

# Chapter

# 8



## Compensation and Gap Analysis

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## Compensation and Gap Analysis

### 8.1 INTRODUCTION

Compensation and resettlement are frequently one of the major social and economic issues to be managed as a result of the land allocation process. In the case of the Sakhalin II Project, the number of individuals affected has been minimised through careful positioning and siting of the facilities and pipeline ROW.

The Project complies with the laws, regulations, and procedures of the Russian Federation related to the land allocation process and compensation calculations.

In addition, the Project has made public commitments to meet the spirit the following World Bank Group (WBG) Operational Directives (OD):

- OD 4.30, Involuntary Resettlement (June 1990), and
- OD 4.20, Indigenous Peoples (September 1991).

Some gaps have been identified between Russian Federation requirements and the spirit of WBG ODs and are discussed in this Chapter. The SEIC Supplemental Assistance (SEIC-SA) Programme, which was developed and implemented by SEIC to address these gaps is further described in Chapter 12.

At the time this SIA was prepared, identification of land users was well advanced, and the SEIC-SA Programme had been implemented.

This programme includes:

- A systematic process for identification of a range of potentially affected people,
- Evaluation of eligibility for supplemental assistance,
- Provisions for supplemental assistance, and
- Follow-up monitoring to ensure that people and enterprises are no worse off after the Project than before.

At the time this report was prepared there were only 56 affected individual land users identified and 6 to 14 households requiring physical resettlement on land needed by the Project. Impacts associated with this land need are described below.

The SEIC-SA Programme is to comply to international best practice and one of the first in the Russian Federation.

### 8.2 RUSSIAN REGULATORY COMPENSATION

#### 8.2.1 Introduction

The new Land Code of the Russian Federation (*Land Code*) became effective on October 30, 2001. It was enacted by the Federal Law dated October 25, 2001 #137-FZ *On introduction into operation of the Land Code of the Russian Federation (the Enactment Law)*. This supersedes the 1991 RSFSR *Land Code* and certain other laws governing land issues.

Article 90 of the *Land Code* generally authorises allocation of plots of land for oil and gas pipelines; facilities required for the operation, maintenance, construction, re-construction, repairing, development, etc. of the trunk pipeline and the establishment of protected areas with special land use requirements and restrictions.

Under the *Land Code*, foreign legal entities (of which SEIC is one) may own or lease plots of land, subject to restrictions imposed by the *Land Code* and federal laws. However, they may not own plots of land located on territories adjacent to the Russian border (Article 15[3] of the *Land Code*, Article 3[5] of the Enactment Law). Until the adoption of a special federal law governing the commercial transactions for agricultural land, foreign legal entities may only lease agricultural land (Article 8 of the Enactment Law). A short-term lease in the Russian Federation can last up to three years and a long-term lease up to 50 years.

Most of the land required by the Project is federal, regional or municipal property. Difficulties in identifying the true owner are addressed in Section 8.3. The authorities grant land to a variety of entities including collective farms, industrial enterprises, and individuals such as farmers, dacha owners. Forms of land-grants vary from a lease for private entities to uncompensated use for state or municipal

enterprises. For ease of understanding, parties affected by Project land appropriation and that have current rights that will be affected by SEIC activities are referred to as Land-users.

The Russian Regulatory compensation system for agricultural land is divided into:

- Compensation for damages to land paid to various state entities (examples include the cost of land-improvement facilities built with federal or municipal resources and cost of alternative plot development), and
- Compensation for investments in the land paid to individuals or enterprises (examples include the costs of residential, industrial and other buildings and structures) is based on current costs of equipment and materials, construction, mounting and other works. Other types of costs include those for cost of unharvested production; cost of fruit- and berry- growing plantations; extra costs due to the inconvenience of land use limitations. The cost of land improvements done at the expense of the registered land user is paid to that user.

SEIC is responsible for transferring the appropriate payments directly to the state entity or to the registered land user.

### 8.2.2 Land Allocation Process

The Sakhalin II Project land allocation process complies with the following legally-mandated steps:

- Preliminary land allocation (PLA),
- Review and approval of the TEO-C through the State expertise process,
- Final land allocation (FLA), and
- Granting of construction permit.

All the steps are supervised and approved by the corresponding Administrative bodies within the Federal, Regional and Municipal Administrations. Russian law requires the PLA to include an estimate of the compensation for each affected land user and landowner. Compensation is paid during the FLA.

The land allocation on the territories traditionally inhabited by indigenous people requires public consultations.

### 8.2.3 Land Reclassification Process

While most of the Project land is taken from land of forest fund, some is taken from agricultural land. The use of land from both of these categories is restricted. Plots of land currently categorised as agricultural or forest may not be used for construction purposes without a change of category. The administrative body that can transfer plots of land from one category to another depends on the land category and land title-holder, as follows:

Type of Land	Can be Transferred by the:
Land owned by Federal Government	Government of the Russian Federation
Land owned by the Sakhalin Region	Sakhalin Region Administration
Agricultural land owned by Districts	Sakhalin Region Administration
Non-agricultural land owned by Districts	District Administration
Agricultural land owned privately	Sakhalin Region Administration
Non-agricultural land owned privately	District Administration

Only the government of Russian Federation can transfer forestland from one category to another. This stipulation was introduced by the new Land Code and contradicts the existing procedures of the Forest Code that provides a hierarchy of authorities for approving changes to forestland categories. It is not quite clear yet, which of the two *Codes* takes precedence for the forestlands.

