stakeholders. A Public Information Booklet was prepared and distributed to all affected households to ensure that affected persons and local governments fully understood the involuntary resettlement aspects of the Project including its processes, mechanisms, and entitlements of affected persons.

417. Stakeholder consultations resulted in several enhancements to the design of project infrastructure including: (i) extension of the tunnel section in Tskere, (ii) inclusion of additional

297 Footnote 4, Appendix 2, ADB Management’s Response, p. 36.
underpasses, and (iii) improvement of village access roads. This underscores the importance of disclosing project information early to allow affected persons to provide meaningful inputs which can enhance the Project.

b. Post-Board Approval

418. During a 2021 mission, ADB reportedly stressed the need to enhance access to information, and agreement was reached with the Roads Department that: (i) project communications will continue to be managed proactively and access to information will be further facilitated; (ii) the Roads Department would set up a container-type project booth to host project documents for local residents; (iii) the Roads Department would instruct the PMCSC to produce a video animation on cultural heritage, to develop and issue quarterly project newsletters and update the web page on Frequently Asked Questions; (iv) the Roads Department would instruct the two contractors to install information boards in each village through which the project road will pass; (v) ADB would assist the Roads Department in developing a series of thematic stakeholder briefs for disclosure on the project website; and (vi) the Roads Department would ask the PMCSC to help update the SEP.

419. The CRP notes that project updates have been disclosed regularly at different levels and in various forms. The Roads Department has developed a dedicated project website (https://kveshetikobiroad.ge/en/) and disclosures there include: (i) information about continuing engagements by the Roads Department, ADB, and EBRD with the project stakeholders, including affected persons as documented and disclosed in the SMRs; (ii) a project newsletter that has been published periodically from the third quarter of 2021; (iii) dissemination of public information leaflets targeting those unable to participate in consultations during the construction phase; and (iv) use of social media such as Facebook and Instagram. The webpage on Frequently Asked Questions have also been updated and two thematic briefs (on Assessment and Mitigation of Impacts to Cultural Heritage and Stakeholder Brief on Community Development and Livelihood Improvement) have also been prepared and disseminated.

420. The CRP notes that a Stakeholder Brief on Assessment and Mitigation of Impacts to Cultural Heritage (Brief on Cultural Heritage) dated September 2021 co-produced by the Roads Department and ADB outlines how cultural heritage issues were considered at the pre-feasibility study and feasibility study stages and in the EIA. It also highlights mitigation measures to be implemented. The Brief on Cultural Heritage introduces work conducted by the NACHP under contract to the Roads Department and summarizes key elements of the CHGAP. The Brief on Cultural Heritage mentions that the CHGAP has been disclosed online on the project website of the Roads Department. The CRP observes however that neither this nor other NACHP outputs (discussed in Section D of this report) have been disclosed.

421. In September 2021, an internal record of an ADB mission noted ADB’s suggestion that a pamphlet be prepared listing all grievances and complaints and indicating for each what modifications had been made to the Project in response. ADB suggested that such a pamphlet could also contain a form for affected persons to express whether they were satisfied by improvements made under the Project. The CRP understands that the Roads Department agreed to this, but the CRP has not seen this pamphlet yet.

300 Footnote 121.
422. A container-type project information booth hosting project documents and a big project map was set up by the Roads Department in Kvesheti. With inputs from villagers, information boards have also been provided in readily accessible locations in all affected villages so that communities have access to relevant information. This includes basic project information such as the map of the Project as it pertains to the village, contact details of key staff of the PMCSC, the contractors, the CLO, and the environment and social monitor (ESM), job opportunities, planned community meetings and other related issues. The CRP saw most of these information boards during its two missions.

423. The CRP recognizes these efforts. However, the CRP also noted during its second mission that contact details for the PMCSC cultural heritage monitors were missing, and that information on available maps posted on information boards was inadequate to provide villagers with an understanding of where the project facilities would be in relation to their own land plots, such as the distance of underpasses or cattle crossings from affected persons' land plots. This kind of information could be found in big project maps, but these are only available at the municipal offices; at the project information booth in Kvesheti; and at ADB’s and the Roads Department’s offices in Tbilisi. This shortcoming highlights the need for continuing regular community consultations during which more detailed information regarding specific concerns of affected persons can be presented and discussed.

424. Information about grievances, be they verbal or written, is included in SMRs and disclosed on the ADB project website. Complaints received for each reporting period are listed separately, as well as the number of complaints forwarded formally to ADB. The CRP notes however, that the SMRs do not appear to include grievances or complaints raised in the course of the CLO’s work and may not therefore present a complete picture of the level of affected people’s concerns regarding the Project.

425. The CRP was also concerned that NGOs were unable to access the Pre-Feasibility Study and the Feasibility Study reports for the Project despite requests sent to ADB and the World Bank. Although these reports were funded by the World Bank, only the Roads Department has the authority to disclose them since they own the reports. The CRP was informed that discussions between ADB and the Roads Department prior to project approval led to an agreement that the Roads Department would make these reports available to whoever will go to their office in Tbilisi to request for them. But there was no agreement to disclose them online, which could have enhanced their accessibility. The availability of these two reports for inspection on request is mentioned in the Project Information Booklet which the ADB had distributed to different stakeholders and also in the Stakeholder Brief: Assessment of Alignment Alternatives.301

426. In mid-2021, an official from the Roads Department stated that the Pre-Feasibility and Feasibility Study reports contain "commercial secrets."302 This is consistent with Order N241 dated 6 October 2020 where the Roads Department listed a number of highway projects including the Larsi highway for which feasibility studies were declared to be “commercial secret[s]”. The Order provides that the studies are accessible only to “government agencies, donor organizations, international financial institutions, any persons employed by the Department, and consultants who have agreements with the Department and/or donor organizations and/or international financial

301 Footnote 3.
302 Statement by Salome Tsurtsumia, video, ‘How the government is persecuting people from Khada because of the road construction - special reportage’ https://mtisambebi.ge/. Available online at https://www.youtube.com/watch?v=d3JK0nBNjhk&t=1602s, 10 December 2021 (statement at 23.54).
institutions." After the CRP’s concern regarding the implications of the Order was raised by the ADB project team, the CRP understands that the Roads Department assured them that the earlier agreed option of inspection in person upon request remains available.

427. Access to information was also raised by national cultural heritage experts who met with the CRP mission in November 2021, and who said that they would be interested to review the cultural heritage reports of the NACHP which the Roads Department had commissioned.

428. In January 2022, the Project disclosed on the project website of the Roads Department a presentation on the Summary of the Site- and Topic-specific Environmental Management Plans (SSEMPs and TSEMPs – described as ‘SEMPs’ in the presentation). The presentation explains what the SSEMPs and TSEMPs are; the roles of the different key project players are in relation to the various SSEMPs and TSEMPs; and the different types of TSEMPs and SSEMPs in terms of what impact each addresses; how the impacts are to be addressed; and shows on maps where the impact areas are.

429. The ADB commissioned studies on the Historic-Cultural Reference Plan and initial materials produced from the preparation of the KVDP have been presented and discussed with different stakeholders. Detailed presentations for community members and for civil society organizations on the Historic-Cultural Reference Plan as well as the preliminary vision for the KVDP have been disclosed in both English and Georgian on the project website of the Roads Department.

430. As mentioned in other sections of this report (e.g., Section D on PCR), many noncompliances by the contractors have been reported internally through ADB’s specialist community and environment monitors. While the Roads Department prepares and submits EMRs to ADB for its review, the CRP’s review of internal documents indicates that ADB’s feedback has not been effective in ensuring that the EMRs present an adequate complete overall picture of the contractors’ environmental and social performance given the ADB project team’s knowledge of this.

431. The CRP notes that detailed engineering designs have not been disclosed. Three (3) examples illustrate the potential significance of this in terms of affected person’s access to information about project impacts and mitigation measures: first, project output 1 of the Gender Action Plan refers to “installation of EWCD-[elderly people, women, children, and people with disabilities] friendly safety facilities “along the project roads”, including pedestrian crossings, road lighting, and bus stops “where needed”. Second, to address community health and safety, fences are supposed to be installed in appropriate places. Third, to facilitate continuing community and livestock mobility, underpasses and cattle crossings are to be provided. Since the design drawings are not accessible to affected people, they have no means of checking whether the mitigating measures to which the Project has committed are reflected in the design and are to be implemented. The CRP itself has not been able to track amendments to detailed designs made following agreement between ADB and the Roads Department (such as amendments to alignments of access roads to minimize risks of adverse impacts to PCR).

303 Ministry of Regional Development and Infrastructure of Georgia, Roads Department of Georgia. 2020. Order No. 241 (On preserving the commercial secrecy of certain documents related to contracts entered into between the Roads Department of Georgia, the State Sub-Agency under the Ministry of Regional Development and Infrastructure of Georgia, and relevant companies). Tbilisi.
432. In discussion with the CRP however, the ADB project team explained that although the detailed design had not been disclosed, relevant information on the project footprint and features are disclosed online and on-site. Detailed high quality maps with legends and markings in Georgian and English are available in a Project Information Booth and at the offices of the two municipalities covering the Project. Smaller-scale maps of the villages with markings of service roads, spoil disposal sites, and cattle crossings are also available on the information boards of each project-affected village.

433. The issue of the SEMPs-TSEMPs/SSEMPs is discussed in Section C of this report. Consultations on the proposed locations, impacts, and mitigating measures for some of the temporary facilities were held with affected persons in the concerned project villages (as documented in the SMRs).\(^{304}\) Equally important however is for affected people to have access to the TSEMPs and SSEMPs themselves.

434. The CRP considered the non-disclosure of the TSEMPs such as the Spoil Disposal Plan, Cultural Heritage Management Plan, Vibration Management Plan and Local Content Management Plan in its Eligibility Report. The SPS Environmental Safeguards mandate that updated environmental assessments (including the EMP) shall be disclosed for affected people and other stakeholders. The CRP further notes that a presumption in favor of disclosure is one of the principles of the AIP.

435. As noted earlier, the Project recently disclosed a presentation of the Summary of the TSEMPs and SSEMPs (which it referred to as ‘SEMPs’) on the project website of the Roads Department in the form of a slide deck. This concise and well-illustrated presentation is easy for the affected persons to understand. However, the information provided is inadequate for the affected persons to fully understand what mitigating measures the contractors have committed to take in relation to identified and possible impacts. Only if they know this can the affected persons engage fully and meaningfully monitor what is being done and hold the Roads Department and its contractors accountable for what they have committed to do. To illustrate, over 4 million cubic meters of spoils are expected to be generated by the Project. This huge volume of spoil, generated in a greenfield area, clearly needs to be managed properly to ensure that possible adverse impacts are mitigated. This is to be done through Spoil Disposal Management Plans which the contractors are to prepare and which ADB is to approve. Yet the Plans themselves are not disclosed.

436. In a second example, the affected persons have raised concerns about local employment. During consultations, community members were informed that the local population would be given preference in project employment.\(^{305}\) This commitment is to be reflected in Local Content Management Plans which are to contain targets for local employment by the two contractors. However, these TSEMPs are not disclosed so affected persons are not able to see how the commitment has been reflected in the plans or to monitor their implementation.

437. TSEMPs and SSEMPs may be highly technical and thus difficult for some stakeholders or affected people to understand. But this should not be at the expense of providing technical and detailed information which stakeholders may find useful when their rights or interests are at stake. It should be noted that the EIA and its EMP are themselves highly technical and voluminous


\(^{305}\) Footnote 7, p. 28.
documents, yet they are at the heart of ADB’s safeguards disclosure requirements. This is precisely to allow any stakeholder who wants to review them the opportunity to do so, in line with the objectives and principles of the AIP. The SPS and AIP require accessible information to be provided.

c. Analysis and Findings

438. The CRP notes that information dissemination and consultations with affected people and other stakeholders have been a feature of both project preparation and project implementation. ADB’s appointment of two field-based specialist monitors has facilitated ADB’s engagement with affected persons and has also provided the ADB project team with an effective two-way means of communication. While the CRP notes that community grievances are included in the disclosed SMR and EMR, those grievances which are directly received by ADB monitors at site-level are not included in these reports and are not disclosed. In its comments on the CRP’s draft compliance review report, ADB Management explained that many informal issues raised on a day-to-day level to the CLO can be resolved quickly without the need for logging them in the formal grievance process. They further mentioned that this approach is consistent with standard practice in Georgia, where complaints are normally resolved through oral feedback consistent with local customs and practices. Since the role of the CLO is to pass on information and build trust with the affected people, formally logging and disclosing these complaints may not support this process and could be counterproductive. The CRP appreciates this clarification and does not find ADB noncompliance on this issue.

439. Regarding non-disclosure of the Project’s detailed engineering designs, the CRP does not find ADB noncompliance. The CRP was informed by the Roads Department that anyone who is interested in seeing the detailed engineering designs can request them and go to the project office where they can see them. The CRP’s view is that the existence of this possibility should be widely disseminated so that affected persons and other stakeholders know that they have this option.

440. Regarding ADB’s monitoring and review of the EMRs and their disclosure of the contractors’ environmental performance and noncompliances, paragraph 53 of the SPS on Information Disclosure provides that in line with ADB’s Public Communications Policy (now superseded by the Access to Information Policy), “ADB is committed to working with the borrower/client to ensure that relevant information (whether positive or negative) about social and environmental safeguard issues is made available… to affected people and to other stakeholders… so they can provide meaningful inputs into project design and implementation… ADB will post the following safeguard documents on its website: (iv) environmental… monitoring reports submitted by borrowers/clients during project implementation upon receipt” (emphasis added). Paragraph 54 provides that “meaningful consultation is a process that… (ii) provides timely disclosure of relevant and adequate information… to affected people”. The CRP has not seen sufficient evidence of action by ADB to ensure that the EMRs reflect an adequate picture of the contractors’ environmental and social performance. The CRP finds ADB noncompliance with its review and monitoring and supervision responsibilities, under para. 58 the SPS, to ensure that the disclosed EMRs are consistent with the SPS requirement for disclosure of relevant and adequate information.

441. This reflects noncompliance by ADB with its monitoring responsibility under para. 57 of the SPS, which provides that the extent of monitoring activities, including their scope and periodicity, will be commensurate with the project’s risks and impacts.
442. The CRP appreciates ADB’s disclosure and presentation of reports from studies on the Historic-Cultural Reference Plan and the KVDP. CRP notes furthermore that the project has published a Stakeholder Brief on Cultural Heritage\textsuperscript{306} which was reviewed and approved by ADB and published on the project website and which provides information for stakeholders on measures taken to assess, avoid and mitigate possible project impacts on cultural heritage. The project has also published a Review of Cultural Heritage Management Implementation (2019-2022)\textsuperscript{307} which summarizes “the context, structure and implementation of cultural heritage management measures undertaken since 2018” in support of the project. This document was prepared by an international expert consultant who had also provided assistance to the multidisciplinary Georgian team tasked with preparing a Historic-Cultural Reference Plan.

443. On the issue of the Pre-Feasibility and Feasibility Studies, since these are not ADB project documents, ADB cannot disclose them itself. The CRP has taken note of ADB’s efforts to convince the Roads Department to provide access to these reports.

444. On the issue of the TSEMPs and SSEMPs, the CRP was informed that these cannot be disclosed because they are products of the contractual arrangements between the Roads Department and the contractors. The same contractual arrangement would logically hold for the Roads Department and the NACHP. However, the CRP noted that AIP para. 15 (ii) on Presumption in favor of disclosure states that “ADB discloses information unless that information falls within the exceptions to disclosure.” Further, OM section L3 specifically provides that “[t]he policy applies to documents and information that ADB produces, that ADB requires its borrowers or clients to produce, or that other parties produce and provide to ADB in the course of ADB operations. The policy will be implemented in accordance with detailed arrangements approved by ADB Management and made publicly available in accordance with ADB’s normal procedures”. Annex 3 of OM section L3 lists the project documents which are to be disclosed and includes “Project Safeguards Documents”. It states that “ADB shall post safeguard documents on its website in accordance with the requirements under the Safeguard Policy Statement (2009). Refer to the Safeguard Policy Statement for the complete requirements. Project information, including environmental and social safeguard issues, shall be made available to project-affected people and other interested stakeholders in a timely manner, form, and language(s) understandable to them and in an accessible place” (emphasis added). Paragraph 71 of the SPS states (in part): “…ADB discloses safeguard plans and frameworks, including social and environmental assessments and monitoring reports, on its website.”

445. The Final EIA clearly requires the contractors to prepare their own SEMPs, which are based on the requirements of the Final EIA and its EMP and form part of the Project’s overarching environmental and social management system. In discussions with the ADB project team and the Sustainable Development and Climate Change Department during its compliance review, the CRP was informed that the SEMPs/TSEMPs/SSEMPs provide granularity to the EMP and operationalize the needed mitigation measures for each project activity that has social and environmental impacts as identified in the EIA. It is clear therefore that SEMPs/TSEMPs/SSEMPs are project safeguard documents which are needed to meet the requirements of the SPS. They thus fall within the scope of the SPS and Annex 3 of OM section L3 and are subject to public disclosure by ADB. The CRP finds ADB noncompliance with its responsibility to disclose project safeguard documents under para. 71 of the SPS read in conjunction with para. 15 (ii) of the AIP


on Presumption in favor of disclosure and Annex 3 of OM section L3 with regard to the nondisclosure of the TSEMPs and SSEMPs.

446. The situation regarding disclosure of key NACHP outputs is similar. ADB Management’s position is that it was aware that baseline data on PCR collected prior to seeking Board approval was not extensive, and that being aware of this shortcoming, ADB presented comprehensive requirements in the EIA (paras. 1274–1289) and EMP to ensure that prior to construction, PCR would be “comprehensively managed”. ADB Management adds that the EIA recognized that additional work was needed with regards to cultural heritage and therefore included what ADB Management describes as “significant additional requirements for PCR that are unprecedented for a sovereign operations project in ADB’s Central and West Asia Department”. While the NACHP’s work was not envisaged in the Final EIA, as described in Section D on PCR it was commissioned by the Roads Department and included preparation of a Cultural Heritage General Action Plan, which set out actions to be taken by contractors, as well as review of the contractors’ CHMPs. Contractors took account of the NACHP’s outputs when revising their CHMPs. Detailed analysis of the NACHP’s outputs can be found in Section D of this report on PCR.

447. The CRP notes that the NACHP’s commissioned reports include its Second Interim Report which among other matters identifies key risks to PCR and their mitigation, and the CHGAP, which incorporates an Annex setting out actions to be taken by contractors. In common with the remainder of the NACHP’s outputs, these have not been disclosed. These documents contain material information regarding cultural heritage objects and monuments which are closely interlinked with the lives of the affected persons. Without access to information about significant project issues that are likely to impact on their lives, affected people cannot make sure that their concerns and interests are safeguarded. A Stakeholder Brief on Cultural Heritage states that the CHGAP can be downloaded from the project website but the CRP has not seen evidence that this is the case. Neither the summary Stakeholder Brief on Cultural Heritage nor the Review of Cultural Heritage Management Implementation, which is also published on the project website, can take the place of full disclosure of the NACHP’s final second interim report and the Cultural Heritage General Action Plan. Since the NACHP’s work is meant in part to address the shortcomings of the baseline assessment of PCR in the EIA and has according to ADB Management’s comments on the draft of this Report been prepared in compliance with SPS requirements, the CRP is of the view that the NACHP’s final Second Interim Report and the CHGAP form part of the project’s safeguard documents. They thus fall within the scope of the SPS and Annex 3 of OM section L3 and are subject to public disclosure by ADB. The CRP finds ADB noncompliance with its responsibility to disclose project safeguard documents under para. 71 of the SPS read in conjunction with para. 15 (ii) of the AIP on Presumption in favor of Disclosure and Annex 3 of OM section L3, with regard to the nondisclosure of the NACHP’s key final outputs.

448. The CRP finds that ADB’s failure to ensure adequate reporting in the EMRs undermines informed participation by affected people. This harms affected people, but the CRP does not have clear evidence that ADB’s noncompliance has to date caused direct material harm or that future harm is reasonably certain. ADB Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, in light of the remaining risk of harm, the CRP expects ADB to take action to ensure that the CRP’s finding of ADB noncompliance is addressed in future EMRs.

449. Regarding ADB’s noncompliance in relation to disclosure of SSEMPs, TSEMPs and the final outputs of the NACHP, the CRP finds that ADB’s failure to ensure adequate disclosure by the borrower undermines informed participation by affected people. This harms affected people but the CRP does not have clear evidence that ADB’s noncompliance has to date caused direct
material harm or that future harm is reasonably certain. ADB Management is not required to propose remedial actions in accordance with para. 190 of the AMP. However, given the remaining risk of harm, the CRP expects ADB to take action to ensure that the CRP’s finding of ADB noncompliance is addressed through disclosure of TSEMPs, SSEMPs and the NACHP’s Second Interim Report and the General Cultural Heritage Action Plan.

I. ADB Monitoring and Supervision

450. In this section, the CRP brings together insights from its review of ADB’s monitoring and supervision under each of the eight (8) areas included in the TOR for the compliance review. In doing so, the CRP seeks here to highlight its overall finding regarding ADB supervision, which arises out of the CRP’s consideration of ADB’s monitoring and supervision under themes B.2 and B.3, C, D, E.1, E.2, F, and G.

451. As part of its regular supervision of project implementation, ADB reviews the semi-annual EMRs and the semi-annual SMRs which document the implementation of the EMP and the LARPs. These reports are approved by ADB and disclosed on its project website. In addition to this, ADB also reviews Compliance Reports which are prepared by the borrower’s external monitoring consultant to ensure that LARP implementation is in accordance with the approved LARPs and compensation stipulated in the Entitlements Matrix are actually provided to the affected persons prior to turnover of their land plots, with any discrepancies properly explained. ADB’s acceptance of these Compliance Reports indicates its no-objection to turning over to the contractors the section of the road covered by the relevant report. Several review missions have also been conducted by the ADB project team and its international consultants since Board approval. Back-to-office reports document findings of these monitoring missions as well as agreements reached with the Roads Department to address issues that have been identified, including recommendations from the mission to improve project implementation.

452. The CRP notes that compared to other projects that the CRP has reviewed in the past, ADB has done more than usual to ensure good monitoring practice in this Project. The steps taken include:

(i) The allocation of additional human resources such as an international environment safeguards specialist, an international resettlement specialist, international cultural heritage specialist, and a national associate safeguards specialist to support the ADB project team.

(ii) The fielding of national experts on community liaison (i.e., the CLO) and environment and social monitoring (i.e., the ESM) who are on the ground and participate in weekly social and environmental safeguard meetings with ADB, the Roads Department and the PMCSC representatives and occasionally, the contractors’ environmental representatives. The CLO also visits affected communities and meets regularly with affected persons from different villages, attending to any concerns which may arise within that week or remain outstanding from previous weeks. In the same manner, the ESM meets regularly with the PMCSC and the contractor and conducts site inspections.

(iii) Reviewing weekly reports from the CLO and the ESM which document achievements for the week and issues of concern, together with recommended corrective actions to address these with a priority rating for each issue ranging from high (red), medium (orange) and low (yellow). Due dates for corrective actions are also provided. These
weekly reports also include an E&S Action Tracker, a Cultural Heritage Site Inspection Checklist, Permits and Approvals Status, Specific Environmental Management Plans Status, Grievance Logs from affected persons and project workers, and Temporary Facility Site Maps for both lots. It is from these weekly reports that the agenda for the weekly meeting with the Roads Department is based.

(iv) The delegation of project implementation to the ADB GRM and the assignment of the project officer who processed the loan from ADB headquarters to GRM to implement the Project provided for continuity and better coordination among project partners. The location of the project team, including project consultants, in-country at GRM, means that it is easier for ADB to be represented in project implementation meetings convened by the Roads Department or visit the project site, when needed.

(v) Regular meetings of the ADB project team with the Roads Department, the PMCSC and the contractors discussing various implementation issues including bi-weekly meetings to discuss the progress of LARP implementation. ADB provided the PMCSC with an action tracker so that project activities can be conveniently monitored, and the preparation of the bi-annual monitoring report is facilitated.

(vi) Participation in several meetings with concerned affected persons together with the Roads Department and the PMCSC to discuss specific issues/concerns raised by affected persons.

453. Since project implementation, multiple contractor noncompliances have been identified and recorded in UBM’s Action Tracker and the joint weekly reports from the CLO and the ESM. Some affected persons also raised their concerns with the CRP during its site visits in October and November 2021. An overview of relevant noncompliances and the actions ADB has taken is provided in earlier sections.

454. The CRP notes that ADB recognizes the importance of addressing and resolving these noncompliances and has raised them with the Roads Department during meetings, through email exchanges and during review missions. Issues communicated by ADB to the Roads Department and the PMCSC include the needs to ensure that:

(i) permitting approvals to ensure that permits are secured for all temporary facilities, project activities and other project infrastructure as soon as possible;

(ii) approval for spoil disposal sites is in place prior to use and that sites are managed safely and operated in an environmentally sound manner;

(iii) discharges of tunnel water, batching plant and camps and sewage treatment facilities are all approved prior to use then managed and monitored properly;

(iv) cultural heritage sites are identified during pre-construction surveys, and managed and monitored appropriately including completion of condition assessment prior to works followed by fencing and vibration monitoring during construction activities;

(v) avalanche protection and other health and safety issues are in place where relevant and incidents are reported in accordance with SPS requirements; and
topic and site-specific management plans are approved by the PMCSC before taking possession of any worksite and then implemented properly. On 4 February 2022, ADB withheld approval of Compliance Report 2-3 until the encroachments of the Lot 2 Contractor on private lands without any lease agreements have been resolved.

Despite all the efforts noted above, the CRP has observed that many contractor noncompliance issues have persisted, remaining unresolved for significant periods of time even after ADB has raised them with the Roads Department through the channels mentioned above. Some remedial actions taken have proven inadequate to completely resolve the issues, so the problems have recurred. Long-standing issues noted elsewhere in this CRP compliance report include inadequate demarcation and fencing of PCR sites; failure to carry out vibration monitoring at certain sites as required; encroachment on private lands; work proceeding before the required surveys; TSEMPs/SSEMPs, or permits, not in place. Some of these have been the subjects of Nonconformance Reports (NCRs) issued by the PMCSC to contractors. To illustrate, damage to the water pipes on access road 1 along Benian-Begoni was raised in the first week of November 2021 but remained outstanding since corrective actions did not offer a long-term solution. To make matters worse, during the third week of January, when the Lot 1 Contractor was repairing a central water pipe which distributes water to the houses, the central water pipe froze leaving seven (7) households without water supply. Water was restored to four (4) households only, one month later. With the snow conditions in the area making repair work difficult, an agreement was reached that the contractors would lay new water pipes from Tskere to the village in spring of 2022. In May 2022, the layout of the proposed new 2 km pipeline was presented to the residents.

At the cut-off for this report, the internal E&S Action Tracker dated 23 June 2022 showed that in Lot 1, of the total 74 issues raised, 59% had been closed; and five (5) considered high priority and 16 of medium priority remained unresolved (28% of the total). For Lot 2, of the 59 issues raised, 42% had been closed but 11 of high priority and 15 of medium priority remained unresolved (44%). Notable among these is the issue of the wastewater discharge in Tskere from a house which the Lot 1 Contractor rented for its employees. Sewage and other wastewater from this house were discharged untreated into a ravine in the village which raised complaints in September 2021. The Lot 1 Contractor then committed to set up a septic tank that was sufficiently large not only for the requirements of the rented house but also for other residents who could then connect to it. However, the PMCSC found that the septic tank was not properly sealed and would therefore leak once connected. Corrective actions were taken and as of the monitoring report of 23 June 2022, the Lot 1 Contractor had completed the upgrade of the septic tank. However, the wastewater pipeline from the rented house was not connected to the tank, meaning that the Lot 1 Contractor was not using the septic tank for its intended purpose. Untreated wastewater continued to be discharged, this time to a private land plot, nine (9) months after the issue was first raised. The CRP notes that this issue is not difficult to address, and the septic tank should have been constructed properly from the beginning.

For community grievances, which include damages to infrastructure and assets, disturbances (noise, vibration, dust), restrictions or loss of access, the Grievance Log for Weekly Report 22-2022 shows that of the total 69 complaints received since the project started, 60.87% have been closed, 36.23% (25 complaints) remain open and 2% (2 complaints) are waiting for technical solutions to be finalized and considered on ‘technical hold’. The CRP is concerned that

308 ADB. 2022. Georgia: Kvesheti-Kobi Road Project, Project Performance Rating. 1st Quarter, 2022 (internal).
309 ADB (Central and West Asia Department). 2022. Kvesheti-Kobi Road Project (Lot 1 and Lot 2) Weekly Environmental and Social Monitoring Report. 23 June (Internal).
310 Footnote 307.
311 Footnote 307.
open complaints without resolution are shown to have remained open for about 200 days (median) while those on technical hold have remained so for 493 days.

458. The CRP is also concerned that at four (4) temporary facilities, in the course of monitoring and supervision, ADB agreed to relax siting criteria that had been stipulated in the Final EIA. These facilities were a rock crushing plant in Kobi; batching plants 1 and 2; and Camp 2. The Final EIA provides for these facilities not to be located within 1 km of a residential property. However, ADB agreed to the location of the facilities 339 m (rock crushing plant), 153 m (Batching Plant 1) and 553 m (Camp 2 and Batching Plant 2) respectively from residential areas, provided that broad community support for three (3) facilities and approval of the 15 residents near Batching Plant 1 was obtained. While the CRP recognizes that realities on the ground may not allow for the strict implementation of the siting criteria for temporary facilities provided in the EIA, the CRP notes that affected persons cannot be expected to understand the impacts of such a decision unless additional information is made available to them to justify it. Moreover, there is no provision in the SPS or its accompanying OM section F1 that provides ADB with discretion to apply a ‘broad community support’ or ‘AP consent’ criterion as a basis for derogations, without further assessment of risk, from mitigation requirements established in a publicly disclosed EIA.

459. Paragraph 58 of the SPS provides that “ADB reviews project performance against borrowers’/client’s commitments as agreed in the legal documents. The extent of ADB’s monitoring and supervision activities will be commensurate with the project’s risks and impacts.” Paragraph 58 stipulates the monitoring actions to be carried out by ADB to supervise project implementation, including: “(i) conduct periodic site visits for projects with adverse environmental or social Impacts; (ii) conduct supervision missions with detailed review by ADB’s safeguard specialists/officers or consultants for projects with significant adverse social or environmental impacts; (iii) review the periodic monitoring reports submitted by borrowers/clients to ensure that adverse impacts and risks are mitigated as planned and as agreed with ADB; and (iv) work with borrowers/clients to rectify to the extent possible any failures to comply with their safeguard commitments, as covenanted in the legal agreements, and exercise remedies to reestablish compliance as appropriate”.

460. The persistence of contractor noncompliances despite the PMCSC’s notices of nonconformance and/or calls to action and despite ADB raising these issues directly with the Roads Department poses risk to affected persons, their communities, and the environment. It also poses a reputational risk to ADB.

461. The CRP appreciates the additional efforts which the ADB team has exerted to strengthen its monitoring and supervision of this Project. However, these steps have not been wholly effective. Admittedly, the COVID-19 situation in Georgia and the winter conditions in Khada Valley posed constraints. But they cannot serve as excuses for multiple noncompliances to persist.

462. As indicated above, contractor noncompliances have subsisted for extended periods of time and there are multiple instances where actions taken, or taken to date, have not remedied the issues or have reestablished compliance only temporarily. The continuation of the approach that the ADB project team has been taken to date does not give the CRP confidence that systemic challenges of contractor social and environmental management that are evident in internal documentation will be effectively addressed. There is no indication in the internal reporting that ADB’s diligence in monitoring has led to substantial change in how the borrower has dealt with these contractors noncompliances to ensure environmental and social management and safeguards compliance. ADB has diligently followed up on individual compliance issues identified in the field and by the PMCSC and the Roads Department; but the available evidence suggests
that stronger action is already warranted. The CRP notes that para. 58 (iv) of the SPS provides for ADB to “work with borrowers/clients to rectify to the extent possible any failures to comply with their safeguard commitments, as covenanted in the legal agreements, and exercise remedies to reestablish compliance as appropriate”. OM section F1/OP, para. 28 additionally provides that: “If any of the safeguard requirements that are covenanted in the legal agreements are found not to be satisfactorily met, ADB requires the borrower/client to develop and implement an appropriate corrective action plan (CAP) agreed upon with ADB to rectify unsatisfactory safeguard compliance. ADB may also consider exercising its legal remedies, including suspension, cancellation, or acceleration of maturity, specified in the legal agreements.” (Emphasis added).

463. As mentioned in Section G of this report, in February 2022, ADB initially withheld approval of Compliance Reports 2-3 of the Lot 2 Contractor. In a communication to the Roads Department that month, an ADB project team member stated that unless encroachments on private lands by the Lot 2 Contractor were resolved, ADB may require the Roads Department to prepare a corrective action plan. This is the only instance where possible escalation action (through the preparation of a corrective action plan) is referred to in the documentation made available to the CRP. As at June 2022, the CRP does not have evidence that ADB has taken steps either internally or with the borrower to consider additional systemic options available to reestablish and enhance compliance as envisaged by para. 58(iv) of the SPS. ADB has extensive knowledge of the Project’s compliance challenges and has tracked in some detail the periods of time over which these have persisted. The CRP expected to find evidence that ADB had considered stronger and more systemic action to escalate its concerns through ADB’s senior management. There is also no evidence that ADB has required the Roads Department to develop and implement a corrective action plan as provided in OM section F1/OP, para. 28. While the SPS does not provide a clear framework for such escalation, requiring ADB simply to “work with borrowers… to rectify to the extent possible any failures… and exercise remedies… as appropriate”, the risk of harm as well as actual direct and material harm resulting from such inaction or slow action should have been the guide point for earlier systemic escalation of the nonconformances. The actions taken to date do not reflect noncompliance with this requirement when individual compliance issues are considered in isolation; but it is clear to the CRP that they have been insufficient. The CRP is not satisfied that supervision actions taken by ADB have been commensurate with the Project’s risks and impacts and finds ADB noncompliance with SPS, para. 58 (iv).

464. On harm, the CRP finds that ADB’s noncompliance regarding supervision of project implementation in the light of multiple persisting contractor noncompliances caused direct and material harm to some affected people. The actions of other actors also contributed. ADB Management is required to propose remedial actions in accordance with para. 190 of the AMP.

