Lao Environment and Social Project

Environmental and Social Safeguard Framework (ESSF)

Background
This Environmental and Social Safeguards Framework (ESSF) of the Lao PDR Environment and Social (LENS) project provides the guidelines to be used to avoid or minimize adverse environmental and social impacts of sub-grants and to ensure that they comply with the requirements of the International Development Association of the World Bank as described in its safeguards policies on Environmental Assessment (OP 4.01), Natural Habitats (OP 4.04), Cultural Property (OPN 11.03), Involuntary Resettlement (OP 4.12) and Ethnic Minorities (OD 4.20 on Indigenous Peoples).

The ESSF will apply to all sub-grants and its proposed activities, to be implemented under the two LECF Windows. Since the Project aims to improve environmental management, has capacity-building as a major focus, and is implemented through small sub-grants, no major environmental and adverse social impacts are expected. However, some eligible small-scale civil works or protected area management activities may require minor land acquisition or involve minor adverse social or environmental impacts. By their nature, these activities will be mostly supported under the CCI window, but some proposals under the PICE may involve small works.

This framework describes how safeguards issues will be dealt with by:
1) detailing the types of sub-grants or activities that will not be supported by the Project;
2) detailing the types of sub-grants or activities that may only be permitted in conjunction with specific safeguards procedures;
3) detailing specific safeguards procedures and measures for sub-grants with environmental and/or social impacts;
4) outlining monitoring arrangements.

Negative List of Prohibited Activities
To avoid adverse impacts on the environment and people, the following activities are not allowed:
• Projects that involve new roads or road-surfacing; gasoline or diesel generators and pumps; guns; chain saws; pesticides, insecticides, herbicides and other dangerous chemicals; asbestos and other investments detrimental to the environment.
• Track upgrading or road rehabilitation of any kind inside natural habitats and existing or proposed protected areas.
• Forestry operations, including logging, harvesting or processing of timber products; however support to sustainable harvesting and processing of NTFPs are allowed if accompanied with a management plan for the sustainable use of the resources.
• New settlement or expansion of existing settlements in natural habitats, protected areas or areas proposed for protection. Where settlements already exist, proposals for funding should be in compliance with any local regulations on land management and other provisions of the protected area management plan as well as recognizing customary rights of local communities.
• The sub-grant will not fund the acquisition of land under any conditions and involuntary resettlement is not allowed. However, some voluntary resettlement or land acquisition may occur, either with voluntary contributions or with compensation provided by the village.
• Sub-grants in villages with government activities, such as village consolidation or focal site areas, which have involved involuntary relocation in the last five years or plan to do so.
• Activities where the conservation and/or environmental gains do not clearly outweigh any potential losses.
• Significant conversion or degradation of natural habitat.
• Introduction of non-native species, unless these are already present in the vicinity or known from similar settings to be non-invasive.
• Loss or damage to cultural property, including sites having archeological (prehistoric), paleontological, historical, religious, cultural and unique natural values.
• Community-based projects that are unacceptable to a large number of villagers involved or any of the villagers directly affected, or where discussions within the village are adjudged not to have been comprehensive or open enough to establish this. In particular, any activity unacceptable to a group of ethnic group in a village of mixed ethnic composition cannot be funded. Activities that will have adverse impacts on ethnic minorities within the village and/or in neighboring villages cannot be funded.
• Payments of salaries to regular staff of the organization to which the grant was awarded. Per diems for field activities and travel, payment for extra manpower contracted for sub-project purposes, and payments to communities for labor are allowed.

Sub-project types triggering specific safeguards procedures
A small number of project or activity types are permissible, despite triggering specific safeguards procedures for land acquisition, resource access restriction, environmental assessment or for dealing with ethnic groups as described in this Framework and further detailed in the Operational Manual. These include:

• **Ethnic Groups:** The project must follow the key principles of the World Bank’s policy concerning ethnic minorities (Operational Directive 4.20 on Indigenous Peoples), which are to "ensure that indigenous peoples do not suffer adverse impacts during the development process,” and that they receive "culturally compatible social and economic benefits." Ethnic minorities, or "Ethnic Groups" as used for the LENS Project, includes ethnic groups in Laos, such as the Mon-Khmer, Hmong-Mien, Sino-Tibetan and Tai-upland ethno-linguistic groups, who are vulnerable to the development process and who meet the characteristics used in the World Bank’s policy (OD 4.20).¹