The costs of land transfer from one category to another are paid to the federal, regional or municipal budget, depending on the land type. Methods for calculating such payments are well-defined, and do not allow for variations in value.

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### 8.2.4 Resources Eligible for Compensation

A wide range of resources is eligible for compensation under Russian law including payments for losses incurred on agricultural land, forests, and fisheries. In many instances it can take the form of both money and alternative land and facilities. For example, when a farmer has to be moved, local authorities have to provide a new plot of land while the investor pays the compensation for loss of production capacity, moving costs, etc.

Those eligible for compensation on the Sakhalin II Project are shown in Table 8-01 below.

TABLE 8-01: POTENTIAL RANGE OF THOSE ELIGIBLE FOR COMPENSATION

Receiver	Examples
Federal, regional and municipal departments/institutions	Forestry, agriculture departments, committees
Legal bodies	Private enterprises, state-owned enterprises, dacha cooperatives, collective farms
Individuals	Kitchen garden owners, dacha owners, farmers registered as sole proprietors

Examples of compensation paid for a variety of resources are listed below and are extracted from Decision of the *Council of Ministers (government) of the Russian Federation No. 77 of January 28, 1993*.

TABLE 8-02: COMPENSATION EXAMPLES

Item	Calculation
Residential buildings, cultural and general facilities, industrial and other buildings and structures	The estimated cost of construction of new buildings, objects and structures equal in useful floor space, capacity, volume and level of mechanisation to those being replaced.
Water sources (wells, ponds, holes, etc.)	The estimated cost of works for building new sources of equal quantity and quality of water, including the cost of Research and Development work.
Fruit- and berry-growing plantations	The cost of seedlings and the expense of planting and cultivating them before the beginning of fruit-bearing or crown linkage - (using prices at the date of land withdrawal). The lost profit will be compensated for the entire period, including the year of land withdrawal and the year of harvesting fruit and berry plantations on new land, equal to the yield obtained from the withdrawn land.
Incomplete construction and non-fruit bearing fruit and berry plantations	Evaluated by the scope and the cost of work actually performed by the land user as of the date of land withdrawal.
Losses (expenditures) caused by inconveniences in land use (e.g., disruption of transport, disruption of territory by communication lines, etc.)	Evaluated by the amount of lump sum expenditures on the construction of dams, bridges, roads, driveways, and other structures, and also on the purchase of boats, launches, ferries and other vehicles.
Losses (expenditures) needed to restore deterioration in land quality	Includes expenses of measuring performance of the soil, agrochemical and other special surveys and prospecting, and also measuring to ensure restoration of land quality.
Losses (expenditures) connected with the restriction of land users' rights	Involve expenditures on performing construction, land-improvement and other work, and purchase of materials and equipment needed to restore lost production capacity.

It is a significant task to complete the compensation negotiation required to meet Russian regulatory requirements.

The compensation volumes are preliminarily calculated during the PLA process at which time the 'land' needed for the Project is 'reserved'. Once reserved, use of the land does not allow for capital investments (construction of new permanent structures, planting of trees, bushes or other perennial plants).

Final negotiation, adjustment and disbursement normally take place during FLA.

The next stage is using and returning the land parcels to land-owners or users after termination of the lease period and temporary use. At this stage, calculation of extra damages and losses can be made on the basis of the existing prices and norms and the actual negative effect on the quality of adjacent agricultural land. Accordingly, payments for extra damages and losses are effected at this time.

The calculation of damage payments is performed by the owners/users of land withdrawn and the losses are calculated by the local agencies of the Federal Land Register (*Cadastre*) Service. Coordination of these calculations is carried out with the stakeholders (land users).

### 8.2.4.1 Temporary Land Use

In the case of temporary land appropriation, losses, including lost profit, damages and cost of land restoration are subject to compensation according to existing Russian regulations.

### 8.2.4.2 Permanent Land Needs

Losses due to permanent land appropriation are subject to compensation according to existing Russian regulations. Such losses include lost profit and damages resulting from the land reclassification, cost of alternative site development or improvement of the land of state reserve. The quality of the newly-developed plots should match the quality of those that have been appropriated.

### 8.2.4.3 Agricultural/Pasture Land

According to the existing Russian regulations, losses and damages caused by agricultural land appropriation and reclassification are subject to compensation. Compensation is paid for agricultural and/or farmlands if they are appropriated and their subsequent use for non-farming purposes results in the irrevocable loss of the land for:

- Future farmlands, and/or
- Deterioration of their quality (e.g., reduced soil fertility).

Compensation is paid to preserve the level of farming by restoring the area and quality of farmlands.

Damages and losses, including lost profits, will be compensated by the enterprises, institutions and organisations to which plots of land were allotted, and by the enterprises, institutions, organisations and citizens whose activities cause a restriction of the rights of land users or a deterioration in the quality of the land.

## 8.2.5 Compensations for Land Use Restriction in Sanitary Protection and Safety Zones

Russian regulations impose certain restrictions on the land use in the following Project areas:

- Sanitary protection zones of temporary and permanent facilities, and
- Safety zones of gas distribution networks and trunk pipelines.

**Sanitary protection zones** are designated areas around industrial facilities separating them from living areas and aimed at protecting the residents.

**Safety zones** are created along the gas distribution networks, trunk pipelines and other facilities in order to provide safe operation and eliminate the possibility of damage.

According to Russian regulations, indirect changes in land use due to the establishment of these zones are also subject to compensation. Losses incurred by the land user due to the restriction of use of agricultural land in sanitary zones are subject to compensation. At the design stage, the Project budgets funds for the sanitary zone organisation and development, including resettlement, where necessary, at the design stage.

