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

ICIM-BR-2014-078

**DETERMINATION OF ELIGIBILITY FOR THE COMPLIANCE REVIEW PHASE
BLUMENAU'S SUSTAINABLE URBAN MOBILITY PROGRAM. SECOND REQUEST
(BR-L1272)**

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ELIGIBILITY DETERMINATION MEMORANDUM

COMPLIANCE REVIEW PHASE

TO: Requesters, Board of Executive Directors, Senior Management, Project Team and Executing Agency¹

FROM: Mary Rose Brusewitz, Chairperson of the Compliance Review Panel

VIA: Victoria Márquez-Mees, Executive Secretary

PROJECT: Blumenau’s Sustainable Urban Mobility Program (BR-L1272). Second request

DATE: May 23, 2014

I. EXECUTIVE SUMMARY

- 1.1 On March 12, 2014, Mr. Rodolfo Souza, a resident of the Ponta Aguda neighborhood in the city of Blumenau, in the state of Santa Catarina, Brazil, filed a Request with the Independent Consultation and Investigation Mechanism (the “ICIM”).² Mr. Souza filed the Request in his own name and on behalf of other residents of the neighborhood he states he represents through the *Ponta Aguda Cidadã* organization.
- 1.2 On April 25, 2014, the Eligibility Committee of the Consultation Phase determined that the Request was not eligible for that Phase. As requested by the Requesters, the Executive Secretary of the ICIM transferred the Request to the Panel Chairperson on May 1, 2014, to determine its eligibility for the Compliance Review Phase.
- 1.3 The Requesters allege harms due to the future construction of a bridge and walkway (the “Bridge”), which they believe will be financed by the Bank. The Requesters allege that the Bridge would negatively affect the quality of life for the area’s residents, in particular because of the increased vehicular traffic it would generate, which would have a negative impact on urban development and increase pollution. In addition, they allege that the

¹ Unless otherwise defined herein, terms used in this document have the meanings assigned to them in the Policy Establishing the Independent Consultation and Investigation Mechanism (GN-1830-49) (the “ICIM Policy”), approved on February 17, 2010 and available at: <http://www.iadb.org/mici> (the “ICIM Policy”).

² Mr. Rodolfo Souza was originally a member of a group of Requesters who filed a Request (ICIM-BR-2013-068) regarding the same Program. During the Consultation Phase eligibility process of the first Request, after several communications with Mr. Souza, the Eligibility Committee saw that Mr. Souza’s concerns, potential impacts, and objectives were of a different nature than those presented by the other Requesters. As a result, Mr. Souza opted to present a different Request to the ICIM on behalf of the Ponta Aguda residents.

planned location of the Bridge is undesirable, as it is a historic heritage site of the city of Blumenau. Finally, they say that the Municipality (defined below) has not shared sufficient information about its plans for the Bridge, and that appropriate impact studies and management plans have not been produced.

- 1.4 Blumenau’s Sustainable Urban Mobility Program (the “Program”) is a Sovereign-Guaranteed Operation in the Transport Division, and is an IDB loan product known as a “Multiple Works Program.”³ The Program involves aggregate financing of US\$ 118,000,000, for which the Inter-American Development Bank (the “IDB” or the “Bank”) and the Municipality of Blumenau (the “Municipality” or “Executing Agency”) are each to provide equal funding. The IDB Board of Executive Directors (the “Board”) approved the Program on June 25, 2012.
- 1.5 Based on research on Bank processes, the Panel Chairperson understands that Multiple Works Programs finance groups of similar works. Only a representative sample of the works, amounting to approximately 30% of the program loan total, must be fully defined at the time a Multiple Works Program is presented to the Board for its approval. Thereafter, if the program is approved, the relevant Country Office is responsible for approving the addition of other works during the life of the program, as requested by the borrower (or Executing Agency). For additional works to be added to the program, the borrower must submit a formal request accompanied by any necessary viability and/or impact studies, which the Country Office would evaluate to assess whether the given component could be incorporated and financed as part of the program.⁴ For additional components to be approved as part of the program, the Executing Agency must demonstrate compliance with the Bank’s Relevant Operational Policies (“ROPs”).
- 1.6 In this case, according to Bank documents on the Program, the representative sample of works presented to the Bank for its approval of the Program did not include the Bridge that is the subject of the Request.
- 1.7 After a review of the Bank’s documents related to the Program and communications with Bank Management, the Panel Chairperson understands that as of the date of this determination, no formal request to include the Bridge in the Program has been received by the Country Office. Hence, the Chairperson understands that the Bridge has not been incorporated in the Program nor is it not under consideration by the Country Office at this time.