VI. CONCLUSIONS AND LESSONS LEARNED

465. Within the scope of the TOR for this compliance review and in accordance with the discussions on the findings detailed above, Table 5 below summarizes the CRP’s determinations of noncompliance.
Table 5. Findings of Noncompliance and Harm, and Associated Management Remedial Actions

<table>
<thead>
<tr>
<th>Topic</th>
<th>Finding of ADB Noncompliance</th>
<th>Finding of Harm? (Yes/No)</th>
<th>Management Remedial Actions (Required/Action Suggested/No Action*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Environmental Impact</td>
<td>The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS, to ensure adequate consideration in the Final EIA of induced impacts relating to the connection established by the Project between Gudauri and the Khada Valley, as required by Environmental Safeguards Policy Principle 2 of the SPS. (See para. 71.)</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td>2. Air, Noise and Vibration</td>
<td>The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities, under para. 56 of the SPS, to ensure inclusion in the Final EIA of adequate baseline data with regards to air quality in the project area in accordance with relevant provisions in paras. 5 and 9, Appendix 1 of the SPS. (See para. 89.)</td>
<td>No</td>
<td>No Action</td>
</tr>
<tr>
<td>3. Physical Cultural Resources (PCR)</td>
<td>The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS, to ensure inclusion in the Final EIA of adequate baseline data with regards to noise in the project area in accordance with relevant provisions in paras. 5 and 9, Appendix 1 of the SPS. (See para. 103.)</td>
<td>No</td>
<td>No Action</td>
</tr>
<tr>
<td>3.1 Pre-Board Approval</td>
<td>ADB’s pre-Board approval due diligence fell short of the standard required of it under the SPS para. 56. ADB did not confirm prior to Board approval that all key potential environmental impacts and risks of the Project were identified; or that measures for avoidance, minimization, and mitigation of adverse impacts to PCR were adequately incorporated into safeguard plans and project design; as it was required to do by para. 56 of the SPS. In particular, ADB did not ensure: (i) that the assessment process was based on</td>
<td>Yes</td>
<td>Action Required</td>
</tr>
<tr>
<td>Topic</td>
<td>Finding of ADB Noncompliance</td>
<td>Finding of Harm? (Yes/No)</td>
<td>Management Remedial Actions (Requireda/Suggestedb/No Actionc)</td>
</tr>
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<tr>
<td>3.2 Post-Board Approval</td>
<td>appropriate baseline data on PCR in accordance with para. 5 of Appendix 1 of the SPS and that the EIA included comprehensive baseline data in accordance with para. 9 of Appendix 1 of the SPS; and (ii) that the EIA’s assessment of landscape impacts and their avoidance and mitigation reflected the integration of landscape in the PCR provisions of the SPS by means of the definition of PCR provided in footnote 13, para. 45, Appendix 1 of the SPS. In consequence, ADB was not in a position to assure itself that the level of detail and comprehensiveness of the Final EIA was commensurate with the significance of the potential impacts and risks with respect to PCR as required by Annex 1 to Appendix 1 of the SPS (See para. 216).</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td></td>
<td>Following Board approval, ADB did not comply with its monitoring and supervision responsibilities under para. 58 of the SPS in two respects:</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>(i) It did not ensure in the period following Board approval that there was adequate assessment and mitigation of potential adverse impacts on PCR as required by Principles 2 and 4 of the Environmental Safeguards of the SPS in light of the findings of the additional work conducted by the NACHP and GeoGraphic in the course of project implementation (See para. 219.)</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td></td>
<td>(ii) It did not supervise the Project in such a way as to ensure that steps taken to address the risks to PCR from adverse construction impacts reflect the hierarchy set out in Principle 4 of the SPS Environmental Safeguards. (See para. 220.)</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
</tbody>
</table>
### 4. Socio-economic Impacts and Project Benefits

#### 4.1 Adverse social impacts

Regarding identification and mitigation of adverse social impacts, the CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS as it failed to ensure, as required by Principles 2 and 4 of the SPS Environmental Safeguards, that the Final EIA and its EMP:

<table>
<thead>
<tr>
<th>Finding of ADB Noncompliance</th>
<th>Finding of Harm? (Yes/No)</th>
<th>Management Remedial Actions (Required\textsuperscript{a}/Suggested\textsuperscript{b}/No Action\textsuperscript{c})</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) identified and effectively mitigated risks of adverse social impacts arising out of negotiated land acquisition by the contractors;</td>
<td>Yes</td>
<td>Action Required</td>
</tr>
<tr>
<td>(ii) provided for adequate mitigation of adverse impacts associated with reduced community access to some areas of land;</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td>(iii) went beyond simplistic assertions regarding the project’s visual impacts to identify the wider social implications of the Project’s landscape impacts; and</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td>(iv) provided for adequate identification and mitigation of adverse operational phase social impacts, particularly those regarding litter and waste and community safety and security.</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
</tbody>
</table>

These four (4) sets of omissions meant that ADB was not in a position to confirm prior to Board approval that all key potential social impacts and risks of the Project were identified; and that measures for avoidance, minimization, and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design; as it was required to do by para. 56 of the SPS. (See paras. 264-265.)
<table>
<thead>
<tr>
<th>Topic</th>
<th>Finding of ADB Noncompliance</th>
<th>Finding of Harm? (Yes/No)</th>
<th>Management Remedial Actions (Required\textsuperscript{a}/Suggested\textsuperscript{b}/No Action\textsuperscript{c})</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 Positive impacts and benefits</td>
<td>The CRP finds ADB noncompliance with its responsibility under OM section C3 on <em>Incorporation of Social Dimensions into ADB Operations</em> to ensure that in the pre-Board-approval social analysis of the Project, measures were formulated with implementation arrangements to maximize the social benefits of the Project. (See para. 312.) In the period since Board approval, the CRP finds ADB noncompliance with its responsibility under para. 6(iii) of OM section C3/BP to ensure that the project design maximizes the Project’s social benefits. (See para. 314.)</td>
<td>Not applicable: para. 187 of the AMP relating to “unfulfilled expectations” applies to both findings.</td>
<td>No Action</td>
</tr>
<tr>
<td>5. Gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1 Operational phase gender impacts</td>
<td>The CRP finds ADB noncompliance with its due diligence and review responsibilities under para. 56 (i) and (ii) of the SPS with respect to reflection of gender dimensions of operational phase impacts in the borrower’s Final EIA and its EMP as required by Principles 2 and 4 of the SPS Environmental Safeguards. (See para. 344.)</td>
<td>No</td>
<td>No Action</td>
</tr>
<tr>
<td>5.2 Enhancing positive gender impacts</td>
<td>The Final EIA refers to contextual challenges faced by affected people regarding issues including access to roads, public transport, and other services. Gender dimensions of these issues are clearly highlighted in ADB’s Gender and Social Analysis Report but have not been carried through into the borrower’s Final EIA. ADB did not seek to ensure that the Final EIA recorded and addressed them to explore opportunities for the Project to enhance positive gender impacts, as required by Policy Principle 4 of the SPS Environmental Safeguards read in conjunction with para. E of the Annex to Appendix 1 of the SPS. Accordingly, the CRP finds ADB noncompliance with its due diligence and review responsibilities under para. 56 of the SPS regarding preparation of the EIA. (See para. 346.)</td>
<td>Not applicable: para. 187 of the AMP relating to “unfulfilled expectations” applies.</td>
<td>No Action</td>
</tr>
</tbody>
</table>

6. Involuntary Resettlement
### Income and Livelihood Restoration

<table>
<thead>
<tr>
<th>Topic</th>
<th>Finding of ADB Noncompliance</th>
<th>Finding of Harm? (Yes/No)</th>
<th>Management Remedial Actions (Required/Suggested/No Action)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The CRP finds ADB noncompliance with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS for: (i) failing to ensure provision of adequate allowances for livelihood restoration; and (ii) failing to ensure provision of non-cash assistance for income or livelihood restoration and improvement under the LARPs, contrary to paras. 12 and 21 of Appendix 2 of the SPS Involuntary Resettlement Safeguards. (See para. 392.)</td>
<td>Yes</td>
<td>Action Required</td>
</tr>
</tbody>
</table>

#### 7. Access to Information

<table>
<thead>
<tr>
<th>Topic</th>
<th>Finding of ADB Noncompliance</th>
<th>Finding of Harm? (Yes/No)</th>
<th>Management Remedial Actions (Required/Suggested/No Action)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The CRP has not seen sufficient evidence of action by ADB to ensure that the EMRs reflect an adequate picture of the contractors’ environmental and social performance. The CRP finds ADB noncompliance with its review and monitoring and supervision responsibilities, under para. 58 the SPS, to ensure that the disclosed EMRs are consistent with the SPS requirement for disclosure of relevant and adequate information. (See para. 440.)</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td></td>
<td>From the CRP’s analysis, the SEMPs, SSEMPs, and TSEMPs are project safeguard documents which are needed to meet the requirements of the SPS. They thus fall within the scope of para. 71 of the SPS, para. 15 (ii) of the AIP, and Annex 3 of OM section L3 and are subject to public disclosure by ADB. The CRP finds ADB noncompliance with its responsibility to disclose project safeguard documents under para. 71 of the SPS, read in conjunction with para. 15 (ii) of the AIP and Annex 3 of OM section L3. (See para. 445.)</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
<tr>
<td></td>
<td>Since the NACHP’s work is meant in part to address the shortcomings of the baseline assessment of PCR in the EIA and has according to ADB Management’s comments on the draft of this Report been prepared in compliance with SPS requirements, the CRP is of the view that the NACHP’s Second Interim Report and the CHGAP form part of the Project’s</td>
<td>No</td>
<td>Action Suggested</td>
</tr>
</tbody>
</table>
safeguard documents. They thus fall within the scope of the SPS, para. 15 (ii) of the AIP, and Annex 3 of OM section L3 and are subject to public disclosure by ADB. The CRP finds ADB noncompliance with its responsibility to disclose project safeguard documents under para 71 of the SPS, read in conjunction with para. 15 (ii) of the AIP and Annex 3 of OM section L3 with regard to the nondisclosure of the NACHP’s key final outputs. (See para. 447.)

8. Monitoring and Supervision

The CRP is not satisfied that supervision actions taken by ADB have been commensurate with the Project's risks and impacts and finds ADB noncompliance with SPS, para. 58 (iv). (See para. 463.)

<table>
<thead>
<tr>
<th>Topic</th>
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<tbody>
<tr>
<td></td>
<td>safeguard documents. They thus fall within the scope of the SPS, para. 15 (ii) of the AIP, and Annex 3 of OM section L3 and are subject to public disclosure by ADB. The CRP finds ADB noncompliance with its responsibility to disclose project safeguard documents under para 71 of the SPS, read in conjunction with para. 15 (ii) of the AIP and Annex 3 of OM section L3 with regard to the nondisclosure of the NACHP’s key final outputs. (See para. 447.)</td>
<td>Yes</td>
<td>Action Required</td>
</tr>
</tbody>
</table>


Notes:

a “Required Action” means remedial actions under para. 190 of the Accountability Mechanism Policy 2012 (AMP) that are required to be prepared by the Management for this project.

b “Suggested Action” refers to remedial action that is not required under para. 190 of the AMP, but is nonetheless suggested by the CRP for inclusion alongside the Management Remedial Actions to address a corresponding remaining risk of direct and material harm.

c “No Action” means no remedial action by the Management is required or suggested because (i) ADB’s noncompliance has not caused direct and material harm to affected people; and/or (ii) future harm is not likely and is therefore not ‘reasonably certain’, in the language suggested by the February 2019 OGC guidance; and/or (iii) in the case of findings on positive impacts and benefits in section 4.2 and on enhancing positive gender impacts in section 5.2, the CRP is not mandated to make a finding of harm because para. 187 of the AMP relating to “unfulfilled expectations” applies.

Source: Compliance Review Panel.

466. On other issues within the scope of the TOR for the compliance review, the CRP has not concluded that ADB was noncompliant with its responsibilities on the issues of vibration; design and deferment of environmental management plans; and involuntary resettlement with respect to (i) land registration; (ii) restricted access to land or orphan lands; and (iii) resettlement issues at Sviana-Rostiani village.

467. Remedial Action. This has been a multifaceted compliance review in which the CRP has made multiple findings of ADB noncompliance. The CRP’s view is that the remedial action now to be taken by ADB Management should be adequate to ensure that risks of direct and material harm to affected people caused by ADB’s noncompliance are adequately addressed. The CRP proposes that the remedial action plan to be prepared by ADB Management in light of the findings of this Report should extend to all findings of noncompliance where the CRP has identified either actual direct and material harm caused by ADB’s noncompliance; or a remaining risk of future
direct and material harm caused by the noncompliance. The CRP proposes that all such remedial actions be subject to monitoring by the CRP.

468. **Lessons learned.** Alongside the formal findings of this Report, the CRP suggests that the Board and ADB Management may wish to reflect on 18 lessons derived from the compliance review process.

(i) **Lessons learned from consideration of compliance review themes**

469. **Air quality and noise:** *Lesson 1.* Baseline modelling and/or an assumption that baseline conditions are pristine can complement but do not of themselves replace the need for field data during baseline assessment of air quality, noise, and where relevant other environmental parameters.

470. **Site-specific and topic-specific environmental management plans.** *Lesson 2:* Topic- and site-specific environmental management plans developed by contractors are not explicitly addressed in the SPS but are widely used in ADB-financed projects and have close equivalents in the practice of other international financial institutions. ADB would benefit from addressing these important safeguard implementation tools within its updated Safeguards Policy Statement and associated operational procedures; including their status in relation to EMPs; disclosure requirements; and ADB’s responsibility for review and approval of TSEMPs and SSEMPs with safeguards significance.

471. **Physical cultural resources.** *Lesson 3:* The compliance review illustrates the importance of early and rigorous baseline assessment of PCR as an integral part of EIA process. *Lesson 4:* The compliance review points to a need to strengthen ADB’s own PCR capacity – whether in-house or through timely engagement of external experts.

472. **Lesson 5:** The CRP’s review benefitted from detailed insights gained through direct engagement with the National Agency for Cultural Heritage Preservation of Georgia. There may equally be value in normalizing practices of early and routine dialogue between ADB and borrower’s public agencies whose mandates and institutional capacities are closely aligned with critical project safeguards issues.

473. **Lesson 6:** In situations where baseline studies done prior to obtaining safeguards clearance and the Board approval are incomplete, or insufficient to satisfy SPS requirements, the safeguards policy compliance memorandum prepared by SDCC should specify what studies remain to be done and state that compliance is conditional on remaining studies being completed satisfactorily. The primary responsibility for oversight of such additional safeguard studies remains with ADB.

474. **Lesson 7:** ADB projects would benefit from further elaboration of cultural heritage requirements within ADB’s updated SPS and accompanying OM.

475. **Social issues:** *Lesson 8:* The compliance review has required the CRP to consider gender and social dimensions of ADB’s responsibilities associated with SPS environment safeguard provisions regarding ‘enhancement’ of ‘positive impacts’ as well as its responsibility under OM C3/BP on Incorporation of Social Dimensions into ADB Operations, to ensure that project design maximizes social benefits. These provisions are subject to compliance review and need to be internalized by ADB staff as requirements not aspirations, notwithstanding their focus on ‘value addition’ rather than ‘risk mitigation’.
Lesson 9: The compliance review raised questions about SPS coverage of contractors’ practices regarding land acquisition for temporary project facilities. These are not covered by the involuntary resettlement safeguards since failure of private land negotiations does not lead to expropriation. Given the risk of adverse social impacts in the event of poor contractor performance, as well as potential asymmetries of bargaining power in negotiations with affected people, the CRP suggests that this area would benefit from development of clear ADB performance requirements in the updated SPS.

Gender: Lesson 10: Input on gender dimensions of safeguards is led by ADB social specialists while gender specialists focus on implementation of ADB’s Policy on Gender and Development. Implementation of ADB’s responsibilities regarding gender dimensions of the SPS could be optimized and enhanced by integration of ADB’s gender specialists in relevant SPS due diligence and monitoring and supervision processes.

Access to information: Lesson 11: The compliance review illustrates that documents prepared by civil works contractors and implementing agency consultants can also be safeguard documents that are subject to the provisions of the SPS on access to information and ADB’s Access to Information Policy.

Lesson 12: ADB has no mandate to disclose pre-project pre-feasibility and feasibility studies that have not been prepared with ADB finance, or to require borrowers to disclose such studies. To ensure the adequacy of disclosure to affected people in ADB-financed EIAs while avoiding duplication of efforts, it would be desirable for project teams to seek agreement at an early stage of project preparation through discussion with borrowers, and as needed financiers of early preparatory analysis, to maximize disclosure of pre-feasibility and feasibility studies that have safeguards relevance and provide a starting point for later EIAs.

Supervision: Lesson 13: In this compliance review process, the CRP has appreciated the diligent monitoring of environmental and social issues by ADB, in particular through deployment of two specialist monitors in the project area. However, effective ADB supervision also demands clear escalation processes and triggers. This area could benefit from additional internal operational guidance.

(ii) Internal lessons learned from the compliance review process

Engagement with the ADB Project Team. Lesson 14: The ADB project team, led by the Country Director of the Georgia Resident Mission, was highly cooperative throughout the compliance review. In addition, the project team welcomed input on various issues that came to the CRP’s attention during the compliance review, including some that did not fall within the scope of the TOR. These factors enhanced the efficiency of the process while maintaining the CRP’s independence and have, in the CRP’s view, established good practice for future compliance review processes.

Internal record-keeping. Lesson 15: Compliance review is more efficient, and the compliance assurance trail is enhanced, by meticulous record-keeping. In this compliance review, the CRP benefitted greatly from being able to access the detailed information available in internal weekly monitoring reports prepared by ADB’s field-based monitors. However, other internal records such as notes from regular meetings with the implementing agency were incomplete; the CRP was unable to substantiate some of ADB Management’s assertions through review of available internal project records; and there was no comprehensive electronic project directory
internally at ADB. ADB project team members needed to spend considerable time responding to the CRP’s detailed document requests, whereas the CRP needed to make specific requests for documents without knowing whether they existed, taking up time that could have been more efficiently spent analyzing those documents.

483. **Site visits during Covid-19.** *Lesson 16:* While the compliance review process took place during the COVID-19 pandemic, the CRP was successfully able to field two separate missions to Georgia in October and November 2021. This approach was initially necessitated by COVID-19 restrictions which prevented all CRP members travelling in person on the first, October 2021, mission. However, it had unexpected benefits. In particular it proved helpful to be able to discuss observations with the ADB project team following the first mission, then to observe progress on identified issues during a second mission one month later.

484. **‘Harm’ and ‘likely harm’.** *Lesson 17:* The interpretation of ‘likely harm’ under the AMP that was provided by ADB’s Office of the General Counsel to the CRP in February 2019 is not well-aligned with prevention of adverse impacts because it requires the CRP at the time of writing its final report to establish with reasonable certainty whether harm that has not yet crystallized will occur in the future. When there has been ADB noncompliance, even a small likelihood of serious harm that is caused by that noncompliance should in the CRP’s view trigger remedial action under para. 190 of the AMP. A ‘reasonable certainty’ threshold for future harm potentially has the perverse effect of readily enabling ADB Management to avoid triggering para. 190 by taking initial remedial action with an unclear chance of success in the period between a CRP eligibility determination and its final report following compliance review.

485. **Cooperation with the accountability mechanism of a co-financing institution.** *Lesson 18:* This has been the first occasion in the CRP’s history on which it has collaborated during compliance review with the accountability mechanism of a co-financing international financial institution; in this instance EBRD’s IPAM. It proved straightforward to respect the distinct mandates and confidentiality requirements of the two accountability mechanisms. The CRP found that sharing an expert international cultural heritage consultant and fielding a joint mission to Georgia in October 2021 had both analytical and efficiency benefits.
VII. RECOMMENDATIONS

486. The CRP recommends that the Board: (i) require the Management to prepare a Remedial Action Plan in accordance with para.190 of the Accountability Mechanism Policy 2012, which should include both the required actions and those actions suggested by the CRP in this Report and summarized in Table 5; and (ii) authorize the CRP to monitor implementation of all actions included in the Management Remedial Action Plan to be approved by the Board.

Elisea Gozun  
Chair, Compliance Review Panel

Halina Ward  
Member, Compliance Review Panel

Vaideeswaran Sankaran  
Member, Compliance Review Panel  
(from 25 August 2022)

Ajay Deshpande  
Member, Compliance Review Panel  
(from start of compliance review up to 8 July 2022)
REQUEST FOR COMPLIANCE REVIEW

Compliance Review Officer
ADB Compliance Review Panel
Manila, Philippines
Email: amcro@adb.org

Dear officer,

We would like to ask you to start the compliance review process, in order to ensure that the 23 kilometer Kvesheti-Kobi road project, a new section of the North-South Corridor, would be in compliance with the ADB’s environmental and social standards and minimize the impacts of the project, that is on the early stage of construction.

The project causes implicit danger to the unique valley, well known as the valley of 60 towers, without proper safeguarding and mitigating impacts on cultural heritage and landscape, people’s economic and social life, not bringing any traceable benefits for local communities.

Destruction of the Khada Valley and incomplete alternatives

Local communities have been vocal when asking the state Roads Department to find out the ways that would avoid the destruction of the Khada valley, its landscape and cultural heritage, that directly threatens the livelihood of the people. We have been asking that the highway avoids the valley and go alternatively through the neighboring valley (with almost no population and cultural heritage sites), or design other alternatives. That was explicitly stated during the public hearings in spring 2019, however, the project proponent never provides clear arguments for the final selection road route, including
provision of alternatives. Opposing the claim that the major selection criteria for the alternatives were the geo-engineering assessment, neither the ESIA, nor any other documents published later, do not contain the full pledge analysis of the alternatives and reasons for their rejection, including the essential constructible alternative (a single tunnel from Kvesheti to Kobi, estimated length 15.5 km, versus 9 km tunnel proposed in the project), as well as “No-project” alternative essentially not considered and discarded outright. Meanwhile, we heard numerous concerns regarding geological and seismological safety from the local community members and experts during the consultation period.

Therefore, we consider that it’s important to ensure that all alternatives are properly studied and disclosed to the public. Also the project documentation does not specify all necessary details, including the detailed route,, so that the project implementation should be on hold while all the mitigation and safeguard measures would not be in place.

Impact on livelihood and local benefits

The project claimed that it will bring prosperity to the region and according to the project documentation, one of the major beneficiaries is the local population. It is expected that the incomes of the local population will increase, as the project will make it possible to use the local road and the newly established Khada Valley Visitor Centre during all seasons. However, in general, the local benefits from 558 mln USD projects benefits for locals are more than modest. The project even not clearly addresses the need to ensure the internal four season road within the Valley that would be functional and easily accessible for villagers, while a new highway may even prevent accessibility of the people towards their own lands.

According to the project and follow up communications, “the EIA considered all types of Project-related impacts during construction and operation (noise, vibration, air quality, biodiversity...) and their relevant functional boundaries. As set out in the EIA, air quality and noise modelling established that traffic utilizing the road would not cause significant noise and air pollution above national or international standards.” However, the lack of proper baseline studies for noise and air pollution and considering the impacts during the exploitation phase presented by ESIA does not bring any confidence. e.g. despite the claims that IFC standards for air quality would be applied, in baseline study the air pollution monitoring was done in line with Georgian standards, and only for very few sites.Vibration was not also measured in the valley. Instead of identifying and mitigating risks of the vibration in Khada, EIA states: “At this point, it is difficult to accurately calculate the extent to which the vibration exceeds the allowable limit.” Air quality management and Noise pollution prevention action plans have been transferred as the obligations to the project constructor. It raises questions, especially on the background of the non-existence of proper legislation on noise pollution. Therefore, during the construction and later exploitation phase, for some communities the noise and air pollution level may be higher than WHO given standards. This would definitely deteriorate the livelihood of the locals.

The ESIA only addresses the needs and impacts of people directly affected by the project in some villages (Tskere, Kobi, Kvesheti, Arakheti, Zakatkari, Beniani, Begoni, Sviana, Rostiani and Mugure) of the Khada Valley; it does not address the wide array problems (pollution, noise, intensification of traffic flows, etc.) that all of the project-affected communities will face, including those of villages not listed here (see below). Furthermore, the report does not assess the socio-economic and gender impact of the project on the communities within the project area during construction and exploitation, including the impact of the workforce. The study also poorly addresses the direct impact of land acquisition on project-affected
It should be noted that several of villages in Khada Valley are not considered ‘affected’ in the project documents, although there are plans for additional infrastructure that impacts those villages. The response from the ADB and EBRD confirms that the project documentation does not include the environmental and social impacts of these activities or risk reduction plans for the road of Gudauri. “The existing track from Zakatkari to Gudauri will be temporarily improved during construction to enable access to spoil disposal sites and for other construction purposes subject to all necessary EMP requirements. Specific method statements will be prepared by the works contractors for all temporary roads, which will then be reviewed and approved by the Construction Supervision Consultant and RD before commencement of works. As indicated in the EIA (Section B.5.4) and during earlier consultations, the existing track to Gudauri is envisaged to be made into a permanent road in the future. Prior to that, the potential social and environmental impacts associated with the road will be studied further and additional consultations will be held with relevant stakeholders. The same approach will be followed for the proposed visitor center. Thereafter, the EIA and LARPs for the road section will be updated accordingly with property valuations that reflect current market value for land and replacement cost of non-land assets.” Therefore, it looks like that while Gudauri road is considered to be permanent, it is not considered as a part of the project and all activities are postponed for an undefined future.

ESIA claims that local households’ income would increase through the development of the touristic opportunities and local employment opportunities. However, the amount of local workforce that would be obligatory for the company is not specified.

In addition, the local touristic companies express their concerns as they consider that the new road will reduce the touristic opportunities within the valley due to increased noise, pollution and other construction and exploitation risks. The touristic companies never have been part of the project review, that comes clear from their statements.

Besides, when asked about long term development of the Khada valley, surprisingly it comes out that only now project sponsor, the Ministry of the Regional Development and Infrastructure, "requested ADB’s assistance to help develop a plan for sustainable land-use in the Project area, which will be prepared in coordination with all relevant stakeholders. Specific attention will be paid to preserve nature based and cultural heritage values, and to improve women’s access to social services and economic opportunities. The findings of this plan will also determine the concept of tourism development and the potential visitor center development, with the aim of maximizing benefits for local community members and supporting sustainable tourism value". How in that case the project claims that it will bring increased incomes from tourism when even the concept was not developed? How would the project respond if the newly developed sustainable land use plan will require certain changes in highway design?

All above mentioned are concerns of the local community members, alongside with the fact that the project does not address any aspect of the social-economic problems that Khada valley communities are experiencing, including absence of kindergarten, school, ambulatory and etc. Investing around half a billion USD and not ensuring even 1% for local communities’ livelihood improvement is an absolutely unacceptable practice.
The lands compensation process in public registry is still problematic, while there is a lack of information about the rights of the people (including existence of the project grievance mechanism, IFI’s accountability mechanisms and etc.) that are affected in different ways - loss of the lands, potential damages of houses during the construction work, air and noise pollution, geological safety and etc. All those issues still are the subject of the concerns for locals. Despite the assurances from EBRD and ADB that the land compensation process goes in line with their own standards, on the ground people are forced to fight to protect their rights. One of the clear examples is the property valuation. The prices for 1 sq.m raised from 5,60 GEL (1,80 USD 2019) to 16-22 GEL (5-7 USD 2020), however still the proposed price was not negotiated with owners.

**Problems of project design and impact on cultural heritage**

The quality analysis of ESIA, done by the independent expert, confirms our concerns regarding the project's impact on nature and livelihood.

The EIA clearly “postpones” numerous critical decisions from the EIA stage to the construction stage and therefore it does not get under the proper approval by environmental decision-making statutory authority. That includes issues such as the road from Gudauri, soil disposal, asphalt plants, that left to

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1 Extract from EBRD, ADB consolidated answer from 25.09.2020
Appendix 1

construction company remits. In numerous cases, the ESIA defines some activities as recommendations, rather than mandatory requirements. The issue of the disposal of 2 mln cubic meter soil is one of the most important issues for our safety, and while the project promoter starts to work, there is no clear answer how it plans to address this very particular issue. The numerous proposals we occasionally hear from the project company on allocation of the disposal on slopes, even more raises our concerns.

The project ESIA describes the cultural heritage that may be severely impacted but not mitigates it. The analysis and measures taken for cultural heritage protection raise lots of questions. E.g. ESIA claims that all cultural heritage was avoided during the selection of the route, but does not explain how it would do that. E.g. it claims that Begoni tower will not be impacted as it is already ruined. The lack of the proper assessment that has been well proved by the follow up process, developed during the pre-construction phase. 2

The latest acknowledgements from the ADB side, states that based on the concerns of local communities, as well as Green Alternative, in order to ensure cultural heritage protection all measures have been undertaken, including feasibility study, identification of the cultural heritage, consultations and so on. Based on it, six residual cultural heritage sites are located within 50m of the project road’s right of way and for these sites and some other sensitive areas mitigation measures have been developed. However, the same time from the letter becomes clear that there will be prepared two management plan; The first one a Cultural Heritage Management Plan (CHMP) that should be developed by the project works contractor, and second a Cultural Heritage General Action Plan (CHGAP) will be developed by Georgia National Agency for Cultural Heritage Preservation with support of International experts. The moves are welcomed, but as the project promoter already started to do work, there is a danger that in some cases mitigation activities will be developed very late, and/or would be not possible at all to reroute the project if needed. Therefore, it is important to ensure the transparency of the process, publicly declare the composition of the working group, Terms of Reference, organise the open discussions around the Action Plans through involvement of different stakeholder groups (NGOs, experts etc).

It’s also important to notice, that the major restrictive factor for the alternatives were the mountainous terrain followed with geological instability and climate fragility, however, in the project EIA for construction of “climate resilient road” that claimed to represent the “adaptation” measures, fails to address how it responds to the increased extreme weather events, the landslides, mudflows, rockfalls and avalanches, that will also affect the newly designed road. The ESIA document also does not address the question, whether various seismic processes will be activated due to the project construction and exploitation process or not.

The quality of ESIA

The analysis of ESIA, which forms the basis for environmental and construction permits under national legislation and of the ADB ESIA, shows that its quality is extremely poor. It does not contain important pieces of information needed for proper understanding of the project impacts that leads towards poor mitigation results. Along with a deficiency of baseline studies, ESIA and its related publicly available materials do not contain sufficient justification of the project, including proper cost-benefit analysis that is required by Georgian Environmental Assessment Code. Even mitigation measures and additional

2 Uncertainties with permitting on the National level is described in the publication.
infrastructure due the project implementation (for example, allocation of Russia-Armenia gas pipelines) are not properly budgeted.

Correspondence with ADB staff and project

Please find attached correspondence

GA letters and responses to ADB

Letter to Director General Mr. Werner Liepach CC: Deputy Director General Mr. Nianshan Zhang Central and West Asia Department Asian Development Bank, 4 September 2020
Letter to Director General Mr. Werner Liepach CC: Deputy Director General Mr. Nianshan Zhang Central and West Asia Department Asian Development Bank, September 6 2019
Letter to ADB local office, March 31, 2020

Letters from local citizens

- Letter from local citizens August 1, 2019, sent to project leader Mr. Kamel Bouhmad, submitted also to ADB accountability mechanism,
- November 18, 2019, to Mr. Werner E. Liepach; Mr. Jesper Klindt Petersen; Mr. Dong Soo Pyo; Numerous letter and communication were held between local communities and project unit both in Khada valley as well as in Tbilisi

Additional information

Brief for ADB AGM 2019, Green Alternative

Experts Opinion on Kvesheti Kobi Road 2019

Report on Kvesheti-Kobi 2020, Green Alternative

Petition,

ESIA quality analysis, M. Gvilava, Georgian language

What we ask:

Based on the above mentioned, we would like to ask you to study the project impact on the environment and its compliance with the safety standards of the ADB, what impact the project will have on our livelihood and quality of life, and what should be relevant measures to address them.

Please, protect confidentiality of the local community signatories, in order to avoid pressure from the governmental structures. Meantime, we would like to give the representation authority regarding the complaint to the Chairman of the Association Green Alternative, Manana Kochladze and Green Alternative social & environmental programs expert, Mrs. Mariam Devidze. (see annex 1).
TERMS OF REFERENCE OF COMPLIANCE REVIEW

Asian Development Bank Accountability Mechanism
Compliance Review Panel

TERMS OF REFERENCE OF COMPLIANCE REVIEW

Compliance Review Panel Request No. 2021/1
on the
North–South Corridor (Kvesheti–Kobi) Road Project in Georgia
(Asian Development Bank Loan 3803)

5 May 2021

This document is being disclosed to the public in accordance with ADB’s Access to Information Policy.
CRP Request No. 2021/1 – Request for Compliance Review on Loan 3803-GEO:  
North–South Corridor (Kvesheti–Kobi) Road Project  

TERMS OF REFERENCE OF COMPLIANCE REVIEW  

I. INTRODUCTION  

1. Following the Board of Directors (Board) decision on 21 April 2021 to authorize compliance review in respect of CRP Request No. 2021/1, the Compliance Review Panel (CRP) has prepared these Terms of Reference (TOR) for clearance by the Board Compliance Review Committee (BCRC) in accordance with para. 183 of the AMP. CRP Request No. 2021/1 was filed on 6 January 2021 (Complaint) under Loan 3803-GEO: North–South Corridor (Kvesheti–Kobi) Road Project (project). The Complaint is attached as Appendix 1. Following clearance by BCRC, the TOR will be provided to the Board, with a copy to ADB Management, and thereafter posted on CRP website, within 10 working days from receipt of the Board’s authorization of the compliance review.  

2. On 10 March 2021, the CRP determined that the Complaint was eligible and recommended to the Board that it authorize a compliance review of the project. The Board considered the CRP’s report on eligibility in a full Board meeting and authorized a compliance review on 21 April 2021.  

3. In accordance with para. 183 of the Accountability Mechanism Policy (AMP) read in conjunction with para. 76 of Operations Manual (OM) Section L1/Operating Procedures, this TOR sets out below the scope, methodology, estimated review time frame and budget for the compliance review, as well as the assignment of CRP members to the compliance review:  

II. THE REQUEST FOR COMPLIANCE REVIEW  

4. Brief particulars of the complaint and the project are summarized below:  

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Loan 3803-GEO: North–South Corridor (Kvesheti–Kobi) Road Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>Georgia</td>
</tr>
<tr>
<td>Borrower</td>
<td>Georgia</td>
</tr>
<tr>
<td>Project approval date</td>
<td>01 August 2019</td>
</tr>
<tr>
<td>Project closing date</td>
<td>31 December 2026</td>
</tr>
<tr>
<td>Requesting parties</td>
<td>Complainants, who requested non-disclosure of their identities, are represented by Manana Kochladze and Mariam Devidze, both from Green Alternative (an NGO based in Tbilisi).</td>
</tr>
<tr>
<td>Complaint issues</td>
<td>The complaint raised broad issues that relate to questions of ADB’s compliance with its policies and indicated probable harm to affected persons in the valley as follows:</td>
</tr>
<tr>
<td>ADB operations department responsible</td>
<td>Central and West Asia Department (CWRD)</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Project safeguards categorization</td>
<td>Category A for environmental impact</td>
</tr>
<tr>
<td></td>
<td>Category A for resettlement impact</td>
</tr>
<tr>
<td></td>
<td>Category C for indigenous peoples’ impact</td>
</tr>
<tr>
<td>Project description</td>
<td>The project includes the following outputs: (i) the construction of a road which has about 23 km of climate-resilient bypass road between Kvesheti and Kobi (which is a portion of the North–South Corridor which connects Tbilisi to the Mtskheta–Mtianeti region in the north and to the Kvemo Kartli region in the south), and about 5 km of climate-resilient all-weather access roads to roadside towns and villages; (ii) the establishment of a Khada Valley visitor center; and (iii) capacity-building of the Roads Department of Georgia on project and contract management. The total project cost is $558,600 million with a $415 million loan from ADB's ordinary capital resources; a $60 million loan from the European Bank for Reconstruction and Development (EBRD), not administered by ADB; and $83,600 as government counterpart funding. The Borrower is Georgia; with the Ministry of Regional Development and Infrastructure (MRDI) as project executing agency and the Roads Department as implementing agency. In CWRD, the Georgia Resident Mission is responsible for ADB’s oversight of the project with support provided by the Transport and Communications Division (CWTC) at the ADB Headquarters.</td>
</tr>
</tbody>
</table>
| Project status | As of April 2021, the ADB project team informed the CRP that the following activities had taken place, or were under way:

i. commencement of permanent works in October 2020 with the excavation of 890m of the emergency tunnel in Kobi;

ii. arrival in Georgia of the tunnel boring machine for the main tunnel that is being transported to the project site;

iii. establishment of 3 labor camps (on-going) and 2 batching plants (on-going);

iv. works on 3 temporary access roads in Lot 2;

v. acquisition of 83% of land plots (i.e., 243 of a total of 293); and

vi. preparation of development of a Khada Valley Masterplan which will be the basis for the design of activities and interventions relating to the establishment of the Khada Valley visitor center. |
<table>
<thead>
<tr>
<th></th>
<th></th>
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<tbody>
<tr>
<td>CRP Team</td>
<td>CRP member Ajay Deshpande will be the Lead Reviewer for this compliance review, with assistance from Halina Ward, CRP member, and Elisea Gozun, Chair, CRP. The CRP team will be supported by the Office of the Compliance Review Panel (OCR).</td>
</tr>
</tbody>
</table>
| Contact Person | Elisea Gozun  
Chair, CRP, concurrently, Head, OCR  
Email: crp@adb.org |

III. SCOPE OF THE COMPLIANCE REVIEW

5. In accordance with paras. 183-187 of the AMP and paras. 76 to 80 of OM Section L1/OP, the compliance review will investigate alleged non-compliance as set forth in the complaint by ADB of its operational policies and procedures in the course of the formulation, processing, and implementation of the project that directly, materially and adversely harm or will likely harm project-affected persons. In accordance with para. 199 of the AMP, the scope of this TOR will be limited to the specific complaint. It will not investigate and make findings on the Borrower’s compliance and will exclude the items set forth in paras. 142 and 148 of the AMP. The CRP’s compliance review and its subsequent compliance report will take account of the status and outcomes of any actions taken by ADB Management to resolve complainants’ issues in the period following the complaint. After carrying out a compliance review, the CRP will prepare its draft report and seek comments from the complainants, Management, and the Borrower. Finally, the CRP will submit its final report to the Board, through BCRC, including its findings.

