



PUBLIC

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

**BR-MICI005-2011
BRAZIL
PROJECT RODOANEL MÁRIO COVAS
NORTHERN SECTION (BR-L1296)**

**COMPLIANCE REVIEW PHASE
ELIGIBILITY DETERMINATION**

This document was prepared by the Panel Chairperson of the Compliance Review Phase

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MEMORANDUM

COMPLIANCE REVIEW PHASE ELIGIBILITY DETERMINATION

FROM: Werner Kiene, Chair of the Compliance Review Panel

TO: The Board of Executive Directors, the Requesters, the Compliance Review Panel, the Executing Agency and the Public

CC: MICI

REFERENCE: Case BR-MICI005-2011

PROJECT: Project Rodoanel Mário Covas – Northern Section (BR-L1296)

COUNTRY: Brazil

DATE: November^{2nd}, 2012

1. INTRODUCTION

- 1.1. On May 13, 2011, the Independent Consultation and Investigation Mechanism¹, received a Request filed by Mauro Antônio Moraes Victor and Marco Antônio Garcia Martins stating that the Inter-American Development Bank's (the "IDB" or the "Bank") financed project Northern Section of the Rodoanel Mário Covas ("the Project") will result in irreparable damage to the biological and social environment in its area of influence. The case has been dealt with by ICIM under number BR-MICI-003-2011.
- 1.2. On July 15, 2011, the Independent Consultation and Investigation Mechanism received a new Request (See Public Registry) filed by Mr. Mauricio Gomes de Souza ("the first Requester"). As a resident of Jardim Itatinga Residential Condominium (the "Condominium"), Mr. Gomes de Souza stated that the Project² and its potential environmental and social impacts would affect him and his family negatively. This case is being handled by ICIM under number BR-MICI-005-2011.
- 1.3. On August 31, 2011, the Project Ombudsperson declared the Mr. Souza's

¹ The terms: Mechanism, MICI, ICIM, Management, Executive Secretariat, Project Ombudsperson, Panel, Mechanism Policy, 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 February 17, 2010.

² The borrower is the State of São Paulo and the Executing Agency is the State Department of Logistics and Transport (SLT), through the mixed enterprise Rodoviário Development S.A. (Desenvolvimento Rodoviário S.A., DERSA) ("the Beneficiary"), linked to the Secretariat. The loan agreement was signed on June 14, 2012.

Request eligible for the purposes of a Consultation Phase exercise. The assessment process was conducted between September and December 2011. During the assessment stage, neighbors of the first Requester joined the complaint, leading to a total number of sixty-four (64) Requesters sharing the concerns about harms expressed in the original Request.

- 1.4. The Requesters state that they fear that the Project will harm them and their families in various ways: (i) the movement of construction equipment and the use of explosives for blasting will damage the physical structure of their houses; (ii) the risk of contamination of around their houses and operational accidents during construction of the road; (iii) reduction of air quality both during the construction phase and once the road will be in operation; (iv) high noise levels and resulting impact on wildlife; (v) reduction of green areas and its impact on the visual attractiveness of the Condominium; (vi) impairment and potential expropriation of property; and (vii) increased risk of crime in the area once the road will operate so close to their homes. They allege that the Executing Agency did not submit detailed information on mitigation options for each of these damages.
- 1.5. IDB Management states that they have been in contact with the Project authorities on solutions to the complaints raised. Although it seems that some of the Requesters' concerns have been clarified, there still exist conflicting assertions about some of them.
- 1.6. **Based on an Eligibility Analysis, the Panel Chairperson, in line with the Policies of the Mechanism and without any judgment on the merits of the Complaint, determines that the Request is eligible for the purpose of a Compliance Review by the Panel. The reasons for this determination are summarized in the table of Section 4.**

