



PUBLIC

## **DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM**

**BR-MICI005-2011**

**RODOANEL MÁRIO COVAS – NORTHERN SECTIONS 1 (BR-L1296) AND 2 (BR L1302)**

This document was prepared by the Project Ombudsperson for the consultation phase.

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**CONSULTATION PHASE  
DETERMINATION OF ELIGIBILITY**

**TO:** Victoria Márquez-Mees, Executive Secretary  
**FROM:** Isabel Lavadenz Paccieri, Project Ombudsperson  
**CC:** Independent Consultation and Investigation Mechanism  
**REFERENCE:** Rodoanel Mário Covas Project – Northern Section 1 (BR-L1296)  
and 2 (BR-L1302)  
**COUNTRY:** Brazil  
**DATE:** 2 September 2011  
**ELEGIBILITY**  
**DECISION:** The Request is **eligible** for the Consultation Phase

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**I. Summary of Request**

- 1.1** On 15 July 2011, the Independent Consultation and Investigation Mechanism (ICIM)<sup>1</sup> received a Request from Mauricio Gomes de Souza regarding potential environmental and social impacts that could be entailed by future construction of the northern section of the Rodoanel Mário Covas Project.<sup>2</sup> The Project finances the construction of the final section of the beltway surrounding the Metropolitan Region of São Paulo (RMSP) in Brazil.
- 1.2** The Request alleges, inter alia, that according to the Environmental Impact Assessment (EIA) conducted for the Project the route selected for the highway will cut through the Buffer Zone of the Cantareira State Park and the Green Belt Biosphere Reserve of the City of São Paulo, which are environmental protection areas. The Requester alleges that the Project will involve cutting down 98 hectares of forest vegetation in a protected area, producing inappropriate deforestation. He also asserts that the northern section of the Rodoanel will pass

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<sup>1</sup> The terms: Mechanism, Management, Executive Secretary, Project Ombudsperson, Panel, Mechanism Policies, Eligibility, Consultation Phase, Assessment, and any other relevant term in this memorandum shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism (ICIM) Policy approved on 17 February 2010 and available at: [www.iadb.org/mici](http://www.iadb.org/mici).

<sup>2</sup> The Requester initially contacted the Mechanism in an email sent on 20 May 2011. After establishing a dialogue with the Executive Secretary, the Requester filed his official complaint on 15 July 2011. The Requester has also been contacting the Country Office since November 2010, but apparently has received no response.

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through the springs and water canal area that supplies water to 55% of the population of the city of São Paulo, and thus could jeopardize the quality of, and access to, these water resources.

- 1.3 Furthermore, the Requester asserts that the Northern Section of the Rodoanel will pass near his residence located in the *Condomínio Residencial Jardim Itatinga*. According to the Requester, the plan calls for a tunnel and tunnel access to be built along this section of the highway. As a result, the Requester and other area residents would be directly affected by the Project, in particular by (i) noise and other types of pollution; (ii) loss of property value and potential resettlement of some families; (iii) damage to the physical structure of their homes due to the use of explosives during construction of the aforementioned tunnel; and (iv) insecurity caused by a possible increase in crime following construction of the highway. In this regard, the Requester alleges that he has received no information from the project executing agency regarding specific mitigation options for each of these harms.
- 1.4 The impacts indicated in the Request may occur as the result of violation of the Environment and Safeguards Compliance Policy (OP-703); the Access to Information Policy (OP-102), and the policy on Involuntary Resettlement (OP-710) of the Inter-American Development Bank (IDB).