• **Land acquisition:** Land acquisition is defined as a process by which any person is compelled to relinquish ownership, possession, control or use of all or part of their land, structures, or other assets. This includes land or assets for which the possessor or user enjoys customary or uncontested access but lacks legal title (e.g. trees, grazing rights, cultivatable land). Land acquisition must be avoided or minimized to the greatest extent possible through exploring alternate project design. Although sub-grants cannot be used to fund land acquisition, proposals involving an unavoidable element of land acquisition may be accepted if this is carried out on a voluntary basis either through contributions of affected persons or compensated by the grant recipient. In all such cases, the proposal must follow the provisions of this Framework.

¹ The characteristics used in OD 4.20 are: a close attachment to their ancestral territories and the natural resources in these areas; self-identification and identification by others as members of a distinct cultural group; an indigenous language, often different from the national language; presence of customary social and political institutions; and, primarily subsistence-oriented production.
• **Resource access restriction:** As defined under the Decree on Resettlement Policy and World Bank policies, Project-Affected Persons include those whose business, occupation, work, place of residence, habitat or standard of living would be adversely affected by the execution of a sub-grant. Sub-grant proposals which would restrict access to resources, notably efforts to enforce national laws or local regulations in protected areas, will therefore trigger safeguards policies and must apply this Framework.

• **Environmental assessment:** Any sub-grant proposal that involves construction work or changes to land or water use has the potential to generate negative environmental impacts. Negative impacts must be avoided or minimized to the greatest extent possible through exploring alternate project design. Small-scale construction activities may proceed with the application of standard operating procedures as developed under the Poverty Reduction Fund Project (PRFP) and applied to the proposed project. Medium-scale construction, or any other activity expected to produce modest, local environmental impacts must produce and implement a Sub-grant Environmental Evaluation and Mitigation Plan. Any proposal involving larger-scale construction or expected to lead to considerable or widespread negative environmental impacts will be rejected.

**Ethnic Groups**

The Resettlement Policy component of the PICE window will in part strengthen national capacity to deal with issues confronting ethnic groups by developing capacity for social research and for using consultative tools relevant to different groups. These activities will be coordinated with the proposed IDF Grant for Ethnic Minorities supporting the Lao Front for National Construction and other stakeholders working with ethnic groups in Lao PDR.

Within community-based sub-grants (e.g. grants that support alternative livelihoods and community development linked to conservation objectives in villages in or adjacent to protected areas), the concerns of ethnic groups are met primarily through the design of the project itself. However, project facilitators at the provincial level are tasked to review sub-grants that may impact ethnic groups in order to ensure that affected persons have been consulted, agree to the arrangements and that no adverse impacts on vulnerable ethnic groups result from sub-grants. If the review determines that the proposed sub-grant will have adverse impacts on ethnic groups, or if the affected group rejects it, the sub-grant
as proposed will not be submitted to, or accepted by, the WMU. Consultations and review should use appropriate methods to ensure that they are meaningful; they would be expected to involve ethnically disaggregated discussions, should take place in the native language wherever feasible and use visual tools. If community development sub-grants are prepared by an INGO, PA management or local government agency project facilitators ensure that the proposal is prepared with the informed participation of the community, an assessment of possible adverse impacts have been conducted, and that the applicant has, or contracts, capacity and skills to implement the sub-grant and work with the ethnic groups. The sub-grant proposal should describe how ethnic groups have been consulted and will participate in implementing the sub-grant, any issues and risks identified pertaining to ethnic groups and any measures to address such issues and risks as appropriate.

For PA management sub-grants, the ethnic composition of the population in and around the PA and any issues and risks relating to it should be assessed and described in a separate section of the PA management plan produced at the start of the Project. Proposed activities in areas inhabited or used by ethnic groups or activities otherwise affecting ethnic groups should be prepared with the informed participation of the affected communities. Preference is given to collaborative PA management arrangements that enable ethnic groups to use their resources in a sustainable manner and that respect their cultures and social organization. The customary rights of local communities should be recognized and described in the PA management plan. Sub-grants with significant impacts should prepare a separate Ethnic Group Development Plan describing the ethnic groups, consultations held and assessments made during preparation, possible risks and impacts, measures to address such risks and impacts, participatory implementation and monitoring arrangements, and institutional arrangements pertaining to ethnic groups and their particular circumstances.