³ IDB Operations Processing Manual PR-202, Multiple Works Programs.

⁴ Ibid.

- 1.8 After careful and independent review of the Request, available case documents and the relationship between the Request and the Program, **the Panel Chairperson determines that the Request is ineligible for a Compliance Review.** The main reason for the ineligibility determination is that the Request does not meet the eligibility requirement established in Section 56(g). In considering Section 56(g), the Panel Chair has determined that because the Bridge is not part of the Program, that at this time a Compliance Review would not assist in determining whether (and how) any Bank action or omission, in respect of a Bank-Financed Operation (i.e., the Program), has resulted in non-compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requesters. For a full analysis see: Part VI, sections 6.4-6.10.

II. COMPLIANCE REVIEW PHASE

A. Purpose

- 2.1 In accordance with Part D, Section 53 of the ICIM Policy, the purpose of a Compliance Review is to investigate allegations expressed by the Requesters that their rights or interests have been, or could be expected to be directly, materially adversely affected by actions or omissions of the Bank that may constitute the failure by the Bank to follow one or more of its Relevant Operational Policies (“ROPs”) in connection with a Bank-Financed Operation. The objective of a Compliance Review is to establish whether (and if so, how and why) any Bank action or omission, in respect to a Bank-Financed Operation, has resulted in non-compliance with one or more ROPs and direct, material adverse effects (potential or actual) to the Requester.
- 2.2 A Compliance Review is a fact-finding exercise. Part D, Section 65 of the ICIM Policy provides that a Compliance Review is not a judicial process designed to establish guilt or innocence or to adjudicate fault or apportion blame. In addition, a Compliance Review does not involve reaching conclusions about the actions of any party other than the Bank, thus the Compliance Review does not investigate or reach conclusions regarding governmental authorities, borrowers, Executing Agencies, project developers, other lenders, Requesters or any other parties.

B. Eligibility

- 2.3 According to ICIM Policy, a Request proceeds from the Consultation Phase to the Compliance Review Phase if the Requester has expressed a desire for a Compliance Review and if:

- i. the Consultation Phase has been terminated or concluded for any reason,
or
- ii. the Request was deemed ineligible under the Consultation Phase.⁵

2.4 As provided in Section 55 of the ICIM Policy, the Panel Chairperson must “review the Request for eligibility, independently of the determination of the Project Ombudsperson.”⁶

2.5 A Request’s eligibility for the Compliance Review Phase is determined based on criteria outlined in the ICIM Policy, which have been included in Annex 1 of this document. In making an eligibility determination, no inference or conclusion is made or expressed as to the merits of the Request or whether any action or omission by the Bank in connection with the relevant Bank-financed Operation has resulted in non-compliance with any of the Bank’s ROPs.

III. THE REQUEST

3.1 Mr. Rodolfo Souza filed the Request with the ICIM on March 12, 2014. Mr. Souza, a resident of the Ponta Aguda neighborhood in the Municipality of Blumenau, filed the Request in his own name and on behalf of other residents of the neighborhood he states that he represents through the *Ponta Aguda Cidadã* organization.

3.2 For the purposes of this determination, references to “the Requesters” should be understood to refer only to those approximately twenty individuals who signed the Request.