Resettlement issues in sanitary protection zones are considered on a case-by-case basis. There can be several compensation options:

- Payment to the land user for the cost of facilities and constructions located on the territory, and
- The operating company can award a subcontract for moving the affected structures and facilities to a new place.

The operating company also pays losses incurred by the land users due to the limitations of allowed activities and/or land deterioration due to the restrictions imposed by Safety Zones. Calculation of the amount of losses is part of the land allocation file and is guided by the Russian regulations.

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The current Russian sanitary regulations during construction and operation of trunk pipelines and other permanent facilities was described in Chapter 7.

#### 8.2.6 Compensation Process

Following international practice, SEIC has developed a low-cost procedure to address grievances concerning supplemental compensation. This is separate from the Russian legal remedies, which are settled by court of law or arbitration court. Final calculations for compensation are to be recorded by the local administration.

SEIC transfers compensation payments intended for the reimbursement of losses directly to the bank accounts of the affected land users.

The sums intended for damage recovery are transferred to the budget of the appropriate federal, regional or municipal entities.

Dates of the remittance of funds are not specified in regulatory documents except for the resources dedicated to damage recovery at the FLA. The sums are transferred within three months after the allotment of the plot of land.

Municipal authorities should inform those potentially affected about the planned construction and seek their feedback via local referendums, meetings and other democratic means. However, the forms and mechanism of public participation in the land allocation process are not yet defined in Russian legislation. Approaches taken by SEIC with regard to public consultations are described in Chapters 2, 3 and 6.

According to Russian regulations, compensation payments are subject to income tax.

#### 8.2.7 Timing of Notification of Potential Land Need, Calculation of Compensation, and Payment

Russian regulation requires one year's notice before relocation of legal landowners. However, Russian law also allows for reaching an agreement with specific land users at any point, allowing 'clearance' of the right-of-way, e.g., the transfer of privately used land back to the local authorities before the Final Land Allocation. Such agreements are subject to approval by local authorities.

#### 8.2.8 Importance of the PLA and Permitted Existing and Future Land Use

The procedure of allocating land for construction purposes with preliminary approval of the site established by Article 30 of the Land Code and consists of the following steps:

- Selection of a plot and issue of a resolution on preliminary approval by local authorities (PLA).
- Land marking.
- Registration of the plot of land in the State Land Register (*Cadastre*).
- Issue of a resolution on the allocation of the plot of land for construction purposes. This resolution legally facilitates conclusion of a lease agreement and its registration.

After PLA users are not permitted to make any capital investments in the selected plot of land in the form of land improvement or capital constructions.

The PLA resolution prepared by local authorities requires compensation for:

- Damages to the existing landowners or landholders due to the withdrawal of their plots of land and termination of lease agreements, and
- Losses of agricultural production or forests.

It may also provide for rights of other persons to use the plots or impose certain limitations on the use of plots. These are set by Article 56 of the *Land Code* and can include a special land use regime, environmental requirements, etc.

According to Russian regulation, municipal authorities are responsible for informing the land users of the restrictions on use under the PLA (Section 8.2.2). Land-users failing to adhere to the restriction, who go ahead and make capital land improvements risk having to cover any expenses incurred themselves.

A resolution is valid for three years. If the final land allocation has not taken place within three years of the PLA, land users have the right to claim from local administrative bodies damage or losses due to the restrictions imposed on them, regardless of any possible terms of PLA extension.

PLA dates for the Phase 2 Project vary from 1997 to 2002, subject to the schedule of the Project, changes in the planning/layout of the Project facilities, and the number of people working on PLA at any one time.

### 8.2.9 Importance of Registering Use

According to Russian regulations the following are subject to land regulations: citizens, legal entities, Russian Federation, subjects of Russian Federation, municipalities (*Land Code* of Russian Federation, Article 5, par. 1). Their status is defined as follows:

- Land owners - parties owning plots of land,
- Land users - parties occupying and enjoying a plot of land by right of perpetual or indefinite use or by right of uncompensated limited use,
- Land occupiers - parties occupying and enjoying a plot of land by right of lifelong inheritable possession,
- Land lessees (tenants) - parties occupying and enjoying a plot of land under a lease or sub-lease contract, and
- Land easement-holders - parties enjoying restricted use of a plot of land belonging to others by virtue of an easement (Section 7.2.1.3).

Land title types (ownership, permanent [perpetual] use of land, lifetime ownership with hereditary succession, easement, lease, uncompensated limited use) are defined in the Civil Code of Russian Federation and Land Code of Russian Federation. They are subject to state registration according to the Russian Federation Law *On the State Registration of Real Estate Rights and Transactions* (FZ 122).

Land rights are governed by the above law. Land lease agreements, sub-lease agreements and uncompensated limited use agreements for a term not exceeding one year are not subject to State Registration, apart from specific cases stipulated by the Federal Laws (ref. - Russian Federation *Land Code*, Article 26).

Only legally registered users can be compensated according to Russian regulations.

However, the existing practice of land use shows that some land users fall out of compliance with Russian regulations (lease agreements expired and not extended, land rights ceased to exist due to delays or lack of property tax payments, inherited land title not re-registered, squatters, poachers, etc.).

In many instances (apart from illegal dumping and logging, and poaching) land users who have fallen out of compliance are vulnerable social groups (retired people, indigenous groups). They either lack funds, legal advice or knowledge or have other impediments to registering, such as remote location, poor transportation and inadequate means of communication.

