

# Due Diligence Report on the Use of Loan Funds for Land Acquisition and Resettlement

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VIE: Additional Financing Second Northern Greater  
Mekong Subregion Transport Network  
Improvement Project

## DUE DILIGENCE REPORT ON USE OF LOAN FUNDS FOR LAND ACQUISITION AND RESETTLEMENT (June 2015)

### A. Introduction

1. Under the ADB Policy on *Cost Sharing and Eligibility of Expenditures for ADB Financing*, as set out in Operations Manual (OM) Section H3/BP,<sup>1</sup> expenditures incurred in the acquisition of land and rights-of-way are eligible for ADB financing, subject to assessments made during preparation of the project. If such expenditures are to be considered for ADB financing then under OM Section H3/OP it is required that as part of project preparation, due diligence is undertaken to confirm (a) the expected productive nature of the acquisition; (b) the suitability of land market conditions; (c) the adequacy of the administrative arrangements; (d) the definition of the risk profile of the transaction; and (e) the soundness of the monitoring and evaluation arrangements for the purchase and payment of the land and right-of-way.

2. The original scope of the Second Northern Greater Mekong Subregion Transport Network Improvement Project (referred to as “ongoing project”) included: (a) provision of works for about 200 km on Route 217 including (i) improving road alignment and widening the road formation from Km 107.2 to Km 195.4 (about 88 km), (ii) construction of new bypasses in Cam Thuy (east and west) (about 3 km), (iii) pavement repair and resurfacing from Km 0 to Km 104.9, (iv) stabilizing slopes and erosion protection, (v) repairing and building new road structures including bridges and culverts, and (vi) improving traffic safety measures; and (b) provision of consulting services in pre-construction activities in the preparation of detailed design, tender document preparation, bid evaluation, project implementation, project management and construction supervision, and for HIV/AIDS and human trafficking awareness and prevention program.

3. On 24 September 2014, a minor change was approved to (i) scale up the project scope by adding road improvements for section Km 104.9 to Km 107.2 (additional 2.3 km); (ii) replace the pavement repair and resurfacing from section Km 0 to Km 104.9 with full replacement of unsuitable bridges; and (iii) increase the scope of consulting services to (a) prepare detailed design, bid documents; and resettlement plans for the proposed change in scope; and (b) update the feasibility study for full scale improvement of section KM 59+800 to KM 104+900 for the proposed additional financing which traverses through Ha Trung, Vinh Loc, Cam Thuy, Ba Thuoc and Quan Son districts in Thanh Hoa Province.

4. A Resettlement and Ethnic Minority Development Plan (REMDP) has been prepared for KM 59+800 to KM 104.9 section and Ha Trung Flyover under the updated feasibility study for the Second Northern Greater Mekong Subregion Transport Network Improvement Project – Phase 2 (referred to as “the Project”). The REMDP is based on preliminary design. Detailed design is expected to commence in July 2015, and the REMDP will be updated following completion of detailed design. The Government has requested ADB to consider funding resettlement costs under the additional financing.

### B. Productive Nature of the Acquisition

5. The existing land use of the land to be acquired for the construction of the CMDCP consists of small and medium plots used for residential, commercial and agricultural purpose. In determining the productive nature of the acquisition of land, this has to be considered within the context of the overall economic evaluation of the Project. An evaluation of the economic viability of the Project has been undertaken in accordance with the ADB’s *Guidelines for the Economic Analysis of Projects*.

6. The economic analysis indicates that all works under the additional financing are viable, the average economic internal rate of return is 14.9%, and the net present value is \$12.5 million at a 12% discount rate. The upgrading of the segment of Highway 217 from km 59.8 to km 104.9 will provide better surface and allow higher speeds, which will reduce travel times and vehicle operating costs, for an overall 24% reduction in travel costs. Traffic on this segment already reaches 7,700 vehicles a day (85% motorcycles), and would quickly exceed the current road capacity. The new interchange at Ha Trung will reduce crash risks at the junction, currently at grade D. It will also improve traffic flows, preventing a

<sup>1</sup> <http://www2.adb.org/Documents/Manuals/Operations/OMH03-15mar06.pdf>

strong degradation of levels of service on both Highway 217 and Highway 1, which is the main road artery of the country (above 20,000 vehicles per day at Ha Trung). Compared to a counterfactual, the interchange will save up to ten minutes of travel time for all Highway 217 and Highway 1 vehicles. Additional benefits from avoidance of potential future flooding on Highway 217 and better safety were not included in the quantitative analysis, but would improve the economic merit of the project.