2. THE PROJECT RODOANEL MÁRIO COVAS

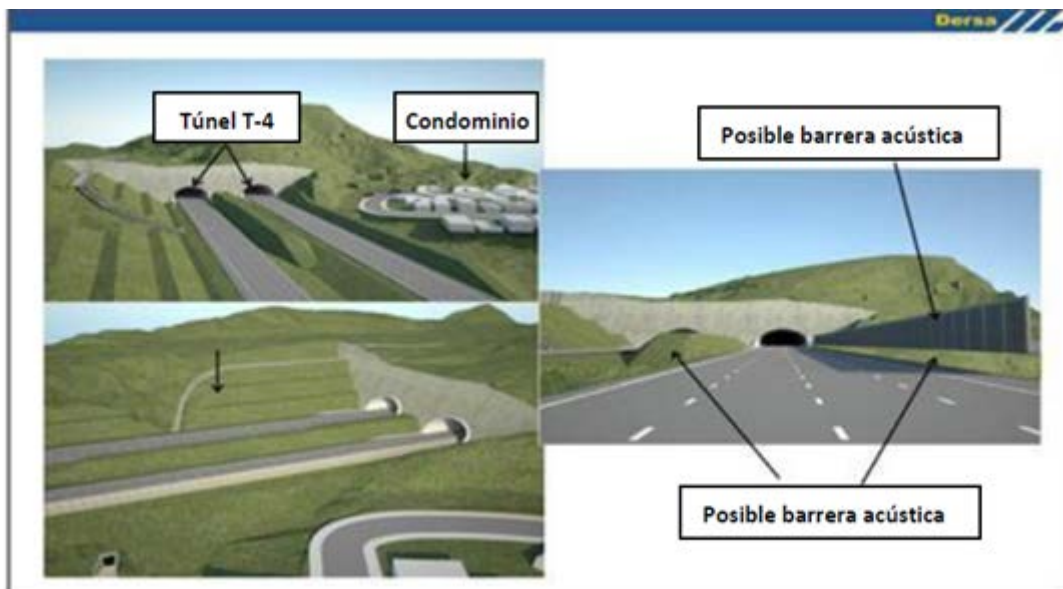
- 2.1. With an estimated population of 41 million (2008, 22% of the country's total) and a GDP at current prices of US\$575 billion (30% of national GDP), the State of São Paulo is one of Brazil's largest. It has the biggest and most diversified industrial base and accounts for 30% of the country's trade and 40% of services sector. It also has the nation's most extensive transportation system, including a large highway system, the main international airport, a waterway, and the Port of Santos, the largest container terminal in Latin America.
- 2.2. The São Paulo Metropolitan Region (SPMR), which, at around 8,000 square kilometers in size and with 19 million inhabitants spreads across 39 cities including the city of São Paulo itself, accounts for about 56% of the state's GDP and 19% of national GDP. The SPMR is at the crossroads between the northern and southern regions of Brazil, and the point of access to the Port of Santos, where 80 million tons of freight converge each year.
- 2.3. The highway network, with its historically radial configuration (hub-and-spoke), converges on the state capital. The network includes ten of the country's main highways, carrying a daily traffic flow of around 1 million vehicles in the SPMR area. In the absence of a beltway, this configuration means that a large share of traffic must pass through the SPMR en route to other destinations. Consequently, there are large numbers of trucks traveling along the avenues that flank the Tietê

and Pinheiro rivers. During 60% of the time, those avenues are now operating at or near their saturation point.

- 2.4. The radial configuration of the road network, the concentration of logistics activities within the city, the high levels of automobile use and the limitations of the public transit system all contribute to increasing pressure on the streets of the SPMR. They have led to worsening traffic conditions, deteriorating air quality, and more accidents, and are imposing heavy socioeconomic costs on users of the road system and on the general public.
- 2.5. Project documents and official Brazilian documents report that the State Government's transport strategy has been elaborated in the Transportation Development Master Plan (PDDT), which sets out guidelines and policies for the period 2000-2020. The beltway, or "Rodoanel" meaning "ring road" in Portuguese, is one of the key strategic priorities of the PDDT for improving road infrastructure and making freight and passenger transport to and from other regions of Brazil and neighboring countries more efficient. Upon completion, it will be a beltway around the SPMR, some 175 km in length, interconnecting the country's ten most important main arteries that converge on the SPMR, redirecting thru traffic and helping to improve travel conditions on the metropolitan road system, in particular the avenues flanking the Tietê and Pinheiros rivers.
- 2.6. The Rodoanel is a priority project for the State Government and for the Federal Government, and it is included in the national Growth Acceleration Plan. The Rodoanel is divided into 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 began in August 2011; and the Northern Section addressed in this operation, which is nearly 43 km long and for which competitive bidding on construction has been scheduled to begin in 2011. Operation of the existing 93 km of the Rodoanel (the Western and Southern Sections) has already produced a significant reduction in travel times for crossing the SPMR; the improved connection with the Anchieta and Imigrantes expressways that give access to the Port of Santos (Southern Section) has reduced truck traffic on the city's main roads by 43%, and has cut the level of airborne particulate matter within its area of influence by 47%.
- 2.7. Project documents state that it is estimated that the design of the Northern Section, because of its location, will encourage redistribution of vehicles in transit, offering greater efficiency for the transportation of freight and passengers to and from other regions of Brazil and neighboring countries. Projections (see Annex II of BR-L1296 Loan Proposal Document) indicate that, in its first year of operation, the Northern Section will reduce travel times by 156,833 hours a year for trucks traveling over the Fernão Dias route to and from the Port of Santos via the Anchieta and Imigrantes expressways, and will reduce average daily traffic on the Avenida Marginal Tietê by 10%, which is estimated to lead to a reduction of 13% by 2024. Project documents also estimate that the Northern Section will play an important role in reducing CO2 emissions: it is estimated that the reduction in congestion and in "stop and go" traffic in the city could cut emissions by 0.5 million tons per year.