6. Based on the CRP’s findings in its eligibility review, the CRP will investigate ADB’s compliance with its operational policies and procedures in the following areas: (i) EIA study area and project components (para. 36 of the eligibility report); (ii) air, noise, and vibration impacts (para. 44); (iii) design and deferment of the environmental management plan (para. 51); (iv) physical cultural resources (paras. 65-66); (v) socio-economic impacts and project benefits (para. 82); (vi) gender (para. 94); (vii) involuntary resettlement (para. 108); and (viii) access to information (para. 121). Compliance will be assessed against the following
operational policies and procedures that were in effect at the time of Board approval of the loan regarding project formulation, processing, and implementation:

i. Safeguard Policy Statement (2009)


iii. OM Section F1 (Safeguard Policy Statement) issued on 1 October 2013;

iv. OM Section C2 (Gender and Development in ADB Operations) issued on 06 December 2010;

v. OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on 06 December 2010; and


IV. CONDUCT OF COMPLIANCE REVIEW AND METHODOLOGY

7. The compliance review is likely to include the following:

i. review of relevant project files and related documents;

ii. project site visits with prior consent of the Government of Georgia;

iii. consultation meetings, including interviews, with:

   • ADB Management, staff and relevant consultants;
   • complainants, with or without their representative/s;
   • other project affected persons;
   • the Borrower, including its executing and implementing agencies and relevant consultants and contractors, as necessary;
   • officials from other relevant government agencies, as necessary;
   • relevant NGOs and civil society organizations, as necessary; and
   • the Independent Project Accountability Mechanism of EBRD which is also conducting compliance review of the project, as appropriate.

iv. engagement of consultants or technical experts, as appropriate, to assist the CRP in carrying out its work;

v. coordination with EBRD to explore opportunities for collaboration in the conduct of the compliance reviews of both IAM; and

vi. any other review or investigatory methods that the CRP consider appropriate in carrying out its work.

8. The project site visit(s) is needed for the following reasons:
6

i. to hold discussions with complainants and other affected persons and stakeholders in the project area, particularly those who would have difficulty engaging remotely with the CRP;

ii. to have a first-hand observation and measurement of the project's noise and vibration impacts and to understand air quality standards and values, especially if the absence of the baseline study in the project area;

iii. to understand the preparation of topic- and site-specific environmental management plans (TSEMPs/SSEMPs) by contractors and scope for participation of affected persons in the process;

iv. to visit the project area in general, more particularly the access roads, dump sites, plantation areas, spoil transportation routes, asphalt plant, borrow pits, among others;

v. to meet with Georgian technical experts in fields relevant to the compliance review, such as physical cultural resources (PCR), environment and land/property law;

vi. to validate and assess the implementation of planned activities relating to PCR;

vii. to understand the preparatory activities relating to the establishment of the Khada Valley visitor center, particularly on how it would strengthen the delivery of socio-economic benefits of the project to project-affected persons, especially women;

viii. to understand better the project’s location in relation to the existing road and tourist facilities and development in Gudauri;

ix. to ascertain the project’s impact on livelihood and appropriateness of income and livelihood restoration program;

x. to better understand the land acquisition and registration process and its impacts on the APs; and

xi. to engage with relevant project stakeholders and to conduct visual observations to determine whether any or all issues raised by the complainants and within the scope of the compliance review have been resolved as a result of subsequent actions by ADB Management or others.

9. Actual site observation and measurements, meetings with project contractors and onsite consultants, and face-to-face interviews with complainants and other project affected persons will be used to gather information during the field visit.

V. TIMEFRAME

10. The CRP plans to complete the compliance review process for this project within 12 months from clearance of this TOR by the BCRC. Below is the estimated timeframe of the
review. Time frame will be flexible especially due to uncertainties relating to the COVID-19 pandemic.

<table>
<thead>
<tr>
<th>AMP Step</th>
<th>Activity</th>
<th>Timeframe</th>
</tr>
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<tbody>
<tr>
<td>4</td>
<td><strong>Conducting compliance review</strong></td>
<td>May 2021 to May 2022 (Timing of a site visit will depend on the pandemic situation in Georgia and CRP/OCRP countries of residence and ADB policy on international travel. Site visit is tentatively planned in October 2021, or in last week of March 2022. Note: The project site and surrounding communities are not meaningfully accessible in winter for purposes of a compliance review.)</td>
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<tr>
<td></td>
<td>Conducting thorough compliance investigation using all possible and appropriate methods, listed above, including site visit(s), subject to the lifting of COVID-19 related travel restrictions and issuance of mission concurrence by the government.</td>
<td></td>
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<tr>
<td>5</td>
<td><strong>Compliance Review Panel’s draft report.</strong> CRP issues its draft report with findings to the Management, the Borrower, and the complainants for comments. CRP also shares the draft compliance review report with BCRC for their review.</td>
<td>01 June 2022 (comment period is 45 working days)</td>
</tr>
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<td></td>
<td>(Comments/responses to CRP draft report are expected by 03 August 2022.)</td>
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<tr>
<td>6</td>
<td><strong>CRP Final Report.</strong> After considering the Management’s, Borrower’s and complainants’ comments, CRP finalizes its report. Each party’s comments are considered by the CRP but only CRP’s final view is reflected in the final compliance review report. CRP then submits the Final Report to the Board through BCRC, including the comments from the complainants, the Borrower, and Management; and a matrix prepared by the CRP summarizing how it has responded to such comments.</td>
<td>23 August 2022 (within 14 working days from receipt of responses)</td>
</tr>
</tbody>
</table>

11. This timeline does not account for any additional time required for translation; requested extensions for filing of responses; unforeseen COVID-19 related restrictions; or other significant local political events that may delay the site visit(s). If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC’s clearance of the revised timeframe.
VI. BUDGET FOR THE COMPLIANCE REVIEW

12. Below is the proposed tentative budget for the compliance review. The budget and the need for consultants will be reviewed and adjusted, as needed, if deemed essential during the compliance review.

<table>
<thead>
<tr>
<th>Budget Item</th>
<th>Amount</th>
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<tr>
<td>Business Travel (assuming one site visit)</td>
<td>$65,500</td>
</tr>
<tr>
<td>Professional Fees of CRP part-time members</td>
<td>$310,000</td>
</tr>
<tr>
<td>Consultants</td>
<td>$68,500</td>
</tr>
<tr>
<td>Administrative Costs (Translation, Interpretation, Representation, &amp; Courier services)</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$459,000</strong></td>
</tr>
</tbody>
</table>

Elisea Gozun  
Chair, Compliance Review Panel

Ajay Deshpande  
Member, Compliance Review Panel

Halina Ward  
Member, Compliance Review Panel

05 May 2021
PERSONS CONSULTED BY THE COMPLIANCE REVIEW PANEL
DURING THE COMPLIANCE REVIEW

The Compliance Review Panel (CRP) contacted the following persons, within and outside the Asian Development Bank (ADB), in carrying out its investigation of the request under the Georgia: North-South Corridor (Kvesheti-Kobi) Road Project. This list is not exhaustive as it does not include persons who requested that their identities be kept confidential.

ADB Staff

Central and West Asia Department (CWRD)

1. Shane Rosenthal, Country Director, ADB Georgia Resident Mission (GRM), Central and West Asia Department (CWRD)
2. Michael Beauchamp, Principal Social Development Specialist (Safeguards), Portfolio, Results, Safeguards and Gender Unit, CWRD (CWOD-PSG)
3. Mary Alice Rosero, Senior Social Development Specialist (Gender and Development), CWOD-PSG
4. Ko Sakamoto, formerly Principal Transport Specialist, CWRD
5. Kamel Bouhmad, Portfolio Management Specialist, Georgia Resident Mission (GRM)
6. Avtandil Tskhvitava, Senior Project Officer, GRM
7. Nino Nadashvili, Associate Safeguards Officer, GRM

Sustainable Development and Climate Change Department (SDCC)

1. Bruce Dunn, Director, Safeguards Division (SDSS-SDCC)
2. Zehra Abbas, Principal Environment Specialist, (SDSS-SDCC)
3. Wendy Walker, Chief of Social Development Thematic Group, Social Development Thematic Group (SDCC)
4. Duncan Lang, Senior Environment Specialist, (SDSS-SDCC)
5. Irina Novikova, Senior Social Development Specialist (Safeguards) (SDSS-SDCC)

European Bank for Reconstruction and Development (EBRD)

1. Elena Gordeeva, Associate Director, Senior Banker (Banking)
2. Catherine Edet, Principal Environmental and Social Advisor (Environment and Sustainability Department)
3. Nurzhan Dzhumabaev, Principal Social Adviser (Environment and Sustainability Department)

GeoGraphic

1. Giorgi Gotsiridze, Director
2. Sopo Kenkebashvili, Project Coordinator
3. Tatia Ghvineria, Project Assistant

Independent Project Accountability Mechanism, EBRD

1. Victoria Márquez Mees, Managing Director
2. Sushma Kotagiri, Associate Director, Accountability
3. Kinga Jaromin, Compliance Associate
Ministry of Culture, Sports and Youth

1. Mr. Kakha Sikharulidze, First Deputy Minister

Ministry of Environmental Protection and Agriculture

1. Nino Tandilashvili, Deputy Minister

Ministry of Finance

1. Ekaterine Guntsadze, Deputy Minister
2. Ioseb Skhirtladze, Head, Public Debt Management Department
3. Natia Mshvidobadze, Deputy Head, Public Debt Management Department
4. Maia Chaladze, Head of Investment Projects Division

Roads Department

1. Salome Tsurtsumia, Deputy Chairperson
2. Levan Kupatashvili, Deputy Chairman
3. Mikheil Ujmajuridze
4. Tinatin Kolbaia
5. Rusudan Gholijashvili
6. Luiza Bubashvili
7. Archil Jorbenadze

National Agency for Cultural Heritage Preservation of Georgia

1. Davit Lomitashvili, Deputy Director General
2. Giorgi Cheishvili, Director of Ivane Javakhishvili Institute of History and Ethnology
3. Konstantin Pitskhelauri, Head of the Institute of Archeology

Complainants and other project-affected persons
Complainants and other project-affected persons from Arakhveti, Bedoni, Sviana-Rostiani, Benian-Begoni, Tskere, Mughure, and Zakatkari

Complainants’ Representatives

1. Manana Kochladze, Green Alternative
2. Mariam Devidze, Green Alternative

Uluslararası Birleşmiş Müşavirlik A.Ş. (UBM) Project management and construction supervision consultant

1. Krishna Chakhum
2. Arif Ozer
3. Kashif Bashir
4. Tamar Kavakhi
5. Nika Sopadze
6. Amiran Nadirashvili
7. Davit Kvirkvelia
8. Nikoloz Tskvitinidze

**China Railway Tunnel Group Co., Ltd. (Lot 1 Contractor)**
General Manager and environment and social staff

**China Railway 23rd Bureau Group Co., Ltd. (Lot 2 Contractor)**
General Manager and environment and social staff

**Consultants (Social Safeguards)**
1. Giorgi Khodeli
2. Dragica Veselinovic
3. Tariel Karelidze
4. Lanfranco Blanchetti-Revelli

**Consultants (Environment Safeguards)**
1. Nick Skinner
2. Maca Stamateli
3. Tamar Lazarashvili

**Nongovernment Organizations and National experts**
1. Iulon Gagoshidze, Georgian National Museum
2. Tsitsino Chachkhunashvili, Co-founder of association Society and Cultural Heritage G. Chubinashvili National Research Centre for Georgian Art History and Heritage Preservation
3. Manana Suramalashvili, G. Chubinashvili National Research Centre for Georgian Art History and Heritage Preservation
4. Natalia Bakhtadze-Englander, Georgia Ecotourism Association
5. Rezo Getiashvili, Caucasus Environmental NGO Network (CENN)
6. Zurab Javakhishvili, Ilia State University
7. Peter Nasmyth, National Trust of Georgia
8. Nato Tsintsabadze, President, ICOMOS Georgia
9. Manana Tevzadze, Chairperson, Blue Shield Georgia
10. Lali Pertenava, Head of Public Art Platform
12. La Tabagari, Chairwomen at Georgian Tour Operators Association
13. Mamuka Gvilia, Consultant, Green Alternative
14. Lia Bokuchava, Cultural Heritage Expert
To: Compliance Review Panel

Subject: Green Alternatives and complainants' comments on draft CRP N2021/2 on the North-South Corridor (Kvesheti-Kobi) Road Project in Georgia ADB loan 3803

Dear Mrs Elisea and Members of the Panel,

We would like to thank you for your detailed and thorough assessment of the project-related documentation and intensive groundwork. We regret that the Kvesheti Kobi greenfield highway project does not meet the ADB standards in numerous areas during the board approval.

Please find attached
Green Alternatives and complainants' comments on draft CRP N2021/2 on the North-South Corridor (Kvesheti-Kobi) Road Project in Georgia ADB loan 3803

Appendix 4

Association Green Alternative appreciates that based on our request the CRP founds the numerous non compliances of the project to ADB standards. It's useful that CRP report "presents the CRP's findings on each compliance review topic. Analysis of each topic is divided into two parts: ADB's actions prior to Board approval; and then those after Board approval. For each topic, the CRP describes how ADB i) conducted due diligence and reviewed relevant safeguard and other documents prior to Board approval; and ii) in the period following Board approval; how ADB exercised its project monitoring and supervision responsibilities."

In line with the policy, ADB should "not finance projects that do not comply with its safeguard policy statement, nor will it finance projects that do not comply with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law"; therefore from our perspective the Kvesheti-Kobi Road project should not be approved and financed by ADB board.

Green Alternative calls on ADB management to ensure that CRP findings will be used not only to improve the Kvesheti Kobi Project, and reduce its impacts, but also to serve as lessons learned for future projects in Georgia.

We hope that one of the lessons learned for ADB Management, including local office, would be not to ignore the letters and concerns raised local communities and CSOs before the board approval, rather try to address those concerns to avoid the future violations on the ground.

About the Alternatives and access to information on feasibility studies

GA disagree with CRP regarding the ADB management's responsibility regarding the accessibility of the feasibility studies regarding the project alternatives.

The fact that "ADB carried out due diligence on the alignment eventually chosen by the Government for further assessment while the World Bank-funded Feasibility Study and Detailed Engineering Design were being prepared for MRDI. Much of the detail in the safeguard documents prepared for the ADB loan, especially the environmental impact assessment (EIA) relied on the outputs from the World Bank studies; although ADB did not directly influence those studies," It does not make the situation more manageable. We appreciate the efforts of the ADB management, as witnessed by CRP, to convince responsible agencies to publish the information. However, the ADB is one of the final major funders of the actual road project. Therefore, it is their responsibility to ensure that all relevant information is publicly accessible and decisions taken in accordance with the Safeguard policy statement.

It is imperative as the Kvesheti-Kobi road section is not a stand-alone project. It is a part of the Northern Corridor. ADB plans to fund another section of the Northern Corridor - Natakhtari - Jirvali section. Again, the feasibility and alternative route studies are already confidential.
According to CRP, the public has no access to information regarding the final design of the corridor and its sections and the right to say. ADB should “ensure environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process.” That could not be done without proper public consultation. Pushing the responsibility over World Bank and MFDI, including the fact that those studies are confidential for the Georgian public, under the request of the Government, does not represent the best practice case.

ADB funds numerous infrastructure projects in Georgia. In some feasibility studies done by other financial institutions or some project bank is evolving in later stage. However, bank’s additional value should include proper due diligence and access to information in line with its safeguard policy statement.

In addition, it’s regrettable to see that ADB applies the salami practice toward the North-South Corridor and lacks the majority of assessments that could have a tangible impact on the project design and impacts. We consider that its goes against the Safeguard Policy Statement, that requires that the EIA for “each proposed project” should “identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socio-economic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the Project’s area of influence. Assess potential transboundary and global impacts, including climate change. Use strategic environmental assessment where appropriate”.

We also considered that use of SEMP-TSEMP/SSEMP model for Kvesheti-Kobi road was not the best choice given both low capacity of the road department and different state agencies, as well as taking into account the fact that there is no full pledge guidelines for contractors and the SSEMPs been not published routinely. In addition, given the scale of some activities, we considered that it should be part of the EIA at least in terms of impact.

E.g. According to the same CRP report, “over 4 million cubic meters of spoils are expected to be generated by the Project. This huge volume of spoil, generated in a greenfield area, clearly needs to be managed properly to ensure that possible adverse impacts are mitigated. This is to be done through Spoil Disposal Management Plans which the contractors are to prepare and which ADB is to approve. Yet the Plans themselves are not disclosed.”

However, it is also important to acknowledge that in the disposal of that amount of spoils in the affected area will have significant impact over the gorge, therefore, this impact should be thoroughly assessed within the EIA and at least principals of mitigation defined.

Finding 1. Zakatkar- Gudauri Road

CRP finding: “Environmental Impact Assessment Study Area and Project Component ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS to ensure adequate consideration in the Final Environmental Impact Assessment (EIA) of induced impacts relating to the connection established by the Project between the Khevi Valley and Gudauri, as required by Environmental Safeguards Policy Principle 2 of the Safeguard Policy Statement (SPS), (See para. 59).”

GA comments on finding 1

It is regrettable that “ADB did not seek to strengthen the TOR for the EIA to ensure that the Project’s area of influence and study area ensured that there would be adequate assessment of induced impacts.”
especially taking into account that according to the report in 2018 they have the concerns with induced impacts.

Zakatkari-Gudauri Road

We welcome the preparation and development of the Khada Valley Development plan; however, sharing the concern of the CRP that "the Zakatkari-Gudauri road in the period following Board approval. However, the CRP notes that since the EIA addendum for the new Zakatkari-Gudauri road has not yet been finalized and the content of the KVDP is not yet clear, and moreover the KVDP will not address all of the villages in the area adjoining the Zakatkari-Gudauri road; there remains a risk of direct and material harm to affected people as a result of ADB's pre-Board approval noncompliance in relation to the induced impacts of the connection established by the bridge between the Khada Valley and the Zakatkari-Gudauri road."

Therefore, a management action should ensure that: "The permanent Zakatkari-Gudauri road is part of the existing project by proceeding with all necessary formality under the national legislation and ADB."

According to CRP "Regardless of the quality of the Zakatkari-Gudauri road and whether it is upgraded as initially envisaged or not, an arched bridge (Bridge 3) will create a new link between Gudauri and the Khada Valley; facilitating the expansion of tourism and other development plans for the expansion of the Gudauri tourist area and development of the Khada Valley." It means that there is a broader area of influence. Consequently, ADB should have ensured that the induced impacts associated with the creation of the new link between Gudauri and the Khada Valley were considered in the Final EIA.

Another issue of concern is that KVDP should include or all villages that is impacted by the Kvesheti-Kobi road and associated infrastructure, including Zakatakari-Gudauri road. We considered that, the KVDP should be widely consulted with local communities and interested stakeholders, including experts of cultural heritage, archaeologists, tourism specialists, and planners, and their views should be incorporated into KVDP.

The implementation of KVDP should be monitored thoroughly by ADB and reported to CRP and the wider public.

Finding 2. Air, Noise and Vibration

Finding about Air Quality
CRP finding: "ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS to ensure the inclusion of adequate baseline data with regard to air quality in the project area in the Final EIA in accordance with relevant provisions in paras. 5 and 9, Appendix 1 of the SPS. (See para. 74.) Following Board approval, ADB did not ensure that further modelling studies were conducted prior to the start of construction as required by para. 532 of the Final EIA. ADB was, therefore, noncompliant with its monitoring and supervision responsibilities under paras. 57 and 58 of the SPS. (See para. 75.)"

GA comments on findings about Air Quality

While we are happy with the conclusion of the CRP, it's important to stress a few things that are also underlined by the CRP that Baseline studies should be conducted even in pristine areas. It's good that in
May 2022 the Air Quality Impact Assessment report was prepared, including detailed air quality monitoring and modelling studies.

However, scenarios based on the assumption that situation, even in worst-case scenario 3 (in Scenario 3 PM$_{2.5}$ will exceed the IFC/WB PM$_{10}$ daily limit value at the highest emissions detected but will not exceed the annual limit value), based on the assumption, “considering the development of engine and emission reduction technologies, it should be noted that these emissions levels reflect the worst-case situation. Actual emission levels are expected to be lower”. However, taking into account that the Georgian Government does not plan any new standards for engines, it’s very interesting where this confidence comes from.

Finding about Noise
CRP finding: “ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS to ensure inclusion in the Final EIA of adequate baseline data with regards to noise in the project area in accordance with relevant provisions in paras. 5 and 9, Appendix 1 of the SPS. (See para. 89.) Following Board approval of the Project, ADB was noncompliant with its responsibilities under para. 44 of the SPS in respect of its review of the contractors’ Noise Control Plans. ADB did not ensure that the Noise Control Plans were adequate to ensure that the borrower met the requirements of the SPS in respect of construction stage noise. (See para. 91.)”

GA comments
We would like to ask CRP to ensure that ADB reviews the NCPs and develop effective measures for noise control both in construction, as well as operation phase to avoid the higher noise levels that may cause harm to local communities.

Finding 3. Physical Cultural Resources (PCR)
CRP finding: “ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS in respect of physical cultural resources (PCR). ADB did not ensure that the level of detail comprehensiveness of the Final EIA was commensurate with the significance of the potential impacts and risks with respect to PCR as required by the SPS and Operations Manual (OM) section F1/Operational Procedures (OP) para. 7. ADB did not confirm prior to Board approval that all key potential social and environmental impacts and risks of the Project were identified; that measures for avoidance, minimization, and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design; as it was required to do by para. 56 of the SPS. (See para. 202.)”
Unfortunately, ADB very late realizes that "PCR is a major concern in Georgia" and it could not ensure consideration and protection of the cultural heritage of Khada valley within the Project.

CRP finding on the Project impacts on Sviana-Rostiani village is alarming. "Project construction has already damaged graves at Svianaanti, an uninhabited village adjoining Sviana-Rostiani. Adverse environmental impacts also occurred through avalanche and water runoff during the winter of 2022, and inhabitants of Sviana-Rostiani have additionally raised concerns. The latter led ADB to develop a draft Sviana-Rostiani Action Plan, dated April 2022. This sets out steps towards a LARP addendum and its implementation (see further Section G of this report). Decision-making on Sviana-Rostiani was informed by structural engineers’ reports that the Roads Department commissioned in respect of seven buildings. These concluded that the existing condition of the buildings meant that even small dynamic loads - of the kind to be expected during project construction - could at six (6) properties cause collapse; and at a seventh could cause damage or "dismantling" of part." Therefore, as mentioned in the document that "the Historic-Cultural Reference Plan recommends establishment of a historical built-up area protection zone at Sviana-Rostiani" will be the minimum measure that ADB should ensure.

It's regrettable that "ADB is noncompliant with its monitoring and supervision responsibilities under para. 44 of the SPS. It has failed to ensure in the period following Board approval that there was adequate assessment and mitigation of potential adverse impacts on PCR as required by Principles 2 and 4 of the Environmental Safeguards of the SPS in light of the findings of the additional work conducted by the NACHP and GeoGraphic in the course of project implementation." To ensure PCR protection, the implementation of KVDP after its approval should be essential, and ADB Management should do proper monitoring of KVDP implementation.

Finding 4
Socio-economic Impacts and Project Benefits
Adverse social impacts ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS as it failed to ensure that the Final EIA and its Environmental Management Plan (EMP): (i) identified and effectively mitigated risks of adverse social impacts arising out of negotiated land acquisition by the contractors; (ii) provided for adequate mitigation of adverse impacts associated with reduced community access to some areas of land; (iii) identified the wider social implications of the Project's landscape impacts; and (iv) provided for adequate identification and mitigation of adverse operational stage social impacts, particularly those regarding litter and waste, and community safety and security as required by Principles 2 and 4 of the SPS Environmental Safeguards.

ADB did not confirm prior to Board approval that all key potential social impacts and risks of the Project were identified; and that measures for avoidance, minimization and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design, as it was required to do by para. 56 of the SPS. (See paras. 243 and 244.)

GA Comments
In the post-approval phase, the Project started to develop numerous additional plans, including KVDP, Khada masterplan +, a priority investment plan for the tourism development plan, and the Project reached agreements on concrete actions with the local communities; However, there are a few problems.

1. First, the concrete activities' implementation phase is still lagging behind the agreed timeframe (water infrastructure, permanent resettlement, etc.)
2. Numerous documents are still in the preparation phase.
Therefore, we consider that CRP should secure maximization and enhancement of positive social impacts from the Project through monitoring of reached agreements and implementation of the developed plans:

- Mandatory construction of agreed internal roads and environmental by the Project
- Monitoring and execution of agreements reached between the local communities and projects by May 2022
- Through requesting the harmonization and adjustment of the plans with the needs assessment
- Development of the relevant village infrastructure based on needs assessment and approved community development plan that will be prepared in line with KVDP and Masterplan
- Design the visitor’s centre under wider public participation in line with KVDP and Masterplan +

Finding 5. Gender Community safety and operational stage gender impacts Enhancing positive gender impact ADB was noncompliant with its due diligence and reviewed responsibilities under para. 56 (i) and (ii) of the SPS with respect to consideration of gender dimensions of community safety and of operational stage impacts in the borrower’s Final EIA and its EMP as required by Principles 2 and 4 of the SPS Environmental Safeguards. (See para. 322.) The Final EIA refers to contextual challenges affected people face regarding access to roads, public transport, and other services. ADB did not seek to ensure that the Final EIA recorded and addressed these to identify opportunities for the Project to enhance positive gender impacts, as required by Policy Principle 4 of SPS Environmental Safeguards. ADB was accordingly noncompliant with its due diligence and review responsibilities under para. 56 of the SPS regarding the preparation of the EIA. (See para. 324.)

GA Comment
It’s regrettable that even though, "gender dimensions of project risks and adverse impacts have been appropriately identified at various points in the project documentation as a whole", "neither gender dimensions of community safety nor gender dimensions of operational stage impacts were adequately reflected in the borrower’s Final EIA and its EMP as required by Principles 2 and 4 of the SPS Environmental Safeguards."

According to the findings, "the Final EIA, the gender and social analysis and the SPRSS all refer to poor community access to services, including public transport; schools and nurseries; healthcare and internet connectivity; and poor electricity supply. The Board-approved Project did not improve the access of Khada Valley residents to these services directly, though access to the project road may ease access to some services indirectly."

In our view, unfortunately, this is a logical continuation of project frame, that only facilitates the mobility between Russia and Georgia and not considering the local people’s including woman needs.

We would like to recommend CRP request the update of the project GAP and monitor its implementation, and ensure that all relevant documents defined, as Tourism development plan, includes integrated gender components.


CRP finding: "ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS in agreeing to limit livelihood restoration only to cash and to provide allowances..."
for livelihood restoration only to severely affected people, contrary to paras. 12 and 21 of Appendix 2 of the SPS Involuntary Resettlement Safeguards. (See para. 368.)"

GA comments on findings about Involuntary Resettlement

CRP notes that “Sviana-Rostiani is one of the villages within the Khada Valley which was excluded from the LARP, based on the assessment that it would not be affected by the Project. Very few people live there and most migrate to more accessible areas during the winter months, except for one elderly couple.” Referring to the current state in the Rostiani village, elderly property owners, whose ancestors have lived there for centuries, were told to “move out of their homes now.” Furthermore, that only when out will they be paid any compensation. They do not trust the Roads Department and have not gone. Meanwhile, the work continues directly above their property; rock sometimes falling down towards the houses. Work should not be done in any civilized country until the villagers have left and given compensation, plus alternative accommodation. And it seems ADB is not taking any direct measures to ensure the safety of these people.

Meanwhile, several locals in Arakhvevi village were detained with accusations of illegal land grabbing of their traditionally-owned lands. Unfortunately, the Georgian Government tries to use coercive power in favour of project implementation while sacrificing locals’ interests and rights. Therefore, we believe that ADB’s role in ensuring that its safeguards are followed during the project implementation would be vital.

As CRP notes, even though “additional work done by the NACHP, GeoGraphic, and preparation of the KVDP does not yet provide adequate assurance that ADB’s earlier noncompliance will be remedied to the point that no significant harm to affected people occurs.” It implies ADB responsibility to find all possible ways to ensure that Khada residents will be equally better off through the project implementation.

GA would like to ask CRP to request from ADB management the revision and upgrade of Livelihood restoration plan in consultation with locals and monitor its implementation

Finding 7
Access to Information ADB’s failure to ensure disclosure of the grievances directly received by ADB; to ensure adequate disclosure of the contractors’ noncompliances in the Social Monitoring Reports and Environmental Monitoring Reports; and the nondisclosure of the detailed engineering designs are noncompliant with Policy Principles of the Access to Information Policy (AIP) contained in para. 15 (i) on “Clear, timely, and appropriate disclosure” and 15 (vi) on “Providing information to project-affected people and other stakeholders.” (See para. 415.)

ADB’s nondisclosure of final drafts of the NACHP reports produced under contract to the Roads Department and of the site-specific EMPs and topic specific EMPs was noncompliant with the AIP and its OM section 1.3. (See para. 416.)

No Comment

Finding 8 Monitoring and Evaluation Monitoring and Evaluation
ADB’s monitoring and supervision has been noncompliant with para. 58 (iv) of the SPS. The CRP is not satisfied that the actions taken by ADB have been commensurate to the Project’s risk and impacts as required by that paragraph. (See para. 432.)
We appreciate the CRP finding and ADB Management efforts to ensure the "more than usual to ensure good monitoring and supervision practice in this Project." Despite of that "persistence of contractor noncompliances" still occurred and discussions with the Roads Department does not help. As CRP founds "has caused harm and continually poses risk to affected persons, their communities, and the environment. It also poses a reputational risk to ADB."

While there were failures in project design, some of the non-compliances after monitoring lays in project structure, low capacity of the road department staff, combined unwillingness to deal with secondary issues, like cultural heritage, involuntary resettlement and etc. That's read in each statement the Road department been doing during the project preparation and implementation. The people raising concerns been always pushed back and accused in different wrong doings. Therefore, while the attitude would not change within the department, its impossible for the bank to ensure proper safeguarding for affected communities and environment.
RESPONSES FROM THE BORROWER ON THE DRAFT REPORT

Ministry of Regional Development and Infrastructure of Georgia
ROADS DEPARTMENT OF GEORGIA

To: Ms. Elisea Gozun
Compliance Review Panel
Asian Development Bank
E-mail: crp@adb.org

CC.: Ministry of Regional Development and Infrastructure of Georgia
E-mail: letters@mrdi.gov.ge

CC: Ministry of Finance of Georgia
E-mail: info@mof.ge

Dear Ms. Elisea Gozun,

We refer to the letter CRP2022BGG12 of 29 July 2022 and submitted draft report on Compliance Review Panel Request No. 2021/1 (hereinafter – “the Report”) on the North-South Corridor (Kvesheti-Kobi) Road Project in Georgia (hereinafter – “the Project”).

The Roads Department of Georgia under the Ministry of Regional Development and Infrastructure of Georgia (hereinafter – the “Roads Department” or the “RD”) has carefully reviewed a draft Report and we would like to thank you for your efforts and hard work that was done during the preparation of the Report. However, we would like to provide additional clarifications/comments to shed light on several issues and refine the Report.

Please find below our detailed comments on the Report:

1. Environmental Impact (Zakatkari-Gudauri road)

1.1. Regarding to para. 38, 45, 46, 51, 54, 55, 60 of the Report, RD wants to underline, that Zakatkari-Gudauri road is not part of main road (main alignment of Kvesheti-Kobi), but it is an existing local road and its improvement will have significant social meaning in the future. Gudauri is one of the biggest ski resorts of Georgia and enhancement of existing road will bring more working places not only for Gudauri,
but also for local people in the nearby places. Locals will have more opportunity to develop their own businesses, ensure efficient connectivity and more incentives to stay on their historical land.

1.2. We would like to underline that projects conducted in Georgia should be in line with Georgian legislation and Loan Agreement. Therefore, RD always acts according to Georgian Legislation and requirements of Loan Agreement.

1.3. Despite the fact that access road was not part of main alignment and main scope of the Project, Kvvesheti-Kobi Road Project EIA (para 274), underlines that as part of the Project the access road from Gudaure may be made into a permanent road. Also, it is mentioned that the road will be approximately 4.9 km long and its location is shown by Figure 49 of EIA. The EIA points out that the potential impacts associated with the access road will be studied further and EIA will be updated accordingly if the road becomes a permanent road.

1.4. The Roads Department and ADB in cooperation took the steps to follow the requirements of ADB policy and Georgian Legislation. In particular for the purpose of further evaluation of environmental impact assessments draft of new Initial Environmental Examination (hereinafter – the IEE) was prepared which is required under the ADB policy.

1.5. Moreover, according to Georgian Legislation there is no requirement to prepare EIA for the road unless it comes to construction of international or intra state roads more than 5 km, which is not case here. Following agreed strategy, separate draft LARP and IEE was prepared for the Gudaure-Zakatkari local road in 2019 and was updated in 2021 and 2022 respectively.

1.6. We would like to underline that as for today, there is no construction activities underway and it could not be commenced before approval of IEE and LARP.

1.7. It should be mentioned, that EIA assessed potential impacts of Access Roads (Section E. 7. 9 of EIA). According to the Contract sub-clause 4.15 and EIA, access roads are the responsibility of the contractor. At the planning stage, it is unclear where the contractor will decide to locate the camps, dumpsites, and temporary structures and which roads will be used as an access routes. Therefore, this issue cannot be regulated at the project planning stage, nor can the impact assessment of access roads be performed. We would like to note that the Contractor is responsible for any maintenance and any impact, which may be required for his use of access routes. Moreover, after identification location of temporary facilities, in 2021 Temporary Facilities Assessment Report was prepared and published on Project web page.

1.8. In the Report is mentioned, that “villages alongside the Zakatkari-Gudaure road including Kaishauni and Jaghmiani will also experience induced impacts from the project road. However, the KVDP will not cover this area.” (para. 55). RD underlines, that in fact, Jaghmiani and Kaishauni are simply not part of Khada valley, they are part of Gudaure and therefore KVDP, as it is document specifically related to Khada Valley, cannot cover them. Gudaure has its Master Plan approved by Resolution №587 of the Government of Georgia, dated December 2, 2019, which covers mentioned villages.

1.9. Based on para. 59 of the Report CRP founds non-compliance and determines that this non-compliance can cause a harm. We cannot share the statement made in the Report regarding the harm. CRP report does not define meaning of harm. We would like to emphasize on legal meaning of harm for more clarity. Georgian Legislation and international law recognizes the concept of harm. In order to determine the obligation to pay for harm, it is necessary to presence four cumulative elements, in particular there must be an illegal act committed by the person (which may be a violation of an obligation), fault, causal connection and a specific type of damage (harm). Absence of one of the mentioned element excludes notion of harm.
1.10. In conclusion, to consider all the accomplished planning stages, legal compliances and steps followed, as a result statement regarding the harm is exaggerated. Moreover, it does not even meet legal requirement what should be in place to determine the harm in the legal context.

2. Noise

2.1. As mentioned in the Report (para. 77), noise monitoring was conducted at Kvesheti and Arakhveti. Reasoning behind it was simple, in the above-mentioned areas there were already activities (population, traffic, and etc.) As in Khada Valley there were not such activities, noise level, baseline, was 0 (zero) and therefore, it was more than unreasonable to conduct such a monitoring. It is well mentioned in CRP Report (para.86), that noise modeling in Khada Valley was conducted in March 2022 as required under the final EIA and the results revealed that no excess noise is expected even after the road becomes fully operational.

2.2. However, it is underlined that lack of monitoring contractors’ Noise Control Plans from ADB’s side, cause non-compliance and harm (para. 91). We would like to highlight that Project supervisor, the Engineer which has role of supervising and project management, is selected according international bidding procedures. Moreover, the Engineer is international company with relevant qualified staff. Exactly the Engineer is in charge to review systematically living plans and request their update upon the consideration. All plans and among them Noise Control Plans was also reviewed with cooperation ADB’s relevant staff. Therefore, we cannot consider any other monitoring tools, which should be available. Moreover, any harm cannot even be considered in the given situation.

3. Physical Cultural Resources

3.1. Regarding to para. 137, 139, 149, 171, 174, 204, 205 RD would like to provide some factual clarifications as cultural heritage is a very sensitive issue and we want to address it accordingly.
3.2. During the design phase, to avoid potential impacts to known sites, the alignment of the road was selected to bypass monuments identified in the area as feasible. At the stage of preparation of EIA relevant cultural heritage studies were undertaken. In particular:
   a) review of the national register for cultural heritage monuments;
   b) review of national and international cultural landscape designations (Khada valley is not designated);
   c) consultation with stakeholders;
   d) walkover field survey undertaken by Iulon Gagoshidze, a Georgian independent expert archeologist with extensive experience;
   e) walkover field survey was conducted and relevant documents have been reviewed by the independent CH expert (high level staff member of ICOMOS Georgia) who was involved by the Golder Associate S.r.l. as an independent expert.