### **C. Suitability of Land Market Conditions**

7. Legal Basis for Land Tenure and Land Transactions. In Viet Nam the Constitution and the Land Law provide that Land is the property of the people, and the State is the representative owner. The State allocates land use rights to individuals and organizations for either for an unlimited period of time, in the case of residential, commercial and some industrial land, or for various specified periods, in the case of agricultural and horticultural land, forestry land, land for aquaculture or making salt and some other land uses. The Land Law and its subordinate decrees govern the allocation of all rights over land, land administration, land use planning, imposition of fees and taxes relating to land allocation, land transactions and land use.

8. Dealings in land use rights between individuals and organizations are carried out on a contractual basis and they are both supported and legally governed by the provisions of Chapters XVII, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI and XXXII of the Civil Code.

9. The land market in Viet Nam is founded first on the provisions of the Land Law, particularly Chapter IV, which specify the rights that are held by lawful holders of land. These are the rights to exchange, transfer, lease, sub-lease, inherit, gift, mortgage, guarantee performance of civil obligations, make capital contributions to enterprises by the use of land lawfully held subject to land use rights or the entitlement to be granted land use rights under the Land Law.

10. The Government has enacted a number of laws, decrees and regulations that constitute the legal framework for land recovery, compensation and resettlement. The principal documents include the Land Law No. 45/2013/QH13, providing Viet Nam with a comprehensive land administration law; Decree No. 47/2014/ND-CP on compensation, rehabilitation and resettlement in the event of land recovery by the State, as amended by Decree No. 44/2014/ND-CP; specifying the methods for land pricing and land price frameworks in the event of land recovery by the State. Decree No. 43/2014/ND-CP stipulating on issue of LURC.

11. Land and Real Estate Markets. In Viet Nam the term "real estate" refers only to buildings and other structures but not to the underlying land or land use rights. The "Real Estate Market", as legally defined in Part II of the Housing Law applies only to houses and other buildings and not to the underlying land or land use rights. In practice the public in Viet Nam treat the market in land alone and land with buildings attached as the same real estate market and ignore the actual legal situation.

12. In most urban and rural areas most of the land has now had land use rights granted and land use rights certificates issued. Transactions in land without land use rights certificates or land use rights are very common and are well recognized by both the public and officials as part of the land market, albeit a legally informal part of the market. These transactions are not reported to local People's Committees or Departments of Natural Resources and Environment or to Commune Land Administration Officers, and are not registered.

13. When registering a transaction in land use rights the price paid for the transfer or lease or sub-lease, or values agreed as the basis for an exchange of land must be reported to the land registration office and to the local tax office as, in many cases, a transaction tax is due. The reported land transaction prices have, in the past, also formed part of the basis for the calculation of Government frame prices and official values of land for the many purposes, particularly the assessment of annual land use taxes. It is universal practice for both individuals and organizations to understate the transaction price, usually adopting the official Government frame price for the land. The frame prices have always been consistently significantly under-estimated and, until recently have also been several years out of date.

14. During periods of rapid increases in land values, calls have been made for Government to introduce regulations to control land prices in the open market. In practice, the performance of the open market in land is effectively controlled only by economic and other market forces and not by regulations, which cannot be enforced in many cases or can easily be circumvented by improper means. The most

important of these effective forces in Viet Nam are: (i) the supply of, and demand for, land and real estate in any particular locality; (ii) the amount of available funds in the economy, (iii) the presence or absence of other attractive investment options, and (iv) the ease with which cash or gold can be converted into land and other real estate; and land and real estate can be converted back to cash or gold without the involvement of the banking system or any other enforceable means of reporting and taxing such transactions or the income by which land or other real estate is purchased.