The registration process is complex and cumbersome. It requires multiple visits to a number of administrative offices in district centres with varying work schedules, waiting in queues, etc. The cost of registration can be prohibitively expensive for the groups concerned.

For more information on procedures, duration and the costs of land use registration see Tables 8-03, 8-04, and 8-05. These were prepared based on analysis of Russian regulations and interviews with the specialists of the corresponding administrative authorities.

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#### 8.3 GREY AREAS IN THE RUSSIAN REGULATORY SYSTEM

##### 8.3.1 Delimitation of Federal and Municipal Land Borders

The Russian State recognises the following types of land ownership: private, state (Russian Federation and its constituents), and municipal. However, there are no clear legal mechanisms enabling delimitation of federal, regional and municipal land.

The Federal Law dated July 17, 2001 #101-FZ *On Delimitation of State Ownership of Land (the Delimitation Law)* came into effect at the beginning of 2002. The Russian Federation is to prepare and approve lists of state-owned plots of land and corresponding landowners (i.e., Russian Federation, constituents of the Russian Federation or municipalities). Such owners will eventually be registered under the Registration Law and have a valid title to the relevant plots of land.

This will require a substantial effort. Until it is completed, uncertainties will surround the issues of land privatisation, allocation and other transactions involving land.

##### 8.3.2 Legislation Related to Commercial Transactions Involving Agricultural Land

The *Land Code* adopted in 2001 does not provide legal mechanisms for commercial transactions with agricultural land, making it a subject of a Federal Law that still needs to be developed. Given the extreme political sensitivity of the problem and traditional controversy over the issue of land, it is highly unlikely that a federal law explicitly authorising ownership of agricultural land will be adopted in the near future.

##### 8.3.3 Detachment of Individual Shares from Collective (Communal) Property

This issue is directly related to the lack of legal mechanisms authorising agricultural land ownership. Chapter 6 of the *Land Code* does not list land shares in collective land properties (collective farms and state collective farms) as objects for land transactions. This has left a significant void in the legislation surrounding the regulation of transactions of land shares of collective property.

##### 8.3.4 A Number of Legally Approved Methods for Calculating Damages and Losses Allows for Significant Differences in Values

The legally recognised and approved evaluation methods for calculating private land users' damages and losses sometimes allow for significant differences in value. Therefore, negotiations are often needed to determine what is considered 'reasonable' under the law. In the case of private land users, compensation is always subject to an agreement between the investor (in this case SEIC) and land user. It must be approved by the local authority. The payment will be made directly by SEIC to the land user.

##### 8.3.5 Lack of Legally Defined Public Hearings Mechanisms

While specifying that certain decisions related to land use (use of land in areas inhabited by indigenous people, establishment of public easement, etc.) have to be based on the outcome of public hearings, existing Russian Land legislation, does not define 'public hearings.' Neither does it stipulate how they should be organised or the results analysed.

##### 8.3.6 Difficulty for Individual Users to Calculate Compensation/Lost Profit

The initial calculation of losses/lost profit is done based on official records that should confirm the actual investments in land made by the land user. However, the majority of individual land users of subsidiary plots do not keep any records, unlike private agricultural enterprises that normally have professional economists and/or accountants on their staff. The use of private companies' records when calculating the expenses of the individual is not always adequate/accurate because of the differences in cost effectiveness between the two entities.

Based on SA Group interviews, individuals often overlook costs, either due to the lack of records, or to poor understanding of investments (e.g., kitchen garden investments). Methods to address these needs or to provide assistance are being evaluated as part of the SEIC SA Programme.

For more information on the subject see Table 8-06.

### 8.4 COMPENSATION FOR INDIGENOUS PEOPLES

#### 8.4.1 Introduction

*Constitution of the Russian Federation* (RF) regulates the rights of minorities (Article 71) and those rights are protected by the Russian Federation and its constituents, e.g., Sakhalin Region, (Article 72). Article 69 guarantees the rights of 'small-numbered indigenous peoples' in accordance with generally recognised principles and norms of international law and international treaties signed by the Russian Federation.

The Constitution guarantees the rights of national minorities and indigenous people equally with nationalities of Russia (Article 19). This sets an important principle, whereby social welfare is based on the protection of the rights of citizens rather than nations.

Regulation of resource use at the regional level assumes that nationalities are equal. The 'indigenous, small-numbered' status is the basis for a range of additional rights and protective measures. Of all the people engaged in traditional activities, only indigenous 'small-numbered' peoples are entitled to special protection.

##### 8.4.1.1 Federal Laws

- *On Environmental Protection* #7-FZ of January 10, 2002,
- *Land Code* #136-FZ of October 25, 2001,
- *On Land Use Planning and Control* #78-FZ of June 18, 2001,
- *On Territories of Traditional Natural Resource Use of Indigenous Small-Numbered People of Northern Russia, Siberia and the Russian Far East (RFE)* #49-FZ of May 7, 2001,
- *On General Principles of Organising Communities of Indigenous Small-Numbered People of Northern Russia, Siberia and the RFE* #104-FZ of July 20, 2000,
- *On Indigenous Communities* #104-FZ of July 20, 2000,
- *On Guarantees of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation* #82-FZ of April 30, 1999,
- *Forest Code* #22-FZ of January 29, 1997, and
- *On Protected Areas* #33-FZ of March 14, 1995.