The 2019 EIA was supported by the completion of walkover surveys, but recognizing the potential for additional cultural heritage to be present the EIA included in Appendix N the details of the 5-phase cultural heritage strategy, which addressed gaps in knowledge about the cultural heritage of the valley.

3.3. In August 2019 the RD applied to NACHP to obtain the permit and submitted the CH survey and archeological conclusion, based on what the NACHP issued a positive opinion and approved the commencement of the works on the condition of the supervision by the archeologist during construction.
3.4. Implementation of 5-phase strategy was commenced in 2020 with pre-construction surveys by UBM, and detailed reconnaissance surveys and targeted trial excavations by NACHPG.

3.5. In August 2020 Walkover Field Survey was undertaken by NACHPG and based on this Inception Report was prepared in October 2020.

3.6. NACHPG prepared relevant reports accordingly.

3.7. It is significant to underline, that none of identified cultural heritage monuments are located within the physical protection zone.

3.8. According to Art. 36 Par. 1 of Georgian Law on Cultural Heritage (hereinafter – The Law), the territory surrounding a cultural property is defined as a primary buffer zone of the cultural property which consists of perimeters of physical and visual security.

- The perimeter of physical security is defined by the following distance: the height of the cultural property multiplied by two, but with no less than 50 meter radius (Law on Cultural heritage of Georgia, Art. 36, Par. 2).

- The perimeter of visual security shall be defined for a cultural property within a radius of 300 meters (Law on Cultural heritage of Georgia, Art. 36, Par. 4).

3.9. RD clarifies, that the the NACHP, according to their conservative approach, studied entire Khada Valley and Kobi area and identified 104 potential objects, which fall within the visual security protection zone (300 m from each side of the road. 300 plus 300 m – 600 m). Specifically, within the LOT 1, were identified 5 objects in the 0-50 meter physical protection buffer zone and 8 objects in the 50-300 m visual protection buffer zone and on LOT 2 were detected 20 objects in 0-50 m, 51 objects in 50-300. In total, 71 objects were detected in 0-300 m zone.

3.10. According to the recommendations considered in the NACHP reports, site is monitored by the Engineer’s and Contractor’s CH experts during whole construction activities, as well as by NACHP.

3.11. Also, on the bases of above mentioned NACHP reports, additional archeological surveys was recommended, which was conducted in May-June 2021 and after their clearance works were commenced on specific areas.

3.12. We would like to underline that EIA provides mitigation measures regarding Cultural Heritage Sites: (i) fencing off monuments located in the proximity of the works, prior to the starts of the construction; (ii) observing physical protection boundaries measures (50m); (iii) monitoring vibration effects on cultural heritage objects; (iv) using Chance Find Procedure described in Appendix E to the EIA; (v) ensuring presence of Cultural Heritage Monitor if any excavation is planned; and (vi) ensuring that the Contractors’ staff is familiar with Chance Finds Procedure and monument protection requirements. Report of NACHP did not come to some another mitigation measures and measures featured in EIA are in full compliance with relevant legislation requirements.

3.13. All the mitigation measures are closely connected to each other and at this time, are independent from each other. The Roads Department uses not only the fencing off the monuments, but also, monitors the vibration effects, uses Chance Find Procedure, ensures presence of Cultural Heritage Monitors etc. Besides, it should also be underlined that under Article 10 of the Law on Cultural Heritage the Contractor is obliged to ensure initial (temporary) protection regime of identified or discovered cultural heritage. This obligation is driven out of Sub-Clause 4.24 of the Contract.

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1 EIA, pg. 474.
2 EIA, Table 2: Summary of Pre-construction and Construction Phase Key Mitigation, pg. 40.
3 EIA, Cultural heritage Monitor, pg. 492.
4 EIA Appendix A, pg. 160.
3.14. As this particular project is ruled under FIDIC Pink Book the Contractor should act according Sub-clause 4.24 of Contract, which clearly indicates contractors obligation in order of protecting cultural heritage. Specifically, according Sub-Clause 4.24 of the Contract, all fossils, coins, articles of value of antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or the other persons from removing or damaging any of these findings. The Contractor shall upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. Moreover, Contractor can claim an extension of time for any delay if completion is or will be delayed or/and payment of any such cost, which shall be included in the contract price.

3.15. As for the budgetary resources, for the mitigation measures, the Roads Department points out that the relevant decision would be taken after the discovery of the archaeological and/or cultural heritage objects which should be in line with Georgian legislation, as well as with Sub-Clause 4.24. of the Contract (which defined contractors obligation if new archaeological and/or cultural heritage objects will be discovered upon construction works). As construction works are executed on the basis of the FIDIC contracts, Contract considers the variation procedure under the Sub-Clause 13, in case during the construction works it becomes obvious that additional works are needed to be implemented. Therefore, the Contractor is obliged to execute the additional works, with the relevant time and/or cost reimbursement. The Roads Department notes, that if the protection of the cultural heritage would require, the Contracts will be varied and the relevant Variation Orders will be issued by the Engineer.

3.16. RD underlines, that there is a contingency provision in the contract, as well as a corresponding article on how the contractor should act. Moreover, as mentioned above, LOT 2 functions under FIDIC type of contract, which has special Clauses regarding how the contractor should behave when it comes to the protection or discovering of cultural heritage.

3.17. In conclusion, we would like to underline that from the starting of the project planning up today all relevant activities was conducted and there is no relevant ground to consider non-compliance on the PCR.

3.18. Regarding para. 204, 205, 206 of the Report, RD wants to distinguish several issues. First of all, Historical-Cultural Reference Plan prepared by GeoGraphic, was a basis for preparation of KVDP. This is the document, which was prepared under the relevant law for the planning purpose of KVDP. GeoGraphic Report is not related and cannot therefore consider any potential impact associated with construction activities. There is a specific plan and steps already taken and implemented by the RD together with the NACHP, as it is provisioned in the Contract and by the regulatory authority.

3.19. Regarding para. 205 RD wants to underline, that the list of 60 CH monuments/objects was clearly misunderstood. This 60 monuments/objects are not located on Project affected area, but in the vicinity of whole Valley and are in poor condition. So, at some point and time, when necessary, NACHP or some other institutions, willing to do some works, can consider this list as a sensitive receptor or it can be used for the purpose of preparation Cultural Heritage Reference Plan. It has nothing to do with the Road Project construction activities or impact.

3.20. According to Law on Cultural Heritage of Georgia, the Ministry of Culture, Sport and Youth of Georgia is supervising Protection of Cultural Heritage. On the basis of Article 5.3 of the Law on Cultural Heritage and Order №108/6, dated 18 June 2019, issued by the Minister of the Education, Science, Culture, and Sport of Georgia “on approving the regulation of the Legal Entity under the Public Law – National Agency for Cultural Heritage Preservation Georgia” this entitlement is fully delegated to the National Agency for Cultural Heritage Preservation Georgia. According to the Statute of NACHP, NACHP is responsible for rehabilitation of CH. Therefore, neither RD, nor Contractor is and can be responsible for rehabilitation of CH in the total area of Khada Valley.
3.21. We also want highlight Annex 3 of Cultural Heritage General Action Plan (Interim Report 2), which defines “Required actions regarding cultural heritage and archeological sites”. The Annex presents specific actions such as conservation, vibration monitoring, detailed archeological survey, fencing, etc, which has to be done before and/or during construction works. It should be emphasized, that some works defined in Annex are already done and RD proudly states, that works are conducted in full compliance of the listed actions. Also, it is important to underline, that no construction works has been started on sites before further archeological surveys were conducted on a specified areas (May-June 2021) as recommended by NACHP.

3.22. In the Report (para. 206) is mentioned that regarding FieldID: 26 Further due diligence will be required for ADB to be in a position to assure itself that the relocation will meet relevant requirements. We would like to underline, that site relocation and relevant documentations could be only agreed and afterwards monitored by the regulatory authority, NACHP. Georgia has a number of international undertakings in the area of the protection of cultural heritage. Georgia is a party to the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (entered into force for Georgia as of 01/06/2011) and has to act in line with the commitments undertaken by this convention. Georgia as a Sovereign State has its own legislation regarding the protection of the cultural heritage, which is line with principles of convention and specifies measures of protection cultural heritage and the legislation requirements determines specific actions to be taken while relocation of cultural heritage. Furthermore, the relocation will take place under the supervision of the regulatory body in accordance with Georgian legislation.

3.23. Moreover, we want to emphasize, that Georgian Criminal Code has separate Chapter XXXII, which envisages Crimes against Cultural Heritage. Intentional Damage or destruction of cultural heritage sites or of other cultural heritage protected under the legislation of Georgia is punished respectively. Hence, first of all, RD and the Contractor are interested to carry out works fully in compliance with the legislative requirements, in the meaning, that no cultural heritage will be damaged.

3.24. RD cannot see any action and causal link, which will lead to harm, based on clarification in Par. 1.9. of this Letter. Therefore, any statement regarding the harm to the affected people is baseless.

4. Adverse social impacts

4.1. In the Report para. 218 and 246 refers to the case when the contractor constructed the camp in 2020 on unregistered land and in the early 2021 private person registered the land as a property. How the contractor leases the land is not a scope of the EIA, therefore it doesn’t addressed it. This is a subject of private Law. Moreover, it cannot be considered in the EIA at the planning stage, because the location where the contractor will place the temporary facilities remain unknown. Lands in each location has different price and status. It is completely impossible to pre-determine such issues in the EIA. Neither pre-construction guide for the contractor, nor the determination of the market rates of the land plots, nor Due Diligence will give us results, since there is a newly revealed circumstance in the form of a newly created property right and there are new owners who cannot be forced to sign a contract. We want to point out, that neither ADB, nor RD has the right to interfere in the relationships governed by the Private Law. Therefore, focusing the attention of CRP on the mentioned issue and considering the project as a shortcoming, as well as considering this issue as a social impact, is completely inappropriate.

4.2. We cannot share the statement made in the report regarding the harm. As we already explained legal meaning of harm in Par. 1.9. of this Letter, RD cannot see possible existence of harm in this case as well.

4.3. Regarding Tskere-Begoni road, mentioned in para. 239, we would like to underline that, this road is now in better condition than before the Project started. Road maintanace is a daily issue which is part of project implementation. The road condition is definitely getting better, as contractors dutifully carries out
its maintenance obligations. Entrance of Village Tskere was paved with concrete for temporary use upon
completion of main works. It should be mentioned that Tskere-Begoni Road will be rehabilitated fully
and be linked with the interchange on main road after completion of construction activities, which will be
additional social benefit from the project.

4.4. The Begoni water issue was also resolved, and construction of a new pipe was completed in
collaboration with the locals. New system is more sophisticated than it was prior Project starting. This
procedure is time-consuming because of several reasons. First of all, as you are aware, winter time in
affected areas are very hard and in most of times no such works can be conducted. In this case too, there
was heavy snowfall in winter until the end of the April and naturally, no construction works could be
conducted. Also, the consultation with the population took some time.

4.5. Regarding issues raised in para. 247 of the Report which referred to Section D (Physical Cultural
Recourses we would like to note that works done for the Physical Cultural Resources from the planning
stage up today, including NACHP document, GeoGraphic document and of the KVDP, are not only
sufficient for the purpose of the works, but are far more exceeding all the obligations as under the
Georgian Legislation, as well IPT’S Policy. We want to highlight, that study and surveys of such a scale,
were never conducted in the Project area. Furthermore, conducted study and surveys exceeded far more
the Project alignment, which is additional social benefit in the cultural heritage realm. This
complementary efforts are exemplary for the many projects is the world. Therefore, statements regarding
the any harm, are baseless.

4.6. RD wants to underline, that according to the Georgian Law “On the Roads” one of the function of
Roads Departments is to maintain the operational Roads. Among many other staff, maintenance also
means to make road litter/waste free. Nowadays, all the Roads in Georgia are under maintenance and so
will be the new road after it becomes operational. Therefore, named issues could not be a subject of the
EIA. RD assures CRP team, that regulatory system is fully in place and well operated regarding to
maintenance the Roads. So, there cannot be seen any harm regarding raised issue.

5. Gender

5.1. RD unfortunately is very surprised with the statement, that women can be somehow be harmed
because of the Project. As mentioned in this letter several times, affected areas, villages had and have
many social problems and many of them were linked with the absence of proper road infrastructure. The
Road is designed and works are executed according international standards and road infrastructure is
equally accessible to women and men. EIA as a document, which concentrates on Environmental Impacts,
it couldn’t assess gender sensitivity of the project in the details. However, RD wants to
highlight, that the Project has a separate gender plan which is active and will be implemented step by step
during whole project. Moreover, RD hired Gender Specialist for the Project and appropriate activities are
planned and ongoing. Hence, RD kindly asks CRP Team to revise statements made in para. 322 and 323.

6. Income and Livelihood Restoration

6.1. In the Report (Para. 368, 369, 370, 373) is considered that “loss of croplands is also loss of
livelihood”. RD underlines that in our understanding loss of the croplands doesn’t constitutes loss of
livelihood. All croplands were compensated much more fairly and as it could be considered. As affected
areas are in mountains and people, who live there need more support, RD is ensuring to conduct trainings
in Beekeeping, Cattle-breeding and other spread agricultural fields in the project area.
6.2. Based on the clarification in para. 120, in this Letter, statement regarding harm is groundless and not evidenced. As in this particular case, in the contrary, all the necessary amounts were paid to the affected people and no additional loss or damage are foreseeable.

7. Access to Information

7.1. In terms of issues raised in Para. 413, 415, 416, 418, RD wants to make some clarifications. First of all, according to General Administrative Code of Georgia, public information is an official document (including a drawing, model, plan, layout, photograph, electronic information, or video- and audio recording), i.e. any information stored at a public institution, as well as any information received, [processed, created or sent by a public institution or public servant in connection with official activities; also any information proactively published by any public institution, unless the information is recognized as a secret information. Any public institution in Georgia is oblige to the Laws of Georgia and of course, also the Roads Department.

7.2. The Roads Department points out that from the very beginning, the Project actively involved the affected persons, as well as civil society and non-governmental organizations. The consultations with directly and non-directly affected people was always actively ongoing. 12 public meetings, 7 focus group discussions, 19 expert group meetings and 7 one-on-one meetings a totally 45 events attended by more than 500 persons have been arranged before project commencement.

7.3. Access to information is not be defined only by its disclosure, but it’s accessibility upon the request. We want to underline, that according to studies of NGO’s RD is always among the one of the open public institutions.

7.4. Kvesheti-Kobi Project has numerous social media channels (Facebook, Instagram, web-page, Twitter), which contribute highly to spread information regarding to the Project. Lots of documentation are available in the web-page https://kveshetikobiroad.ge/en. The documentations related to detailed engineering designs, are always provided to the interested persons upon request. For more details, we want to share following information. Between 2018-2022 years 27 public information request was made regarding to Kvesheti-Kobi Project. All the request were treated adequately and requested information was given to the interested persons. 7 out of 27 request were made by the NGO, other by different private persons and media channels. Among requested information was detailed design, documents discussed on the stage of obtaining different permits, also other different information relating to project. We want to underline that detailed design was also requested by the NGO and private persons, which was provided.

7.4. Regarding to SSEMPs and TSEMPs, they are living documents that are subject to change during the construction process. Those who are interested in the documents can request them, and the documentation is available, but there is no requirement to publish them. When the document is created by the contractor it is contractors document, the contractor decides whether or not to publish them. Therefore, RD cannot agree with CRP findings regarding to this issue. In this case there is no ground to discuss any harm, when RD is making all efforts to keep public informed through different channels. This process started long before works has commenced and is ongoing. There are no evidence presented, that someone was denied access to information and it caused them harm. Harm cannot be seen per se, when there is not any restriction regarding the accessibility of information and therefore, statement regarding any harm is baseless.

7.5. Regarding to the issues raised in para. 429, 432, RD underlines that, all the possible monitoring mechanisms are in place. Specifically, RD and ADB relevant staff have meeting call every Monday, where all the ongoing activities are discussed and if necessary, they are addressed respectively. On site are relevant social staff, RD project manager, also Engineer who’s direct responsibility is to supervise all the ongoing activities on site and if necessary give the Contractor notices. Besides, representatives of RD
are also on site every week to meet with people, discuss all the relevant concerns, which is without any doubt very fruitful mechanism.

7.6. Presence of complaints is natural while conducting large-scale projects. As RD already has rich experience in terms of executing large-scale infrastructural projects, we can say with confidence, that complaints from different stakeholders are always part of the process. Of course, there are different kinds of complaints, some of them are groundless and some of them have grounds, but total absence of complaints cannot be foreseen in any project.

7.7. It should be underlined that all complaints are addressed as required by Law and internal documentations before harm is constituted. Therefore, any assumptions, that there can be some non-confirmed harm, is groundless. Existence of harm should be proven, only hypothetical assumptions „likely to cause harm“, is not enough. Besides, all the damages have its compensational tools and harm should be prevented, but if it occurred despite attempts, it will be fairly and fully compensated. This Principle works in both, civil and public relations and therefore, all the parties involved in the Project act in compliance with it.

To summarize all the above made clarifications and provided explanations, we kindly ask CRP team to revise findings on noncompliance and harm in the Report.

The Roads Department remains at your disposal and is always ready to discuss with you any details related to the implementation of the Project. The Roads Department is ready to give any additional explanations in every format preferred by the CRP team.

Kind regards,

George Tsereteli

Chairman of the Roads Department of Georgia
RESPONSES FROM ADB MANAGEMENT ON THE DRAFT REPORT

Memorandum
Central and West Asia Department
Office of the Director General

29 September 2022

To: Elisea G. Gozun
Chair, Compliance Review Panel

Through: Shixin Chen
Vice-President (Operations 1)

From: Eugenue Zhukov
Director General, CWRD

Subject: Loan 3903-GEO: North-South Corridor (Kvesheti-Kobi) Road Project--Management’s Response to Compliance Review Panel’s Draft Report

A. INTRODUCTION

1. The North-South Corridor (Kvesheti-Kobi) Road Project (the Project), approved in August 2018, improves connectivity, safety, and livelihoods along the North-South Corridor. It connects Tbilisi to the Mtskheta-Mtianeti region in the north and to the Kvemo Kartli region in the south. The Project is complex and very challenging from engineering, construction, and safeguard perspectives, particularly because this transport artery spans diverse and spectacular terrain. The Project road will pass through a remote and mountainous valley, which is largely inaccessible in winter between November and April. The Project road has been designed to European Union standards and provides for five tunnels and five bridges, including the longest tunnel in Georgia (9km; 30% already completed).

2. Through a memorandum of the Chair of the Compliance Review Panel (CRP) dated 29 July 2022, the CRP requested comments from the Management on its draft report (the Report) on the compliance review of the Project. This Management Response is prepared in accordance with para. 165 of the Accountability Mechanism Policy (AM Policy) of the Asian Development Bank (ADB) and provides (i) a summary of Management response to CRP findings of the Report (Section B), (ii) considerations related to Project optimization (Section C), and (iii) Management’s detailed responses to the Report (Attachment 1).

3. Management acknowledges the extensive engagement and in-depth work carried out by the CRP against the backdrop of the coronavirus disease (COVID-19) pandemic. The overall concerns and underlying goals set out in the Report are aligned with Management’s aim of doing no harm and, beyond this, bringing wider long-term benefits to the Project area and the communities within it. Management welcomes the recommendations included in the Report to further improve Project implementation.

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1 Project website: [https://kveshetikorob.english.gov.ge/en/](https://kveshetikorob.english.gov.ge/en/) (accessed on 28 September 2022). Project information is also available on Facebook and YouTube as well as at the Project information center in Kvesheti.

2 Approximately 277 people live, for part of the year, in the Khada Valley proper (2019 estimates).
B. SUMMARY RESPONSES TO FINDINGS OF THE REPORT

4. Scope and findings of the Report. The Report covers eight areas for which the CRP found preliminary noncompliance at the eligibility stage, and which were subsequently included in the scope of the compliance review’s Terms of Reference (TOR). The Report includes a ninth and new area on “ADB Monitoring and Supervision”, which was neither included in the complaint submitted by the complainants nor in the TOR for this compliance review. The Report assesses 15 points under these nine areas and finds (i) compliance under five points; (ii) noncompliance not resulting in harm under two points; and (iii) noncompliance that has resulted, or is likely to result, in direct and material harm under eight points, which—if confirmed—would require remedial actions (Table).

Table: CRP Findings at a Glance

<table>
<thead>
<tr>
<th>Report Section Ref.</th>
<th>Finding on Noncompliance</th>
<th>Finding on Harm</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.1 Environmental Impact Assessment (EIA) study area and project component</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>B.1 Air quality</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>B.2 Noise</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>B.3 Vibration</td>
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<td>No</td>
</tr>
<tr>
<td>C. Design and deferment of the environmental management plan</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>D. Physical cultural resources</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>E.1 Adverse social impacts</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>E.2 Positive impacts and benefits</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>F. Gender</td>
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<td>No</td>
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<tr>
<td>G.1 Land registration</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>G.2 Restricted access and orphan lands</td>
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<td>No</td>
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<tr>
<td>G.3 Income and livelihood restoration</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>G.4 Sviiana-Rostiani</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>H. Access to information</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>I. ADB monitoring and supervision</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

5. Summary of findings and responses. The following sub-sections summarize CRP’s findings and Management’s response to the 10 areas for which noncompliance was identified in the Report. Detailed responses are in Attachment 1.

A.1 EIA Study Area and Project Component

6. CRP finding on compliance and harm. The Report finds that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under the SPS to ensure adequate consideration in the Environmental Impact Assessment (EIA) of induced impacts from the connection road between the Khada Valley and Gudauri (the Zakatkarı–Gudauri Access Road). The Report notes that since the environmental assessment for the Zakatkarı–Gudauri Access Road has not yet been finalized and the content of the Khada Valley Development Plan (KVDP) is not yet clear and does not include the villages adjacent to the Zakatkarı–Gudauri Access Road, there remains a risk of direct and material harm to affected people.
7. **Management response.** At the time of Board approval of the Project, temporary access roads connecting Khada Valley and Gudauri were part of the construction strategy, and in accordance with SPS requirements, assessment of the temporary roads was included in the EIA (Section F.7.9 and Table 151), baseline data was collected, and impacts were fully assessed. The EIA also established a requirement for the works contractors to develop a Temporary Roads Method Statement, ensuring environmental impacts associated with temporary roads are mitigated.

8. In accordance with the SPS, the Project EIA includes an assessment on induced impacts for the Project (Section F9 of EIA). A temporary access road for use by the works contractors is included under the existing Project, but induced impacts from this temporary road will be insignificant as it is not passable for five months per year. While a minor change to the Project scope is currently being considered to include this temporary access road as a permanent structure, this was not part of the Project scope at Board approval, and as such it was not included in the EIA. The SPS does not require assessment at project appraisal of features that are not part of the project scope. The approach followed was in line with Environmental Safeguards Policy Principle 2, in setting out a project area of influence consistent with impacts from the temporary access road and a broader area of influence in relation to induced impacts from the highway.

9. When a change in scope of a project is approved, as envisaged here to include a new permanent road, an environmental assessment should be undertaken as required under para. 33 of Operations Manual (OM) Section F1 on SPS. This is the process that is being followed by the Project and a full assessment is now being conducted in accordance with SPS requirements, and will be publicly disclosed. In addition, potential induced impacts from uncontrolled development will be comprehensively managed through the development of the KVDP, which will contain legally bound land-use regulations for the Khada Valley—meaning that induced impacts from unplanned and unregulated development will be avoided. The development of the KVDP goes beyond SPS requirements and will itself be subject to a Strategic Environmental Assessment, following national requirements. The KVDP does not include the villages of Jaghmiani and Kaishauri because they fall under the Gudauri Masterplan that was approved in December 2019, and which already has measures in place to manage development and potential induced impacts.

10. The Report provides no evidence to demonstrate harm or likely harm, or specific examples of such harm. Furthermore, in accordance with the SPS, construction of the Zaktakari–Gudauri Access Road will not commence until completion of the environmental assessment, its clearance by ADB, and incorporation of the relevant mitigation features within the works contract. Given these features, which are standard for ADB-financed projects, there is no evidence for the finding of "likely harm", nor the linkage of such harm to noncompliance, as required under paras. 145, 147 and 186 of the AM Policy.

11. **Conclusion.** The SPS did not require the inclusion of an assessment of the permanent Zaktakari–Gudauri Access Road within the EIA because it is not yet part of the Project scope. Environmental impacts from temporary access roads connecting Khada Valley and Gudauri were assessed as part of the EIA, in accordance with the SPS. On approval of a permanent access road, a full environmental assessment of the Zaktakari–Gudauri Access Road as a permanent structure will be finalized, and construction will not commence until completion of the assessment and incorporation of the Environmental Management Plan (EMP) within the contract of Lot 2 contractor. Consequently, there is no evidence for the CRP’s finding of noncompliance and the link to "likely harm". Moreover, the KVDP, which provides an additional level of assurance beyond SPS requirements (para. 9), will further mitigate and manage induced and long-term impacts.
B.1 Air Quality

12. CRP finding on compliance and harm. The Report states that ADB is noncompliant with SPS requirements based on the findings that prior to Board approval, ADB did not ensure that the EIA contained adequate baseline air quality data from the Khada Valley; in addition, following Board approval, ADB did not ensure that further modeling studies were conducted prior to the start of construction. The CRP concludes that its findings of noncompliance are not likely to cause direct and material harm to affected people.

13. Management response. The SPS provides that the assessment process will be based on “appropriate environmental and social baseline data” (para. 5 of Appendix 1). When undertaking the environmental assessment, rather than take air quality data on a given day to establish a baseline, the Project took a more precautionary approach, where air quality in the valley was taken to be “pristine” (i.e., of the best possible air quality for modelling purposes). This approach was in accordance with the SPS, which does not mandate specific data collection in each instance and provides for discretion as to the appropriate method for establishing a baseline. By designating the baseline as pristine, the method followed a precautionary approach towards ensuring protection of air quality.

14. The Report finds noncompliance on the basis that “ADB did not ensure that further modeling studies were conducted prior to the start of construction as required by para. 532 of the Final EIA.” However, para. 532 of the EIA refers to “monitoring”—not “modeling”. Further modelling was not required. Monitoring within the Khada Valley was undertaken before the start of construction by the works contractors as listed in the disclosed Semiannual Environmental Monitoring Reports.

15. Conclusion. The CRP’s findings of noncompliance are not based on the SPS requirements, and result from a misreading of the EIA section, which calls for pre-construction “monitoring”, not “modeling”. This factual error should be addressed in the final report. The SPS does not mandate specific data collection methods in each instance for purposes of establishing a baseline, and in fact the precautionary approach taken by ADB was more protective of air quality than use of baseline data. This approach was validated by an Air Quality Impact Assessment Report (May 2022), which confirmed the original assessment was robust and appropriate.

B.2 Noise

16. CRP finding on compliance and harm. The Report states that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under the SPS, based on a finding that it did not ensure that the EIA contained adequate baseline noise data from the Khada Valley. The Report also finds that following Board approval, ADB was noncompliant with its monitoring responsibilities under the SPS in respect of its review of the contractors’ Noise Control Plans (NCPs).

17. The Report finds that “the absence of effective mitigation measures at construction stage for temporary facilities in the NCPs may result in higher noise levels than the standards and that this may result in harm.”

18. Management response. The SPS provides that the assessment process will be based on “appropriate environmental and social baseline data” (para. 5 of Appendix 1). Similar to the approach taken for air quality, when undertaking the environmental assessment, rather than take noise data on a given day to establish a baseline, the Project took a more precautionary approach,
where noise in the valley was taken to be "pristine" (i.e., very low ambient noise levels). This approach was in accordance with the SPS, which does not mandate data collection in each instance, and provides for discretion as to the appropriate method for establishing a baseline. By designating the baseline as pristine, the method followed a precautionary approach.

19. With respect to managing construction noise, in accordance with the SPS, the EIA and EMP include clear requirements with respect to prevention or mitigation. The measures set out within the EMP and EIA were subsequently transposed into the NCPs, which were then reviewed and approved by technical experts of the Project Management and Construction Supervision Consultants (PMCC), in accordance with para. 12 of Appendix 1 of the SPS. The NCPs contain all necessary information needed for the works contractors to manage and control construction noise. The NCPs are a part of the works contract between the executing agency and works contractors, derived from safeguard plans reviewed and cleared by ADB. The SPS does not require ADB's review and clearance of contractors' documents such as the NCPs. Notwithstanding this, ADB has reviewed the NCPs and provided feedback as appropriate.

20. With respect to harm, the basis for the finding of harm to affected people is not established, and the Report's assertion that the absence of ADB review of the NCPs "may result in higher noise levels" is general and hypothetical in nature. The Report does not provide any evidentiary finding of inadequately mitigated noise levels, nor does it establish a causal relationship between any such noise levels and the absence of ADB's formal review of NCPs. It also does not recognize that the NCPs have been reviewed by qualified experts as required by the works contracts.

21. Conclusion. The CRP's findings of noncompliance are not based on the SPS requirements. The SPS does not mandate specific data collection methods in each instance for purposes of establishing a baseline, and in fact the approach taken by ADB was more precautionary. The CRP determination of noncompliance with respect to review of NCPs is also not based on any ADB policies and procedural requirements. With respect to harm, the Report's finding of harm is hypothetical and general, and not grounded in any evidentiary finding. Only one grievance related to noise has been lodged under the Project grievance redress mechanism since implementation started and regular monitoring results show that noise levels have been largely within Project limits.

D. Physical Cultural Resources

22. CRP finding on compliance and harm. The Report states that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities in respect of physical cultural resources (PCR), and that it was noncompliant with its monitoring and supervision responsibilities to ensure adequate assessment and mitigation of potential adverse impacts on PCR. The Report asserts that ADB's identified noncompliance with respect to conservation of PCR has resulted in a risk of material and direct harm to affected people.

23. Management response. In accordance with SPS policy principles 2 and 4, the EIA covered impacts on PCR, specifically in a landscape context. The EIA methodology followed the mitigation hierarchy in line with SPS Policy Principle 4 of Safeguard Requirement 1, avoiding impacts as far as practically possible. As a result, the Roads Department selected the final road alignment taking into account impacts to all known cultural resources in the Khada Valley and the overall landscape value.
24. The CRP’s finding of noncompliance pre-Board approval is based on a view that as of Board approval, (i) the final EIA was not sufficiently detailed and comprehensive with respect to impacts on PCR; (ii) all potential social and environmental impacts and risks were not identified; and (iii) mitigation measures for such impacts and risks were not incorporated in the safeguard plans. While it is acknowledged that the baseline assessment could have been strengthened before Board approval, baseline studies were undertaken, and extensive provisions were included within the EIA and EMP requiring such work to be conducted prior to construction. These provisions included requirements for the works contractors to undertake a pre-construction survey following a comprehensive 5-phase archaeological strategy, and the PMSCC to mobilize cultural heritage monitors to supervise earthmoving activities. The Government of Georgia was made aware that should pre-construction PCR surveys find anything of high significance, this could result in the need to reroute the Project road. This approach ensured (i) PCR sites were identified prior to construction; and (ii) conservation of PCR in accordance with SPS Environmental Safeguard Policy Principle 11. As such, the EIA recognized the limitations of the PCR baseline at Project approval, and thus included significant additional requirements to be completed prior to construction.

25. Following Board approval, the 5-phase archeological strategy has been implemented. To further ensure conservation of PCR, a Cultural Heritage General Action Plan (CHGAP) was developed, which provides (i) a register of monuments and cultural heritage sites within a 600-meter buffer of the road alignment, and a register of their significance and physical condition; (ii) an assessment of potential impacts; and (iii) attendant mitigation measures. The National Agency for Cultural Heritage Preservation (NACHP) developed this action plan, which is now under implementation with the support of the PMSCC cultural heritage monitors. Key actions identified within the CHGAP included detailed archaeology surveys at nine sites, which have been completed. Construction work was allowed to commence at these sites only following NACHP approval. In addition, ADB technical assistance financed the engagement of cultural heritage experts (Geographic) to build on NACHP’s work by developing a Historic-Cultural Reference Plan to further ensure the conservation of PCR across the valley.³

26. The CRP’s finding of noncompliance post-Board approval is based on a determination that ADB was insufficiently engaged in reviewing the work of NACHP, and did not sufficiently ensure that cultural heritage sites identified by Geographic would be assessed for potential impact. The CRP’s finding that ADB was noncompliant on the basis of inadequately reviewing NACHP’s work is not based on the SPS or any ADB policy or procedural requirements. NACHP was contracted by the Roads Department and the works contractor, and in keeping with that contractual arrangement, the Roads Department and contractor were primarily responsible for reviewing NACHP’s work. Notwithstanding this, ADB has reviewed NACHP reports and provided feedback as appropriate. With respect to the additional cultural heritage sites identified by Geographic, recommendations for the management of such sites are being incorporated into the cultural heritage management plans included within the works contracts, in accordance with the requirement under the SPS.

27. With respect to harm, the CRP conclusion is provided without an assessment causally linking such harm to ADB’s identified noncompliance. Particularly considering the substantial work undertaken by the borrower to ensure the conservation of PCR, the basis for the CRP’s finding of harm is unclear.

³ Preparing the North-South Corridor (Kvesheti-Kobi) Road Project (TA 9552-GEO).
28. **Conclusion.** The EIA acknowledges the limits of the PCR baseline and includes a clear framework to close these gaps through the 5-phase archeological strategy. A staged and complete assessment of PCR in the Project area has been undertaken in accordance with the SPS and through substantial efforts, including specialist engagement of NACHP and Geographic. ADB has supported the borrower in undertaking additional efforts to ensure the conservation of PCR, in a manner meeting SPS requirements. These efforts have included the engagement of full-time cultural heritage monitors (a first for ADB-financed projects in Georgia), who are on-site daily to monitor the Project and the development of a Historic-Cultural Reference Plan (a first for a non-listed heritage site in Georgia). ADB has also deployed an environmental field officer to provide additional oversight through weekly site inspections and reporting, as well as bringing in the support of an international cultural heritage expert to support implementation oversight. This ensures that appropriate due diligence is being undertaken to make sure safeguard requirements for PCR are met.

29. Management acknowledges that the PCR baseline was limited at the Project appraisal stage, and—if left unremedied—could have led to likely harm during implementation. Having said that, the effective implementation of the archeological 5-phase strategy and the additional assessments undertaken post-Board approval have largely mitigated this risk. However, Management remains alert to any residual risks and committed to work closely with the borrower to ensure that key findings from the NACHP and Geographic studies are timely implemented. As noted above, given the substantial efforts taken to assess and mitigate impacts on PCR, the basis for the CRP finding on compliance post-Board approval is not based on any requirements of ADB policies and procedures. With respect to harm, no construction works started in the vicinity of PCR sites and objects without securing prior approval from the regulator (NACHP), the construction supervision consultant (PMCSC), and the Roads Department. The Report’s finding that “[the identified noncompliance] has resulted in a risk of direct and material harm” (emphasis added) does not demonstrate a strong causal link between the identified noncompliance and risk of harm.

**E.1 Adverse Social Impacts**

30. **CRP finding on compliance and harm.** The Report states that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under the SPS as it did not ensure that the EIA and its EMP (i) "identified and effectively mitigated risks of adverse social impacts arising out of negotiated land acquisition by the contractors," (ii) provided for adequate mitigation of adverse impacts associated with reduced community access to some areas of land; (iii) identified the wider social implications of the Project's landscape impacts; and (iv) provided for adequate identification and mitigation of adverse operational stage social impacts, particularly those regarding litter and waste, and community safety and security." The Report also finds ADB noncompliant with para. 56 and Principles 2 and 4 of the SPS Environmental Safeguards since it did not confirm prior to Board approval that all key potential social impacts and risks of the Project were identified; and that measures for avoidance, minimization, and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design.

31. The Report finds ADB noncompliant "in respect of its pre-project implementation responsibilities regarding effective mitigation of social risk associated with contractors' negotiation of access to private land led to direct and material harm to affected people. While this has been

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4 While "negotiated land acquisition" is the term used in the Report, this concept does not apply in the context of the contractors' temporary land take; there is no negotiated land acquisition performed under this Project as defined under the SPS.
partly remedied through steps taken during project implementation, problems, and a risk of direct and material harm to affected people remain.” The Report further finds that there is a remaining risk of direct and material harm to affected persons with respect to ensuring community access to land, mitigation of social dimensions of landscape impacts, and mitigation of operational stage risk in relation to litter/waste, and community safety.