15. Land Valuation Consulting Organizations and Real Estate Agents in Viet Nam. There are large numbers of real estate agents in business, both licensed and unlicensed, in Hanoi and Ho Chi Minh City, with smaller numbers in business in Hai Phong, Hue, Da Nang and Can Tho cities and Lao Cai, Dong Nai, Long An and Binh Duong Provinces. All other provinces have only a few real estate agents confined mainly to the provincial capital. The agents in business in Hanoi, Ho Chi Minh, Hai Phong and Da Nang cities, as well as those in Dong Nai, Long An and Binh Duong provinces have large client bases and advertise in local Vietnamese language newspapers and specialist monthly magazines. They also advertise land and real estate at the higher end of the market in English language newspapers and magazines and such agents have also been advertising on the internet. It is proving to be a popular source of information to prospective purchasers and lessees. Most, if not all, real estate agents maintain their own data bases containing both records of sales in which they have been involved and sales about which they have obtained information from other agents and other sources. All of the Vietnamese trading banks are involved in lending to varying extents for the purchase or improvement of land and real estate. They also act as real estate agents and some have their own land and real estate valuation departments. They also maintain data bases of sales and mortgages which they have negotiated or funded as well as applications for mortgages and sales that have not qualified for bank mortgage financing.

16. Section 2 of new Land Law which was approved in 2003 and became effective on 1 July 2014 refers to the principles and methods of land valuation: "*(i) in accordance with the legitimate land use at the time of land valuation; (ii) in accordance with the land use term; (iii) being suitable with the popular market prices of transferred land with the same land use; winning price in auctions of land use rights in case of organizing auctions on land use rights or the income incurred from land use; and (iv) at the same time, adjacent land parcels with the same land use, profitability, land-use related income have the same price*". Furthermore, the Provincial Peoples Committees are entitled to "hire organizations having consultancy functions for advising on the determination of specific land prices".

17. Other principal documents to support the new Land Law are Decree No. 43/2014/ND-CP detailing a number of articles of the Land Law; Decree 44/2014/ND-CP which prescribes land prices; and Decree 47/2014/ND-CP on compensation, support and resettlement upon land recovery of the State.

18. Conduct of Land and Real Estate Valuation. The basis for valuation assessment of both land and real estate should be (i) research and market investigations carried out by the Valuer, (ii) accumulated market evidence already held by the valuation organization, (iii) the results of any valuation surveys carried out by any other organization that is available and (iv) survey maps of the land to be valued and surrounding land. Recent aerial photographs or satellite imagery are also valuable and are increasingly being used by land and real estate valuers in Viet Nam.

19. The preferred method of land valuation in Viet Nam is the direct comparison method. This is very much dependent on there being an active land market and accessible, reliable information about recent sales of individual properties. However, it is common for valuers to use one or more of the other four methods of valuation as a check on, or confirmation of, the method chosen in any particular case. This is the same practice as that followed in most developed countries.

20. The land and the real estate markets in Viet Nam are very well informed. Organizations, both domestic and overseas, that are purchasing land use rights or leases for both their own use or as speculative investments, have little difficulty in quickly obtaining from publicly available sources, sufficient accurate information about the current value of any parcel of land in which they are interested. Such sources are frequently supplemented by direct enquiries from land agents and real estate agents and from neighbors in the vicinity of the land under consideration. Vietnamese households who want to acquire land or land with a house or an apartment for their domestic use or for investment purposes demonstrate significant ability and perseverance in eliciting current and accurate information about recent sales of comparable properties as well as information on the most recent trends in the market overall.



Individuals and organizations that want land or premises for business purposes demonstrate similar, if not more pronounced abilities. Valuers have even more ability to obtain such information.

21. Land valuation consulting organizations normally carry out surveys of sales and leases both in the immediate vicinity of the land to be valued and in other comparable areas. These surveys, together with the information that they have already accumulated in their records, information from selected land agents and banks and information that can be obtained from newspaper and magazine advertisements and reports as well as from the internet provide an excellent basis for determining true market values on the date of valuation.

22. With the current increasing levels of land values and costs of building materials and other building costs, including costs of financing, any valuation of land or real estate in the major cities and the more populated provinces will be valid for a comparatively short time and valuations should be updated on a quarterly basis. However, the fact that an escalation in land values can be quickly and accurately identified, publicized and then widely acknowledged by valuers, land agents, real estate agents, appropriate government and local authority officials as well as members of the public, demonstrates the robustness of the market and the information flowing from it. The prompt availability of such robust market information and information on overall market trends simplifies the work of valuers. The information also shows that the market operates in an almost text book fashion despite decrees issued by the Government, not because of them. Valuers of real estate have ready access to current pricing information for building materials and other construction costs from suppliers, building contractors, architects and individuals who are building or improving their own houses (a fairly common occurrence in Viet Nam).