##### 8.4.1.2 Other Legislation

- The Law of Sakhalin Region *On the Regional Programme of Economic and Social Development of Indigenous Small-Numbered People of the North in 2001-2004* #300 of December 10, 2001,
- Enactment of the Russian Federation government #255 of March 24, 2000 *On the Unified Register of Indigenous Small-Numbered Peoples* (amended on March 28, 2001),
- Enactment of the Sakhalin Region Governor #99 of March 2, 2001 *On Support of the Traditional Way of Life and Development of Traditional Enterprise of Indigenous Small-Numbered People of the North*,
- The Concept Paper on State National Politics within the Russian Federation, approved by the Presidential Decree #909 of June 15, 1996, and
- Temporary Regulations *On Indigenous Communities, Community and Family Enterprises of Indigenous Small-Numbered People of Sakhalin Region*, approved by Enactment #18/140 of the Sakhalin Region Duma of January 9, 1996.

#### 8.4.2 Definition of Indigenous Small-Numbered People

The law *On Indigenous Communities* defines 'indigenous small-numbered peoples' as:

- Residing in areas where their ancestors traditionally lived,
- Maintaining a traditional mode of life, sustenance and economy,
- Numbering less than 50,000, and
- Aware of their status as an independent ethnic group.

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According to the Law *On Guarantees of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation* and the federal enactment *On the Unified Register of Indigenous Small-Numbered Peoples*, Sakhalin has four groups that qualify as indigenous small-numbered peoples. They are Nivkhi, Uilta (Oroki), Evenki and Nanai.

#### 8.4.3 Territories of Traditional Natural Resource Use

One way for indigenous people to preserve their land used for traditional livelihood activities is to set aside that land as a 'Territory of Traditional Natural Resource Use' (or *territoriya traditsionnogo prirodopolzovaniya*, known as a TTP). The 2001 Russian Federation Law *On Territories of Traditional Natural Resource Use* provided a framework with which to establish a TTP: as a federal, regional or district level protected area. Legal mechanisms for TTP registration have not yet been developed and therefore, there are currently no registered TTPs in Russia. The registration process would also require significant resources that are currently unavailable to IP communities. Traditional Natural Resource Use, however, can be carried out without registering a TTP.

According to the law *On Territories of Traditional Natural Resource Use*, land of traditional use may be used for constructing and maintaining pipelines or other linear facilities if this activity does not violate the order of Traditional Natural Resource Use.

Articles 95 and 97 of the *Land Code* introduced another framework for establishing TTPs as a protected area or as Nature Conservation Land (NCL). The Russian Federation Law *On protected areas and sub-legislative norms regulate protected area establishment and management*. The NCL form is not yet regulated. The Russian Federation government is currently working on a draft enactment *On Territories of Traditional Natural Resource Use*. This will probably recognise a new type of nature conservation territory where non-traditional commercial activity would be allowed subject to many restrictions and requirements. Current protected area regulations ban non-traditional commercial activities in nature reserves.

Protected areas are areas of land/water of certain environmental, scientific, cultural, recreational or other significance. The areas are withdrawn partially or completely from commercial use and are protected by a special conservation regime. In accordance with the Russian Federation Law *On Protected Areas*, protected areas need to be registered in the state land register (*kadastr*). State registration means that there is publicly available information on the status of each protected area, its geographic location and borders. Protected areas can be established at the federal, regional and district level but the state register applies to every level of protected area.

Yet another statute was introduced by the Russian Federation Law *On Environmental Protection*. Article 4 states that Native environments and places of traditional habitation may be eligible for environmental protection. It can be inferred now that a place of habitation may be subject to special restrictions and requirements (probably similar to a protected area) without formalising the status of a protected area.

#### 8.4.4 Land Use Rights of Indigenous People

Based on current legislation, indigenous people acquire the status of 'users of natural resources' and have various rights to land. In accordance with the law *On Territories of Traditional Natural Resource Use*, plots of land within traditional use areas are granted to indigenous people for free use.

Land rights can be realised through ownership, usufruct rights (Article 216 of the *Civil Code*) and contractual obligations. The temporary regulations *On Indigenous Communities, Community and Family Enterprises of Sakhalin Region* establish that plots of land are granted free of charge to indigenous users based on the following rights:

- Ownership - for private subsidiary plots (dachas),
- Perpetual (indefinite) use - for various agricultural purposes and farming, and
- Long term lease - for deer pastures and hunting.

All forms of land rights mentioned in this section require formalisation and receipt of title documents from the appropriate land committees and local authorities.

#### 8.4.5 Compensation for Native Land

Russian land allocation regulations do not establish a specific mechanism to compensate indigenous people as an independent category of the population affected by a project. Compensation mechanisms are the same for non-indigenous land users:

- The temporary regulations, *On Indigenous Communities, Community and Family Enterprises of Sakhalin Region*, establish that indigenous land users/owners are entitled to compensation for the full value of their land plot and reimbursement of losses and lost profits in case of withdrawal of land.
- In accordance with the law, *On Territories of Traditional Natural Resource Use*, withdrawal of land within a TTP requires that the indigenous user should be compensated by being granted equivalent land and reimbursed for associated losses.

PLA materials did not specify whether land users were indigenous or not.

They did call for compensation payment for damages to reindeer pastures in Okha and Nogliki as one of the land allocation conditions.

However, there are no legal mechanisms to establish compensation to indigenous land users for effects to traditionally used land that is not subject to official registration. If indigenous people/communities demonstrate damages/losses caused by land withdrawal, they would be subject to SEIC Compensation and Supplemental Assistance Programme discussed in detail in Chapter 12. The compensation (if due) would best be assessed by the parties involved and paid directly to the land users but with the approval of the local administration.