3.3 The Bridge, according to the Requesters, is related to the “Blumenau Urban Sustainable Mobility Program,” a Bank-Financed Operation to be implemented by the Municipality of Blumenau.

3.4 The Requesters report that during the 2012 mayoral campaign in Blumenau, the then-candidate, now current Mayor announced his intention to move the site of the Bridge should he take office. Upon taking office, the Requesters state that the Mayor has maintained this position publicly, saying the Bridge will be moved to a new area. The

⁵ Part D, Section 54 of the ICIM Policy.

⁶ According to a transition scheme approved by the Board, starting September 1st, 2013, the eligibility determination of the Consultation Phase is made by an Eligibility Committee which is composed by the Executive Secretary of the ICIM and two Case Officers. See: IDB Organization, Human Resources, and Board Matters Committee, Meeting Minutes, June 24, 2013, approved on July 10, 2013.

Requesters say the Mayor has publicly stated on numerous occasions that the Bank has authorized the modification of the Bridge's location and design.⁷

- 3.5 The Requesters are primarily concerned with the impact the Bridge might have on the quality of life for residents of the Ponta Aguda neighborhood due to what they allege would be a tripling of vehicular traffic and consequent increased pollution. In addition, they do not agree with the planned location of the Bridge as it is a historic heritage site of the city of Blumenau. They believe the Bridge could exacerbate flooding of the Itajaí River it would cross, due to the inclusion of pillars in the riverbed. The Requesters are also concerned that environmental impact studies and related management plans with respect to the alleged new location and design of the Bridge have not been produced by the Municipality nor solicited by the Bank. The Requesters allege that they have actively followed the Municipality's process relating to the Bridge, and have repeatedly asked the Mayor questions about their issues. However, the Requesters state that they have only received what they categorize as "evasive" responses from the Municipality. They believe that a complete set of studies would be necessary in order for the Bank and the Municipality to make an informed decision as to the viability of the Bridge's location and design and in order to formulate adequate plans to minimize and manage potential negative impacts.
- 3.6 Finally, the Requesters indicated to the ICIM that their principal intention in filing the Request is to make certain that the IDB ensures that the alleged site and design changes relating to the Bridge are not implemented without requiring that necessary studies and planning be carried out and that appropriate information is shared with the potentially impacted communities.

IV. THE PROGRAM

- 4.1 The Program involves an aggregate financing of US\$ 118,000,000. It is a Sovereign-Guaranteed Operation in the Transport Division. Each of the IDB and the Municipality of Blumenau are slated to provide financing of US \$59,000,000. The loan type for the Program is a Multiple Works Program.⁸

⁷ The Requesters provided several sources from which they drew the conclusion that the Bank was in support of the new location of the Bridge. See for example the following links to newspaper articles and interviews mentioning the new location of the Bridge and the alleged IDB financing:

<http://wp.clicrbs.com.br/transitonovale/tag/ponte/?topo=52,2,18,,159,e159>,

<http://www.radioclubeblumenau.com.br/noticias/default.aspx?s=15&codigo=18205> and

<http://www.radionereuramos.com.br/alexandre-gevaerd-fala-dos-projetos-executados-este-ano-em-blumenau/>

⁸ See: Sections 6.7-6.8.