Province Facilitators will review proposals submitted by individual PA management units to ensure that their activities with ethnic minority communities reflect the ethnic balance of the area, and the concerns, risks and circumstances of different ethnic groups affected or participating. Sub-grant proposals requiring an Ethnic Group Development Plan should be reviewed by the PSC and the World Bank. Sub-grant proposals involving resource access restrictions for customary users must document a comprehensive consultation process with the communities involved, taking account of any concerns and circumstances of the various ethnic minorities within those communities (see below for further guidance on resource restrictions).
Sub-grant Land Acquisition

Both the procedures and principles described in the National Policy on Resettlement and the World Bank Guidelines on Resettlement will be applied. The key principles of the World Bank’s policy on Involuntary Resettlement are:

- Acquisition of land and other assets should be avoided when feasible and otherwise minimized;
- Compensation measures must provide affected persons with sufficient opportunities to improve, or at least restore, incomes and living standards;
- Lost assets should be replaced in kind, or compensated at replacement cost;
- Absence of legal title to land or other affected assets will not be a barrier to compensation or other suitable forms of assistance; and
- Adversely affected persons will be provided with information relating to impacts and entitlements, will be consulted as to their preferences regarding implementation arrangements, and will be informed regarding methods and procedures for pursuing grievances.

Where minimal land acquisition or relocation is unavoidable, it may occur on a voluntary basis either by contributions by affected persons or with compensation (possibly in-kind) provided by the grant-recipient (typically the village), but not out of the grant. In accordance with traditional practices villagers may choose to voluntarily contribute land or assets and/or relocate temporarily or permanently from their land without compensation. This can often be justified because the project will either increase the value of the remaining property or provide some other direct benefit to the affected people. Voluntary contribution is an act of informed consent. Province Facilitators must assure that voluntary contributions are made with the prior knowledge that other options are available, and are obtained without coercion or duress. Proposals including voluntary contributions will not be submitted for approval where they would significantly harm incomes or living standards of individual owners or users (the amount contributed on a voluntary basis should not exceed 5% of that individual’s holding).

Where compensation is provided, Province Facilitators will ensure that the following are agreed to before grant evaluation and provided before works are undertaken:

i) replacement of land with an equally productive plot or other equivalent productive assets;
ii) materials and assistance to replace fully solid structures that will be demolished;
iii) replacement of damaged crops, at market value;
iv) other acceptable in-kind compensation.

For both types of land acquisition (voluntary contribution or against compensation), Province Facilitators will ensure that all occupants of land and owners of assets affected are consulted and agree to the arrangements. The proposal will include a description of the persons affected, impacts involved (e.g. land, trees, crops, houses and other structures) and agreements reached (e.g. nature and amount of compensation). Province Facilitators will arrange a village meeting to inform villagers about their rights to compensation and options available in accordance with these guidelines. The minutes will reflect the discussions held, agreements reached and include the following:

i) for any voluntary contribution: name of contributor, impacts and details about the contribution;

ii) for land/asset acquisition against compensation: names of affected persons, impacts and details about the nature and level of compensation.

The Province Facilitator shall provide a copy of the minutes to affected persons and confirm in private discussion with each of them their requests and preferences for compensation, agreements reached, and any eventual complaint. Copies will be kept in the project documentation and be available for monitoring and supervision. For sub-grants with significant land acquisition (e.g. affecting more than 100 persons or more than 10% of the holdings of project affected persons) a separate Land Acquisition Report will be required. For sub-grants requiring voluntary movement or resettlement of more than five households or household structures a Resettlement Report will be required. The reports will include the following elements, as relevant:

1. basic data identifying impacts and persons affected;
2. arrangements for in-kind replacement of land or for compensation at replacement cost, including signed statements by all affected landowners confirming that these arrangements are satisfactory;
3. arrangements to ensure adequate performance by contractors relating to compensation for temporary impacts;
4. a schedule of assets (other than land), which will require to be replaced as part of the construction contract, and signed statements by the affected owners confirming that these arrangements are satisfactory;
5. an implementation schedule indicating that replacement land will have been provided before implementation of the project begins;
6. a siting map and field measurements validated by villagers, showing land to be acquired and replacement land to be provided, sufficiently detailed to allow verification;
7. arrangements for disclosure of information, consultations, and procedures for pursuing grievances.