32. Management response. The Report draws a direct link between the existence of complaints and works contractors’ transgressions under their contractual obligations, and noncompliance by ADB with its policies and procedures. While it is acknowledged that improvements in works contractors’ performance and timelier resolution of adverse impacts can be made, this is not the same as noncompliance under the SPS or any other ADB operational policies and procedures. Temporary land acquisition by contractors is common in contracts with civil works, with potential associated social impacts that cannot be pinpointed in advance. These issues are regulated and addressed through standard provisions in civil works contracts for all temporary land take impacts beyond the right of way, which is given by the Project owner. These unanticipated impacts may occur if works contractors do not adhere to their contractual obligations, and where that occurs, impacts are captured and addressed during the construction phase of a project. Provisions for timely due diligence and monitoring were made in the Land Acquisition and Resettlement Plan (LARP) to address these types of implementation issues. The Project grievance redress mechanism did identify all these cases and ADB and the Roads Department monitored them all to mutually agreed solutions. Similarly, all cases of community land access grievances have been captured and the Roads Department has agreed to ensure access and/or compensate.

33. With respect to potential community safety and litter/waste impacts, works contractors’ performance is being monitored and all instances of noncompliance are reported on a weekly basis. This significantly reduces the likelihood of remaining operational risk of direct and material harm related to these potential impacts. The alleged potential harm related to visual and landscape impacts affecting traditional farming and religious and other community practices is vague and not linked to any specific concerns raised by the communities thus far and/or registered by the Project. Overall, mitigation of adverse social impacts is an ongoing and dynamic process and requires adaptive management and continuous engagement with Project-affected people. It is acknowledged that scope remains, over and above the achievements to date, to further improve responses to social impacts during construction. All such incidents and grievances have been recorded and will be addressed through the grievance redress mechanism and weekly recommendations made to the Roads Department. The LARP made specific provisions for all key unanticipated impacts, which cannot be pinpointed in advance.

34. Conclusion. The assertion in the Report that noncompliance of ADB with its “pre-project implementation responsibilities regarding effective mitigation of social risk associated with contractors’ negotiation of access to private land led to direct and material harm to affected people” is not based on SPS requirements and lacks factual basis. These risks are managed and addressed through the works contract. In addition, all cases of unanticipated adverse impacts have been addressed through the grievance redress mechanism to conclusion in accordance with the SPS principles, including the requirements of para. 56 of the SPS. With respect to harm, the Report’s general finding that “there is a risk of harm” (emphasis added) demonstrates that actual harm, whether direct or material, does not exist. Notwithstanding the above, the Report highlights the multidimensional nature of possible adverse social impacts, which require close and continuous attention to ensure that harm does not materialize. To this end, Management remains alert to risks and committed to further improve the systems for grievance avoidance and resolution.
E.2. Positive Impacts and Benefits

35. **CRP finding on compliance and harm.** The Report finds that ADB was noncompliant with its responsibility under OM Section C3 on Incorporation of Social Dimensions into ADB Operations to ensure that in the pre-Board approval social analysis of the Project, measures were formulated with implementation arrangements to maximize the social benefits of the Project. Furthermore, the Report finds that ADB has been noncompliant with its responsibility under OM Section C3/OP to ensure that the project design maximizes the Project’s social benefits. The Report did not find harm regarding the identified noncompliance.

36. **Management response.** Social dimensions have been identified, analyzed, and refined during project preparation and implementation in accordance with OM Section C3/OP. In accordance with OM Section C3/OP, an initial poverty and social analysis (IPSA) was prepared at the concept stage, then a social analysis was carried out during project design and its findings were included in the summary poverty reduction and social strategy as well as the EIA, LARP, and Gender Action Plan (GAP). Moreover, a community needs assessment was prepared by a reputable regional civil society organization at the early stages of project implementation to inform the preparation of the KVDP and its Priority Investment Program. The community needs assessment was based on extensive field work including 11 focus group discussions and 185 rapid household surveys (50% of the population of the valley). Social dimensions have been adequately incorporated into the Project design and are (i) based on robust data and assessments; (ii) reflected in Project documents (GAP, KVDP, and works contracts); and (iii) supported by adequate resources and implementation arrangements.

37. **Conclusion.** The finding of noncompliance is not based on requirements of SPS or any ADB policies and procedures, and is premised on an incorrect assumption that the Project design did not provide for development of village infrastructure and that no positive impacts would be realized from the Project. This is factually incorrect and contradicted by (i) the Project outcome and outputs indicators; (ii) the budget set aside under two works contracts to implement small-scale social infrastructure, as well as a consultancy contract to set up a multipurpose visitor center and provide relevant trainings; (iii) the improvement of the sewage system in Tskere village, water systems in Bedoni and Benian-Begoni villages, and the forthcoming improvement of the Tskere-Begoni road; and (iv) the preparation of a Priority Investment Program and Community Development Initiatives under the KVDP. Therefore, Management considers that the Project has been designed and implemented in full compliance with OM Section 3. As noted within para. 187 of the AM Policy, “unfulfilled expectations” that do not generate direct and material harm compared to the without-project situation are to be excluded from the compliance review report.

F. Gender

38. **CRP finding on compliance and harm.** The Report finds that ADB was noncompliant with its due diligence and review responsibilities under the SPS because (i) neither gender dimensions of community safety nor gender dimensions of operational stage impacts were adequately reflected in the Final EIA and EMP; and (ii) the Final EIA did not adequately identify opportunities for the Project to enhance positive gender impacts. The Report finds that harm to women “may result from ADB’s noncompliance regarding community safety but is not likely regarding ADB’s noncompliance in relation to operational impacts”.

39. **Management response.** As noted in the Report, and pursuant to Principles 2 and 4 of Environment Safeguards of the SPS, both the EIA and the EMP include references to gender-related issues and impacts and provide for mitigation measures that could address risks of
adverse gender impacts. Moreover, during its due diligence and review, ADB confirmed that (i) all key potential social and environmental impacts and risks of a project are identified; and (ii) effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design. This complies with para. 56 of SPS and was appropriately reflected in the Safeguard Policy Compliance Memorandum issued on 28 May 2019. Further, the Report acknowledges that ADB was compliant with the provisions under OM Section 2 on Gender and Development in ADB Operations (para. 311 of the Report). The Report expectation for a different or additional gender dimension to be included in the Project is not an issue of noncompliance under any ADB policies, rather a matter of optimization-related expectation or preference.

40. On harm, the Report did not ascertain that alleged direct and material harm exists, and that it is caused by ADB’s noncompliance with SPS, as required under para. 186 of the AM Policy. Moreover, there is no finding that the Project did create or widen gender gaps, nor discriminate against women. The identified negative impacts on community safety as indicated in the EIA have corresponding mitigation measures that will protect the welfare of the community, including women. The Project has adequate measures in place to monitor the implementation of the mitigation measures included in the EMP to ensure that women and the rest of the community will not be harmed.

41. **Conclusion.** Management is of the view that the gender dimensions of the Project have been designed and implemented in full compliance with the SPS. The Report states that CRP is broadly satisfied that gender dimensions of Project risks and adverse impacts have been appropriately identified at various points in the project documentation (para. 322 of the Report). It is also worth noting that gender dimensions are captured in the GAP, community needs assessment, and KVDP. With respect to harm, the Report’s finding of harm is hypothetical and not supported by evidence, and has no clear link to ADB’s identified noncompliance.

**G.3. Income and Livelihood Restoration**

42. **CRP finding on compliance and harm.** The Report finds that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under the SPS in concurring (i) to the limitation of livelihood restoration to cash and (ii) to provide allowances for livelihood restoration only to severely affected people. The Report finds that these asserted noncompliances are likely to harm affected people.

43. **Management response.** In accordance with the SPS, a LARP was prepared for the Project, including detailed measures for income restoration and livelihood improvement of displaced people. Under the SPS, Involuntary Resettlement Policy Principle 3, compensation with land is provided only where possible, with cash-based compensation permitted. The CRP has nonetheless identified noncompliance due to livelihood restoration being limited to cash. This finding is based on para. 12 of Appendix 2 of the SPS, which provides that “the borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that [displaced people] can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels.” In this case, and as noted in the LARP, land replacement was not possible because the Roads Department is not equipped to manage all necessary requirements for land purchase on behalf of affected people. As such, a cash compensation scheme was developed in accordance with the SPS. An entitlement matrix was developed making clear provisions for livelihood restoration beyond the immediate cash value of crops, as well as requiring further consideration of measures based on individual assessments.
Cash compensation was complemented by additional measures including in-kind assistance, training, and agricultural extension, in accordance with paras. 9 and 12 of Appendix 2 of the SPS.

44. The CRP's finding that livelihood restoration was limited to only a subset of affected persons is factually incorrect. The Report asserts noncompliance based on the finding that income and livelihood restoration was limited to people losing at least 10% of their agricultural or non-agricultural productive assets. As noted within the LARP, and in accordance with para. 21 of Appendix 2 of the SPS, livelihood restoration allowances are paid to all people whose livelihoods are impacted. The "Severe Impacts" allowance represents an additional livelihood restoration component for severely affected households.5

45. The Report's identification of harm is based on a mischaracterization of the income and livelihood restoration program to only "severely affected persons". In accordance with para. 21 of Appendix 2 of the SPS, an income and livelihood strategy was prepared for the Project, pursuant to which livelihood restoration allowances are paid to all affected people whose livelihoods are impacted. With respect to the limitation to cash-based compensation, this finding appears to overlook the provisions for non-cash compensation that exist in the entitlement matrix, and the ongoing assessments and plans, which also include non-cash elements such as agricultural extension training.

46. Conclusion. The income and livelihood development strategy provided livelihood assistance to all affected people, and included non-cash assistance, contrary to the findings of the Report. In addition, the Report's finding of noncompliance for payment of cash compensation is not based on SPS requirements that permit cash compensation. These factual inaccuracies and non-policy-based requirements that the Report asserts are likely to cause harm are not consistent with the SPS and AM Policy.

H. Access to Information

47. CRP finding on compliance and harm. The Report finds that ADB was noncompliant with the Access to Information Policy (AIP) and related operational procedures under OM Section L3 by not adequately disclosing (i) contractors' noncompliances in the Project's semi-annual safeguard monitoring reports; (ii) detailed engineering designs; (iii) NACHP reports; and (iv) Site-Specific Environmental Management Plans (SSEMPs) and Topic-Specific Management Plans (TSEMPs) prepared by the works contractors.

48. The Report finds that the concerned nondisclosures are likely to cause harm, on the basis that "without access to information about significant project issues that are likely to impact on their lives, affected people cannot make sure that their concerns and interests are safeguarded."

49. Management response. The list of routinely disclosed project documents (proactive disclosure) on the ADB website is set out in para. 2(iii) of the Appendix of OM Section L3 on the AIP, which does not contain any of the documents mentioned in the Report. Other documents can be made available upon request and as appropriate (reactive disclosure) in accordance with para. 6 of the Appendix of OM Section L3. The safeguards semi-annual monitoring reports for the Project were disclosed in accordance with SPS requirements. Notwithstanding this fact, the Report suggests that the inadequate description of contractor noncompliances within these reports constitutes ADB noncompliance with the AIP. This essentially establishes requirements

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5 Severely affected households are those who lose 10% or more of income producing assets.
that are not set out under the AIP and SPS. Similarly, the AIP does not stipulate proactive disclosure of detailed engineering designs or contractor-level safeguard planning documents such as NACHP reports or SSEMPs/TSEMPs under ADB-financed construction contracts.

50. While the AIP does not include requirements for disclosure as suggested under the Report, it does establish the principle that ADB should disclose information regarding the projects it finances “in a clear, timely, and appropriate manner to enhance stakeholders’ ability to meaningfully engage with ADB.” This is consistent with the SPS, which requires that “information is disclosed [to affected people] in a form, manner, and language accessible to them.” In accordance with the AIP and SPS, ADB has undertaken substantial efforts to ensure disclosure to the public of relevant Project-related information. For example:

- **Engineering design.** While the detailed design per se was not proactively disclosed, all relevant information on the Project footprint and design features are disclosed both online and on-site. Detailed and high-quality maps are presented in color and at the village level with a legend and markings in Georgian and English. These maps enable affected people to see the Project footprint, including service roads and spoil disposal sites for example, in relation to their homes and villages.

- **NACHP reports.** The Project has prepared and disclosed two summary documents describing NACHP findings and overall cultural heritage management: (i) a Stakeholder Brief which serves as a non-technical summary of NACHP findings and measures taken to assess, avoid, and mitigate possible impacts on cultural heritage; and (ii) a summary report capturing the context, structure, and implementation of cultural heritage management measures undertaken under the Project since 2018. The summary report, conducted by an independent and authoritative expert, has assessed ADB’s due diligence efforts (and the implementation thereof) since the Project has been underway. The CRP does not refer to this important document in its Report.

- **SSEMPs/TSEMPs.** The Project has prepared and disclosed summaries of the SSEMPs and TSEMPs so as to provide accessible and readily understandable information to Project stakeholders. These summaries provide a geo-referenced list of all key construction sites and receptors, and outline all management plans. Environmental and social aspects are covered, including all key mitigation, monitoring, and reporting requirements.

51. The list of documentation available on the Project-dedicated website (footnote 1) and the Project information center on site is in Attachment 2. As noted above, information from the concerned technical documents (e.g., contractor-level safeguard plans) has been disclosed, in a manner accessible and relevant to Project stakeholders. However, the Report nevertheless identifies likely harm on the basis of the non-disclosure of the underlying technical documents, neglecting the fact that salient information from these documents has been conveyed to the public. The complaint that is the subject of the CRP’s review also does not allege harm on the basis of lack of disclosure of the concerned technical documents. A potential residual lack of

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6 The AIP establishes the principles that guide ADB’s approach to ensure transparency, accountability, and participation. It does not contain any requirement for disclosure of safeguard-related grievances, and moreover makes clear that “[the AIP] will be implemented in accordance with detailed arrangements approved by ADB Management and made publicly available in accordance with ADB’s normal procedures” (para. 14).

7 AIP subpara. 15(i).

8 Interested stakeholders can reach out to the Roads Department to access relevant parts of the voluminous detailed engineering design documentation.
awareness of Project-related information, with no other identified detriment, is hypothetical and is not a "direct and material harm" within the meaning of the AM Policy.

52. **Conclusion.** The AIP’s mandate to disclose information in a “clear, timely and appropriate manner” has been met through the substantial efforts undertaken to provide meaningful and accessible summaries of the concerned documents, which are highly technical in nature and not accessible to lay people. The CRP’s determination that the underlying technical documents should have been disclosed is not based on a requirement set out under the AIP or SPS, and is an additional requirement or standard that exceeds ADB policies and procedures. The CRP’s linking of likely harm on the basis of non-disclosure of technical documents that are not required to be proactively disclosed under any of ADB policies and procedures is not supported by the AIP, SPS and AM Policy.

I. **ADB Monitoring and Supervision**

53. **CRP finding on compliance and harm.** The Report finds that ADB was noncompliant with para. 56(iv) of SPS and para. 28 of OM Section F1 because (i) “the CRP is not satisfied that the actions taken have been commensurate to the project’s risks and impacts” and (ii) “there is also no evidence that ADB has required the Roads Department to develop and implement a corrective action plan.” The Report further indicates that “the CRP expected to find evidence that ADB had considered stronger and more systemic action to elevate its concerns through ADB’s senior management.”

54. The Report finds that the persistence of noncompliances by the works contractors rather than ADB has caused harm and continually poses risk to affected persons, their communities, and the environment.

55. **Management response.** The Report finds based on noncompliance by the works contractors under their contractual obligations as noncompliance by ADB with its policies and procedures. As financier, ADB is not responsible for contract implementation, nor is it the contractual party to the works contractors, as expressly stated in ADB’s Procurement Policy (2017). Para. 148 of the AM Policy provides that “for the purpose of compliance review, the following will also be excluded: (i) complaints relating to actions that are the responsibility of other parties, such as a borrower, executing agency...(ii) complaints that do not involve ADB’s noncompliance with its operational policies and procedures. The issues referred to in the Report (e.g.: approvals for temporary facilities, fixing of broken water pipes, better fencing of PCR sites...) have been opened for few months, and most of them have been resolved since the issuance of the Report. The inaccessibility of the site between November and April and the successive COVID-19 waves have significantly and adversely affected the timely resolution of some issues. ADB’s role is to supervise and monitor the Project, and ensure the government complies with its safeguard obligations. ADB has fulfilled this responsibility by closely supporting the Roads Department to rectify unsatisfactory safeguard compliance as provided for in para. 58(iv) of the SPS and para. 28 of OM Section F1. The unprecedented and robust monitoring systems

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9 Para. 4 of ADB Procurement Policy reads as follows: “The responsibility for the implementation of the project, and therefore for the procurement, award, and administration of contracts under the project, rests with the borrower. ADB, for its part, has the obligation to ensure that the proceeds of its financing are used with due attention to considerations of the core procurement principles mentioned herein.”

10 As of 18 September 2022, the Environment and Social Action Tracker includes a total of 90 issues raised for the Lot 1 Contractor and 77 issues for the Lot 2 Contractor; 81% of which have already been closed by both Contractors and 19% are yet to be resolved.
established for the Project, including mobilizing additional staff resources and holding weekly site inspections, have enabled ADB to track and help resolve issues to the extent possible, in accordance with para. 44 of the SPS. In addition, the grievance redress mechanism has also proven to be effective and reasonably efficient for addressing and resolving stakeholder concerns. With respect to harm, the Report does not identify actual, direct, and material harm experienced by affected people, and the “harm” identified is linked to contractor noncompliances, rather than ADB’s compliance with its policies and procedures.

56. The Report’s findings of noncompliance neglect the borrower’s ownership of the project and ADB’s role as project financier rather than implementer. ADB continues to monitor and supervise the Project implementation in accordance with its operational policies and procedures. The Project team holds weekly meetings with the Roads Department, the works contractors, and the construction supervision consultant to review and discuss the progress of agreed corrective actions. These actions are systematically and diligently reflected in the weekly safeguard monitoring reports and the safeguard action tracker, which is the prime monitoring tool used under the Project. The approach followed is in line with para. 28 of OM Section F1, which requires the “borrower/client to develop and implement an appropriate corrective action plan agreed upon with ADB to rectify unsatisfactory safeguard compliance.” In addition, ADB conducts regular monitoring and review of the borrower’s safeguard-related obligations under the loan agreement, and establishment of remedial actions where noncompliance is identified. Of the 12 safeguard-related covenants of the loan agreement, 10 have been complied with at all times, and 2 were partially complied with, owing to delays in the issuance of certain permits and protracted resolution of some grievances.\footnote{Para. 5 (environment) and para. 28 (grievance redress mechanism) of schedule 4 of the loan agreement.} Pursuant to para. 58(iv) of the SPS, ADB has alerted the Roads Department and borrower of these compliance issues, exercised remedies (e.g.: withholding clearance of LARP implementation reports), and supported efforts to reestablish compliance. Moreover, the Project team has rated the safeguard indicator \textit{at risk} in Q1–Q2 2022 in ADB’s project performance monitoring system (eOps) to escalate and accelerate resolution of outstanding issues. Significant improvements have been made in Q3 2022 (footnote 10).

57. \textbf{Conclusion.} The Report’s findings of noncompliance are not of ADB noncompliance of its policies and procedures, rather non-performance of the works contractors under their contractual obligations. The Report’s finding of harm is not established as caused by ADB’s noncompliance, as required under para. 147 of the AM Policy, but is rather described as caused by noncompliance by the works contractors. The Report’s finding on noncompliance also appears to contradict other statements in the Report which remark positively on ADB’s monitoring and supervision role: “The CRP notes that compared to other projects that the CRP has reviewed in the past, ADB has done more than usual to ensure good monitoring and supervision practice in this Project” (para. 421); “There is no indication in the internal reporting of a substantial change in contractors’ approaches to environmental and social management and safeguards compliance as a result of ADB’s considerable monitoring and supervision diligence” (para. 431); and “ADB has diligently followed up on individual compliance issues identified in the field and by the PM CSC and the Roads Department; but the available evidence suggests that stronger action may be needed” (para. 431). Management will continue working with the borrower to further improve the Project safeguards performance.

58. Management also notes that assessment of ADB’s performance of its monitoring and supervision is neither included in the complaint nor in the TOR of the compliance review. Therefore, this section should be removed from CRP’s final report in accordance with para. 148 (i) and (ii) and para. 186 of the AM Policy.
C. PROJECT OPTIMIZATION CONSIDERATIONS

59. Noncompliance distinguished from project optimization. Given the Project’s complexity and potential impacts, the Project’s design included several features that go beyond the requirements of ADB policies and procedures, such as the robust approach taken toward stakeholder engagement. The Project followed a continuous and adaptive approach to safeguards management, which ensures that implementation of mitigation measures is responsive to changing conditions and site-specific monitoring results. Since commencement of the works in early 2021, ADB and the borrower have taken several steps to proactively address complainants’ concerns and enhance the quality of Project implementation. An action plan was designed, implemented, and monitored over the last 15 months to close the gaps identified in CRP’s eligibility report. While these actions have led to tangible improvements, Management acknowledges that there is room to further optimize certain aspects of Project implementation.

60. However, Management notes that policy compliance should be distinguished from unfulfilled expectations or project optimization considerations, which are not based on ADB’s policies and procedures. This distinction is reflected in the AM Policy, which calls on the CRP to “examine whether the direct and material harm alleged by the complainants is the result of ADB’s failure to follow its operational policies and procedures …” (para. 145, emphasis added). While the Report’s findings are valuable for purposes of achieving Project optimization, as noted in the preceding sections, the Report’s findings of noncompliance are not clearly based on the requirements of ADB’s policies and procedures.

61. Identification and causality of harm. The CRP issued a note in 2020 that provides guidance on the meaning of the terms “harm” and “likely harm” within the AM Policy.12 It includes the following relevant paragraphs:

- “With regard to the final stage of the compliance review when the CRP submits its final report, the AM Policy requires the CRP to “ascertain whether the alleged direct and material harm exists” (para. 186, emphasis added). “Ascertain” means to make a determination with certainty, and “exists” refers to a current state of reality. Thus, only direct, material and actual existing harm determined with some level of reasonable certainty to be caused by ADB’s noncompliance with its operational policies and procedures is to be appropriately included within the findings and conclusions in the CRP’s final report.” (para. 29)

- “In paras. 103 and 106 of the AM Policy, the reference to “likely” harm arises in the context of the allegations, which, by their nature, are claims or assertions that something has occurred, and therefore, require investigation. By the time the compliance review process moves from the allegation phase to the findings phase, the question of suspected “alleged, possible, or likely” harm versus “real and existing” harm must be resolved in order to be included in the CRP’s final report as definitive findings or conclusions that would trigger a required Management response in the plan of remediation.” (para. 30)

- “Where there are instances in which the CRP has clear evidence that establishes the causation between ADB’s noncompliance with its policies or procedures and a future material harm that has not yet occurred but is clearly “likely” to occur at some future time,

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then the CRP should take note of such likely material harm. While likely harm is not expressly contemplated by the AM Policy in the context of required remediation, the practical effect is that likely harms that are reasonably certain to occur will be identified by the CRP and will normally be required to be remediated by the Board.” (para. 32)

62. The Report’s findings of harm, while general and sometimes hypothetical in nature, do provide helpful guidance for continuous efforts to optimize the Project. Through numerous efforts to optimize the Project, the risk of potential harm is expected to be mitigated. To address residual risk, ADB is committed to work closely with the borrower to ensuring robust systems for timely identification and resolution of grievances.

63. **Scope of the Report.** Para. 186 of the AM Policy stipulates that the CRP compliance review report “will focus on the specific complaint”. Management notes that of the 15 points assessed by the Report, at least five are not included in the complaint, including (i) adverse social impacts (as defined in the Report), (ii) restricted access and orphan lands, (iii) involuntary resettlement in Sivana-Rostiani, (iv) disclosure of detailed engineering design and contractors’ specific environmental management plans, and (v) ADB monitoring and supervision. A review or report that exceeds the scope of the complaint and the TOR of the compliance review is a deviation from paras. 186 and 187 of the AM Policy.

D. **CONCLUSION**

64. Management expresses its appreciation to the CRP for its extensive engagement and thorough work. Management welcomes CRP’s observations and recommendations to further optimize the Project, and notes that many are being addressed as part of actions undertaken to optimize the quality of implementation.

65. The AM Policy establishes that the function of the CRP review is to examine whether the direct and material harm alleged by the complainants is the result of ADB’s failure to follow its operational policies and procedures (paras. 145, 147, 186 and 187). As noted within the preceding sections, the findings on noncompliance identified in the Report are not based on the requirements of ADB policies and procedures. Nevertheless, these findings have been valuable toward optimizing the Project benefits and enhancing the quality of its implementation. With respect to harm, as also described in the preceding sections, the Report’s findings on harm are hypothetical in nature, and therefore depart from the AM Policy’s requirement for the review and the Report to focus on the existence of direct and material harm, and its causal linkage to ADB’s noncompliance (paras. 145, 147, and 186).

66. Management notes that the Report went beyond the scope of the complaint and TOR for this compliance review. The AM Policy provides that the review and the Report should be focused on the complaint submitted by the complainants (paras. 186 and 187). Management will nonetheless diligently examine and follow-up the additional points raised in the Report.

67. Management, having carefully considered the findings on noncompliances and likely harm in the Report, is of the view that the Project has been prepared, and is being implemented, in compliance with ADB’s policies and procedures. Management stands ready to provide further clarification to the CRP upon request.

**Attachments:**

1. Management’s Detailed Responses to the Report
2. List of Documentation Available Online and On-Site
Attachment 1: Management’s Detailed Responses to the Report

<table>
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<th>Para. #</th>
<th>CRP’s Report Findings</th>
<th>Management’s Response</th>
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| 16      | “Table 2: Additional Safeguards-related Studies/Reports During Project Implementation” | This table should be updated to include the following reports:  
- Review of Cultural Heritage Management Implementation  
- Temporary Facilities Assessment Report  
- Summary of Specific Environmental Management Plans  
- Air Quality Impact Assessment Report  
- Noise Modeling Study |
| 17      | “The Project experienced considerable delays in the mobilization of contractors, arrival of equipment, construction of temporary roads and facilities and commencement of construction of permanent works, due to the coronavirus disease pandemic. As of 31 December 2021, construction of the Lot 1 emergency tunnel and the main tunnel had reached 26.2% and 3.64%, respectively while construction in Lot 2 had reached 1.19% (much lower than the projected progress of 42%).” | This paragraph should be updated with latest figures:  
“The Project experienced considerable delays in the mobilization of contractors, arrival of equipment, construction of temporary roads and facilities and commencement of construction of permanent works, due to the coronavirus disease pandemic. As of 31 August 2022, the physical progress on Lot 1 (Kohe-Takele, main tunnel and emergency tunnel) was 35.2% while the scheduled progress was 37.6%. The physical progress on Lot 2 (Kohe-Takele) was 8.9% while the scheduled progress was 95.7%.” |

Section V—Findings

A. Environmental Impact Assessment Study Area and Project Components

43 | “The Final EIA [Environmental Impact Assessment] also includes information about access to the project site during construction, including through the existing track between Gudauri and Zakabad. Paragraph 267 of the Final EIA referencing the map shown at Figure 1, notes that access to the Didveli Plateau from Gudauri offers the best access route to spoil disposal areas on the Didveli Plateau. It asserts that it is planned that the access road from Gudauri will now be a permanent road. Paragraph 274 states that as part of the Project, the access road from Gudauri ‘may be made into a permanent road, approximately 4.9 km long.’” | Impacts from the temporary Gudauri access road were considered in Section F.7.9 and potential induced impacts for the project as a whole were considered in Section F.9 of the EIA while. The approach was consistent with Environmental Safeguards Policy Principle 2, in setting out a project area of influence consistent with impacts from the temporary road and a broader area of influence in relation to induced impacts from the highway. It is highly unlikely that any incremental increases in induced impacts resulting from the temporary access road connecting Gudauri to Khada would be significant, particularly as the temporary road would still be impassable for a significant part of the year and the distance to travel into Khada is approximately the same from the existing Bedoni access. Therefore, refining the area of influence for induced impacts to focus more specifically on the Gudauri access road was not necessary.  
Para. 6 of Appendix 1 of the Safeguard Policy Statement (SPS) indicates that the project’s impacts and risks will be analyzed in the
Appendix 6

The final EIA states that the Gudauni access road has not been studied in detail, and as such villages in this area had not been assessed to date.

The EIA did in fact undertake stakeholder engagement and survey with respect to villages located along the Zakatkan–Gudauni Access Road as detailed in Section E.3.1.1 of the EIA. Pursuant to SPS Policy Principle 2, an environmental assessment for the project was conducted to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic, and physical cultural resources (PCR) in the context of the project's area of influence. The Zakatkan–Gudauni Access Road was not approved as a permanent component prior to Board circulation, so surveys and stakeholder engagement were undertaken for wider understanding of socio-economic impacts, but impacts were not assessed for operational impacts of this road, in accordance with the SPS. However, with the subsequent consideration of a permanent road, a full assessment was conducted in accordance with SPS requirements.

When the original project was prepared, ADB did not have detailed traffic projections for the access road, so it was not possible to determine impacts of operation, such as on noise and air quality. Following the consideration of the access road as a permanent project component and the confirmation of the final alignment, an

context of the project's area of influence. At the time of Project processing, the permanent access road had not been confirmed and could therefore not have been reasonably or comprehensively assessed. The permanent access road to Gudauni has now been confirmed and a focused environmental assessment for this Project component has been completed and includes a full assessment of induced impacts from this road. A draft was provided to the Compliance Review Panel (CRP) on 17 May 2022. The alignment of this road in some sections is different to the road that is being used during the construction period, which only follows existing tracks and has been temporarily upgraded. Impacts from the temporary road were assessed and are included in Section F.7.9 of the EIA.

Asian Development Bank (ADB) can only assess the scope of the Project presented by the Borrower. At the time of approval this did not include the permanent Gudauni Access Road. The Borrower indicated it could be later proposed for inclusion in the Project’s scope, and once so included, it would be fully assessed in accordance with SPS requirements.
"The permanent upgraded Gudauru-Zakaki road, along the alignment depicted in Figures 46 and 49 of the Final EIA, was not included in the Board-approved project. However, the CRP notes that because the strengthening of the existing Zakaki-Gudauru track is part of the construction strategy planned for the Project for transportation of construction equipment and materials, the EIA should have assessed the environmental and social impacts of the use of this access road regardless of the omission from the final Board-approved project of the initially proposed permanent Zakaki-Gudauru road."

SPS Policy Principle 2 establishes the requirement for "conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the project’s area of influence." In compliance with these principles, relevant impacts relating to construction were included for the temporary access road, while assessment of a permanent Zakaki-Gudauru Access Road was not part of the Project design and so was not assessed.

The SPS does not require assessment at project appraisal of features that are not part of the project. When a change in project scope is approved, then environmental assessment is undertaken as required under the SPS. With respect to the temporary access road associated with construction, the works contract included provision for the contractor to (i) define and make their own arrangements for temporary facilities including access roads, and (ii) prepare relevant method statements to be approved by the construction supervision consultant. At the time of Project appraisal, the precise location of the temporary facilities was not known. As shown from the actual construction phase, access roads have tended to use existing tracks and are different to the alignment of the proposed permanent road presented in Figure 48 of the EIA (Figure 1 of the CRP report [the Report]).

In accordance with the SPS, assessment of temporary roads was included in the EIA in Section F.7.9 and Table 151 listed the need for the contractor to develop a Temporary Roads Method Statement, ensuring they were covered. This is standard practice for all ADB projects as temporary access roads are very rarely confirmed at the time of project approval. Had the road been included as a permanent component at the time of Board consideration, then additional assessment requirements would have been needed, including consideration of noise, air quality, and cultural heritage.
| 46 | "However rather than requesting additional analysis, ADB suggested amendments to minimize the potential for the EIA to draw attention to induced impacts of the connection between the Khada Valley and Gudauri that would be enabled by the project road. Relevant references accordingly did not appear in the Final EIA." | ADB did not seek to obscure the potential environmental or social impacts of the connection between the Khada Valley and Gudauri. Induced impacts were fully assessed in accordance with the SPS, based on the Project area and scope. As noted above, the Zakatiari-Gudauri Access Road was not approved as a permanent component prior to Board circulation and so induced and operational impacts were not assessed, in accordance with the SPS. However, with approval of a permanent road, a full assessment was conducted in accordance with SPS requirements, with attendant mitigation measures reflected within the assessment. The completion of the Khada Valley Development Plan (KVDP) is also now underway and will ensure induced impacts resulting from the long-term operation of the Zakatiari-Gudauri Access Road are properly covered. The KVDP will also itself be subject to a Strategic Environment Assessment following national requirements. Given the longer than 5-year construction period, there is sufficient time to complement and refine the work on induced and operational impacts and the SPS allows flexibility for when such activities must be completed. |
| 49 | "While the Final EIA does not examine the induced impacts triggered by the construction of the road in conjunction with other development plans that were in existence during project preparation, it refers to the effect of the creation of the Gudauri Recreational Area. However, it cites this as a mitigation of potential adverse effects rather than as a driver of induced impacts." | As noted above, the SPS requires an assessment of the environmental impact of the proposed project, and at the time of appraisal, a permanent Zakatiari-Gudauri Access Road was not part of the proposed project and therefore induced impacts resulting from it were not included. Induced impacts were however covered more broadly in Section F.9. With respect to the Gudauri Recreation Area, the Masterplan is already in place and being enforced by the government. The reference to this plan in para. 1258 of the EIA relates to uncontrolled development that has occurred in the Gudauri area, which was one of the reasons this plan was put into place. |
| 50 | "However, the exact nature of the visitor center is yet to be confirmed and will be developed following the completion of a specific study, and therefore its impacts, including in driving additional tourism to the Khada Valley from Gudauri, have not been assessed." | When the exact nature, location, and design of the visitor center is established, an assessment of social and environmental impacts will be initiated in accordance with Section 7 of Appendix 1 of the SPS. The assessments and consultations being carried out under the unfolding KVDP will inform the exact nature and location of this center. Pursuant to the SPS, construction shall not commence on the visitor center until the necessary safeguard assessments have been undertaken, with the relevant provisions of the safeguard documents reflected within the works contract. |
| 56  | "Regardless of the quality of the Zakatikani-Gudauri road and whether it is upgraded as initially envisaged or not, an arched bridge (Bridge 3) will create a new link between Gudauri and the Khada Valley, facilitating the expansion of tourism and other development plans for the expansion of the Gudauri tourist area and for development of the Khada Valley. This results in a wider area of influence. Consequently, ADB should have ensured that the induced impacts associated with the creation of the new link between Gudauri and the Khada Valley were considered in the Final EIA." |

| 57  | Induced impacts for the project were considered in Section F.9 of the EIA. In addition, potential induced impacts are comprehensively managed through the development of the KVDP, which will contain land-use regulations and all necessary details for the issuance of building permits. The KVDP goes beyond SPS requirements and will itself be subject to a Strategic Environmental Assessment, following national requirements. |

| 58  | "The CRP finds that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS to ensure adequate consideration in the Final EIA of induced impacts relating to the connection established by the Project between the Khada Valley and Gudauri, as required by SPS Environmental Safeguards Policy Principle 2." |

| 59  | In accordance with SPS Policy Principle 2, an environmental assessment was undertaken during project appraisal which, among other things, assessed induced and cumulative impacts. As already noted, the SPS requires an assessment of the environmental impact of the proposed project. This assessment cannot include features that have not been included in a project design at appraisal and are only included later, during implementation of the project. At the time of Project appraisal, a permanent access road was not included in the Project design. However, with approval of a permanent road, a full assessment has now been conducted in accordance with SPS requirements, with attendant mitigation measures reflected within the assessment. |

| 60  | As earlier noted, in accordance with the SPS, assessment of temporary roads was included in the EIA in Section F.7.9. Table 151 listed the need for the contractor to develop a Temporary Roads Method Statement ensuring potential environmental impacts were properly mitigated. |

| 61  | "However, the CRP notes that since the EIA addendum for the new Zakatikani-Gudauri road has not yet been finalized and the content of the KVDP is not yet clear, and moreover the KVDP will not address all of the villages in the area adjoining the Zakatikani-Gudauri road, there remains a risk of direct and material harm to affected people as a result of ADB’s pre-Board approval noncompliance in relation to the induced impacts of the connection established by the bridge between the Khada Valley and the Zakatikani-Gudauri road." |

| 62  | As noted above, the KVDP is now underway and will be completed in 2022. It will provide the best mechanism to ensure induced impacts within Khada Valley are carefully managed. The unfolding KVDP will be legally binding and will define zoning and land-use regulations. Given this, the Report’s assertion of a risk of direct and material harm relating to induced impacts seems unclear. |

| 63  | It is acknowledged that the KVDP does not include the villages of Jaghman and Kasauri, which are adjacent to the Zakatikani–Gudauri Access Road, because they fall under the Gudauri Masterplan that was approved in December 2019. However, these villages are included within the environmental and social impact assessment for the |
permanent access road and the outcome of this assessment will be included into subsequent works contract with the requirement that measures must be implemented prior to construction. Therefore, the potential risk of direct and material harm is being clearly managed and there is no evidence provided to suggest that these two mechanisms will not be sufficient to avoid likely harm.