- 4.2 The Board approved the Program on June 25, 2012. It was classified as a category B operation under the Bank’s Environmental and Safeguards Compliance Policy (OP-703), a designation given to “operations that are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available.”⁹
- 4.3 The Bank’s documentation indicates that the Program was designed to support an overall urban strategy in Blumenau, called Blumenau 2050. The strategy was created in light of problems recognized by the Municipality. The city’s transportation system was developed in a piecemeal manner over a lengthy period of time and became a radial configuration due to physical characteristics of the city, including the location of the city on the banks of the Itajaí-Açu River. The transportation system forces most traffic to pass through the city center due to lack of connections over the river, which in practice increases congestion on roads, pollution and traffic accidents. Originally conceptualized during the 1970s and first put into practice with the development of a master plan in 1977, Blumenau 2050 sets out a vision for the city’s development focused around five axes: (i) land use; (ii) transportation and circulation system; (iii) actions for economic development, tourism and recreation; (iv) housing; and (v) rural settlement and sanitation and environment. The Municipality last updated the directives for the master plan of Blumenau 2050 in 2006.¹⁰
- 4.4 According to Bank documents, the specific objectives of the Program are the following: (i) improve mobility, urban accessibility and road safety, and (ii) support the sustainable development of the city. In line with such Bank documents, these objectives could be achieved through “the improvement, expansion and extension of the integrated urban and non-motorized transport system; the construction of new integration terminals; the expansion, construction and rehabilitation of urban roads *and bridges* that are part of the basic, structural road systems; and the establishment of pedestrian and bike paths” (emphasis added).¹¹

V. ICIM ACTION TO DATE

- 5.1 The Request was registered on March 12, 2014 and transferred to the Eligibility Committee of the Consultation Phase for its eligibility analysis.¹²

⁹ Classifications under OP-703 are made according to its Policy Directive B.3 on Screening and Classification.

¹⁰ Loan Proposal, Blumenau’s Sustainable Urban Mobility Program (BR-L1272), part B, section 1.14 and 1.15.

¹¹ Ibid, section 1.15.

¹² According to a transition scheme approved by the Board, starting September 1st, 2013, the eligibility determination of the Consultation Phase is made by an Eligibility Committee which is composed by the Executive

A. Consultation Phase

5.2 The Eligibility Committee of the Consultation Phase determined on April 25, 2014 that the Request was not eligible for that Phase. The Eligibility Committee based its reasoning solely on the fact that the Requesters said specifically that they did not wish to participate in a dialogue with that Phase, but rather that they desired a Compliance Review investigation. The Requesters' lack of amenability for dialogue meant that the Request did not meet the standards set forth in Section 40(g) of the eligibility criteria for the Consultation Phase as set forth ICIM Policy.¹³

B. Compliance Review Phase

5.3 On May 1, 2014, the Executive Secretary transferred the Request to the Panel Chairperson for the purposes of the independent determination of eligibility as required by Section 55 of the ICIM Policy and sent out communications both to the Requesters and Management to inform them of the transfer of the Request and to explain what the next step would be according to the ICIM Policy.

5.4 The Panel Chairperson commenced an analysis of the relevant Bank project documents, communications to date with the Requesters and Management, and other information related to the Program. This analysis was informed by research done in relation to the prior Request presented to the ICIM related to the same Program, which the Chairperson found ineligible for a Compliance Review.¹⁴

5.5 On May 12, 2014, the Panel Chairperson reached out to Management requesting updated information regarding the status of the Bridge in relation to its incorporation (or not) into the Program.

5.6 On the date of this memo, the Project Team reconfirmed that the Municipality has not formally requested the incorporation of the Bridge into the Program being financed by the Bank.

Secretary of the ICIM and two Case Officers. See: IDB Organization, Human Resources, and Board Matters Committee, Meeting Minutes, June 24, 2013, approved on July 10, 2013.

¹³ See: Consultation Phase Eligibility Determination Memorandum for case MICI-BR-2013-078, April 25, 2014.

¹⁴ See: Compliance Review Phase Eligibility Determination Memorandum for case MICI-BR-2013-068, May 2, 2014.