## II. Project Background

- 2.1 The specific objective of the **Rodoanel Mário Covas Project – Northern Section** is to improve mobility, connectivity, safety, and convenience levels for users of the regional road transportation system. The Project financing, now in the preparation phase, would be structured as two loan operations:
  - a) **Northern Section 1 (BR-L1296)** for a total amount of US\$1,049,870,000, with US\$400 million financed by the Bank. This part of the Project, which would build 22 km of highway from the Eastern Section to the Fernão Dias highway, includes the following components: (i) engineering and administration; (ii) civil works and technical and environmental supervision; and (iii) social and environmental viability. The activities under components 1 and 3, with the exception of right-of-way acquisition, will correspond to the entire Northern Section.
  - b) **Northern Section 2 (BR-L1302)** for a total amount of US\$1,965,363,000, with US\$748,633,000 financed by the IDB. This part of the Project, which would build 21 km of highway from the Western Section to the Fernão Dias



Project Ombudsperson

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highway, has two components: (i) civil works; and (ii) institution-strengthening.

The loan proposals for the Northern Section, parts 1 and 2, are scheduled for submission to the Board of Executive Directors in November 2011 and February 2012, respectively.

- 2.2 The Rodoanel will be a beltway around the RMSP; it will be about 175 km long and interconnect the region's 10 most important main arteries. The Rodoanel consists of four sections: the Western Section, which is 32 km long and has been in operation since 2002; the Southern Section, which is 61 km long and began to operate in 2010; the Eastern Section, the construction of which has been concessioned and will begin this year; and the Northern Section addressed in the Request, which is 43 km long and for which competitive bidding on works is scheduled to begin in 2011-2012.
- 2.3 According to the Project documents, upon completion the Rodoanel will represent, together with two other projects,<sup>3</sup> one of the largest logistics platforms in Latin America, substantially restructuring transportation flows and improving the distribution of vehicular loads in the region. The expectation is that the Northern Section will facilitate direct connection from any part of the State of São Paulo (ESP) to Brazil's principal airport, Guarulhos, eliminating the need to travel through the urban area via the highly congested local road network. Improving the connection will play a key role, inter alia, in the logistics framework for the Soccer World Cup 2014.
- 2.4 The executing agency will be the Secretaria Estadual de Logística e Transportes [State Department of Logistics and Transportation] (SLT), acting through DERSA – Desenvolvimento Rodoviário S.A., a semipublic corporation associated with the SLT. DERSA was responsible for the design and construction of the existing sections of the Rodoanel, so it can incorporate lessons learned into the design and implementation of this Project.
- 2.5 In accordance with the Bank's Operational Policies and Safeguards, the Rodoanel Project – Northern Section is classified as **Category A**. In the context of its design, a Strategic Environmental Assessment (2004) and an Environmental Impact Study of the Section (2010) were conducted, in addition to numerous supplemental analyses and studies in compliance with the national environmental licensing process. The Project's Preliminary Environmental License was granted

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<sup>3</sup> The two projects are the future ring railway around the RMSP and the Integrated Logistics Centers.



on 28 June 2011 by the environmental authority, the Conselho Estadual do Meio Ambiente [State Environmental Council], based on the opinion of the Companhia Ambiental do Estado de São Paulo [Environmental Company of the State of São Paulo] (CETESB), which included a number of additional actions to improve the Project's environmental and social performance. In its opinion, CETESB also indicted the measures required for issuance of the Project's Environmental License for Installation and Environmental License for Operation. These measures include analysis and approval of the (i) Public Information Program, including the Subprogram for Relations with Surrounding Communities during Construction; (ii) the programs comprising the Basic Environmental Plan, among them the Subprogram for Control of Erosive Processes and Sedimentation and the Water Quality Subprogram; (iii) the Expropriation and Compensation Program; and (iv) the Social Compensation and Involuntary Resettlement Program.<sup>4</sup>

### III. Eligibility Analysis

- 3.1** The Eligibility Analysis is based on the eligibility and exclusion criteria included, respectively, in Articles 40 and 37 of the Policy. Article 38 of the Policy states that *“the purpose of the Consultation Phase is to provide an opportunity, applying consensual and flexible criteria, to address the concerns of a party that believes it has been or could reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-Financed Operation.”*
- 3.2** The Request originally lacked a detailed description of the environmental and social impacts. When given the opportunity to do so by the Ombudsperson based on Article 41 of the Policy, the Requester supplemented the allegations in his complaint, setting out the effects that he and his family, as residents of the *Condomínio Residencial Jardim Itatinga*, could suffer due to the construction and operation of the highway.
- 3.3** The Project documentation reviewed by the Ombudsperson establishes that the Project Team has analyzed various options for the location of the route. As a result, the Project's engineering design provides for the construction of more than 30% of the length with 22 viaducts/bridges and six tunnels, in order to minimize the effects on natural resources and human activity. The population has been included in consultations on the EIA, as reflected in the respective minutes and