### B. Air, Noise, and Vibration Impacts

74 “The CRP finds that at Board approval, ADB had not taken steps to ensure that the Final EIA contained adequate baseline air quality data from the Khanda Valley. Such data was necessary to understand changes in air quality due to construction and operation of the project road.”

Pursuant to para. 5 of Appendix 1 of the EIA, the EIA included appropriate environmental baseline data to inform the impact assessment. Air quality data of the Khanda Valley was not deemed necessary for purposes of the EIA because, as stated in the EIA, the results provide only a “snapshot” of air quality on a particular day of the year. Instead, modeling was undertaken taking a precautionary approach, where air quality in the valley was taken to be high quality and well below World Bank Group (WBG) Environmental Health and Safety (EHS) Guideline (2007) limits. Consequently, the absence of baseline data in this respect was not considered to influence the results of the modeling and the predictions of impacts. Moreover, pre-construction baseline data within the Khanda Valley was expressly required under the Environmental Management Plan (EMP) as part of standard project monitoring activities, meaning assumptions on air quality were clearly established prior to construction in Khanda Valley.

75 “Following Board approval, ADB did ensure that further modeling studies were conducted prior to the start of construction as required by para. 532 of the Final EIA. ADB was therefore noncompliant with its monitoring and supervision responsibilities under paras. 57 and 59 of the SPS. However, the CRP notes that detailed monitoring and modeling studies were later carried out, and the May 2022 Air Quality Impact Assessment Report prepared by the Lot 2 Contractor is comprehensive.”

To correct the finding, para. 532 of the EIA refers to “monitoring,” not “modeling.” Monitoring within the Khanda Valley was undertaken before the start of construction by the contractor as listed within the Semi-Annual Environmental Monitoring Report.

It should also be noted that the May 2022 Air Quality Impact Assessment Report validated the findings of the original assessment, confirming the original approach was robust and appropriate.

77 “The CRP has reviewed records of baseline noise monitoring carried out as part of the EIA and notes that while ambient noise monitoring was conducted at Kresheli and Arakhtwell, it was not carried out at villages in the Khanda Valley. This means that although the effect of the increase in road traffic noise on residents in these villages has been assessed through comparison with norms, there is no baseline data from which incremental noise change due to project-related activities could be calculated.”

In accordance with the SPS, the environmental assessment was based on appropriate environmental and social baseline data. Similar to the approach taken towards air quality, modeling was undertaken following a precautionary approach, assuming a “pristine” assumed noise level within the Khanda Valley. Consequently, the absence of baseline data in this respect had no influence on the results of the modeling and the predictions of impacts. Moreover, the EIA set out detailed provisions for operational noise mitigation including potentially resettling the residents where standards may not be met even with the use of
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| 82   | Both contractors’ NCPs identify the principal noise-generating activities at pre-construction and construction stages of the Project. Like the EIA, they present baseline data for two sites in Kheshti and Arakhwali, but without measurements for the Khanda Valley. The Lot 1 Contractor’s NCP (Noise Control Plan) provides assumed noise levels expected from construction equipment (Table 3 of the report). The CRP has therefore compared these levels with values set by two widely referenced sources: the US Federal Highway Administration and the US Environmental Protection Agency. As per the EIA, baseline noise levels within the Khanda Valley were taken to be pristine, therefore the appropriate noise limits are those stated within the WBG EHS Guidelines at 45 night/day dB(A). Therefore, regardless of the equipment being used or the distance from the construction site to the receptors, these are the limits that the contractor is required to meet, and this is clearly set out in the Noise Control Plan for both Lot 1 and Lot 2 contractors. With respect to the construction noise levels presented in the NCP, these are the same as those in Table 140 of the EIA. They are based on Federal Highway Administration of the US Department of Transportation for assessment of construction noise and uses Roadway Construction Noise Model (RCNM) Ver. 1.1. |
| 85   | The CRP has reviewed the contractors’ NCPs dated April 2020 for Lot 1 and August 2020 for Lot 2. While the NCPs refer generally to good operational practices, technical details of project execution intensity, equipment configuration, and the predicted noise levels and mitigation measures with expected outcomes are not mentioned. Neither contractor’s NCP contains details on mitigation measures and expected outcomes. The NCPs do not adequately address mitigation of impacts at temporary facilities considering limited information available at the time of the preparation of the NCPs nor actual noise generation data from the construction equipment deployed in the field. Both NCPs set out clear requirements for the contractors in terms of the project noise standards that must be met, mitigation that must be applied, and monitoring requirements. The principles provided are relevant, and the requirements clear, aligning with those set out in the EMP that ADB approved and consistent with those in SPS Appendix 1 Section 9, Pollution Prevention and Abatement. Further, the siting of temporary facilities included requirements to locate them away from local settlements to avoid impacts as far as possible (para. 852 of the EIA). This is in alignment with Policy Principle 4 of the SPS. |
| 89   | The CRP finds that at Board approval, ADB had not taken steps to ensure that the EIA contained adequate baseline noise data from the Khanda Valley. Such data was necessary as an alternative to obtaining baseline data for noise. A more precautionary approach was undertaken, aligning with SPS Appendix 1, para 12 which assigned a “pristine” quality with respect to noise (as well as air quality). This baseline was confirmed to be more |
to understand the incremental increase in noise levels due to
construction and operation of the project road.” precautionary through latter-stage data collection in 2022, where in fact
original predictions were more conservative than the original modeling
results.

| 94 | “Regarding ADB’s noncompliance in relation to review of the
contractors’ NCPs, the CRP finds that the absence of
effective mitigation measures at construction stage for
temporary facilities in the NCPs may result in higher noise
levels than the standards and that this may result in harm.” The SPS requires ADB’s review and approval of the EIA and EMP. The
NCPs are contractual documents included within the works contract
between the executing agency and the contractor, the requirements for
which are set out in the EMP cleared by ADB.

The SPS requires that the EIA and EMP include clear requirements
with respect to prevention or mitigation of construction noise, and the
EIA and EMP included such requirements in accordance with the SPS.
ADB undertook due diligence on these documents, and they were
approved in line with para. 55 of the SPS.

Following project approval, the measures set out within the EIA and
EMP were subsequently transposed into the NCPs, which were then
reviewed and approved by technical experts from the Project
Management and Construction Supervision Consultants (PMSCC). As
lender, it is not the role of ADB to be involved in this process and to
assess the adequacy of these reports. ADB’s responsibility is only to
ensure that requirements set out within the EIA and EMP have been
included, and this has been done through the bank’s ongoing role
under para. 44 of the SPS to review, monitor, and supervise the
project.

By requiring ADB’s review and clearance of NCPs, the Report
establishes standards that exceed the requirements of the SPS. It is
also an unrealistic expectation that ADB can or should review and clear
all technical plans. This is the role of the implementing agency and
construction supervision consultants, who are engaged to provide this
function and to take responsibility. This is the same as with detailed
engineering designs. ADB is not an engineering firm and cannot sign
off on technical designs. The implication of such a finding would be that
ADB should play the role of a certified engineer. This goes well beyond
ADB’s clear responsibility for due diligence, as defined with the SPS.

With respect to the finding of harm, the Report provides a general
assertion that the absence of ADB review of the NCPs may result in
higher noise levels. The Report does not provide evidence of inadequately mitigated noise levels, nor does it establish a causal relationship between any such noise levels and the absence of ADB review of NCP reports. With regards to findings of harm related to noise, the last two Semi-annual Environmental monitoring reports shows all standards were met across the project footprint other than in a few locations with minor exceedances (less than 3 decibels) across the last year and that only one noise related complaint has been submitted since commencement of construction. This suggests that the NCPs are in fact adequate, noise issues are not a significant issue for residents, and there is no likelihood of harm.

C. Design and Deferrment of the Environmental Management Plan

112 (b)  Topsoil: The Final EIA requires the contractors to prepare Topsoil Management Plans and Reclamation/Land Restoration Plans. While the location of many temporary facilities was not known at the time of EIA preparation, the preparation of these TSEMs by contractors would have been facilitated by the specification in the EMP of topsoil storage locations in the right of way in light of estimated approximate quantities of topsoil generated in the right of way.

Pursuant to Policy Principle 4 of the SPS, an EIA and EMP were prepared for the project. The additional requirements set out in respect of the development of the Topic-Specific EMP (TSEMP) serve to add an additional layer of management scrutiny, account for local conditions, and include contractor construction method and technology not known at the time of approval. Requiring the development of these additional plans provides additional assurance beyond SPS requirements that the contractor will appropriately manage impacts at the project level. It also considers local approval requirements with the Ministry of Environmental Protection and Agriculture (the regulator), which requires such plans to be compiled for many facilities such as batching plants.

The Report suggests noncompliance with respect to the quality of the TSEMs noting that such issues could have been addressed if the EMP specified topsoil storage locations. The SPS does not require the preparation of TSEMs, and moreover the SPS does not require the EMP to address locations for temporary and permanent location of topsoil or any other temporary or associated facilities. Following general industry practice, the contractor is responsible under the terms of the works contract to identify such locations, gain national approval for them, and then appropriately manage and mitigate potential impacts following the requirements of the EMP and the issued permits.

112 (iii) The EMP could have provided better guidance for contractors had it provided for landscape impacts to be

In accordance with the SPS, the EIA included an appraisal of potential impacts on physical cultural resources, with attendant measures to
addressed through integrated landscape management plans.  

avoid significant damage to them. Landscape impacts were assessed within Section F.8.3 of the EIA and mitigation and management measures were set out in the EMP.  

Post-approval of the project, ADB has supported the development of the KVDP and protection of landscape will be a key component of this plan.  

The SPS does not include requirements for landscape management plans. Notwithstanding this fact, the Report suggests noncompliance because the EMP did not require development of landscape management plans. The Report therefore establishes requirements that exceed ADB policy requirements and finds noncompliance on the basis of such CRP-derived requirements.

117 "However, the CRP notes that not all TSEMPs and SSEMPs [Site-Specific EMPs] were ready when the SEMP was reviewed by ADB. Rather, the TSEMPs and SSEMPs were reviewed and approved by the PMC/S on an individual basis as work progressed."  

Pursuant to Policy Principle 4 of the SPS, an EIA and EMP were prepared for the project. The Specific EMP (SEMP), TSEMP, and SSEMP are not required under the SPS but were nonetheless developed for the Project to add an additional layer of scrutiny, account for local conditions, and include contractor construction method and technology not known at the time of approval. These additional plans provide added assurance beyond SPS requirements.  

Notwithstanding that these plans are not required under the SPS, the Report suggests the presence of a compliance issue based on the sequencing of the preparation of the TSEMPs and SSEMPs and indicates these plans should have all been in place prior to the start of construction.  

The approval of the SEMP was listed in the EIA (para. 1305) and the requirement to submit this document for approval by the contractor to the Roads Department and engineer prior to taking possession of the works site was an obligation under their contract. The contractor did provide this document and works were allowed to proceed with this in place. The SEMP is an overarching document that transposes all the measures detailed within the EIA and EMP into the contractors’ own document. Where necessary, the SEMP is complemented with additional TSEMPs and SSEMPs and as is normal these plans will only be prepared on a needs basis to be in place prior to the start of relevant works as outlined in para. 1305 of the EIA. As an example of the approach, the Asphalt Plant Management Plan will only be prepared.
121 "The conceptual framing of the SEMP-SSEMP/TSEMP model leaves the detail of many mitigation measures to be established only after project approval. The CRP understands that the theoretical framework is that ADB approves the SEMP, which is to include all its TSEMPs and SSSEMPs. The assumption is that all TSEMPs and SSEMPs will be available at the time that ADB reviews the SEMP, and that ADB therefore has adequate opportunity to exercise effective safeguard oversight over the borrower's environmental and social risk mitigation management, and monitoring; and offer guidance and course-correction where needed. However, in this Project, the CRP notes from the internal documentation that not all TSEMPs and SSEMPs were ready when ADB approved the SEMP. They were developed at different times, and some were not subject to ADB approval at all after they had effectively been separated from the SEMP approval process."

As noted above, pursuant to Policy Principle 4 of the SPS, an EIA and EMP were prepared for the Project and ADB met its obligations under para. 56 of SPS to undertake due diligence and review these documents. The SEMP, TSEMP, and SSEMP are not required under the SPS, but were nonetheless developed for this project to add an additional layer of scrutiny, account for local conditions, and include contractor construction method and technology not known at the time of approval. These plans provide additional assurance beyond SPS requirements.

Notwithstanding the fact that the concerned additional plans are not mandated by the SPS, but instead developed to provide an additional layer of assurance, the Report suggests noncompliance with ADB policies and procedures based on the sequencing of the development of these additional plans. As mentioned above, these plans are developed when relevant and not all required prior to the start of construction.

124 "The de facto effect of pushing the mitigation and management details of the EMP to SSEMPs and TSEMP in a governance structure that does not allow for explicit ADB approval of many of these documents, is heavy reliance on the contractors/borrower's capacity to comply with SPS requirements. However, ADB's project preparation process does not provide it with opportunities to establish, or take account of, contractors' environmental and social capacities. The SEMP-TSEMP/SSEMP model's greater reliance on contractors to design and implement project- and site-specific mitigation measures suggests that contractors' environment and social management capacity should be part of bid evaluation criteria."

In accordance with Policy Principle 4 of the SPS, an EIA and EMP were prepared for the project. The additional plans for inclusion in the works contracts (SEMP, SSEMP, and TSEMP) do not replace the EMP, but rather incorporate EMP requirements within the works contract with additional levels of specificity. Further, the EIA and EMP still provided a robust assessment framework for Project approval and did not defer the mitigation and management of the project to the completion of the TSEMPs and SSEMPs at a later stage.

The Report suggests noncompliance based on inadequate assessment of the contractors' "environmental and social capacities." The policy basis for this suggestion of noncompliance is not clear, as the SPS does not require such assessment.

D. Physical Cultural Resources

140 "A total of eight (8) areas of potential cultural heritage impact and/or potentially sensitive ICR sites are identified in Figures 184 and 185. The Final EIA states simply that the contractor..." This statement is included in para. 1276 bullet 2 of the EIA refers specifically to sites provided in Figure 184 and 185. However, the EIA also sets out in para. 1274 that the contractor must develop a Cultural..."
| 144 | The CRP notes that the EMP includes limited provisions on a Recultivation/Land Restoration Plan. There is no provision for monitoring of landscape restoration measures or for a landscape management plan. | Heritage Management Plan, which includes the 5-phase strategy for progressive assessment and mitigation as set out in Appendix N. The requirements of the 5-phase strategy are comprehensive and set out a robust framework for the contractor to undertake archaeological investigations across the entire project. The 5-phase strategy is now under implementation as clearly demonstrated. | Landscape restoration is covered under re-cultivation and land restoration. The contractors are required to complete Reinstatement Plans (see Table 170 of the EIA and row #3 of the EMP) and subsequently implement them. Implementation of these plans will then be monitored as per normal requirements of the Project. Moreover, a series of landscape photomontages have been prepared at relevant locations in the Khaza Valley. These photomontages cover three different time horizons (current, post-construction, and 15 years after Project completion) and will inform the preparation of the Reinstatements Plans. Landscape restoration measures are being further enhanced under the ongoing KVDP with support from international landscape architects and regional planners. |
| 145 | The Final EIA does not assess potential operational stage impacts that result from project infrastructure being located within visual protection zones of some monuments, or through a historic-cultural lens on the landscape changes that will result from the project. Neither does it discuss risk to PCR arising out of potential theft or vandalism. | Visual impacts from the Project's operation are dealt with in Section F.8.3 of the EIA, which covers landscape and landscape change, and has been assessed. Security is covered under F.9.1 of the EIA, although it is not specific to PCR. The Report could note that landscape photomontages (see above) and a detailed Historic-Cultural Reference Plan have been developed to further complement the EIA assessment on landscape. Both were provided to the CRP during the investigation. | Any unplanned development has the potential to affect PCR monuments and sites. The EIA has assessed the overall risk of uncontrolled development in Section F.9 and the unifying KVDP is addressing this risk and its implications for PCR monuments, sites, and landscape. |
The CRP notes that Phases 1-3 in the Project’s 5-phase strategy for contractors reflect steps that other regulatory frameworks reviewed envisage for implementation prior to project implementation. The CRP refers here to guidelines on archaeological impact assessment in Western Canada, Ireland, and France. The loan agreement requires the Project to be implemented in accordance with ADB’s SPS and Georgian law, both of which do not cross-reference guidelines from other countries. Section 9 of the outline EIA annexed to Appendix 1 of the SPS includes the following guidance: “This section discusses the national and local legal and institutional framework within which the environmental assessment is carried out. It also identifies project-relevant international environmental agreements to which the country is a party.”

Para. 45 of the SPS reads: “The borrower/client is responsible for siting and designing the project to avoid significant damage to physical cultural resources. Such resources likely to be affected by the project will be identified, and qualified and experienced experts will assess the project’s potential impacts on these resources using field-based surveys as an integral part of the environmental assessment process specified in paras. 4-10 [Environmental Assessment] (emphasis added).

Survey work implemented for purposes of the EIA was consistent with early-stage assessment. ADB should have ensured that Phases 2 and 3 were also implemented by the borrower during the EIA process for known project facilities.”

“Phase 2 states that ‘where possible, the route can be changed or its impact reduced to minimize the damage to PCR features.’ However, the CRP notes that avoidance of impacts through significant changes in project alignment is more difficult following project approval, when design features of one stretch of alignment naturally also determine parameters for further sections.”

“The CRP notes that potentially significant sites have been avoided by the current road alignment, the CRP notes that the EIA itself identifies areas close to the alignment where a chance of archaeological finds is flagged for further investigation.”

This requirement was complied with; walkover surveys were conducted by qualified and experienced experts (EIA Appendix III and T1). Prior to the Project, little information was available on PCR in the valley. It is acknowledged that the baseline assessment could have been strengthened before Board approval, extensive provisions were included within the EIA and EMP requiring such work to be conducted prior to construction. In particular, the EIA states the need to conduct more extensive field-based surveys and this was done prior to construction following the 5-phase strategy by the National Agency for Cultural Heritage Preservation (NACHP) amongst others.

Para. 47 of the SPS reads: “When the project is likely to have adverse impacts on physical cultural resources, the borrower/client will identify appropriate measures for avoiding or mitigating these impacts as part of the environmental planning process specified in paras. 10–15 [Environmental Planning and Management]. These measures may range from avoidance to full site protection to selective mitigation, including salvage and documentation, in cases where a portion or all of the physical cultural resources may be lost.”
This requirement was compiled with since the EMP and the archaeological 5-phase strategy identified appropriate measures for avoiding or mitigating the impacts on PCR.

It is often the case under ADB-financed projects that detailed design is completed post-Board approval and additional survey work is often undertaken post approval. Para 56 of the SPS does not require due diligence to be completed prior to project approval and ADB practice has been to undertake such archaeology work once a project is approved.

The NACHP decision [2 August 2019] approved the Project subject to two conditions: (i) earthworks are carried out only under the archeologist's supervision, and (ii) in case of identifying or discovering an archaeological object during the works, under Article 10 of the Law of Georgia on Cultural Heritage, the works must be terminated and the Ministry of Education, Science, Culture and Sports of Georgia (Agency at present) must be informed thereof immediately.

The approach followed through the Archaeological 5-Phase Strategy goes beyond the requirements listed within NACHP's decision and follows good international industry practice. It also specifically mentions in Phase 3 that resurfacing could be required to avoid impacts to sites. A similar phased approach was followed for the construction of the South Caucasus Pipeline (SCPX) gas pipeline in Georgia financed by BP plc (formerly The British Petroleum Company plc and BP Amoco plc), the allowed construction to continue while ensuring that impacts to PCR were avoided or mitigated as necessary.

Therefore, the borrower was aware of the risk of realignment and its implications and still approved and implemented the Archaeological 5-Phase Strategy.

Para. 47 of the SPS reads: "When the proposed location of a project is in areas where physical cultural resources are expected to be found as determined during the environmental assessment process, chance finds procedures will be included in the EMP. Chance finds shall not be disturbed until an assessment by a competent specialist is made and actions consistent with these requirements are identified."
This requirement was complied with, since the EMP included a chance find procedure (Appendix C). Moreover, through a combination of pre-construction survey by the Cultural Heritage Monitors and through the more extensive implementation of the 5-phase strategy in areas identified as having higher sensitivity in the EIA (see paras. 1274–1276), all construction sites were only handed over to contractors after appropriate above- and below-ground work was completed. This included detailed Phase 3 archaeological work by the NACHP in nine locations, which was concluded prior to the start of construction.

The chance find procedure was also triggered on four occasions and all requirements were adequately met. Chance Find Reports were issued on 11 November 2021, 23 February 2022, 27 May 2022, and 15 July 2022.

149 "The summary costs in the EMP of the Final EIA include modest sums for fencing, but do not otherwise include earmarked costs for management of cultural heritage issues such as further archaeological investigations."

The EIA is a planning document not a contractual document. It includes a cost estimate for mitigation and monitoring measures that is meant to inform the drafting of the bidding document. Cultural heritage measures are site-specific (each object is different and requires tailored mitigation) and cannot be realistically costed at the planning stage. However, the bills of quantities under the works contracts include different payment mechanisms (e.g., embedded costs, separate pay items, and provisional sums) for environmental monitoring and mitigation measures. These payment mechanisms are fit for purpose and working well, as exemplified by the effective implementation of archaeological investigations that have not been costed under the EIA.

151 "The CRP notes that at the time of the NACHP’s letter, the locations of temporary facilities were not made known to it in the reports and maps provided to it by the Roads Department. Many had not yet been identified."

Under Georgian legislation, the NACHP would not be required to receive information on these temporary facilities as part of the overall project approval process. Such facilities are dealt with separately and the process to approve these sites has been ongoing since the original approval.

152 "The Roads Department proposed that the NACHP carry out the work, and ADB obtained internal clearance. A little later, the Lot 1 Contractor’s Cultural Heritage Management Plan was discussed, as well as buffer zones (though the record does not reveal the nature of this discussion)."

Management plans are discussed among the Roads Department, the construction supervision consultant, and the contractor on a regular basis. Semi-annual safeguard monitoring reports highlight key activities carried out and achievements made during the reporting period; they cannot report back on ‘the nature of discussion’.

153 "The TOR [terms of reference] did not refer to relevant requirements of the SPS, and it did not provide for ADB to review or approve the outputs of the assignment."

The TOR were developed in compliance with SPS requirements, hence the absence of reference to it. ADB has no legal role to approve documents financed under its loans (unlike its technical assistance) since it is not a party to those contracts. The Cultural Heritage General
Appendix 6

The second NACHIP interim report is dated November 2020. It is notable for the breadth of its analysis and its identification of previously unconsidered objects and sites in the areas around the road alignment and planned temporary facilities. However, the report records a number of areas where topsoil had already been cut, and it was therefore not possible to conduct the survey as envisaged.

The second NACHIP interim report includes in Annex 2 the surveys undertaken by construction supervision consultant (UBM) cultural heritage monitors (CHMs). These were undertaken ahead of construction and no significant PGR findings were identified. As per Georgian legislation, works were allowed to proceed without further informing NACHIP or waiting for their approval of the sites. The procedure followed by UBM was as follows:

- CHMs complete the pre-construction survey for sites and can clear the site if no evidence of cultural heritage is found. The CHMs subsequently monitor the site during earthmoving activities following the chance finds procedure.
- Should CHMs identify something of value during the pre-construction survey, they notify NACHIP, who are obliged to undertake an initial investigation. NACHIP can then give clearance or state that further investigation is needed.
- If full archaeological investigation is needed, this is done by NACHIP or any other authorized body. Upon completion of archaeological works and confirmation that the site is ‘clear,’ NACHIP would endorse project works to recommence.

This approach was effectively followed and documented for all temporary facilities that were not covered under the detailed NACHIP investigations.

The second interim report concluded with a preliminary assessment of the physical condition of cultural heritage monuments and objects in the project area, listing 59 that a stated required conservation or restoration works. Restoration, urgent restoration, or conservation was noted as needed at 46. The list was stated to be intended to help the contractors take preventive measures before the start of works, and also to help prepare cultural heritage management plans. Of the 59, six (6) were identified as in need of urgent restoration.

The table included in page 166 of the second interim report lists 60 sites. While there are recommendations with respect to conservation and restoration of these 60 sites, it is important to note that this relates to the objects irrespective of the Project. If this list is compared to the Project-specific table provided in Annex 2 of the CHGAP, it can be seen that actions directly relating to the Project are not needed in most cases as the Project is unlikely to impact these sites.

The second interim report concluded that assessment had (i) identified changes in the historical landscape environment of large part of the identified PCR. (ii) indicated that the

This paragraph does not (i) reflect key text from the second interim report. "In order to avoid the above-mentioned risks (listed in para. 166 of CRPs draft report), it is advisable to take preventive measures."

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project would result in damage and/or physical destruction of one (1) immovable monument/object and nine (9) archaeological objects located in the immediate road corridor (these sites were later the subject of further archaeological investigation), (iii) identified expected construction damage to PCR structures located immediately above project tunnels; specifically six (6) archaeological objects above tunnel 2 on the Driveli Plateau, and the Tsiret Kvaratskhoveli close to the Lot 1 tunnel portal, and (iv) identified vibration impacts on cultural heritage resources with a number of sites referenced. A concluding section summarized recommendations including mitigation actions for individual objects/sites. Examples are highlighted in Box 3.

It is important to reflect that the NACHP provided its approval to the project in 2019. The alignment at that time was the same as during the NACHP surveys, and the register of cultural heritage monuments and the information of key sites within Khada Valley was available at the time of approval. None of the concerns with regards to the buffer zones were brought up at that time and ADB was not able to challenge the NACHP’s own approval of the project based on the laws it is required to regulate. ADB did due diligence to establish the approval was in place and as noted by the CRP, ADB also raised concerns about the NACHP findings with respect to buffer zones.

While the NACHP reports that the road alignment will pass through buffer zones, it does not state that there should be any realignment. Instead, the reports present a “road map” and actions to be taken to ensure the long-term preservation of cultural heritage in the Khada Valley, all of which are either implemented or underway.

ADB is already considering landscape restoration with photomontages provided to the CRP in May 2022. These photomontages were completed to show the road within the landscape from key cultural heritage locations and villages within and surrounding the Khada Valley. Images show how the landscape will be restored over time, with views presented for the current situation, post-construction (2023), and 15 years after project completion (2040). The photomontages will inform landscape restoration measures to be considered under the ongoing KVDP and the Reinstatement Plans to be prepared by the contractors.
| 178 | *Annex 3 of the ChGAP apparently shows the relationship between the project road and individual protection zones of monuments and objects—including those that had been granted temporary protection by the NACHP in December 2020. The CRP has not seen this Annex. However, the CRP has reviewed the version of the Annex that was attached to the earlier draft ChGAP. It shows that permanent project infrastructure encroaches on the physical protection zones of a total of 19 cultural heritage objects and monuments. Temporary project infrastructure additionally encroaches on the physical protection zones of a further thirteen cultural heritage objects and monuments.* The CRP did not approach the regional department to provide the final Annex 3 of the ChGAP. The regional department was not aware that this Annex was missing from the documents provided and would be happy to share it. With respect to the project infrastructure and the physical protection zone for monuments and objects, project infrastructure does indeed pass through the physical protection zone of some of these sites. However, Annex 3 does not list activities that need to be undertaken or not. Instead, Annex 2 of the same report is the key document identifying activities that need to be undertaken for these sites. ADB is carefully checking with the PAMCSC that activities listed in Annex 2 of the ChGAP are being undertaken. |
| 179 | *There is no evidence that ADB offered feedback, or sought clarification, on the recommendations and measures in the ChGAP. It was not in a position to ensure that the NACHP outputs were designed optimally from an SPS-informed risk assessment and mitigation perspective. Mitigation measures requested of the contractors following the NACHP’s work, with ADB's involvement, focused only on the actions for contractors in Annex 2 of the ChGAP.* ADB and the European Bank for Reconstruction and Development (EBRD) have regularly engaged with the Roads Department to discuss the findings of NACHP work and their implications for the Project. It is worth noting that the SPS does not require ADB to review management plans developed by contractors. This falls within the remit of the Roads Department (the employer) and the construction supervision consultant (the engineer). Further, the findings from the NACHP within the ChGAP are de facto in compliance with Georgian law. ADB has no right to challenge a sovereign state’s interpretation of the law. As well, the Project complies with SPS obligations under Appendix 1 Section 11; it is irrelevant whether the outputs of the ChGAP were optimal or not. |
| 181 | *ADB reviewed the Lot 2 [Cultural Heritage Management Plan] ChMP in July 2021, but apparently did not review the Lot 1 CHMP at this time.* Lot 1 CHMP was also reviewed, and significant joint comments were provided by the EBRD on 23 September 2020. It is worth noting that the SPS does not require ADB to review management plans developed by contractors. This falls within the remit of the Roads Department (the employer) and the construction supervision consultant (the engineer). Notwithstanding this, ADB and the EBRD went beyond and above their respective policy requirements to enhance the construction team’s capacity while contributing to Project’s environmental performance. |
| 183 | *The ADB project team did not engage directly with the Ministry of Culture, Sports and Youth before the expiry of the temporary protection.* The Ministry of Regional Development and Infrastructure has been engaging with the Ministry of Culture, Sports and Youth regarding the temporary protection of cultural heritage sites. Regulatory
| 194 |  "The ADB project team also received weekly internal updates from its monitors. No noncompliance reports regarding PCR had been considered necessary by the PMC/SC by January 2022. However, the CRP’s review of 4 months’ internal reports by ADB monitors (October 2021–January 2022 inclusive) illustrates challenges in implementation of PCR mitigation measures [...].“  

While no noncompliance reports were issued, the Roads Department confirmed that the contractor(s) had been issued with letters relating to PCR by the PMC/SC on 25 occasions. This is standard practice in terms of project management and there is no reason to suggest the approach was not appropriate. This is also not a compliance issue and the SPS does not specify particular methods for project management and supervision.  

With regards to the PCR issues referenced in the bullets in para. 184 of the Report, as the lender ADB followed up on all these issues within the weekly reports. It is unclear what further action the CRP is asking ADB to take. ADB has clearly been fulfilling its obligations under para. 44 of the SPS. In addition, further nuance is necessary to understand two of the issues listed:  
(1) At Sivansami cemetery, the fence was partially damaged but the grave itself was not. The fence was fixed, and an additional protective wire mesh fence was arranged to protect the grave from any future potential damage. This grave itself does not fall under the Georgian Law on Cultural Heritage, since it was arranged in the 1970s and the law covers resources either at least 100 years old or having historical significance.  
(2) With regards to the travertine, the mineral outcrop mentioned was not touched or damaged. The muddy, saturated ground onto which the mineral rich water flows now has some tyre tracks on it, which in time will disappear. |

| 197 |  "The study area is less extensive than that applied in the NACHP’s work and does not include all of the area around the planned upgraded Zakatian–Gudaul road."  

Because the objectives of these 2 studies differ, they should be evaluated based on their respective objectives. The NACHP’s work focused on the inventory of cultural heritage objects within the overall project buffer zone (excluding areas within urban settlements). The objective of the Historic-Cultural Reference Plan (HCRP) prepared by Geographic was to build on the data collected by the NACHP and conduct detailed surveys on urban settlements in Khada Valley (including Zakatian), with an extension to Kvreshet and Arakveli...
“Not all of the Khadi Valley’s most significant cultural heritage monuments (such as the national monument Begot Kari church in Banas-Begoni) fall within the draft Reference Plan’s proposed built-up or historical built-up area protection zones.”

Objects that have never been part of built-up areas such as Begot Kari church do not qualify to be included either in built-up or historical built-up protection zones. Therefore, Begot Kari church was recommended to be included under the historic landscape protection zone, which is one of the most restrictive protection zones for development in the area. This is consistent with the Law of Georgian Cultural Heritage and Order N161 of the Government of Georgia on Rules of Establishing Cultural Heritage Protection Zones (12 May 2012).

Experts completed the HCRP in consultation with key stakeholders including the International Council on Monuments and Sites, National Trust of Georgia, and Blue Shield. Therefore, it is not appropriate for ADB to comment as to whether particular buildings should or should not be included within built-up area protection zones.

“Paragraph 49 of the SPS sets out requirements on the removal of PCR, including that best available techniques be employed. The CRP asked the ADB project team about arrangements for the relocation. They informed the CRP that the methodology would follow national law and that details would be clarified after an agreement had been reached between the contractor and its subcontractor. ADB has assured the CRP that it is continuing to conduct due diligence. However, at the time of writing there was no documentation showing how ADB would ensure that best available techniques would be met. The versions of the Lot 2 Contractor’s CHMPs that have been made available to the CRP do not make provision for relocation of cultural heritage objects.”

The best available techniques will be discussed and agreed among subject matter experts including those of the NACHP (regulator), the OnWis (construction supervision team), and the Project’s international cultural heritage consultant (Charles Le Queinec). Given this work has not yet been undertaken, there is no grounds for noncompliance as the activity has yet to be completed. ADB will of course aim to meet the requirements set out in Appendix 1 para. 49 of the SPS.

The CHMPs are living documents, so they are updated regularly as evidenced by the number of versions made available to the CRP. Once the relocation methodology is agreed, the CHMP for Lot 2 will be updated accordingly.

“There is no evidence that the ADB project team engaged with the NACHP or with other experts in Georgian cultural heritage law to ensure that it had fully understood its requirements.”

The EIA is a document of the borrower and the views expressed in that document do not necessarily represent those of ADB’s Board of Directors, Management, or staff, and may be preliminary in nature.
| 199 | The Final EIA was insufficiently detailed to identify all or even most, PCR likely to be affected by the Project, or to allow for documentation on the significance of the PCR identified so as to enable effective impact assessment. It did not assess the relevance of the restrictions on various kinds of construction within primary protection zones under the Law on Cultural Heritage. The Final EIA was insufficiently detailed to identify all or even most, PCR likely to be affected by the Project, or to allow for documentation on the significance of the PCR identified so as to enable effective impact assessment. It did not assess the relevance of the restrictions on various kinds of construction within primary protection zones under the Law on Cultural Heritage. |
| 200 | The EIA recognized the limitation of the PCR baseline and thus included significant additional requirements to be completed prior to construction. These requirements are outlined extensively within the EIA (and EMP) and through its Appendix V, with the implementation of the archaeological 5-phase strategy. The borrower was made aware that this approach posed risks to overall project implementation and that were pre-construction surveys to find anything of high significance, this could result in the need to reroute the road (mentioned explicitly under phase 3 of the strategy). Rerouting realignment has in fact happened for the proposed Zakalkari-Gudauli road Access Road as a result of the NACHP’s work. The approach taken by ADB as mentioned above is regularly applied and SPS para. 56 does not require all due diligence to be completed prior to project approval, but rather only that it must be completed, as was the case for this Project. This paragraph includes a footnote referencing legislation in France, Sri Lanka, and the United States. It is unclear how this is relevant to this project. There is a disconnect with the SPS as demonstrated above under the discussion on para. 147. |

The SPS states in para. 4 (Appendix I, Section D.1): “If potentially adverse environmental impacts and risks are identified, the...

The SPS does not require ADB to engage with regulators or experts in any specific field. The borrower through the project executing and implementing agencies is required to conduct meaningful consultations with stakeholders, which it has done under this project. ADB ensures compliance with national requirements by monitoring the implementation of the Environmental Decision issued on 25 April 2019 by the Ministry of Environmental Protection and Agriculture. The decision included a condition to secure approval of the project by the NACHP, which was obtained with conditions on 2 August 2019.
borrower/client will undertake an environmental assessment as early as possible in the project cycle. It therefore does not preclude works to be completed post-Board approval. The reality of ADB’s operations is that this is not always possible and so a risk-based and adaptive approach is needed to ensure that projects can progress while still ensuring that impacts are avoided. Such measures have been the focus for this project during the implementation phase.

The EI/AEMP includes a cost estimate for mitigation and monitoring measures that is meant to inform the drafting of the bidding document. Cultural heritage measures are site-specific (each object is different and requires tailored mitigation) and cannot be realistically costed at the planning stage. However, the bills of quantities under the works contracts include different payment mechanisms (e.g., embedded costs, separate pay items, and provisional sums) for environmental monitoring and mitigation measures. These payment mechanisms are fit for purpose and working well, as exemplified by the effective implementation of archaeological investigations that have not been costed under the EIA.