### 8.5 RUSSIAN REGULATORY SYSTEM AND INTERNATIONAL STANDARDS

#### 8.5.1 Goals of World Bank Operational Directives Related to Compensation

Gaps exist between the Russian regulatory systems and the World Bank principles of compensation. The Russian regulatory process appears to lack transparency and there is no low/no cost grievance resolution process apart from the court proceedings at the request of a party aggrieved or considering itself aggrieved. In addition, some gaps appear to exist between market and replacement valuations, e.g., for structures.

In order to ensure that the population displaced by the Project is properly compensated the Project is adhering to the spirit of the WBG ODs 4.20 and 4.30. Key principles include the following:

- Recognition of uses of land, rights to land, and investments in the land which may fall outside the legal regulatory system of the country,<sup>5</sup>
- The need for a transparent process,
- Compensation for the loss of a wide range of resources,
- Compensation should be paid based on replacement, not market value.<sup>6</sup> This issue is in part driven by the presence or absence of an active market economy,
- Implementation of a transparent low/no cost grievance process through which people can seek resolution with the Project, and
- People to whom compensation is paid must be the same or better off after a Project.<sup>7</sup>

#### 8.5.2 Market/Replacement Valuations of Structures/Crops

In general, Russian law provides for compensation, which recognises investments in the land rather than its market value. For example, where farmland is removed compensation provides for costs associated with the development of new land. Restoring affected farmland includes requirements for reusing disturbed fertile soil, recultivation and damages that include actual losses as well as lost profits.

<sup>5</sup> For example, historical land use by indigenous peoples.

<sup>6</sup> For example, a dilapidated house would need to be replaced with a new house of similar size and materials in a nearby location.

<sup>7</sup> Follow-up monitoring is usually implemented in order to demonstrate this goal has been met.

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Evaluation of the compensation value of houses, farm buildings and other structures is based on the cost of the construction of new houses, farm buildings and other structures of equal area, capacity, utilities, etc. If the value of the newly-constructed premises is higher than that of the existing ones, Russian regulations state that the difference in values is paid by the affected land user.

#### 8.5.3 Methods to Address 'Gaps'

'Gaps' may be addressed in several ways:

- By payment of supplemental compensation by project developers as per negotiated agreements with government.<sup>8</sup>
- By institutional strengthening in cases where basic compensation does not meet the basic regulatory requirements of the country due to lack of staffing or other administrative reasons.
- Through indirect methods working in tandem with the regulatory process and fully disclosed to local authorities.

Given the limited range of compensation issues that have arisen around the Sakhalin II Project, the latter has become part of the SEIC Supplementary Assistance Programmes.

#### 8.5.4 Resettlement Action Plan

Any movement of individual or household investments such as houses and fields resulting from the construction or establishment of new ports, mines, or transport infrastructure, is considered as an involuntary resettlement under WBG ODs. In any project, involuntary resettlement should be avoided as much as possible, as it has been in the Sakhalin II Project.

International best practice recognises that a range of options is available. WBG guidelines generally call for preparation of a RAP in the case of Bank-funded projects.<sup>9</sup> However, this is not a universal requirement of major international lenders. The Asian Development Bank for example does not require RAPs if the project is affecting small number of entities. The WBG recognises that the range of RAPs can vary from small simple summary plans in the case of a limited number of users to major and complex plans in the case of moderate and large-scale resettlement.

Based on the land needs survey and on information obtained during baseline studies of the affected areas, the number of such cases falls well below the thresholds of 100 to 200 individuals established by Note 8 to OD 4.30.<sup>10</sup> The number of individuals and households also falls below thresholds set by the Asian Development Bank.

SEIC will implement the SEIC SA Programme to provide as much advance notification as possible and to provide fair and adequate compensation to the individuals and families who may require assistance.

8 On the Chad-Cameroon pipeline project (1998-2000) a system of 'supplemental compensation' was negotiated with the Cameroon government to address the gap between the legal compensation system of the country and expectations of the World Bank. A system was developed whereby the government and the Project each paid compensation to individual land users.

9 Resettlement Plan - The document prepared whenever people are displaced physically or economically from land or other fixed resource rights they own or occupy, without there being a 'willing seller' or the possibility of rejecting the loss. The plan is the record of the process of analysing baseline conditions, predicting effects, consulting affected people, and drawing up a detailed strategy for (a) minimising or avoiding resettlement; (b) compensating for losses, (c) relocating and rebuilding as necessary, and (d) ensuring that affected people are afforded the opportunity to improve the incomes, income-generating activities, and standards of living that they had before the project affected them, or at a minimum to restore the incomes and standards of living that they would have had if the project had not affected them. (WBG Operational Directive 4.30)

10 Where only a few people (e.g., about 100 to 200 individuals) are to be relocated, appropriate compensation for assets, logistical support for moving and a relocation grant may be the only requirements. However, the principles on which compensation are to be based are the same as for larger groups.

TABLE 8-03: PROCEDURES OF LAND TITLE REGISTRATION

Organisation	Required Process	Potential Duration	Cost
City or District Administration	Issue of document verifying the right to the land	Nominal term for the application review is two months; however, there is no formal limit for the procedure	
SakhzemProject - a government institution responsible for the registration of plots of land	Cadastre Plan with the Cadastre Reference number	No less than one month	From 3,000 Roubles
City or District Centre of State Registration and Technical Inventory of Real Estate	Certificate of the Assessed Land Value	No less than two months	From 10,000 Roubles
City or District Registration Chamber	Register the land title	One month for the Application Review	300 Roubles

Therefore, the applicant needs to apply to at least four organisations in the district centre. Each organisation is open to receive applications on only two days/week. Registration will take at least six months and will cost at least 13,300 Roubles.