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<sup>4</sup> CETESB, Technical Opinion No. 018/11/IE, of 20 June 2011, Process: 208/2010, Matter: Rodoanel Mário Covas– Northern Section, pp. 152 to 167.



reports,<sup>5</sup> and the Master Resettlement and Compensation Plan (PDRI) provides that the specific resettlement plans (PER) will include community participation mechanisms.<sup>6</sup>

**3.4** Regarding the requirements of Article 40.f of the Policy, the Requester alleged that he and the residents of the condominium would be directly affected by the noise, visual, and air pollution that would result from construction and operation of the Project. He asserted that a tunnel will be built in the section of highway that will pass very close to his residence, for which explosives are to be used, so his property could suffer irreparable damage to its physical structure. He also alleged that his residence will suffer significant economic damage because the value of its location close to a protected area would be affected by construction of the highway. The Requester further explained that the residents of the *Condomínio Residencial Jardim Itatinga* are not allowed to build walls around their homes because of environmental legislation applicable to the Cantareira State Park. He states that this will put his family in a vulnerable position, given the potential increase in crime near the Rodoanel. According to the Requester, the Project executing agency, DERSA, has not provided concrete and specific information on the mitigation measures for each of the noted impacts.

**3.5** In reference to the foregoing, the Ombudsperson has taken the following considerations into account:

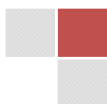
**a)** The environmental harm described by the Requester in general terms (see paragraph 1.2 above) would, prima facie, be addressed within the framework of the Project through (i) relatively concrete mitigation measures for the project's current design phase, and by (ii) an environmental management plan that specifies the impacts and mitigation measures over the entire course of design, construction, and operation of the Project.

**b)** In regard to the impacts alleged by the Requester in the area of the *Condomínio Residencial Jardim Itatinga* (see paragraph 3.4 above), the ICIM's review of the Project documentation was unable to identify

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<sup>5</sup> "Documento de Comentários aos questionamentos e às sugestões recebidas durante as Audiências Públicas do EIA/RIMA realizadas pelo CONSEMA - Contrato nº 3934/09 - Rodoanel Trecho Norte - Maio de 2011" [Document containing comments in response to questions and suggestions received during Public Hearings on the Environmental Impact Assessment and Report conducted by CONSEMA – Contract No. 3934/09 – Rodoanel Northern Section – May 2011].

<sup>6</sup> DERSA, "Plano Diretor de Reassentamento e Indenização – PDRI Parcial" [Partial Master Resettlement and Compensation Plan – PDRI], BR-L1296, BR-L1302, Rodoanel Mário Covas Project, Northern Section," June 2011, p. 41.



sufficiently specific measures that would be adopted to mitigate them. It should be noted that similar concerns were already submitted to DERSA by the condominium's residents during the public consultations. However, although the responses provided by the executing agency explain the need to conduct additional studies once the final design is complete, they do not provide the information needed to give the Requester and other residents of the *Condomínio Residencial Jardim Itatinga* a better understanding of the real and/or potential risks they would have to address due to the Northern Section of the Rodoanel.<sup>7</sup> Moreover, even considering that most of the Requester's concerns could be addressed by the measures suggested by CETESB as requirements for issuing the Environmental Licenses for Installation and Operation,<sup>8</sup> in accordance with the IDB's policy on Involuntary Resettlement, the residents already identified and already known to be directly and definitely affected must be informed and consulted, and would have to participate in development of the impact or damage mitigation or reparation plan at an early stage of the project.