VI. ELEGIBILITY ANALYSIS FOR THE COMPLIANCE REVIEW PHASE

- 6.1 As per Section 55 of the ICIM Policy, the Panel Chairperson must make an independent eligibility determination from that of the Consultation Phase. For the Compliance Review Phase, Requests are analyzed based on the exclusions and eligibility requirements set forth in Sections 37 and 56 of the ICIM Policy.
- 6.2 The Panel Chairperson has analyzed the Request and determined that the harms the Requesters allege could relate to the Environment and Safeguards Compliance Policy (OP-703) and the Disaster Risk Management Policy (OP-704).
- 6.3 In considering its eligibility for a Compliance Review the Panel Chairperson has determined that the Request meets the eligibility criteria established in ICIM Policy Sections 56 (a), (b), (c), (d) and (h). However, the Chairperson has found that the Request does not meet the criteria established in Section 56, parts (f) and (g) and that the exclusion established in Section 37 (c) applies.
- 6.4 The main reason for the ineligibility determination is that the Request does not meet the criteria established in Section 56(g). Section 56(g) provides that the Panel Chairperson is required to determine whether “a Compliance Review would 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 a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requesters.”
- 6.5 In analyzing this criterion, the Chairperson has found that the Requesters have alleged a number of direct and material adverse effects that might occur based on the alleged changes to the location and design of the Bridge. The Requesters have cited evidence where the changes to the Bridge’s location and design and supposed authorization of the IDB for those changes have been mentioned in news articles, interviews and public statements by the local government. However, it appears, after an examination of Bank documents relating to the Program and consideration of information communicated by the Project Team, that the Program does not currently include the Bridge.
- 6.6 Internal Bank procedures and practice require that in the case of Multiple Works Programs the Executing Agency must make a formal request to include a new element for which it would like Bank financing under the umbrella of a given program, along with a complete set of feasibility and impact studies that meet the standards of relevant Bank Operational Policies. At that point the Bank (through the Country Office) would evaluate the package of information presented by the Executing Agency to see if it meets Bank standards and ROPs and is justifiable within the scope of the program. If the Bank makes

a positive determination, it would issue a non-objection letter to the Executing Agency. Thereafter, the relevant element would be included within the scope of the relevant program.

- 6.7 According to both Bank documents and the Project Team, the Bridge that is the object of the Request was not part of the representative sample included in the proposal for the Program at the time the Board approved of the Loan. The Project Team has informed the ICIM on several occasions that the Municipality has not formally requested the inclusion of the Bridge (neither the old location and design nor the new location and design) in the Program. Therefore, the Panel Chairperson concludes that the Bridge is not part of the Program, and further understands that inclusion of the Bridge in the Program has not been requested and hence is not under consideration by the Country Office at this time.
- 6.8 In light of the above, the Panel Chairperson determines that at this time a Compliance Review would not assist in determining whether (and how) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requesters.
- 6.9 This determination does not prejudice the right of the Requesters to present a new Request in line with ICIM Policy in the future should they so desire and should they deem circumstances warrant doing so.
- 6.10 In conclusion, the Panel Chairperson determines that the **Request is ineligible for the purposes of a Compliance Review**. Analysis of each eligibility criteria and exclusion can be seen in the table in Annex 1 of this document.

ANNEX 1: COMPLIANCE REVIEW PHASE ELIGIBILITY ANALYSIS TABLE

Eligibility Criteria	Determination by the Chairperson
<p>56 a. The names and contact information for the Requester are available</p>	<p>Meets criteria: The ICIM has the names and partial contact information for 20 of the signatories to the Request. Mr. Souza states that he represents approximately 800 residents of the Ponta Aguda neighborhood, through the organization called <i>Ponta Aguda Cidadã</i>. Given the determination of ineligibility for the Compliance Phase, the Chairperson determined that it was not necessary to undertake further diligence with respect to identifying as many as 800 Requesters, but relied on the group of 20 as the “Requesters.”</p>
<p>56 b. Names and contact information of the Representative, if any, and proof of the authorization are available</p>	<p>Meets criteria: Mr. Souza has provided his name and contact information to the ICIM.</p>
<p>56 c. The Bank-Financed Operation(s) at issue has been identified</p>	<p>Meets criteria: The Program has been identified as Blumenau’s Sustainable Urban Mobility Program (BR-L1272).</p>
<p>56 d. The Requester resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed)</p>	<p>Meets criteria: The Requesters reside in Brazil according to information provided to ICIM staff.</p>
<p>56 e. None of the exclusions set forth in Section 37 applies</p>	<p>Does not meet criteria: See below.</p>
<p>37 (a) actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical cooperation beneficiary, or Executing Agency, and that do not involve any action or omission on the part of the Bank</p>	<p>Exclusion does not apply: Though the Request does make mention of actions of the Executing Agency, in particular its stated plan to move the Bridge, it specifically highlights that the new Bridge location does not have adequate environmental and social impact studies which would be required by the Bank and correspond to its compliance with ROPs.</p>
<p>37 (b) Requests related exclusively to the laws, policies or regulations of the host country(ies), borrower/recipient or the</p>	<p>Exclusion does not apply: The Request does not relate exclusively to these elements.</p>