3. THE REQUEST

- 3.1. The original Request to ICIM came from a resident living close to the projected road, who was then joined by other residents. The complaint alleges that, as per the Environmental Impact Assessment (the “EIA”) conducted for the Project, the road as planned will cross the buffer zone of the Cantareira State Park and of the Biosphere Reserve of the Green Belt of the city of São Paulo, which are areas of environmental protection. The Requester argues that the project will involve the cutting of 98 hectares of forest vegetation in a protected area, resulting in inappropriate deforestation. It also says that the northern section of the Rodoanel pass through the area of springs that supplies and tracts 55% of the water for the population of the city of São Paulo and, therefore, could compromise the quality and access to these water resources.
- 3.2. Moreover, the Requesters state that the Northern Section of Rodoanel passes near their residences, jointly referred to as “Condomínio Jardim Itatinga”. They have been informed that a tunnel and a related access is to be built next to the condominium.



Source: DERSA/Requesters



Source: DERSA/Requesters

- 3.3. The Requesters allege that the harm they fear is partially due to the IDB failure to comply with its obligations to ensure that the planning for this section of the Rodoanel would be in keeping with the provisions of certain IDB Relevant Operational Policies (the “OPs”).
- 3.4. Their allegations include, but are not limited to possible harm feared from the following : (i) noise and other forms of pollution; (ii) the movement of construction equipment; (iii) the use of explosives for blasting in the tunnel will damage the physical structure of their houses; (iv) the risk of contamination around their houses and operational accidents during construction of the road; (v) reduction of air quality both during the construction phase and once the road will be in operation; (vi) loss of value of their property and the potential relocation of some families; (vii) high noise levels resulting in impact on wildlife; (viii) reduction of green areas and its impact on the visual attractiveness of the condominium; (ix) impairment and potential expropriation of property; (x) increased risk of crime in the area once the road is operating as it is very close to their homes; (xi) the Requesters have not received information on specific mitigation alternatives for each of these damages from the Executing Agency of the Project .
- 3.5. After initial attempts by the Project Ombudsperson to facilitate a consultation exercise failed, the Consultation Phase was declared concluded because: i) mutual trust among the Parties had become extremely deteriorated, and ii) the majority of Requesters did not confirm their willingness to participate in the dialogue process. Once it became clear that all original Requesters wanted to opt out and have their Request transferred into a Compliance Review Phase, the Panel Chair received the case on October 10, 2012, so that the Panel can make its determination of eligibility as per the Policy criteria.
- 3.6. While IDB Management believes that the design followed by the Project have been in line with the Bank’s OPs, the Requesters’ assertions seem to contradict this. The Request implies or directly alleges that the IDB failed to ensure that some of its OPs have not been adhered to in the design of the Project. In particular, the Requesters’ allegations relate to certain provisions of the Environment and Safeguards Compliance Policy (OP-703); the Involuntary

Resettlement Policy (OP-710) and the Access to Information Policy (OP-102).

4. ELIGIBILITY DETERMINATION

- 4.1. The Panel has the duty to determine whether the Request satisfies the eligibility criteria for a formal investigation. During this eligibility review process the Panel followed Sections 30, 31, 37, and 56 of the ICIM Policy.
- 4.2. The eligibility determination utilized information contained in IDB OP procedures and related documents available to the ICIM, gathered additional information on the Project³; established a dialogue with the relevant IDB Management units, and received additional information from the Requesters.
- 4.3. The results of the Eligibility Review are summarized in the following table:

ELIGIBILITY ANALYSIS		
ELIGIBILITY CRITERIA FOR A COMPLIANCE REVIEW PHASE (as specified in relevant sections of the ICIM Policy)	The Panel's Determination of Eligibility (YES/NO)	COMMENTS
56.a) The names and contact information for the Requesters are available;	YES	ICIM files contain information on names and contact of the Requesters.
56.b) The names and contact information for the Representative, if any, and proof of the authorization are available;	YES	The Requesters reside in the State of São Paulo, Brazil. In addition, the Requesters provided to the ICIM letters of representation signed by the Instituto Brasileiro de Proteção Ambiental [Brazilian Institute of Environmental Protection].
56.c) The Bank-Financed Operation(s) at issue has been identified;	YES	Rodoanel Mário Covas Project – Northern Section (BR-L1296) already approved by the IDB's Board of Executive Director under Loan Contract 2618/OC BR, signed with the Government of São Paulo on June 14, 2012.
56.d) The Requesters resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed);	YES	The Requesters reside in the State of São Paulo, Brazil.
56.e) None of the exclusions set forth in Section 37 applies;	YES	<u>Exclusion 37 (a) does not apply:</u> The Bank is responsible for the actions that are subject to the Request though co-financiers share in this responsibility. <u>Exclusion 37 (b) does not apply:</u> The Request focuses on the Bank's omission in securing adherence to its Operational Policies. It does not relate exclusively to the laws, policies or regulations of the Government and the Executing Agencies. <u>Exclusion 37 (c) does not apply:</u> The Request deals with issues arising from an operation that is supported by the Bank together with co-financiers. The Requesters' concerns are plausible and may be

³ The information examined by the Compliance Review Panel include the Request and its annexes, IDB's ROP and legal documents, the Loan Proposal approved by the IDB Board of Executive Directors regarding the Northern Sections 1 and 2 (BR-L1296 and BR-L1302), the EIA, the Counter-EIA, the Loan Proposal presented to the Operations Policy Committee on September 1st, 2011, the Loan Contract 2618/OC-BR signed on June 14, 2012, and related Report such as the Environmental and Social Management Report (ESMR) and its the Environmental en Social Management Plan (ESMP) of July 2011.

		<p>subject to Bank's ROP on Environment Compliance Safeguards, Access to Information, and Involuntary Resettlement.</p> <p><u>Exclusion 37 (d) does not apply:</u> The Request does not address procurement issues.</p> <p><u>Exclusion 37 (e) does not apply:</u> There has not been a previous review on the same matter.</p> <p><u>Exclusion 37 (f) does not apply:</u> The Request deals with a recently approved operation.</p> <p><u>Exclusion 37 (g) does not apply:</u> The Request deals with operational issues germane to the Mandate of ICIM and is not subject to review by other bodies of the Bank.</p> <p><u>Exclusion 37 (h) does not apply:</u> The Request deals with feared or actual harm to the livelihood of the Requesters and has not been submitted to gain a competitive business advantage.</p> <p><u>Exclusion 37 (i) does not apply:</u> The Panel has no evidence that the Request submitted to ICIM raises issues under arbitral or judicial review by national, supranational or similar bodies.</p>
56. f) 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 a Relevant Operational Policy in an Bank-financed Operation and has described in at least general terms the direct and material harm caused or likely to be caused by such action or omission in the Bank-financed operation;	YES	Without entering into the merits of the alleged harm, the Panel has examined various documents that could be seen as supporting the Requesters' concerns that they could be directly, materially adversely affected by actions or omission of the IDB and that there could be a relationship to violations of ROP.
56.g) With respect to an issue raised in the Request, a Compliance Review may assist in determining whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with an OP and direct, material adverse effects (potential or actual) to the Requester; and	YES	A Compliance Review may assist in determining whether any Bank action or omission, in respect of a Bank-Financed Operation, may have resulted in non-compliance with an OP and direct, material adverse effects
56. h) the Requester has taken steps to bring the issue to the attention of Management. The Panel Chairperson shall consult with Management as to its response and if Management is involved in addressing the concerns raised, the Panel Chairperson shall allow (45) calendar days from the date of receipt by the Executive Secretary of the Request for purposes of the Compliance Review before it is deemed eligible. The Panel Chairperson may waive this requirement in his or her discretion if the 45-day period has been invoked by Management during the Consultation Phase.	YES	The Requesters has taken steps to bring the issue to the attention of Management. The Executing agency and Management have been involved in addressing some of the concerns of the Requesters; however, there continues to exist disagreement on several issues. The Panel Chairperson has determined that further time extensions do not promise to lead to a solution within a reasonable period.

5. ELIGIBILITY DETERMINATION

5.1. The issues raised by the Requesters are known to IDB and the Executing Agency. There seem to be discussions underway to find solutions. However, it appears that several conflicting views about the design of this Project continue to persist. Providing an impartial assessment about them would go beyond the scope of an eligibility determination. **Therefore, the Panel Chairperson, in line with the**

ICIM Policy and without any judgment on the merits of the Complaint, determines that the Request is eligible for the purpose of a Compliance Review by the Panel.

6. PROCESSING OF THE ELIGIBILITY DETERMINATION

As per the Mechanism's Policy, Paragraph 55, the Panel Chairperson shall cause the Executive Secretary to notify the Requester, the Board, IDB Management the project Execution Agency and the Borrower/Recipient. Within 5 business days of distribution to the Board, the document will be published in the Public Registry.