23. Use of the Land Market as an Efficient Means of Acquiring Land – Conclusion. Valuation consulting organizations in Viet Nam are very knowledgeable of their local and surrounding markets and are very competent in assessing market values both according to Government decree and in accordance with internationally accepted definitions and practices. The use of the direct comparison method of land valuation and real estate valuation in Viet Nam is widely accepted and practiced. This method produces reliable results that are neither leading nor trailing behind the market, although it should be noted that asset valuations are more of an art, and a matter of judgment, than a science. Vietnamese valuation consulting organizations have neither the desire nor incentive to produce artificially high or low valuation assessments as their continued work flow is dependent on the accuracy of their results. They have no desire to contribute to already high levels of inflation, but they are also not afraid of recognizing inflationary affects within the economy on market prices. Given the above, it is most unlikely that an independent Valuer from another country, however well qualified and experienced, would generate results that would be significantly different from the results that would be produced by one of the local valuation consulting agencies on the same date.

24. For Thanh Hoa Province, it is most likely that a qualified appraiser will be hired whose headquarter is in Hanoi who may (or may not) have a branch in Thanh Hoa Province. In the case of Central Mekong Delta Connectivity Project (ADB-funded) where the project areas are in Dong Thap Province and Can Tho City, the implementing agency engaged a qualified appraiser from Ho Chi Minh City who has a branch office in Dong Thap and Can Tho City.

#### **D. Implementation Arrangements and Channeling of Funds**

25. Implementation Arrangements. The Executing Agency (EA) for the Project will be the Ministry of Transport (MOT) and the implementing agency (IA) is the Project Management Unit 1 (PMU1). PMU1 will assign its financial and accounting department to be responsible in administering/monitoring loan funds for land acquisition and resettlement.

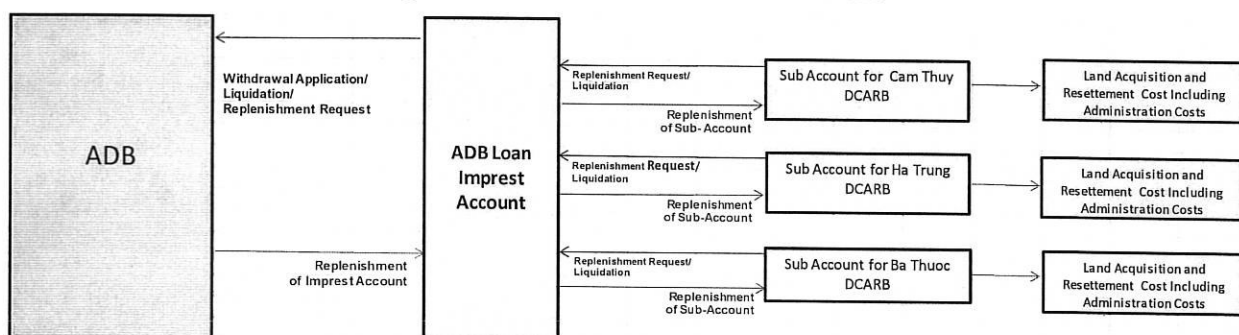
26. Vietnamese regulations require that land acquisition and resettlement plans are implemented by the relevant provincial authorities. The District Compensation, Assistance, Resettlement Boards (DCARBs) are already established in Cam Thuy and Ba Thuoc districts due to the ongoing project where land acquisition and resettlement activities are still ongoing. The DCARB in Ha Trung has yet to be established.

27. Fund Flows and Disbursement Arrangements. PMU1 will establish an imprest account at a commercial bank acceptable to ADB, and the DCARBs in Cam and Ha Trung and Ba Thuoc districts will establish sub-accounts in Thanh Hoa Province Treasury for land acquisition and resettlement and ensure

that liquidation of any amount paid from the sub-account requires the submission of: (i) a validation certificate issued by a qualified appraiser engaged by the DCARBs to carry out replacement cost surveys; (ii) the results of the DMS; and (iii) individual compensation plan signed by the affected households, and that receipt of compensation payment is acknowledged by the affected households.