Eligibility Criteria	Determination by the Chairperson
Executing Agency	
<p>37 (c) actions or activities that do not relate to a Bank-Financed Operation or that are not subject to the Bank’s Relevant Operational Policies</p>	<p>Exclusion applies: The Bridge has not been incorporated into the Program at this time. See: Part VI, sections 6.4-6.8 above.</p>
<p>37 (d) procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank)</p>	<p>Exclusion does not apply: The Request does not make reference to procurement elements.</p>
<p>37 (e) a particular matter or matters that have already been reviewed pursuant to the Mechanism, or its predecessor, unless justified by new evidence or circumstances not available at the time of the initial Request</p>	<p>Exclusion does not apply: The Request does not raise issues that have been previously reviewed by the ICIM nor its predecessor.</p>
<p>37 (f) Requests dealing with a Bank-Financed Operation that are filed after twenty-four (24) months of the last disbursement</p>	<p>Exclusion does not apply: The Request was filed on March 12, 2014. As of the writing of this document, the Bank had disbursed approximately 7% of the Loan.</p>
<p>37 (g) ethics or fraud questions, specific actions of Bank employees, non-operational matters such as internal finance or administration, allegations of corrupt practices, or other matters subject to review by other bodies established by the Bank (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank)</p>	<p>Exclusion does not apply: The Request does not make reference to these elements.</p>
<p>37 (h) any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive business advantage</p>	<p>Exclusion does not apply: The Chairperson’s prima facie review has revealed that the Requesters have made allegations of that appear to assert plausible substantive harm and that these do not appear to be alleged for purposes of gaining a competitive business advantage.</p>
<p>37 (i) Requests that raise issues under arbitral or judicial review by national,</p>	<p>Exclusion does not apply: The Panel Chairperson understands that a Civil Public Action (“CPA”) could be relevant to the</p>

Eligibility Criteria	Determination by the Chairperson
supranational or similar bodies	Request, however after a prima facie analysis, it was determined that the CPA would not trigger this exclusion. The CPA sought an injunction to suspend the bidding process for certain studies related to the Bridge. The CPA was determined by the relevant authority and an injunction was granted on November 26, 2013. The exclusion does not apply because the issue is no longer under judicial review.
<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 a 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</p>	<p>Does not meet criteria: The Requesters have reasonably asserted harm they could expect to experience due to the location and design changes of the Bridge and have presented reasonable evidence to back up their claim that these changes have been authorized by the IDB (such as numerous news articles, interviews and public statements by the local government). However, the Panel Chair has not found any evidence through a review of Bank documents and interviews with Management that the Bridge can be considered part of the Program at this time. See: Part VI, sections 6.4-6.8.</p>
<p>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 a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester</p>	<p>Does not meet criteria: The Panel Chairperson believes that a Compliance Review would not be useful at this time because it does not seem that the Bridge can be considered part of the Program at this time. See: Part VI, sections 6.4-6.8.</p>
<p>56 h. The Requester has taken steps to bring the issue to the attention of Management</p>	<p>Meets criteria: Management confirmed to the Eligibility Committee of the Consultation Phase that the Requesters had entered into contact with them regarding their concerns but Management did not wish to respond to the Requesters.</p>