TABLE 8-04: ISSUE OF A HOUSE CONSTRUCTION PERMIT ON URBAN/COMMUNITY LANDS

Organisation	Required Process	Potential Duration	Cost
City or District Administration	Land allocation regulation authorising the construction of a house	Nominal term for the application review is two months; however, there is no formal limit for the procedure	
Department of Architecture or other Professional Design office	Preparation of architectural plan of house	Unlimited	From 9,000 Roubles
City or District Department of Architecture	Statement on Land Survey (Statement on the Land marking and construction axes)	Three months or more	
City or District Department of Architecture	Construction Certificate (Chart)	Application review term is 30 days	Determined on a case-by-case basis (no less than 5,000 Roubles)

Again, the applicant needs to apply to at least four organisations in the district centre, spend no less than 14,000 Roubles and it could take up to one year.

TABLE 8-05: REGISTRATION OF AN EXISTING PRIVATE HOUSE

Organisation	Required Process	Potential Duration	Cost
City or District Centre of State Registration and Technical Inventory of Real Estate	Technical Inventory of the Plot of land	No less than two months	From 10,000 Roubles
SakhzemProject	Cadastre Plan with the Cadastre Reference Number	No less than one month	From 3,000 Roubles
City or District Power Distribution Control Bodies (Enegronadzor)	Receive approvals	Unlimited	From 1,500 Roubles
City or District Sanitary Inspection	Receive approvals	Unlimited	
City or District Fire Inspection	Receive approvals	Unlimited	0.5% of the assessed house value as per records of Centre or State Registration and Technical Inventory of Real Estate (until 01 Jan. 03)
City or District Department of Architecture	Registration of the house	No less than one month	

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Therefore, to register an existing house one needs to get approval of at least six organisations. It will cost at least 14,500 Roubles and will take no less than five months.

### Use of Urban/Community Land as Kitchen Gardens

Unused urban/community land (non-agricultural) can be allocated as kitchen gardens for local residents by municipal authorities. Residents should submit proper applications, and observe the following restrictions:

- No permanent construction is allowed,
- When this land is required for its original purpose (for instance, housing construction), kitchen garden is withdrawn without any compensation to the user.

According to community administration specialists, questioned by the SA Group specialist, very few people follow the application procedure. This is probably because the permit issued by the local administration has no legal value and does not guarantee compensation of the investments for land. Also, until recently, penalties for unauthorised use of land were insignificant and were rarely applied by authorities.

### Obtaining a plot of land for farming

To obtain a plot of land for farming an individual must apply to the appropriate land committee in order either to get a State Certificate of Lifetime Ownership with Hereditary Succession, to acquire land title, or to sign an appropriate lease agreement. The committee has the right to request a feasibility study or a business plan for the future farm operation. Submission of the application and the business plan do not guarantee land allocation, and depend on the availability of plots of land (which should not exceed 100ha) suitable for farming.

Sakhalin land in general is not very suitable for farming, and the probability of being awarded a fertile plot of land is not high. Following the land allocation, the State Registration Chamber registers the new farm within a month for a fee of 300 Roubles.

TABLE 8-06: GENERAL DESCRIPTION OF CALCULATION OF LOSSES AND DAMAGES CAUSED BY LAND WITHDRAWAL AND POSSIBLE PROBLEMS WITH COMPENSATION

Category	Loss		Lost Profit		
	Basis	Paid to?	Basis	Paid to?	
<b>Agricultural Land</b>					
Cultivated land, including kitchen gardens, subsidiary plots, garden plots	Compensation of expenditure needed to restore the deterioration in the quality of land (cost of surveying and prospecting and activities aimed at land quality recovery) (clause 19).	Cropland user (clause 9)	For compensation for crops see Agricultural Crops.		
Garden Berry field Other perennial crops	Compensation of fruit- and berry-growing plantations (cost of seedlings and expenditure on planting and cultivating them before the beginning of fruit-bearing or crown linkage - (clause 16); Expenditure on incomplete production and non-fruit bearing fruit and berry plantations (evaluation is based on the cost of work actually performed by the land user); Compensation of expenditure on perennial crops (cost of seedlings and expenditure on planting and cultivating them before the beginning of fruit-bearing or crown linkage).	Cropland user			
Layland	Compensation of expenditure needed to restore the deterioration in the quality of land (cost of surveying and prospecting and activities aimed at land quality recovery).	Cropland user			
Hay-meadow Cattle pastureland Reindeer pastureland	For cultivated land - compensation of expenditure needed to restore the deterioration in the quality of land (cost of surveying and prospecting and activities aimed at land quality recovery).	Cropland user			