Province Facilitators will aid the villagers and/or grant recipient in preparing the Report, which the Technical Officer at the WMU must review and forward to the WMU for approval. No sub-grant requiring a Land Acquisition Report or Resettlement Report will be approved unless the report also has been approved by the PSC and the World Bank. Thus, sub-grant proposals that would require demolition of houses or acquire productive land, permanently or temporary, must be carefully reviewed by Province Facilitators and WMU staff. The review process should confirm that no satisfactory alternative is available, that affected persons have been informed about their rights to compensation and assures that they have agreed with the arrangements.

**Sub-grant Resource Access Restriction**

Protected area management in Lao PDR should be carried out in partnership with stakeholder communities. Enforcement of national wildlife laws and protected area regulations that result in restriction of access to natural resources is a sensitive issue, which if handled badly has the potential to alienate local communities and undermine conservation efforts. Restricting access to resources is usually a necessary component of resource management, however, and must at some stage be addressed in any system of protected area management.

Access may be restricted in cases where users do not have customary resource rights or are using resources in ways that are clearly illegal under national legislation. Customary resource rights derive from established, traditional or locally-recognised use, and do not depend on the possession of legal titles. Clearly illegal activities include the use of explosives, military weapons, poisons or electricity in hunting or fishing, the hunting or possession of Restricted species (*sensu* MAF Regulation 360), or the hunting of Managed species (*sensu* MAF Regulation 360) for sale.

Even illegal or non-customary users should be treated with sensitivity where they come from communities which do have customary rights to some resources within the protected area or whose cooperation is important to its management. In the first instance, confiscation of illegal equipment and products, clarification of laws and issuance of warnings should be the limit of sanctions, unless the offence is very serious. The issue should be discussed with the village from which the offender originates, and the help of the community should be sought to prevent future infractions. Customary rights will be poorly defined or known in
many cases, and may be disputed between villages. Protected area managers should facilitate discussion and conflict resolution between villages where resource rights are disputed, to ensure that these are understood and agreed by the concerned communities before they are enforced. The definition of clear and secure access rights is the starting point for any resource management system.

Wherever feasible, patrolling systems should actively involve villagers and should in themselves constitute a form of support for stakeholder communities by providing them with payment for their services. Any sub-grant proposal requesting support for patrolling or enforcement activities must submit guidelines for responses to different types of offences. If ethnic groups with particularly high levels of forest dependency or limited understanding of national laws are present within the protected area, the guidelines should take account of this and may differentiate between responses to offenders from different ethnic groups on this basis.

The establishment of a protected area implies that the level of resource protection or regulation should be developed in excess of nationally-applicable standards. Restrictions to typically legal resource uses by customary users, e.g. in implementing PA-specific regulations or zoning, should be agreed with those users through a process of informed participation and with the offer of some form of compensatory mechanism to offset loss of resource use. The PA zoning should take into account customary land and resource use areas and the agreements must result from a process of consultation that ensure the inclusion of and equitable outcomes for the most vulnerable and most forest-dependent groups.

For sub-grants that affect local communities adversely affected by restricting access to resources, the recipient will ensure that they are assisted with remedial measures necessary to maintain or improve their incomes and livelihoods. Such mitigation measures will be identified with the participation of the affected communities, and will center on establishing alternative livelihood activities that are environmentally sustainable. A variety of different compensatory mechanisms is possible and may be combined, including:

- Improved resource management leading to higher future productivity;
- Assistance with resource management or planning;
- Assistance in securing resource access rights by excluding outsiders who do not enjoy such rights;
- Payment for villager involvement in patrolling or other protected area management activities; and
• Support for other community development or sustainable livelihoods activities through direct provision of funds or advocacy on the part of the community to attract funds from other sources.