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<tr>
<td><em>The CRP considers that ADB should have ensured that for known project facilities, Phases 2 and 3 of the 5-phase strategy for contractors were implemented as part of the EIA process.</em></td>
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This opinion/consideration is not grounded on SPS requirements as demonstrated above under the discussion on para. 147.

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<td><em>The SPS clearly indicates that a cultural heritage-informed approach to landscape is required. But Part F on Environmental Impacts and Mitigation Measures of the Final EIA did not address the landscape from a cultural perspective, even after ADB feedback, and additional design opportunities to further mitigate adverse landscape impacts were not identified or assessed.</em></td>
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The SPS only includes three mentions on landscape, and defines PCR resources as “movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, palaeontological, historical, architectural, religious, aesthetic, or other cultural significance.”

The road design has carefully taken into consideration the character and heritage significance of the landscape by (i) avoiding impacts on known PCR objects, (ii) siting the alignment along the edge of Dvidel and Benian-Regini plateaux (below grade for Benian-Regini to further reduce visual and noise impacts), and (ii) including cut and cover tunnels and bridges fitting into the landscape. Moreover, the EMP includes specific provisions for contractors to develop Reinstatement Plans for landscape restoration before Project completion to reduce and manage operational impacts.

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<tr>
<td><em>ADB did not ensure that the operational implications of the Project for PCR were adequately assessed, or that changes that will be induced by the Project’s impact on the character and heritage significance of the landscape were identified and mitigated.</em></td>
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</table>

This opinion/consideration is not grounded on SPS requirements as demonstrated above under the discussion on para. 147.
As well, the unfolding KVDP has been informed by the Historic-Cultural Reference Plan, which assessed in detail the operational implications of the Project for PCR and included practical recommendations to manage them. The KVDP is a legally binding document which will be subject to a Strategic Environment Assessment and thus it provides the best instrument to manage operational implications of the project, which an improved EIA cannot do.

Para. 56 of the SPS does not require that due diligence and review requirements should be fully completed prior to Board approval. They are indeed now complete, as acknowledged in para. 203 and para. 209 of the Report. Para. 56 is therefore not relevant grounds for the identified noncompliance. Moreover, each finding on noncompliance should refer to specific policy requirements and should not be determined “in totality.”

Para. 7 of Operations Manual F1/OP reads: “A project’s environment category is determined by the category of its most environmentally sensitive component, including direct, indirect, induced, and cumulative impacts. Each proposed project is scrutinized as to its type, location, scale, sensitivity and the magnitude of its potential environmental impacts. The level of detail and comprehensiveness of the EIA or IEE [Initial Environmental Evaluation] are commensurate with the significance of the potential impacts and risks.”

The EIA is 1050 pages long (comprising 520 pages of main text and 1410 pages of annexes) and covers all key potential environmental impacts and risks. The EIA recognized that additional work was needed with regards to cultural heritage and therefore included significant additional requirements for PCR that are unprecedented for a sovereign operations project in ADB’s Central and West Asia Department. These measures, as mentioned extensively above, will ensure that impacts would be avoided, minimized, or mitigated. These measures have been subsequently implemented as envisaged.

By issuing a Safeguard Policy Compliance Memorandum on 28 May 2019, ADB confirmed that all key potential social and environmental impacts and risks of the Project were identified, and that measures for avoidance, minimization, and mitigation of adverse impacts were
<table>
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<tr>
<td>(i) ADB did not ensure that the SPS provided a reference point for the NACHP’s work, or that the TOR gave ADB adequate opportunities to review and comment on outputs. ADB was subsequently insufficiently involved in the process and was not in a position to ensure that the entirety of the work’s relevance to the project’s SPS compliance was brought to bear in the subsequent assessment of impact and design of mitigation measures.</td>
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<td>(ii) The Geographical work has led to inventorying of many new cultural heritage sites. In some cases, this raises additional questions about potential project risks regarding PCR. There is no evidence that ADB will now ensure that additional assessment of associated project impacts on these sites now takes place, including consideration of whether any further mitigation measures are needed.</td>
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<th>Page 204</th>
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<tr>
<td>The CRP concludes that ADB is noncompliant with its monitoring and supervision responsibilities under para. 44 of the SPS. It has failed to ensure in the period following Board approval that there was adequate assessment and mitigation of potential adverse impacts on PCR as required by Principles 2 and 4 of the Environmental Safeguards of the SPS in light of the findings of the additional work conducted following project approval and as already mentioned, the 5-phase archaeological strategy has been implemented. This has allowed PCR to be assessed and impacts to be avoided or mitigated. The approach has been consistent with Principles 2 and 4 of the SPS. ADB’s role as the lender, as per para. 44 of the SPS, has been to review, monitor, and supervise activities relating to Principles 2 and 4 of the SPS. This has been done within the Project team through additional staff.</td>
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by the NACHP and Geographic in the course of project implementation."

resources to monitor the project, firstly through inclusion of the role of the CRMs under the PMCSIC (a first for an ADB-financed sovereign project in Georgia) and secondly by including an environmental field officer who visits the site weekly and gives advice and recommendations with respect to PCR, among other things. ADB has actively engaged on PCR issues and in fact has brought in additional international expertise to supplement the Project team due to Project team concerns.

The assertion that ADB has not met its obligations under para. 44 of the SPS is subjective and does not take account of (i) ADB’s active weekly on-site work and (ii) the fact that the extensive work undertaken by the NACHP and Geographic has been integrated into Project implementation as supervised by the PMCSIC. ADB continues to engage with the Roads Department on issues and will further push to ensure PCR identified by NACHP and Geographic are protected and impacts avoided. This was highlighted in the Report.

| 206 | "Conservation and restoration work to prevent project construction damage is planned at one site on the Dikvel Plateau, and reinforcement work prior to construction is stipulated at one other location (Field ID: 23). However, preventive conservation or rehabilitation work is not planned at other sites where the NACHP has identified both conservation actions and risks of damage from construction."

"ADB has endorsed an approach that mandates conservation or rehabilitation work only ex post, should construction work affect the cultural heritage resource concerned. Based on the NACHP’s analysis, there is a risk that these measures will not achieve mitigation of potential adverse impacts to the level of no significant harm to third parties as provided in Principle 4 of SPS Environmental Safeguards."

The Report has missed an important distinction with respect to PCR mentioned within the NACHP reports. The Report clearly states within Annex 2 all the sites relevant to the Project and the actions needed to ensure these sites are protected. As mentioned previously, ADB is supporting the PMCSIC to ensure this list is carefully monitored and sites are protected and monitored appropriately in line with SPS para. 44.

In addition to this list, Section 6 of the NACHP report lists further sites that require conservation/restoration, regardless of the Project. The report states: "Rehabilitation works will be carried out by a company interested in land works in case the works have a physical impact on the CHR." The report also states: "The table will help the engineering companies to take preventive measures in certain areas before the works are starting."

The nuance of the language presented in the report is important as (i) it does not list these preventive measures as an obligation that must be completed, as it clearly does with respect to Annex 2, and (ii) the report also mentions that these preventive works should be undertaken "in case works have a physical impact on CHR" and should taken in "certain areas" before the start of works.

| 206 | "The CRP concludes that following Board approval, ADB has been noncompliant with its responsibility under para. 44 of the SPS to supervise the Project in such a way as to ensure that steps to address the risks to PCR of adverse construction impacts reflect the hierarchy set out in Principle 4 of the SPS Environmental Safeguards."

25
Therefore, ADB has not endorsed an approach that mandates conservation or rehabilitation work only ex-post. Rather, ADB’s approach has been to focus on sites that the Project may possibly affect. There is no reason to think this approach does not comply with Principle 4 of SPS.

It should also be noted that for sites where preservation and restoration are required, but for which direct project impacts are not envisaged, multiple opportunities for the future preservation of these sites will be presented through the KUP.

The relocation of the megalithic site at Field ID: 26 will be made in accordance with national legislation and “best available techniques,” which will be discussed and agreed among subject matter experts including those of the NACHP (regulator), the CHMs (construction supervision team), and the project international cultural heritage consultant (Charles Le Queinec).

At the time of Project approval and as extensively mentioned within the Report and EIA, baseline data collected prior to seeking Board approval was not extensive. However, being aware of this shortcoming, ADB presented comprehensive requirements in the EIA (paras 1274–1289) and EMP to ensure that prior to construction, PCR would be comprehensively managed and policy principles 2, 4, and 11 would still be met. In addition, as outlined above, SPS paras 56 does not specify if all due diligence is required prior to project approval. It is common practice to undertake archaeological works post-approval as previously mentioned.

With respect to post-approval findings mentioned in para. 207 of the Report, ADB is aware of the mentioned PCR interests and will look to appropriately manage them in compliance with SPS Appendix 1 Section 7. ADB will consult with its Social Development and Safeguards Specialist about the most appropriate reporting format to disclose further information.

ADB has no mandate to challenge the interpretation of national legislation by a national regulator. As mentioned, the Project alignment was provided to the NACHP when approval was sought, and the agency did not raise concerns with respect to buffer zones or
with these prohibitions in light of the recommended listings. Given the sensitivity of the project area, the CRP expects ADB to ensure that project implementation accords proper respect to the restrictions included in the provisions of the Law on Cultural Heritage on primary protection zones, particularly when mitigating construction risk that may adversely impact on objects and sites that were previously temporarily listed and that have again been recommended for listing in the historic-cultural reference plan process. protection zones when it provided subsequent approval on 2 August 2019.

Post-approval survey and assessment work by the NACHP has now clearly identified these zones. However, the NACHP has not challenged the original ruling nor has it added new restrictions on the Project. Therefore, it can be concluded that the NACHP has a mandate to interpret the Law on Cultural Heritage as they deem appropriate and in the case of the Kvesheti–Kobi Project, the agency has confirmed that the original approval for the Project is still valid and there are no specific additional requirements with respect to the buffer zones.

Regarding ADB’s noncompliance during pre-project due diligence and review, the CRP notes that a significant body of new work has now been conducted which addresses some of the gaps. However, this additional work has itself been associated with further ADB noncomplies and has not completely remedied the earlier noncompliance. The CRP concludes that there is a risk of material and direct harm to affected people as a result of these noncomplies.

Further clarification is warranted about “further ADB noncomplies” and “earlier noncompliance” mentioned in the second sentence of para. 209. The conclusion about likely harm does not establish a clear and strong link to the noncomplies identified.

E. Socioeconomic Impacts and Project Benefits

During the CRP’s site visits, several community members expressed their dissatisfaction with contractors’ use of their land for temporary project facilities. At the time of project approval, the locations of many temporary project facilities were not known. Private negotiations between contractors and affected persons were needed to meet the Project’s land access needs. ADB project team members informed the CRP that these negotiations were a private contractual matter between contractors and affected persons. Thus, land takings for project facilities such as camps, access roads, storage facilities, spoil disposal areas were not included in the LARP. Land acquisition and Resettlement Plans.

Negotiated land acquisition as stipulated in the SPS does not apply in this context and refers to a very different set of project circumstances. The reference to negotiated land acquisition is erroneous in this case. Temporary land take by a contractor is regulated through standard provisions in the civil works contract, as they relate to areas beyond the right of way which is given by the employer. At processing stage, ADB strengthened the approach and requested inclusion of additional provisions in the LARP to ensure the due diligence on land take administered by the contractor for temporary purposes be adequately done and supervised by the government. Thus, the due diligence for Project facilities such as camps, access roads, storage facilities, and spoil disposal areas are reflected in the LARP. Entitlement Matrix under two provisions for unanticipated social impacts in the last two rows:
(a) “Unforeseen impacts during construction, including temporary impacts and impacts on livelihoods not otherwise assessed,” and
(b) “Impacts related to spoil disposal areas and construction camps.”

These impacts are indeed normally managed by contractors through private agreements and as such do not fall under the provisions of the
218 The Final EIA was silent on the evident social risks associated with asymmetry of information and bargaining power of the parties involved in transactions for temporary use of land for project purposes. Neither the Final EIA nor its EMP provided for actions to be taken to provide information to affected persons on issues such as market rates for leases, or what to expect when discussing possible lease arrangements. No good practice framework was established for the contractors on how to conduct due diligence in respect of land acquisition in the Project’s challenging land registration context; nor on principles for negotiating with affected persons to achieve fairness and manage risk. This contrasts with detailed SPS requirements applicable to negotiated land acquisition when the involuntary resettlement safeguard applies. Among other things, SPS Appendix 2, para. 25 provides for negotiated settlement to be based on an adequate and fair price for land and/or other assets, and for negotiations with displaced persons openly to address the risks of asymmetry of information and bargaining power.

229 No designed operational-stage mitigation of community security and safety risk is proposed in the EIA. Other kinds of security risk—such as risks of theft from unoccupied homes, or risks to the personal security of winter residents of sparsely populated villages—are not identified. Affected people will largely need to find their own ways to adapt.

LARP. However, as the Project team explained to the CRP, these impacts do fall under the LARP as soon as they are involuntary—and an affected person’s complaint has been one trigger used by ADB to invoke the LARP provisions in cases of contractors’ use of land. Each complaint has been identified and monitored, until resolution.

Negotiated land acquisition is not a directly relevant concept in this case: Land acquisition is done through eminent domain for this project and negotiated settlement and its extended provisions do not apply. If the contractor fails to comply with their contractual obligations related to temporary facilities and land take, the Project-level needs for mitigation of social impacts are managed through the environmental management process during implementation. The contractor’s performance with relation to management of social impacts is being effectively monitored and complaints are being resolved through the Project’s Grievance Redress Mechanism (GRM) through both environmental management and involuntary resettlement means.

Contractor performance is being monitored and instances of noncompliance are being reported to stakeholders through the Community Liaison Office (CLO), and environmental field officers on a weekly basis. Both the GRM and the safeguards monitoring arrangements are robust and exceed standard practice. Information is provided to the Roads Department and the MCMSC and it is their responsibility to complete actions to resolve issues identified. Safety and security risks are yet to materialize. However, ADB will work closely with the Roads Department to engage with communities on the early recognition of any emerging risks. There is no evidence of direct and material harm.

The EMP (Table A-6) includes an operational phase EMP which includes specific measures, one of which relates to liaising with the police with respect to the operation of the road. As part of this aspect, issues relating to security will be covered.
260. "The Final EIA acknowledges that littering with waste is a problem along the existing alignment and that its continued use would see this situation continue. There is an implicit suggestion that this is among the justifications for the new alignment. During construction, the Final EIA proposes regular cleaning of project sites. It acknowledges the potential impacts of litter during operation, but a recommendation that the Roads Department shall ensure clean up and waste removal from carriageway and roadkerbs is included only in the Final EIA's analysis of impacts on water."

261. "The Final EIA acknowledges that the landscape will completely change, providing illustrations of this; while describing ways in which the project design limits this impact—including through tunnels and cut and cover sections. Regarding operational stage visual impacts, the Final EIA presents a new arch bridge across the Kheda Valley as a potential future attraction for tourists. It also suggests, without evidence, that the local community, with time, will get accustomed to the new infrastructure: adding that ‘perception of the viewers may differ’. Similarly, while landscape visual impact is highlighted in the Final EIA’s consideration of adverse factors associated with the ‘with project’ alternative, the Final EIA states that ‘this is subjective.’ The Final EIA does not address use of the landscape for traditional farming or religious or other community practices. It does not address landscape as a source of identity for its traditional residents nor the possible implications of landscape impacts for affected peoples’ identity or resilience. There is no record that ADB requested any change in this aspect of the EIA."

266. "ADB's internal monitoring documents expressed concern on different occasions that lease agreements were one-sided in favor of the contractor, and not all agreements were initially written. Widely differing sums had been requested by affected persons, and widely different agreements reached. In some instances, third party valuations had been obtained when agreement on rental amount or (in instances where encroachment damage had occurred) compensation, proved elusive for extended periods of time. Some affected persons were unable to travel to sign agreements, due to distance, or due to work commitments."

As mentioned above, the EMP (Table A-6) includes an operational phase EMP which includes specific measures relating to waste. There is no evidence of direct and material harm. Due diligence, mitigation planning, and monitoring arrangements are in place.

The EIA does include Section F.8.3 on landscape impacts and it is inherent in the assessment that community considerations were included. The EIA does not presume to say exactly what will or will not happen in the long term; as how the community will react is uncertain. Annex 2 of the SPS clearly states uncertainty should be mentioned, as has been done in the EIA.

Impacts on traditional farming and religious and other community practices have broadly been covered in other aspects of the EIA, if not directly mentioned within the landscape section.

Landscape generally is only mentioned in the SPS as a component of PCR, and the EIA delivers all requirements set out within Section 11 of Appendix 1 of the SPS.

There is no evidence of direct and material harm. The alleged potential harm related to visual and landscape impacts affecting traditional farming or religious or other community practices represents a rather vague claim, which is not linked to any specific concerns raised by the communities so far and/or registered by the Project.

This relates to contractor performance and is not a noncompliance matter with respect to ADB. The Report confirms though that ADB is on top of the issue and is actively monitoring the situation. The action tracker and grievance database were specifically designed to capture and monitor all grievances received, not only those elevated to ADB. This has provided a unique instrument for tracking grievances as well as an interface with the respective stakeholders required for grievance resolution. It is correct that some grievances were open for extended periods of time, and also that the Project team withheld acceptance of
grievances have been lodged with the project level GRM. Based on the UBM Action Tracker on Community Grievances from the time of commencement of the Project to December 2021, 25% of all grievances received pertain to this issue. While 69% of these complaints were lodged as resolved, some have remained pending for months. The CRP understands that to address continuing issues, the ADB project team withheld acceptance of Compliance Report CR 2/3 when it was submitted by the Roads Department. This also withheld clearance of the corresponding area for construction.1

ADIB will continue to monitor issues related to the contractor’s performance when implementing temporary land take and advise the government on application of a standardized approach to lease agreements based on applicable market rates and consistency of the approach.

237  “ADIB has a responsibility to ensure that projects respect and follow international and local laws as stated in para. 47 of the SPS. Taking of privately-owned lands without a signed contract and/or compensation to the landowner is illegal in Georgia. Use requires the permission of the owner, and trespass is considered a crime under Article 160 of the Criminal Code of Georgia.”

ADIB does not have a role in enforcing national laws, or offering its own interpretation of national laws. Whenever a contractor’s infringement was brought to the attention of ADIB, it was immediately raised with the Roads Department, often repeatedly, with continued encouragement for the Roads Department to compel the contractor to comply.

This is not a noncompliance matter with respect to ADIB. ADIB continues to advise the borrower to comply with relevant national laws and regulations, as well as to perform due diligence and contractor supervision as committed to by the Government of Georgia with respect to LARP and DIA.

241  “Disruption in villagers’ access to water due to construction damage has also been a problem. During the CRP’s second mission in November 2021, the CRP heard directly about several instances when water supplies to Benani and Begoni had been interrupted or pipes damaged by contractor vehicles. Village water supplies in Tekere and Bedoni have also been adversely affected on different occasions. Villagers in Benan-Begoni were also concerned about the implications of planned connection of contractor infrastructure to the same water supply as them. ADIB’s monitor recorded in January 2022 that the contractors were to provide a water balance to the PMCGC for its approval.”

All water supply issues (such as damages and connections) have been reported and monitored regularly, with continued weekly discussions at Roads Department management level.

Significant progress has been made on the issues with respect to water supply and the long-term outcome to the communities will in fact be far better than the situation prior to project commencement. An improved water supply network is already in place and water tanks are being installed at strategic locations within the valley to ensure water will be supplied to villages far more consistently and in greater volume.
242. "Some repairs on occasion took considerable time to resolve, with ADB noting that delay in the contractor's action was inconsistent with para. 987 of the Final EIA. Thus, residents of Bienan-Begoni suffered extended interruptions in water supply in 2021-2022 following contractor damage to pipelines. In February 2022, community members stated that they would block the Lot 2 Contractor's activities in Tsiere if water supply to the village was not reinstated. Later that month, the Lot 2 Contractor agreed with villagers that remaining repair works would be postponed until spring when weather conditions were more favorable. However, in May 2022 there were still ongoing problems with water pipes in Bienan-Begoni. Agreement was reportedly reached that the water supply systems in Bienan-Begoni would be replaced, and in May 2022 the layout of a proposed new 2 km pipeline was presented to residents."

As far as is possible, ADB has facilitated resolution of issues through consistent encouragement of the Roads Department to require the contractor to apply remedial actions. Non-timely performance of contractors should be considered separately from any deemed ADB noncompliance.

243. "Regarding identification and mitigation of adverse social impacts, the CRP found that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 95 of the SPRS as it failed to ensure, as required by Principles 2 and 4 of the SPRS Environmental Safeguards, that the Final EIA and its EMP:

(i) identified and effectively mitigated risks of adverse social impacts arising out of negotiated land acquisition by the contractors;
(ii) provided for adequate mitigation of adverse impacts associated with reduced community access to some areas of land;

(iii) went beyond simplistic assertions regarding the project's visual impacts to identify the wider social implications of the project's landscape impacts; and

(iv) provided for adequate identification and mitigation of adverse operational stage social impacts, particularly those regarding litter and waste, and community safety and security."

ADB strengthened this approach and requested that the borrower include additional provisions in the LARP to ensure due diligence on land take administered by the contractor for temporary purposes be adequately done and sufficiently supervised by the government. Thus, the due diligence requirements for Project facilities such as camps, access roads, storage facilities, and spoil disposal areas are also reflected in the LARP, and the LARP's Entitlement Matrix has two provisions for related unanticipated social impacts in the last two rows:

(a) "Unforeseen impacts during construction, including temporary impacts and impacts on livelihoods not otherwise assessed;" and

(b) "Impacts related to spoil disposal areas and construction camps."

Therefore, there is no noncompliance with respect to ADB's adherence to the SPRS, but there are ongoing concerns with contractors' performance and management of social impacts on the ground. Risks of social impacts are inherent in all projects with civil works contractors and it is clear that the Kwehele-Kool contractors caused some infringements by encroaching on private lands. However, the Project GRM did identify these cases and the Project team monitored them all to mutually agreed solutions. It is acknowledged that timeliness was suboptimal, partially due to the borrower being reluctant to instruct contractors to take remedial action. This said, ADB remains on top of the situation and will continue to advise the borrower on application of a standardized and consistent approach to lease agreements based on applicable market rates.
(i) All cases of access grievances have been captured and the Roads Department has agreed to ensure access and/or compensate. All cases of “orphan lands” will either be fully acquired or have access provided. This is consistent with the policy objectives to avoid involuntary resettlement wherever possible. There is no noncompliance on behalf of ADB and no harm has been caused as loss of access has not yet been experienced. No compliance reports are accepted and no land handed over to contractors without, among other things, addressing and compensating for mitigating any claims of access loss.

(ii) This is a very broad statement to which it is difficult to respond unless it is supported by specific cases where harm has been caused. There is no evidence of direct and material harm.

(iii) These operational stage impacts are common yet difficult to anticipate. All cases of such social impacts have been captured through the grievance monitoring and weekly recommendations made to the Roads Department. There is no evidence of direct and material harm. Due diligence, mitigation planning, and monitoring arrangements are in place.

| 244 | ADB did not confirm prior to Board approval that all key potential social impacts and risks of the Project were identified, and that measures for avoidance, minimization, and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design, as it was required to do by para 56 of the SPS. ADB has ensured compliance with each element noted in para. 56 of the SPS (very broad reaching), though performance always leaves room for improvement. By issuing a Safeguard Policy Compliance Memorandum on 28 May 2019, ADB confirmed that all key potential social and environmental impacts and risks of the Project were identified, or that measures for avoidance, minimization, and mitigation of adverse impacts were adequately incorporated into safeguard plans and project design as required by para. 56 of the SPS. |

| 245 | The CRP finds that ADB’s noncompliance in respect of its pre-project implementation responsibilities regarding effective mitigation of social risk associated with contractors’ negotiation of access to private land led to direct and material harm to affected people. While this has been partly remedied through steps taken during project implementation, problems, and a risk of direct and material harm to affected people remain. On ADB’s noncompliance in ensuring community access to some rehabilitation infrastructure. The Entitlement Matrix is inclusive and comprehensive, making provisions for a wide scenario of social impacts. Spoil disposal and construction camps are specifically mentioned. The LARP made specific provisions for unanticipated impacts, which by definition cannot be reported in advance. ADB has tracked, monitored, and facilitated the resolution of all complaints related to adverse social impacts. |
areas of land, the detailed engineering design that had been made available to the CRP at the time of writing have not been adequate to permit the CRP to verify whether current project designs wholly remedy this. The CRP concludes that there is a remaining risk of direct and material harm to affected people. A link to direct and material harm from specific noncompliance(s) has been presented by the CRP without factual support. No specific cases of what constitutes harm, rather than inconvenience, have been cited. The unique grievance database established by the Project, on the other hand, contains comprehensive records of all grievances received, through all channels, and tracks their trajectory to resolution.

Social dimensions have been identified, analyzed, and refined during Project preparation and implementation in accordance with CM Section C3. An initial poverty and social analysis was prepared at the concept stage, a social analysis was carried out during project design, and its findings were included in the summary poverty reduction and social strategy (SPRiSS) as well as the EIA, LARP, and Gender Action Plan (GAP). Moreover, a Community Needs Assessment was prepared by a reputable regional civil society organization at the early stages of project implementation to inform the preparation of the KVDP and its Priority Investment Program. The Community Needs Assessment was based on extensive field work including 11 focus group discussions and 185 rapid household surveys (covering 50% of the population of the valley). Social dimensions have been adequately incorporated into the Project design and are (i) based on robust data and assessments, (ii) reflected in Project documents.
Appendix 6

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<tr>
<th>Implementation arrangements to maximize the social benefits of the Project.</th>
<th>GAP, KVDG, and works contracts; and (ii) supported by adequate resources and implementation arrangements.</th>
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<td><strong>202</strong> Taking account of these facts, the CRP acknowledges the steps taken by ADB since project approval, with the support of the Roads Department, to adjust the project outputs to deliver greater positive social outcomes. ADB met its responsibility under para. 6(iv) of CM section C3/BP to ensure that project implementation arrangements included actions to enhance benefits. Nonetheless in the period since Board approval, the CRP finds overall that despite some promising initiatives, ADB has been noncompliant with its responsibility under para. 6(iii) of CM section C3/BP to ensure that the project design maximizes the Project’s social benefits.</td>
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<td>The finding on noncompliance is not based on SPS requirements, and is premised on the incorrect assumption that the Project design did not provide for development of village infrastructure and that no positive impacts would be realized from the Project. This is factually incorrect and contradicted by (i) the Project outcome and outputs indicators; (ii) the budget set aside under two works contracts to implement small-scale social infrastructure as well as under one consultancy contract to set up the multipurpose visitor center and provide relevant trainings; (iii) the improvement of the sewage system in Takere village, water systems in the villages of Beordi and Beni-Begoni, and the forthcoming improvement of the Takere-Begoni Road; and (iv) the preparation of a Priority Investment Program and community development initiatives under the KVDG. Therefore, Management considers that the Project has been designed and implemented in full compliance with CM Section 3. As noted in para. 187 of the Accountability Mechanism Policy (AMP), “unfulfilled expectations” that do not generate direct and material harm compared to the without-project situation are be excluded from assessment.</td>
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**F. Gender**

| **ADB** developed a **GAP** for the Project in discussion with the borrower. It included the following: |
| (i) (associated with Project Output 1): installation of EWCD-friendly safety facilities ‘along the project roads’, including pedestrian crossings, road lighting, and bus stops ‘where needed’; conduct road safety awareness campaigns for roadside villages; and |
| (ii) (associated with Project Output 2): Design and set-up a gender-sensitive multipurpose visitor center; design and implement a female-friendly tourism development program. |
| This paragraph suggests that the GAP includes two outputs while it actually contains six. The paragraph should be revised to make that clear. |

| **308** The summary of the **GAP** in the Project Administration Manual (PAM) is broader than the eventual text of the GAP itself. The GAP refers to installation of elderly-, women-, children-, and differently-abled-, friendly safety facilities ‘along the project roads’ ‘where needed’. However, the PAM asserts that the GAP includes a commitment to ‘gender-responsive and socially inclusive design features across all infrastructure built under the project’. This is potentially significant because the PAM is |
| This paragraph is confusing, and its conclusion is factually incorrect. The language in the PAM and GAP are not contradictory. The wording in the PAM covers both infrastructure to be built under output 1 (Project roads) and output 2 (visitor center). Moreover, both the PAM and the GAP are covenanted in the loan agreement, and as such are legally binding on the borrower. This paragraph needs revision. |
| 322 | "However, neither gender dimensions of community safety nor gender dimensions of operational stage impacts were adequately reflected in the borrower’s Final EIA and EMP as required by Principles 2 and 4 of the SPS Environmental Safeguards. This is consistent with the omission of ADB gender specialists from the safeguards review process. The CRP finds that ADB was noncompliant with its due diligence and review responsibilities under para. 56 (i) and (ii) of the SPS in this regard."
| Para. 56 (i) and (ii) of the SPS reads: "Due diligence and review involves field visits as well as desk reviews. Through such due diligence and review, ADB will confirm (i) that all key potential social and environmental impacts and risks of a project are identified; (ii) that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design."
| Both the EIA and the EMP includes a number of references to gender-related issues and impacts and "provides for mitigation measures that could address risks of adverse gender impacts" as acknowledged by the CRP in para. 311 of its report.
| ADB complied with due diligence and review responsibilities under para. 56 (i) and (ii) of the SPS, as well as with Principles 2 of the SPS Environmental Safeguards, as it identified the key potential social impacts and risks at operations phase, including those that will affect women in the context of human security concerns and access to services and utilities.
| EIA Part 6 (Section F on Environmental Impacts and Mitigation Measures), subsection F.7.2 (Social Infrastructure [including Utilities]) noted two potential impacts on the community that also relate to women:
| (i) "Social infrastructure will be enhanced during project operations, i.e., in facilitating improved access to services via the new road. Currently, residents of the Khada Valley travel to Kvesheti (or on to Tbilisi) to access medical and educational infrastructure via a poor road connection. The road will facilitate safer and faster access to Kvesheti" (para. 982).
| (ii) "Gas, water and power infrastructure will remain unchanged by Project operations" (para. 983). Subsection F.7.3 (Population and In-migration) indicated that "...the anticipated impacts on population and in-migration during the operations phase is expected to be beneficial, because the improvements to the road will facilitate greater trade and other economic opportunities to the Project area" (para. 994). Section F.8 (Social and Cultural Aspects), subsection F.8.1 (Community and Livestock Safety and
Security Potential Impacts noted in para. 1133 that “During the operations phase, security issues may also be present due to increased accessibility of the area as per the construction phase, however due to access by all road users rather than specifically the construction workforce.”

Following the guidance of Principle 4 of the SPS Environmental Safeguards on minimizing, mitigating, and/or offsetting adverse impacts and enhancing positive impacts, EIA Part 6, para. 1134 under subsection F.8.1 of Section F indicated the following mitigation measures to address security issues identified in para. 1133 in the same subsection: “Mitigation measures for minimizing possible crime/security issues on the road include: coordination with police by the RD [Rural Development Department] during construction and operations to ensure regular patrolling as per other international roads; facilitating planned rest areas along the route to enable better control of spaces within the project area that receive visitors.” The potential impacts cited in paras. 982, 983, and 984 are positive impacts that are in line with Principle 4 of the SPS Environmental Safeguards. These impacts will facilitate the communities’ access to services, ensure uninterrupted access to utilities, and enable them to access economic opportunities.

The community safety issues identified by the CRP that relate to women are not gender issues, as they do not reference gender disparities or discrimination against women. The issues referred to are human security-related concerns that cover all members of the communities, including women.

ADB management, through its monitoring mechanisms as provided for in CM Section F/1 Operational Procedures (OP) Subsection F. Departmental Responsibilities and Compliance ensures that all social, community-related mitigation measures include and account for the participation of women and other vulnerable groups.

323 “Aside from the Final EIA and its EMP, the GAP also offers a measure to mitigate operational stage gender risk. Output 1 of the GAP addresses gender dimensions of project infrastructure design, but its language is imprecise and ADB has not reviewed project infrastructure design from a gender perspective. The ADB project team assured the CRP in May 2022 that the infrastructure is designed to European Union standards, with

The remarks related to Project additionally do not appear to relate to ADB policies and procedures, and as such falls outside the scope of the compliance review.”
The implication that it will therefore meet the requirements of GAP Output 1 even in the absence of such a review. The CRP accepts this but notes that it is doubtful as a result whether GAP Output 1 brings meaningful project additionality.  

Where a GAP addresses detailed infrastructure design, the CRP would expect to see at least gender specialists, and preferably both safeguards and gender specialists, involved in review of infrastructure design and its implementation.  

ADB’s operational policies on gender are set out in CM C2, none of which require gender specialists to be involved in review of infrastructure design and its implementation. Following the guidance para. 11 of CM C2GP, the GAP of the project has identified specific responsible entities (the Roads Department, the PMSC, and work contractors). These entities have the expertise to work on the technical details of the infrastructure design that will take into account the standards and specifications of safety features for women and other vulnerable groups.

The Final EIA refers to contextual challenges faced by affected people regarding issues including access to roads, public transport, and other services. Gender dimensions of these issues are clearly highlighted in ADB’s Gender and Social Analysis Report but have not been carried through into the borrower’s Final EIA. ADB did not seek to ensure that the Final EIA recorded and addressed them to identify opportunities for the Project to enhance positive gender impacts, as required by Policy Principle 4 of SPS Environmental Safeguards. ADB was accordingly noncompliant with its due diligence and review responsibilities under para. 56 of the SPS regarding preparation of the EIA.

The Project was compliant with provisions of para. 56 (Due Diligence and Review) of the SPS, as the EIA incorporated data on issues faced by affected people. Part 5 (Section E) of the EIA, subsection E.3.3 (Social Infrastructure), para. 710, 714, 716, 725, 728–729, and 731 all discussed the issues related to community infrastructure, utilities, and services, as well as access to roads and the scarcity of public transport. The first two sentences of para. 312 of the Report acknowledged the indication of these issues. The Final EIA incorporates data on other issues that are also relevant to gender, as demonstrated by ADB’s Gender and Social Analysis Report. For example, it includes an overall description of village infrastructure and services and it also describes problems of lack of access to services including education, healthcare, and public transport.

The Project complied with Environment SPS Principle 4, as it identified measures to minimize and mitigate community social issues that are relevant to and/or within its scope. Part 6 (Section F: on Environmental Impacts and Mitigation Measures) included mitigation measures to address social, economic, and safety concerns of the women and men in the communities in the Project area. Para. 262 noted that the Project road to be constructed will facilitate access to social infrastructure, such as medical and educational institutions. To ensure that communities will continue to have access to water, gas, and power during the road construction phase, contractors will liaise with utility
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companies for the temporary relocation of lines and pipes (para. 987) or, in the case of Bédor, construct an alternative access road that circumvents the village center (para. 988). Section F.8 (Social and Cultural Aspects), subsection F.8.1 (on Community and Livestock Safety and Security), cites the preparation of an occupational and community health and safety plan (para. 1135). Para. 1136 cited consultations with local households, community groups, police, and emergency services along the transport routes and driver training programs to ensure that contractors’ staff are aware of community sensitivities, such as specific livestock movement periods. The implementation of the GRM will provide a venue for members of the communities to seek redress and resolution for community/social and/or livestock safety issues (para. 1136). To help ensure the safe mobility of school children, the Project will conduct road safety awareness programs in schools and provide reflective badges for children’s coats and bags (para. 1136).

The EIA is not meant to cover all gender dimensions, particularly those related to enhancing positive gender impacts. The GAP is the instrument designed for such purpose. The GAP should be reviewed in conjunction with the EIA.

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The Project did not create or widen gender gaps, nor discriminate against women. The identified negative impacts on community safety as indicated in the EIA, and which as the CRP noted relates to women, had corresponding mitigation measures that will protect the welfare of the community, including women. The Project has adequate measures in place to monitor the implementation of the mitigation measures indicated in the EMP to ensure that women and the rest of the community will not be harmed. Para. 77 of CM Section F1/3P Subsection F. (Departmental Responsibilities and Compliance) notes the following in para. 77: “The operations departments are responsible for … (iv) monitoring and supervision during project implementation.”