		Damage		Gaps
	Basis	Paid to?		
	Compensation for cultivation of the same amount of new land including reclamation and other activities aimed at land cultivation and fertility increase up to the level of the withdrawn land (cadastre land cost) (clause 28). Maps, plans, soil examination data and land monitoring results will be used for calculation of profit (clause 31). Losses will be fully compensated when farmland is granted for temporary use on the condition that the disturbed land will be recultivated into non-agricultural land (clause 34).	Local administration (clause 5)		Loss compensation might be insufficient to cover actual expenditure, as individual users are more often than not unlikely to take account of their expenditure. This particularly concerns the cost of individual labour on soil quality recovery.
				<p>Damage compensation might be insufficient to cover actual expenditure, as individual users are highly unlikely to take account of their expenditure. This particularly concerns cost of individual labour on crop-planting and cultivation. People either forget about this kind of expenditure or do not consider this to be expenditure at all. Sometimes people underestimate their expenditure. The cases in which people either supply correct estimates or overestimate are very limited. That is why independent expert estimation is needed on a case-by-case basis.</p> <p>People are generally unable to provide proof of such expenditure, as they have no documentary evidence. The recommended application of collective farm prices in cases where no documentary evidence is provided generally leads to a calculation which under-estimates expenditure.</p>
				Problems with perennial crops might be faced.
				In case of cultivated pastureland, problems similar to those faced with perennial crops might be faced.

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Category	Loss		Lost Profit		
	Basis	Paid to?	Basis	Paid to?	
<b>Crops</b>					
Tillage agricultural products (vegetables, berries, etc.) Hay-meadow Agricultural products (hay, silage, other green food, etc.) Pastureland products			Annual land user profit returned from the withdrawn land calculated for the time period necessary for recovery of infringed production with coefficient equal to the time period necessary for recovery and rental time (clauses 21-23).	User	
Perennial crop products (berries, fruits, etc.)			Annual land user profit returned from the withdrawn land for the whole period including the year of land withdrawal and the year of first yield of new fruit-and berry-growing plantations equal to the yield on the withdrawn land (clause 24).	User	
Residential (dachas, houses, etc.)	Compensation for residential facilities (by the estimated cost of construction of new facilities equal to those available in useful floor space, capacity, volume and level of mechanisation) (clause 12) or compensation for transferring residential facilities (by the estimated cost of transferring residential facilities).	Owner			
Non-residential (fences, chicken coops, dog kennels, cowsheds, etc.)	Compensation for cultural, production and other facilities, industrial and other buildings (by the estimated cost of construction of new facilities equal to those available in useful floor space capacity, volume and level of mechanisation) (clause 12) or compensation for transferring non-residential facilities (by the estimated cost of transferring residential facilities).	Owner			
<b>Resettlement Expenditures</b>					
<b>Nuisances (inconveniences)</b>					
	Compensation for nuisance	User			
<b>Expenditure caused by land use nuisances that emerged (faults with transportation system, etc.)</b>					
	Compensation of non-recurrent expenditure for construction of roads, access roads and other constructions and for equipment purchasing (clause 18).	User	Tenfold difference of annual expenditure for transportation after land withdrawal (when nuisance occurred) and prior to land withdrawal (clause 25).	User	
<b>Expenditure caused by limitations in the land use rights</b>					
	Compensation of expenditure for construction, reclamation and other activities, purchasing of materials and equipment necessary for reconstruction of infringed production (clause 20).	User			
<b>Expenditure for factual land use registration</b>					
	Compensation for right of use registration (for the cases of self-acquisition/verbal agreement concerning agricultural land temporary usage/rent).	User			

\* Calculation of damages and losses of agricultural production is regulated on the federal and local level by the 'Decision of the Council of Ministers Land-users, Tenants and Losses in Agriculture. (government) of the Russian Federation No. 77 of January 28, 1993 on Endorsing the Regulations for the Redemption of Losses to Land Proprietors, Landowners,

Damage		Gaps	
Basis	Paid to?		
			Individual users might have difficulties calculating lost profit for the following reasons: In most cases, production volume is not calculated. If the strategy is to use prices of some agricultural enterprise for sampling, the best enterprise should be chosen to avoid an under-declaration of crop yield. Due to insufficient data on agricultural products prices, there is a risk of an incorrect calculation of profit from agricultural products sold by individuals (these prices are higher than those of agricultural enterprises) and of expenses). Potentially there might be changes in the type of land allotment usage (e.g. former pastureland is used for tomato production). In this case there will be no available data on tomato yield within the last five years, which is the requirement of Russian Federation legislation. There is the option here to use data on tomato yield for the current year. For the rest of the time period data from the best agricultural enterprises might be used. But in this case, crop yield under-declaration is a potential problem. As the land user becomes more experienced, it is likely that crop yield will increase accordingly.
			See above.
			Since some individuals use these structures for permanent residence (but do not own them) there may be a risk that they will not be compensated as compensation is only provided for the registered land users. To resolve this, compensation should be available to the user of the structure (for example, the farm in Prigorodnoye). It is also unclear how to expenditure for the improvement and maintenance of residential facilities is calculated.
			Practical experience shows that there are cases when compensation is not available on some non-residential structures. These are small-scale objects (like dog kennels). The problem of their improvement and maintenance is similar to that of the residential facilities.
			There is the risk that some aspects may not to be taken into account in the process of calculating compensation.
			No approved methods to calculate the compensation.
	Losses resulting from limited access or land deterioration caused by enterprises'/institutions' activities are calculated as a percentage of the costs for land reclamation in proportion to land quality deterioration (cadastre land cost) (clause 30).		Individual users are highly likely to forget about this type of expenditure. The problem will only arise when production levels are discovered to have been encroached upon.
			Compensation is not provided by Russian regulations. Lease agreement for the time period less than one year is not subject to compulsory state regulations. It should be noted that official registration costs are significant. Besides, the registration procedure is highly bureaucratic. The majority of individuals that use land under the terms of self-acquisition/verbal agreement would prefer to be officially registered.