There may be cases in which villagers readily recognize the benefits of strengthened resource management and are eager to establish rules in conjunction with the PA management authority. In most cases, however, arrival at village resource use agreements will follow a gradual process of developing cooperation and understanding, which will require special skills in consultation and participatory techniques. This will generally occur in the context of general resource and land use planning, integrated with or building upon a participatory land and forest allocation process. Protected area managers should not rush into securing village resource use agreements. In the early phases, it is best to concentrate on simpler actions that directly benefit villagers, build trust and establish working relationships, including securing access to village resources by excluding non-customary users.

Protected area managers should develop village resource use agreements in line with the PA management plans developed at the beginning of the LENS Project. They should seek assistance for developing their work with communities before seeking funds for enforcing resource access restriction amongst customary users. In many cases separate sub-grants will be needed to support the process of reaching agreements, prior to the implementation stage. Where sub-grant proposals do include elements of such enforcement activities, they must include the following documents:

• A copy of the village resource use agreement, including details of the resources involved, their location, the volumes currently extracted and the user groups; the restrictions to be imposed; the compensatory mechanisms agreed upon; complaint mechanisms; and participatory monitoring arrangements. A sample of a village resource use agreement will be provided in the Operational Manual and is based on the sample provided in the SEMFOP document prepared for NTSEP. It must be explained to villagers that the function of the agreement document is not to bind them into a permanent contract, but to make it clear to everyone what the arrangements are. Village agreements can and should be updated and amended until a workable arrangement is found that is satisfactory to all. The agreement and project complaint mechanisms must be posted within the village in a location accessible to all.

• A short report detailing the process of consultation that led to the agreement. This must detail the approach for ensuring the inclusion of all relevant sub-groups within the community. If communities include a significant mix of ethnic groups, the report must detail how the opinions
and needs of each were included, typically through the inclusion of ethnically disaggregated discussions and use of local languages whenever possible.

Sub-grant Environmental Evaluation and Mitigation

For sub-grants that require a specific environmental assessment, the Provincial Facilitator will oversee the preparation of an Environmental Evaluation and Mitigation Plan. The Plan will include a simple description of the environmental impacts and mitigation measures to be incorporated into the design. Most adverse impacts will be highly localized, temporary in nature, and easily mitigated through the application of sensible site selection criteria, good construction practices and diligent management practices in the operational phase.

Whenever new activity types with potential for negative environmental impacts are supported, the Environmental Evaluation and Mitigation Plans developed for these will be used to extend the coverage of the list of environmental standard operating procedures adopted originally from the PRFP.

A summary of the Plan and project complaint mechanisms must be posted within the community in a location accessible to all.

Screening of proposals

As most safeguards issues will concern sub-grants under the CCI Window, the responsibility for initial safeguards screening will typically fall to the Provincial Facilitators under the guidance of the WMU Safeguards Coordinator. Proposals under the PICE Window which involve construction or field activities will be screened for safeguards issues directly by the WMU Safeguards Coordinator.

The Provincial Facilitator will screen the proposal on the basis of the application form, aided by whatever contact or discussion with the proponent he/she may already have had, and guided by a detailed checklist (see Operations Manual). The Facilitator will apply a healthy skepticism in screening projects, drawing on his/her experience and training to assess likely impacts of the proposed activities, rather than relying entirely on the assertions in the proposal. The screening will determine whether the proposal involves any activities from the negative list or triggers any of the specific safeguards procedures, and whether these can be avoided or any negative impacts reduced by re-designing aspects of the project. The Facilitator will apply a precautionary approach; any uncertainty
in the assessment will be clarified by obtaining further information from the project through discussions and/or a field visit, by referring to studies or reports where available, or by referring technical questions to the WMU Safeguards Coordinator. A field visit is compulsory where ethnic minority concerns are an issue, or where any other specific safeguards procedures are triggered.