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The CRP finds that ADB was noncompliant with its pre-Board approval due diligence and review responsibilities under para. 56 of the SPS in agreeing to limit livelihood restoration only to cash and to provide allowances for livelihood restoration only to severely affected people, contrary to paras. 12 and 21 of Appendix 2 of the SPS Involuntary Resettlement Safeguards.” In line with its responsibilities under para. 56 of the SPS on due diligence, ADB required the borrower to carry out additional surveys related to social impact assessment of affected people which resulted in a significantly strengthened resettlement plan compared to its draft version. ADB was actively engaged in supporting the borrower to prepare an updated LARP and conduct all substantive assessments before and after Project approval.
Para. 12 of Safeguard Requirement 2 calls for compensation for the loss of income or livelihood sources at full replacement for economically displaced people. In accordance with the SPS Policy Principle 6, a land acquisition and resettlement plan was prepared to meet Safeguard Requirement 2, including detailed measures for income restoration and livelihood improvement of displaced people. The LARP has standard sections on income and livelihood restoration measures which are applied universally to all affected people irrespective of severity of impact. In this respect, the Report’s finding is inaccurate. As noted in the LARP, and in accordance with para. 21 of Appendix 2, livelihood restoration allowances are paid to all affected people whose livelihoods are impacted.

Further, para. 12 of Safeguard Requirement 2 states that “the borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels.” At the time of the assessment, it was considered that limiting assistance to training and capacity building was not a preferred option, a more tailored approach will be to shape additional livelihood restoration measures based on needs expressed by affected people during LARP implementation. Therefore, the LARP has a significant budget contingency (20%) and a designated statement in the Entitlement Matrix under unforeseen impacts related to livelihood restoration to provide any in-kind support as needed in the future. Project-related employment opportunities are otherwise available to affected people. Thus, ADB is compliant with the requirement to provide livelihood restoration assistance, as both ADB and the borrower actively planned for it through assessment and contingencies, and further needs assessments were commissioned during Project implementation.

In addition, ADB worked with the borrower to strengthen support for all severely affected households, as they bear the brunt of the Project’s land acquisition. The Severe Impacts allowance represents an additional livelihood restoration component for severely affected households.

As far as cash compensations are concerned, under SPS Policy Principle 3, compensation with land is provided only where possible.
with cash-based compensation permitted. Further, Para. 9 of Safeguard Requirement 2 states that "if land is not the preferred option of the displaced persons, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost." Para. 12 of the safeguard does not pertain to the SPS requirements for non-cash compensation for economically displaced people for loss of income or livelihood sources. The language relied upon by the CRP in making this finding instead pertains to measures that should complement compensation.

In the context of this project, land-based compensation was not possible, which is also noted in the LARP, and as such a cash compensation scheme was developed in accordance with SPS requirements. As described above, an Entitlement Matrix was developed making clear provisions for livelihood restoration beyond the immediate cash value of cropshires and loss of business income, as well as requiring further consideration of measures based on consideration of individual assessment. As of today, the Project GRM and ADB have not received any complaints about the scope of assistance rendered to physically and economically displaced people and concerning any alleged omission of livelihood sources or income. As such, the matrix appears robust and holistic.

Overall, ADB is fully compliant with the SPS requirements for livelihood restoration. The CRP finding appears to be biased in significant part on dissatisfaction with cash compensation rather than land replacement. However, the SPS does not dictate land replacement, which as SPS Policy Principle 3 notes, is provided where possible. The Report's finding of noncompliance misinterprets para. 12 of Safeguard Requirement 2 of the SPS when it comes to the definition of the livelihood restoration and a requirement for land-based compensation. The paragraph pertains to the provision of measures additional to direct compensation, which was also conducted for this project.

369 "Turning to whether the noncompliance harms or is likely to harm the affected persons, the CRP notes that limiting the entitlement to livelihood restoration only to those severely affected means that other affected persons will not receive this additional allowance. This is significant considering that the..."
average income of the affected persons in most of the project area is below the national average. In the same manner, limiting livelihood restoration only to cash deprives the affected persons of much-needed assistance which could improve their livelihood. The SPS refers not only to livelihood restoration but also to livelihood improvement.

| provision for the loss of income or livelihood sources at full replacement for economically displaced people. The LARP has provisions for loss of livelihood/income generating assets such as crops and trees, and all business income sources which include both formal and informal business operations, such as earning rental income, conducting informal value-addition activities such as processing and selling agricultural produce, and petty trade.

| Provision of cash as compensation is acceptable according to the SPS. This cannot be deemed a noncompliance. In addition, the Entitlement Matrix retains provision for complementary, non-cash livelihood support to be provided—and as such, the Project team has been planning training, agricultural extension, and other livelihood support which will be delivered based on need during Project implementation. Furthermore, livelihood restoration compensation is delivered through several heads of compensation, not only through the Severe Impacts Allowance, which is intended as additional compensation for those severely affected. All ADB resettlement plans have a separate allowance paid to severely affected households only.

| Taken together, all Entitlement Matrix entitlements and allowances, as well as the benefits provided through the community development program, are expected to result in overall livelihood improvements, not just restoration.

| “The CRP finds that the identified ADB noncompliances are likely to harm the affected persons. While during project implementation, some other non-cash assistance to the affected persons is being considered, the CRP cannot determine whether these meet the relevant safeguard requirements until they have been finalized. Improved local roads, and connectivity to Gudeun and Kuweshit, are also essential requirements to enable the facilitation of training and business development opportunities.” ADB is compliant with all requirements related to livelihood and income restoration. According to the Project track record so far, neither the Project GRM nor ADB have received any complaints about the scope of assistance rendered to physically and economically displaced people or concerning any alleged omission of livelihood sources and/or income.

| The Report’s identification of harm is based on a mischaracterization of the income and livelihood restoration program to only “severely affected persons.” As noted above, this characterization is incorrect. In accordance with Appendix 2, para 21 of the SPS, an income and livelihood strategy was prepared for the Project, pursuant to which livelihood restoration allowances are paid to all affected people whose livelihoods are impacted. The Severe Impacts Allowance represents an additional livelihood restoration component for severely affected...
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<td>The CRP recognizes these efforts. However, the CRP also noted during its second mission that contact details for the PMCSA cultural heritage monitors were missing, and that information on available maps posted on information boards was inadequate to provide villagers with an understanding of where the project facilities would be in relation to their own land plots, such as the distance of underpasses or cattle crossings from affected persons' land plots. This kind of information could be found in big project maps, but these are only available at the municipal offices, at the project information booth in Kvesheti, and at ADB's and the Roads Department's offices in Tbilisi. This shortcoming highlights the need for continuing regular community consultations during which more detailed information regarding specific concerns of affected persons can be presented and discussed.</td>
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The purpose of the Community Liaison Office (CLO) is to act as a focal point passing on information to relevant Project team members, including the Cultural Heritage Monitors (CHMs). To date, on several occasions affected people or other stakeholders have raised concerns with the CLO that were passed to the CHMs, who then met with the affected people or undertook other relevant actions.

With respect to maps, the Project published a detailed, high-quality map that contains information relevant to affected people. It is available in color and at the village level with a legend and markings in Georgian and English. The map enables affected people to see the project footprint, including service roads and spoil disposal sites, in relation to their homes and villages. It is also available on the Project website.

With these clarifications made, it should be noted that Project-related information has been disclosed to the public in accordance with ADB's Access to Information Policy (AIP) and SPS issues raised relating to map quality and the contact information for CHMs are matters relating to optimization, rather than compliance.

| 399  | "SMRs (safeguard monitoring reports) do not appear to include grievances or complaints raised in the course of the CLO's work and may not therefore present a complete picture of the level of affected people's concerns regarding the Project."

In accordance with para. 53 of the SPS, SMRs have been disclosed to the public on ADB's website. Also in accordance with the SPS, such reports have included the required content as described in para. 53 of the SPS. As noted in para. 399 of the Report, information about grievances, be they verbal or written, is included in SMRs and disclosed on the ADB Project website.

However, the Report nonetheless identifies an issue with respect to the publication of informal complaints received during the day-to-day work of the CLO. This is a matter of optimization, rather than policy...
The CRP was also concerned that NGOs (nongovernment organizations) were unable to access the Pre-Feasibility Study and the Feasibility Study reports for the Project despite requests sent to ADB and the World Bank. Although these reports were funded by the World Bank, only the Roads Department has the authority to disclose them since they own the reports. The CRP was informed that discussions between ADB and the Roads Department prior to project approval led to an agreement that the Roads Department would make these reports available to whoever will go to their office in Tbilisi to request for them. But there was no agreement to disclose them online, which could have enhanced their accessibility. The availability of these two reports for inspection on request is mentioned in the Project Information Booklet which the ADB had distributed to different stakeholders and also in the Stakeholder Brief, Assessment of Alignment Alternatives.

In mid-2021, an official from the Roads Department stated that the Pre-Feasibility and Feasibility Study reports contain commercial secrets. This is consistent with Order No 241 dated 6 October 2020 where the Roads Department listed a number of highway projects including the Lekari highway for which feasibility studies were declared to be commercial secrets.

As acknowledged in the Report, the Pre-Feasibility Study and Feasibility Study were financed by the World Bank, not ADB. The publication and availability of these reports are not subject to ADB policies and procedures, so the issue is not relevant to the compliance determination. The description of issues relating to the publication of materials that were not supported under the Project however creates the impression of noncompliance by ADB. As noted in the Accountability Mechanism Policy (AMP), subparagraph 142(i), complaints are excluded if they concern actions that are not related to ADB’s action or omission in the course of formulating, processing, or implementing ADB-assisted projects.

With this point made, to date ADB is not aware of any formal request submitted to and denied by the Roads Department to view these reports. As mentioned in the Stakeholder Brief, there is a clear mechanism for any interested parties to view these reports.

As noted above, the Pre-Feasibility Study and Feasibility Study were financed by the World Bank, not ADB. Therefore, the publication and availability of these reports are not subject to ADB policies and procedures, so the issue is not relevant to the compliance determination. The description of issues relating to the publication of materials that were not supported under the Project however creates the impression of noncompliance by ADB. As noted in the AMP, subparagraph 142(i), complaints are excluded if they concern actions that are not related to ADB’s action or omission while formulating, processing, or implementing ADB-assisted projects.
"As mentioned in other sections of this report (e.g., Section D on PCR), many noncompliances by the contractors have been reported internally through ADB's specialist community and environment monitors. However, the CRP has not seen sufficient evidence that the ADB has taken action to press the Roads Department to ensure that the disclosed SMRs and the EMRs [environmental monitoring reports] present a complete picture of project implementation by adequately reflecting these noncompliances."

In accordance with para. 53 of the SPS, SMRs are published on ADB's website. Also, in accordance with the SPS, such reports describe implementation of the safeguard plans, disclose monitoring results, and identify necessary preventive and corrective actions (para. 57 of the SPS).

Notwithstanding this point, the Report identifies issues in the reporting of noncompliances by contractors. The SPS does not require the reporting of contract management issues in the SMRs, and therefore the issue raised in the Report is not a policy compliance issue.

With that point made, contractor noncompliances are reported weekly to stakeholders through the CLO and EFO. Information is provided to the Roads Department and the PIMCSG and it is their responsibility to complete actions to resolve issues identified. The ADB's field team's role in monitoring is to provide information on Project issues and progress to the Roads Department as well as the ADB team. To ensure this is done in a consistent and structured manner, a report is produced and shared.

ADB staff and consultants visit sites on a regular basis with feedback on contractor noncompliances often verbally communicated, making impractical a requirement (beyond existing SPS requirements) for inclusion of all such communications on noncompliances to be formally logged in the SMRs.

"The CRP considered the non-disclosure of the TSEMPs [Topic Specific EMPI] such as the Spill Disposal Plan, Cultural Heritage Management Plan, Vibration Management Plan and Local Content Management Plan in its Eligibility Report. The SPS Environmental Safeguards mandate that updated environmental assessments (including the EMP) shall be disclosed for affected people and other stakeholders. The CRP"

In accordance with para. 53 of the SPS, the EIA, EMP, and LARP were disclosed on ADB's website. As noted in the preceding sections, the TSEMPs are contractual documents which incorporate the requirements of the safeguard plans within the works contract. The SPS does not require disclosure of such contractor-specific plans, and a requirement to publish such documents extends beyond ADB policies and procedures."
Further notes that a presumption in favor of disclosure is one of the principles of the AIP. The Report appears to base its finding in part on the presumption in favor of disclosure, as set out in the AIP, which contains the principles that guide ADB’s approach to ensure transparency, accountability, and participation. The AIP does not contain any requirement for disclosure of contractor-specific safeguard plans, and moreover makes clear that “[t]he policy will be implemented in accordance with detailed arrangements approved by ADB Management and made publicly available in accordance with ADB’s normal procedures” (para. 14). ADB’s detailed arrangements for release of safeguard materials are set out in the SPS, and the Project ensured disclosure of materials required for disclosure under the SPS.

| 409 | As noted earlier, the Project recently disclosed a presentation of the Summary of the TSEMPs and SSSEMPs [Site-Specific EMPs] (which it referred to as ‘SEMPs’) on the project website of the Roads Department in the form of a slide deck. This concise and well-illustrated presentation is easy for the affected persons to understand. However, the information provided is inadequate for the affected persons to fully understand what mitigating measures the contractors have committed to take in relation to identified and possible impacts. Only if they know this can the affected persons engage fully and meaningfully monitor what is being done and hold the Roads Department and its contractors accountable for what they have committed to do.

To illustrate, over 4 million cubic meters of spoil are expected to be generated by the Project. This huge volume of spoil, generated in a greenfield area, clearly needs to be managed properly to ensure that possible adverse impacts are mitigated. This is to be done through Spoil Disposal Management Plans which the contractors are to prepare and which ADB is to approve. Yet the Plans themselves are not disclosed.

| As noted above, in accordance with para. 53 of the SPS, the EIA, EMP, and LARP were disclosed on ADB’s website. The SPS does not require disclosure of contractor-specific plans such as the TSEMPs, and a requirement to publish such documents extends beyond ADB policies and procedures.

In addition to the safeguard documents, in accordance with para. 16 of the SPS, relevant environmental information has been made available in a timely manner, in an accessible place, in a form and language(s) understandable to affected people and other stakeholders. As noted in the Report, this has included synthesizing the technical details of the contractor plans into form and content accessible and relevant to stakeholders, through summaries made available on the executing agency’s Project website, both in English and in Georgian.

Additionally, as per CM Section L3 (Appendix 3), “project information shall be made available...this could include...various formats (e.g., brochures, graphics, dramatizations, and channels, as appropriate).”

The information provided in the summary TSEMP and SSSEMP document was developed as per the SPS and CM to be in a form that was to be understandable to affected people. ADB contests that this was achieved. All key construction sites are listed, all plans are mentioned, key receptors, environmental and social aspects are covered, and all key mitigation and monitoring and reporting requirements are listed.
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<th>TSEMPs and SSEMPs may be highly technical and thus difficult for some stakeholders or affected people to understand. The SPS and AIP provide for accessible information to be provided. But this should not be at the expense of providing technical and detailed information which stakeholders may find useful when their rights or interests are at stake. It should be noted that the EIA and EMP which are themselves highly technical and voluminous documents, yet they are at the heart of ADB’s safeguards disclosure requirements. This is precisely to allow any stakeholder who wants to review them the opportunity to do so, in line with the objectives and principles of the AIP.</th>
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<td>It is acknowledged that the EIA and EMP are highly technical documents and are at the heart of SPS disclosure requirements. However, an executive summary in an EIA is specifically included to ensure all project information is easily accessible and understandable for the public. ADB’s approach has been consistent with ensuring information is available that is understandable to affected people going well beyond SPS requirements, with Project fact sheets and numerous other stakeholder briefs providing information to affected people in a form and manner that is consistent with the SPS.</td>
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| 415 | The CRP notes that information dissemination and consultations with affected people and other stakeholders have been a feature of both project preparation and project implementation. ADB’s appointment of two field-based specialist monitors has facilitated ADB’s engagement with affected persons and has also provided the ADB project team with an effective two-way means of communication. While the CRP notes that community grievances are included in the disclosed SMRs and EMRs, those grievances which are directly received by ADB monitors at site level are not included in these reports and are not disclosed.  

As noted above, in accordance with para. 53 of the SPS, SMRs are published on ADB’s website. Also, in accordance with the SPS, such reports describe implementation of the safeguard plans, disclose monitoring results, and identify necessary preventive and corrective actions (para. 57 of the SPS). As also noted, complaints received at a site level where possible should also be resolved at a site level. A requirement to disclose informal complaints or issues raised exceeds the requirements of the SPS, and is moreover impractical and not relevant to most affected people who have concerns that they want addressed quickly. Furthermore, the tradition of verbal resolution is culturally appropriate within the Project area and helps build trust with the community. Conjoint reporting and disclosure of complaints would erode the relationships that have been built by the CLO and the EFO with the local community. |
| 415 | The CRP finds that ADB’s failure to ensure disclosure of the grievances directly received by ADB, to ensure adequate disclosure of the contractors’ noncompliances in the SMRs and EMR, and the nondisclosure of the detailed engineering designs are noncompliant with Policy Principles of the AIP contained in para 15 (i) on “Clear, timely, and appropriate disclosure and (vi) Providing information to project-affected people and other stakeholders.” |

As noted above, in accordance with para. 53 of the SPS, safeguard monitoring reports are published on ADB’s website. Also, in accordance with the SPS, such reports describe implementation of the safeguard plans, disclose monitoring results, and identify necessary preventive and corrective actions (para. 57). Neither the SPS, nor its operational procedures, require the disclosure of informal complaints in SMRs. The Report appears to base its finding in part on the presumption in favor of disclosure, as set out in the AIP. The AIP set out the principles that guide ADB’s approach to ensure transparency, accountability, and participation. It does not contain any requirement for disclosure of contractor-specific safeguard plans, and moreover makes clear that “[t]he policy will be implemented in accordance with detailed arrangements approved by ADB Management and made publicly available.” |
available in accordance with ADB’s normal procedures (para. 1-6). ADB’s detailed arrangements for release of safeguard materials are set out in the SPS, and the Project ensured disclosure of materials required for disclosure under the SPS.

ADB policies and procedures do not require the reporting of contract management issues in the SMRs, and therefore, the issue raised in the Report is not a policy compliance issue, but rather relates to the CRP’s judgement on the adequacy of ADB policy.

With this point made, the Project has prioritized resolving grievances immediately, which negates the need for formalizing the process. Weekly reporting by the CLC and EFO goes far beyond SPS requirements.

With respect to the detailed engineering designs, these materials are included with the Pre-Feasibility Study and the Feasibility Study, both financed by the World Bank without ADB support. The publication and availability of these reports are not subject to ADB policies and procedures. The issue is therefore not relevant to the compliance determination; the description of issues relating to the publication of materials that were not supported under the Project however creates the impression of noncompliance by ADB. As noted in the AMP, subparagraph 142(i), complaints are excluded if they concern actions that are not related to ADB’s action or omission in the course of formulating, processing, or implementing ADB-assisted projects.

With this point made, it is important to note that the feasibility studies include three sections of the North-South Corridor proposed for upgrading, including the road constructed under the Project. The government informed ADB of concerns relating to the risk of land speculation in the other road sections included in the feasibility report, particularly given that they pass through far more populated areas.

Finally, despite the engineering designs not being developed as part of the ADB-financed Project, the Project has taken steps to make available relevant information contained in them in a form that is more easily understood by affected people i.e., as a map.
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On the issue of the SSEMPs and TSEMPs, the CRP was informed that these cannot be disclosed because they are products of the contractual arrangements between the Roads Department and the contractors. The same contractual arrangements would logically hold for the Roads Department and the NACHP (National Agency for Cultural Heritage Preservation). The second interim report which identifies key risks and mitigation and the Cultural Heritage General Action Plan [CHGAP] have also not been disclosed. The CRP finds that the non-disclosure of the NACHP’s outputs is not in line with the AIP. The first para of OM section L.3 clearly provides that "in line with the presumption in favor of disclosure in the Access to Information Policy (AIP), ADB discloses information, unless that information falls within the exceptions to disclosure...the AIP applies to documents and information that ADB produces, requires to be produced by its borrowers or clients, or are produced and provided to ADB by other parties in the course of ADB operations." Similarly, the project EIA clearly requires that the contractors prepare their own SEMPs, which is based on the requirements of the Final EIA and its EMP and forms part of the Project’s overarching environmental and social management system. The SEMPs/SSEMPs/TSEMPs are thus within the scope of the AIP. The CRP concludes that ADB’s nondisclosure of final drafts of the NACHP reports produced under contract to the Roads Department and of the SSEMPs and TSEMPs was noncompliant with AIP and its OM section L.3.

As noted above, in accordance with the SPS, para. 53, the EIA, EMP, and Resettlement Plan were disclosed on ADB’s website. Neither the SPS, nor its operational procedures, require the disclosure of contractor-specific safeguard plans. As noted in the preceding sections, the TSEMPs are contractual documents, which incorporate the requirements of the safeguard plans within the works contract.

The Report appears to base its finding in part on the presumption in favor of disclosure, as set out in the AIP. The AIP sets out the principles that guide ADB’s approach to ensure transparency, accountability, and participation. It does not contain any requirement for disclosure of contractor-specific safeguard plans, and moreover makes clear that “[t]he policy will be implemented in accordance with detailed arrangements approved by ADB Management and made publicly available in accordance with ADB’s normal procedures,” para. 14. ADB’s detailed arrangements for release of safeguard materials are set out in the SPS, and the Project ensured the disclosure of materials as required under the SPS.

The finding of noncompliance in this area is therefore based on a CRP-derived requirement that is not featured in ADB policies or procedures, or followed in general practice in ADB-financed projects. As noted in the AIP, para. 142(vii), complaints are excluded if they are about the adequacy or suitability of ADB existing policies and procedures. As this finding is not derived from the requirements of ADB policies and procedures, but rather a determination by the CRP of a more optimal standard, the finding should be reconsidered.

With these points made, on non-disclosure of the NACHP second interim report and the CHGAP, the Project has prepared and disclosed summary documents outlining what has been done in this area. The Project website published a Stakeholder Brief, which serves as a non-technical summary of measures taken to assess, avoid, and mitigate possible impacts on cultural heritage. The site also published a second summary report capturing the context, structure, and implementation of cultural heritage management measures undertaken since 2018. Conducted by an independent expert, this report is an independent assessment of ADB’s due diligence efforts (and the implementation thereof) since the Project started.
| 417 | “The CRP has considered whether these noncompliances cause or are likely to cause harm to the affected persons. It considers that the nondisclosures of grievances sent directly to ADB may not harm affected persons directly since ADB communicates individually with each complainant on actions taken on their respective grievances. However, the underreporting in the EMRs and SMRs of the contractors’ noncompliances means that information that would allow affected persons to understand the extent of the Project’s adverse impacts is not available to them.”

“To illustrate, among noncompliances relating to PCR referenced in ADB’s internal reporting over a 3-month period are (i) damage to a grave at the Svanantii cemetery below access road 4; (ii) failure to mark sites in Tseke and Muhure, a risk of damage due to heavy sediment run-off from the Muhure batching plant construction area and access road; and (iii) the failure over several months adequately to fence archaeological site #35 on the internal Khanda Valley Road, with numerous instances of lost or ineffective warning tape at this and other cultural heritage sites. Lack of effective reporting in the EMRs [Environmental Monitoring Reports] undermines informed participation and may, in this way, harm affected people. [para. 417]” |

| 418 | “Nondisclosure of the SSEMPs and TSEMPs is likely to cause harm. For example, as illustrated earlier, not having access to the Spoil Disposal Management Plan could harm affected persons. Without access to information about significant project issues that are likely to impact on their lives, affected people cannot make sure that their concerns and interests are safeguarded. The NACHP second interim report and the Cultural Heritage General Action Plan also contain material information regarding cultural heritage objects and monuments which are closely intertwined with the lives of the affected

As noted above, the safeguard monitoring reports for the project have been prepared and disclosed in accordance with the SPS.

The AMP requires the CRP to ascertain the presence of direct and material harm, and its linkage to ADB’s noncompliance with its policies and procedures (para. 156). Thus, only direct, material, and existing harm determined with some level of reasonable certainty as caused by ADB’s noncompliance with its operational policies and procedures is to be appropriately insured in the findings and conclusions of the CRP’s final report.

The Report concedes that because grievances relating to contractor noncompliances are addressed directly with each complainant, harm is not likely to occur. However, the Report nonetheless identifies harm since those not directly affected by the grievance do not have the information that “would allow affected persons to understand the extent of the Project’s adverse impacts is not available to them.”

As noted above, grievances are reported weekly by the CLD and CFO, rather than through the SMRs. The complaint which is the subject of the Report also does not allege harm based on lack of reporting of grievances in the safeguard monitoring reports. A potential residual lack of awareness by individuals of grievances to which they are not involved, with no other identified detriment, is hypothetical and is not a “direct and material harm” within the meaning of the AMP.

As noted above, notwithstanding the fact that ADB policies and procedures do not require the disclosure of contractor-level safeguard
<table>
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<th>persons. The same is true for the nondisclosure of the detailed engineering designs as mentioned above. Affected persons are likely to be harmed as a result of not having access to all these. The CRP finds that these noncompliances could lead to harm.</th>
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<tr>
<td>plane, summaries of the SSEMP and TSTEMP were prepared and disclosed to stakeholders, so as to provide accessible and readily understandable information to stakeholders. These materials list all key construction sites, mention all plans, cover key receptors, environmental and social aspects, and list all key mitigation and monitoring and reporting requirements. The relevant substance of the SSEMP and TSTEMP have been conveyed to Project stakeholders through summary materials. With respect to the NACH-IP interim report and the CH-GAP, the Project website published a Stakeholder Brief, which serves as a non-technical summary of measures taken to assess, avoid, and mitigate possible impacts on cultural heritage. The site also published a second summary report capturing the context, structure, and implementation of cultural heritage management measures undertaken since 2018. Conducted by an independent expert, this report is an independent assessment of ADB’s due diligence efforts (and the implementation thereof) since the Project has been underway.</td>
</tr>
<tr>
<td>Regarding the nondisclosure of the detailed engineering design prepared as part of the World Bank-financed Pre-Feasibility Study and Feasibility Study, the Project published a map that contains all relevant information to affected people. This detailed, high-quality map is presented in color and at the village level with a legend and markings in Georgian and English. The map enables affected people to see the Project footprint, including service roads and spoil disposal sites, in relation to their homes and villages. Moreover, a link to the dedicated Project website is on the ADB project webpage to ensure the provision of timely and up-to-date information. Similarly, the Project website links to the ADB Project webpage.</td>
</tr>
<tr>
<td>The complaint that is the subject of the Report does not allege harm due to lack of disclosure of the SSEMP, TSTEMP, cultural heritage reports and actions plans, or the detailed engineering design. Substantial efforts have been made to provide Project stakeholders with the relevant aspects of each of these documents. A potential residual lack of awareness by individuals of “significant project issues,” which “could lead to harm” is hypothetical and is not a “direct and material harm” within the meaning of the AMP.</td>
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### 1. ADB Monitoring and Supervision

<table>
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<th>Page</th>
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<tr>
<td>424</td>
<td>Despite all the efforts noted above, the CRP has observed that many contractor noncompliance issues have persisted, remaining unresolved for a long time. Some remedial actions taken have proven inadequate to completely resolve the issues, so the problems have recurred.</td>
</tr>
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</table>

The issues referred to in this paragraph have been open for a few weeks to few months only. The inaccessibility of the site between November and April and the successive coronavirus disease waves have adversely affected the timely resolution of some issues. These external factors, which have also impacted the CRP’s visit to the Project site and the overall compliance review, cannot be discounted.

Notwithstanding the above, ADB has worked with the Roads Department to rectify to the extent possible any failures to comply with their safeguard commitments, as covenanted in the loan agreement, and exercised remedies (e.g., withheld clearance of some reports) to reestablish compliance as appropriate in accordance with para. 56(v) of the SP.

| 425  | At the time of writing, the internal E&S Action Tracker dated 23 June 2022 showed that in Lot 1, of the total 74 issues raised, 59% have been closed; five (5) that are considered high priority and 16 of medium priority remain unresolved (23% of the total). For Lot 2, of the 56 issues raised, 45% are closed but 11 of high priority and 15 of medium priority remain unresolved (44%). |

Notable among these is the issue of the wastewater discharges in Tisere from the house which the Lot 1 Contractor rented for its employees. Sewage and other wastewater from this house were discharged untreated into a ravine in the village which raised complaints in September 2021. The Lot 1 Contractor then committed to set up a septic tank that was sufficiently large not only for the requirements of the rented house but also for other residents who could then connect to it. However, the PM&CRC [Project Management and Construction Supervision Consultants] found that the septic tank was not properly sealed and would therefore leak once connected. Corrective actions were taken and as of the monitoring report of 23 June 2022, the Lot 1 Contractor had completed the upgrade of the septic tank. However, the wastewater pipeline from the rented house was not connected to the tank, meaning that the Lot 1 Contractor was not using the septic tank for its intended purpose. Untreated wastewater continued to be discharged, this time to a private land plot, nine (9) months after the issue was first raised. The CRP notes that this issue is not significant progress has been made on the Project with regards to implementation of remedial actions. As of 16 September 2022, the E&S Action Tracker included a total of 90 issues raised for the Lot 1 Contractor and 77 issues for the Lot 2 Contractor; 91% have been closed by both contractors and 10% are yet to be resolved.

There were indeed delays in completing the works for the septic system in Tisere, which is now in place and functional for the village. Moreover, the Lot 1 contractor will immediately move out of the village and stay within the construction camp. Therefore, the Tisere residents will be the main beneficiaries of the newly completed sewage system.
difficult to address and the septic tank should have been constructed properly from the beginning."

426 "For community grievances, which include damages to infrastructure and assets, disturbances (noise, vibration, dust), restrictions or loss of access, the Grievance Log for Weekly Report 22-2022 shows that of the total 69 complaints received since the project started, 60.87% have been closed. 36.23% (25 complaints) remain open and 3% (2 complaints) are waiting for technical solutions to be finalized and considered on ‘technical hold’. The CRP is concerned that open complaints without resolution are shown to have remained open for about 200 days (median) while those on technical hold have remained so for 450 days."

427 "The CRP is also concerned that at four (4) temporary facilities, in the course of monitoring and supervision ADB agreed to relax siting criteria that had been stipulated in the Final EIA. These facilities were a rock crushing plant in Kob, batching plants 1 and 2, and Camp 2. The approved EIA provides for these facilities not to be located within 1 km of a residential property. However, ADB agreed to the locations of the facilities 330 m (rock crushing plant), 153 m (Batching Plant 1) and 553 m (Camp 2 and Batching Plant 2) respectively from residential areas, provided that broad community support for these (3) facilities and approval of the 15 residents near Batching plant 1, was obtained. There is no provision in the SPS or its accompanying CM section F1 that provides ADB with discretion to apply a ‘broad community support’ or ‘AP consent’ criterion as a basis for derogations from established legal commitments. Moreover, affected persons cannot be expected to understand the impacts of such a decision unless additional information is made available to them to justify it."

The SPS does not state any distances for which facilities should or should not be located in relation to communities, this is worked out through completion of an EIA. In the case of the Kvvesheti-Kob Project, an ideal distance was set out. However, upon Project inception it became evident that meeting the EIA requirements was impossible. The EIA is the borrower’s document and it is not a legal document. Therefore, with justification, the borrower is able to adapt proposed distances. The approach was mentioned in the January–June 2020 Semiannual Monitoring Report below Table 5, and flexibility was necessary to be able to implement the project. As mentioned in the Semiannual Environmental Monitoring reports, all national requirements will still be met and permits obtained, as has occurred over the last two years. With regards to obtaining broad community support, it is surprising that the CRP has queried ADB’s use of this approach, which CRP themselves acknowledge is not needed. The approach clearly demonstrates that the Project went beyond SPS requirements to get community support for facilities to be built within the local area on top of other national and project level requirements.

430 "The CRP appreciates the additional efforts which the ADB team has exerted to strengthen its monitoring and supervision of this Project. However, these steps have not been wholly effective. Admittedly, the pandemic situation in Georgia and the winter conditions in the Valley posed constraints. But they cannot serve as an excuse for multiple noncompliances to persist."

ADB has helped the Roads Department in setting up robust monitoring systems, an effective grievance redress mechanism, and robust monitoring systems. ADB is striving to further optimize its oversight systems and make them more efficient. This is exemplified by the achievements highlighted in comment to para. 425 above, and despite the challenges mentioned in comment to para. 424 above.
At the time of writing, the CRP does not have evidence that ADB has taken steps either internally or with the borrower to consider further systemic options available to reestablish and enhance compliance as envisaged by para. 58(v) of the SPS. ADB has extensive knowledge of the project’s compliance challenges and has tracked in some detail the periods of time over which these have persisted. The CRP expected to find evidence that ADB had considered stronger and more systemic action to alleviate its concerns through ADB’s senior management. There is also no evidence that ADB has required the Roads Department to develop and implement a corrective action plan as provided in OM section F1/CP, para. 29. While SPS does not provide a clear framework for such escalation, requiring ADB simply to “work with borrowers . . . to rectify to the extent possible any failures . . . and exercise remedies . . . as appropriate,” the risk of likely harm as well as actual direct and material harm resulting from such inaction or slow action should have been the guiding point for earlier systemic escalation of the noncompliance. The actions taken to date do not reflect noncompliance with this requirement, when individual compliance issues are considered in isolation; but it is clear to the CRP that they have been insufficient. The CRP is not satisfied that the actions taken in accordance with SPS, para. 58 (iv) have been commensurate to the project’s risks and impacts and thus finds ADB noncompliant with its monitoring and supervision role set forth in the SPS and that this harms and is likely to cause harm to the affected persons.

With respect to the monitoring, ADB has gone far beyond SPS requirements as clearly summarized in the information presented in the Report. Whether supervision is compliant or not, the findings on monitoring and supervision should be delineated to show that monitoring has been compliant.

As noted in response to para. 425, it is also worth highlighting that significant progress has been made in closing issues since the Report was issued. This demonstrates that on-site management of construction non-compliances is an ongoing activity and that ADB continues to be committed to supporting the borrower in improving project performance.

Section VI – Conclusions

Table 5: Compliance Review Panel’s Findings of Noncompliance and Harm.

This table could be updated as follows:

- Reflect all findings including compliances found (as set out in para. 434 of the Report) to give a comprehensive picture of the conclusions of the compliance review. Table 1 in the main text of the management response serves that purpose.
- Include a summary description of harm for each area in the last column of the table. Given that identification and causality of harm is one of the main purposes of the final report.
### Attachment 2: List of Documentation Available On-Site and Online

(Project Information Center in Kvesheli | Project Website: [https://kveshetikobiroad.ge/en/](https://kveshetikobiroad.ge/en/))

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Download</th>
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<tbody>
<tr>
<td>Project Map</td>
<td>March 24, 2021</td>
<td>Download</td>
</tr>
<tr>
<td>Project Fact-Sheet</td>
<td>September 22, 2020</td>
<td>Download</td>
</tr>
<tr>
<td>Frequently Asked Questions</td>
<td>October 18, 2021</td>
<td>Download</td>
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<tr>
<td>Land Acquisition and Resettlement Plan (Tokare-Tokare Section)</td>
<td>September 22, 2020</td>
<td>Download</td>
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<tr>
<td>Land Acquisition and Resettlement Plan (Kvesheli-Tokare Section)</td>
<td>January 13, 2021</td>
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<tr>
<td>Stakeholder Brief on Alignment Alternatives</td>
<td>January 15, 2021</td>
<td>Download</td>
</tr>
<tr>
<td>Environmental Impact Assessment</td>
<td>September 22, 2020</td>
<td>Download</td>
</tr>
<tr>
<td>Stakeholder Engagement Plan</td>
<td>September 22, 2020</td>
<td>Download</td>
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<tr>
<td>Grievance Redress Mechanism Leaflet</td>
<td>January 15, 2021</td>
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<tr>
<td>Temporary Facilities Assessment Report</td>
<td>June 1, 2022</td>
<td>Download</td>
</tr>
<tr>
<td>Preliminary Vision for Khada Valley Development Plan (presentation for local residents)</td>
<td>May 31, 2022</td>
<td>Download</td>
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<tr>
<td>Draft Historic-Cultural Reference Plan (presentation for local residents)</td>
<td>May 28, 2022</td>
<td>Download</td>
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<tr>
<td>Stakeholder Brief on Community Development</td>
<td>May 30, 2022</td>
<td>Download</td>
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<tr>
<td>Draft Historic-Cultural Reference Plan (presentation for CSOs)</td>
<td>May 28, 2022</td>
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<td>Community Needs Assessment</td>
<td>September 20, 2021</td>
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<td>Stakeholder Brief on Cultural Heritage</td>
<td>October 18, 2021</td>
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<tr>
<td>Summary of Specific Environmental Management Plans</td>
<td>January 14, 2022</td>
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