- 3.6** Considering the above, the Ombudsperson considers it necessary to move ahead with a process of dialogue with the parties involved in the Project in order to, inter alia: (i) gain a better understanding of the requester's concerns and how they relate to the actions or omissions of the Project or the Bank; (ii) facilitate the processes and the parties' efforts to find viable and comprehensive solutions, ensuring that the lessons learned in the other sections of the Rodoanel will be effectively incorporated; (iii) provide or strengthen a participatory platform for better access to information and more effective environmental, social, and economic decision-making; and (iv) establish more effective mitigation measures. In this regard, the Requester and the Project Team have indicated their willingness to participate in a consultation and mediation process.

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<sup>7</sup> DERSA, JPG/PRIME Consortium, "Trecho Norte do Rodoanel Mário Covas – Respostas aos Questionamentos do Jardim Itatinga" [Northern Section of Rodoanel Mário Covas – Responses to Questions from Jardim Itatinga], pp. 30 to 34; and "Documento de Comentários aos questionamentos e às sugestões recebidas durante as Audiências Públicas do EIA/RIMA realizadas pelo CONSEMA - Contrato nº 3934/09 - Rodoanel Trecho Norte - Maio de 2011" [Document containing comments in response to questions and suggestions received during Public Hearings on the Environmental Impact Assessment and Report conducted by CONSEMA – Contract No. 3934/09 – Rodoanel Northern Section – May 2011], pp. 55 to 93.

<sup>8</sup> CETESB, Technical Opinion No. 018/11/IE, 20 June 2011, Process: 208/2010, Matter: Rodoanel Mário Covas– Northern Section, pp. 152 to 167.



**3.7** In addition, the Request presents none of the exclusions set forth in Article 37 of the Policy, and therefore meets all the Eligibility requirements established in Article 40 of the same instrument.

**3.8** The results of this Eligibility Analysis are presented in the following table:

**Summary of Eligibility Analysis**

<i>Eligibility Criteria</i>	<i>Ombudsperson Determination</i>	<i>Comments</i>
The names and contact information for the Requester are available.	Fulfilled	The Requester’s name and contact information are recorded.
Project and operation at issue have been identified.	Fulfilled	Rodoanel Mário Covas Project – Northern Section 1 (BR-L1296) and 2 (BR-L1302).
The Requester resides in the country where the operation is or will be implemented.	Fulfilled	The Requester’s residence is recorded in the State of São Paulo, Brazil.
None of the exclusions set forth in Section 37 applies.	Fulfilled	The Request presents none of the exclusions set forth in Article 37 of the Policy.
The Requester has reasonably asserted that it has been or could be expected to be directly, materially adversely affected by an action or omission of the IDB in violation of one or more Relevant Operational Policies.	Fulfilled	Regarding the impacts specifically related to the area of the <i>Condomínio Residencial Jardim Itatinga</i> , a possible causal link has been established between the impacts and an action or omission by the Bank in violation of its Operating Policies.  The environmental harm alleged in general terms would, prima facie, be addressed within the framework of the Project. However, this analysis could be expanded upon during the Consultation Phase.
The parties are amenable to a consultation or mediation exercise.	Fulfilled	The Requester and the Project have indicated their willingness to engage in dialogue.





<i>Eligibility Criteria</i>	<i>Ombudsperson Determination</i>	<i>Comments</i>
The Requester has taken steps to bring the issue to the attention of Management.	Fulfilled	The Requester has contacted the Country Office since November 2010, but apparently has received no response.

#### **IV. Conclusion**

- 4.1** In performance of the duties and authority conferred by the Policy, the Project Ombudsperson has determined that the Request described herein is **eligible** for the Consultation Phase.
- 4.2** This decision is not to be construed as a final judgment by the ICIM on the substance or the merits of the matters presented in the Request or in the Project.

The Executive Secretariat will proceed without delay to notify the Requester, the Board of Executive Directors, the President, the Country Office, the Project Team, and the Executing Agency of this Determination of Eligibility, and will record this Determination of Eligibility in the Registry within ten (10) business days.

**Isabel Lavadenz Paccieri**  
**Project Ombudsperson**