The screening will result in one of the following outcomes:

1. Proposal passed to evaluation stage.
2. Proposal is passed, but with safeguards procedures triggered. The procedures must then be discussed with the proponents to ensure that appropriate actions and documentation are prepared before the proposal is passed to the evaluation stage. Where specific environmental standard operating procedures alone are required, these must be provided to and discussed with the proponents to ensure their agreement and capacity for implementation.
3. Proposal is returned with suggestions for changes to avoid negative list activities, avoid triggering specific safeguards procedures, or reduce impacts.
4. Proposal is rejected with reasons.

If the applicant, Provincial Facilitator and the WMU Safeguards Coordinator between them are unable to develop any required safeguards documents a priori, then the completion of those documents according to the framework may constitute a part of the sub-project itself. In such cases, disbursement of the remainder of the sub-grant would be dependent on the safeguards procedures being completed satisfactorily. If production of safeguards documents is likely to involve considerable expense, then it should constitute an initial grant proposal in and of itself, with the understanding that it would be expected to lead to a later, operational sub-grant proposal.

The Facilitator must keep records of all proposals received and screening decisions for review by the WMU if required.

**Complaint mechanism**

Individual sub-grant proposals will include complaint mechanisms to allow affected persons or concerned citizens to have their complaints heard and addressed. These will start at the village level as appropriate and include local and customary mechanisms. Appeals can be made to district and provincial authorities. Affected persons and concerned citizens are also able to complain to the WMU about project or sub-grant activities that may have adverse impacts on
the environment or people or otherwise contradict the principles and procedures in this framework. Complaints will be handled as follows:

i) As a first stage, affected or concerned persons will present, verbally or in writing, their complaints to the Provincial Facilitator, who will have to provide a documented response to the claimants within fifteen days. Reports on each complaint and subsequent measures taken must be given to the WMU Technical staff, with routine summaries sent to the M&E Coordinator (as attachment to regular/monthly reports).

ii) If the claimants are not satisfied with the decision, the case may be submitted to the Window Manager, as well as to local authorities (e.g. the Provincial Assembly, Lao Front for National Construction). Specified authorities should record receipt of complaints and reply to the claimants within fifteen days.

Claimants will be exempted from any administrative or legal charges associated with pursuing complaints. Reports on each complaint and subsequent measures taken must be recorded by the national level M&E team.

However, recognizing that many conflicts arise due to difference in understanding and perceptions, a proactive approach will be adopted to avoid conflicts before they escalate. This approach will promote a common understanding through a four-pronged method, including: (a) wide-spread disclosure of project background information and relevant legislation (e.g. Resettlement Decree); (b) clarification of the duties and responsibilities of all stakeholders in the process; (c) community education and awareness regarding the value of biodiversity conservation, their customary rights, threats to the NPA, and options for mitigating these threats; (d) education of project staff and grant recipients regarding the customary rights and practices of ethnic groups.

Monitoring and institutional arrangements

Approved projects that have triggered specific safeguards procedures and which involve ethnic minorities issues will be monitored more intensively than other projects. In all cases the Provincial Facilitator (or the WMU Safeguards Coordinator in the case of a PICE proposal) should carry out a field visit before evaluation of the proposal to verify the physical characteristics of projects with environmental impacts, and/or to verify the consultation process, proposed measures and the views of Project-Affected Persons in cases of social impacts. Implementation monitoring visits for such sub-projects will be carried out at least at the mid-point and close. All monitoring reports from such sub-projects and of all sub-project-specific safeguards documents will be made available in English
for review by World Bank supervision missions if desired. A summary of sub-
project safeguards issues will be included in the quarterly reports of the LENS
Project.

For sub-grants following the environmental standard operating procedures,
compliance will be verified through visual inspection by the Provincial Facilitator
at least at the mid-point and close.

Overall responsibility for the implementation of these guidelines lies with the
WMU. The WMU Safeguards Coordinator will be the central resource person for
safeguards issues, and the M&E Coordinator will ensure they are properly
documented in monitoring reports. Training programs will be developed to
strengthen the capacity of the Provincial Facilitators, and local government
partners where appropriate, to deal with environmental and social safeguards
issues. Materials will be adapted and developed by the WMU to aid the
Facilitators in this process, including visual materials and written materials
translated into local languages as needed. Necessary changes to the guidelines
and procedures will be incorporated based on recommendations from monitoring
exercises and in agreement with the World Bank.