28. PMU1 will make available to the DCARBs funds for resettlement which will cover (a) payment for land, structures, and other fixed assets, (b) allowances to the project affected persons, (c) administration expenses incurred by the DCARBs in relation to resettlement updating and implementation, (d) payment for relocation of public utilities. The DCARBs will be responsible in carrying out the payment and relocation of public utilities in accordance with ADB's Procurement Guidelines. PMU1 will be responsible in administering and monitoring loan funds for resettlement in accordance with ADB's Loan Disbursement Handbook. The external monitoring agency will carry out its own monitoring of compensation payments. Flow of funds using loan funds for resettlement is shown in Figure 1 below:

**Figure 1: Flow of Funds for resettlement**



#### **E. Disbursement of Compensation and Assistance to Affected Households**

29. With regard to disbursement of payment to the affected persons (APs), the following procedures will be followed. Additional steps or supporting documents may be requested as necessary to meet ADB and Government requirements.

- a) The affected household will be notified through the village chiefs two weeks in advance of the final schedule of payment of compensation and other entitlements. The affected households will be advised to have with them the required documents (such as LURC, ID, family book/civil registration certificates, DMS record, Compensation Plan, etc.) when claiming their compensation and other entitlements. If the affected household is unavailable to claim the compensation payment on the scheduled date, he/she will inform local authorities as soon as possible with a written authorization for a representative to claim the same on his/her behalf, or the affected household may request the DCARB to reschedule a later date for him/her to claim payment.
- b) DCARB to disburse payment to APs (in commune office or a location both acceptable to APs and DCC)
- c) APs to sign Compensation Plan and Official Receipt and get copy for record including DMS
- d) DCARB to document status of payment, update records as part of the quarterly progress report.
- e) DCARB will prepare and submit liquidation with agreed supporting documents to PMU1.

#### **F. Workshop on the Administration of Loan Funds**

30. To ensure that use of loan funds will be administered properly and that liquidation of resettlement expenditures are submitted in a timely manner, the administrative procedures and checklist of supporting documents required by ADB and the Government will be discussed and agreed during the workshop to be held in August 2015 in Than Hoa Province.

## G. Risks

31. Potential risks in the ADB providing funding for land acquisition include the following:

Risk	Mitigation Measures
1. Distortions to the land market as an efficient means of acquiring land.	A qualified and certified appraiser will conduct the valuation. The affected persons will (i) be fully informed about market conditions and prevailing land values, (ii) have access to legal assistance; and (iii) have a reasonable right of refusal.
2. Misuse of funds intended for land acquisition.	Use will be made of sub-account specially established for funding of resettlement costs and in accordance with the requirements of ADB's Loan Disbursement Handbook, as amended from time to time.
3. Inappropriate monitoring and evaluation arrangements.	An accountant in PMU1 will be responsible for administering/monitoring loan funds. An external monitoring agency (EMA) will be engaged under the Project to carry out its own monitoring and assessment if all procedures for land acquisition and compensation payments and agreed documentation are followed. The external monitor will do random checks as part of their monitoring and assessment. A well-defined grievance redress mechanism has been established in Cam Thuy and Ba Thuoc while the grievance redress mechanism in Ha Trung District will be established.

## H. Grievance Redress Mechanism

32. A well-defined grievance redress and resolution mechanism has been established in Cam Thuy and Ba Thuoc districts for the ongoing Project and they are found to be functioning well and accessible. Nevertheless, further capacity building or refresher training on grievance redress will continue to be carried out to ensure the affected persons' requests, grievances and complaints regarding land acquisition, compensation and resettlement will continue to be addressed in a timely and satisfactory manner. In Ha Trung District, the grievance redress mechanism has yet to be established but PMU1 will ensure that the required resources and capacity building interventions are in place in order for the GRM to be functional, effective, and accessible like the GRMs in Cam Thuy and Ba Thuoc districts. The grievance redress mechanism has been discussed and explained during the REMDP preparation. Further, copies of the public information booklet which refer to the GRM will be distributed to the affected persons in July 2015.

### I. Monitoring

33. The PMU1 will be responsible for the overall coordination and management of REMDP preparation and updating, implementation and monitoring. As mentioned in the earlier section above, an accountant will assist PMU1 in the proper administration, management, and submission of supporting documents to MOT, MOF and ADB in relation to request for replenishment and liquidation of loan funds used for resettlement.

34. The EMA will be engaged by PMU1 using government counterpart funds. Specific to the use of loan funds, the EMA will carry out its own monitoring and assessment to determine if the agreed procedures for land acquisition and compensation payments and agreed documentation are followed. The external monitor will do random checks as part of their monitoring and assessment. PMU1 and DCARBs are required to provide the documents requested by the EMA.