

MEMORANDUM

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Date: 20 September 2016

To: Victoria Márquez-Mees, MICI Director

From: Sergio Campos, Chief
Water and Sanitation Division, INE/WSA

Re: **Request MICI - BID-BR-2016-0106 in reference to the “Tietê Várzea Program” (BR-L1216) - Response to the Request**

We are writing in reference to your email of 22 August 2016 notifying the Management of the Inter-American Development Bank (“IDB” or “Bank”) of the registration of Request No. MICI-BID-BR-2016-0106 (“Request”), filed with the Independent Consultation and Investigation Mechanism (“MICI”) by three residents of the Jardim Izildinha neighborhood of the city of Guarulhos, State of Sao Paulo, Brazil, with respect to the “Tietê Várzea Program.”

As per your request, and pursuant to paragraph 21 of the Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6), this reply expresses the position of Bank Management regarding the Request.

1. Program background

1.1 – On 15 December 2010, the Bank’s Board of Executive Directors approved the loan proposal for the “*Tietê Várzea Program*” (“program”) (BR-L1216).

1.2 – On 13 July 2011, the State of São Paulo and the Bank signed loan contract No. 2500/OC-BR, with the intention of partially financing the execution of that program.

1.3 - The program, as stated on the Bank’s website, has the general objective of contributing to the recovery of the banks of the upper basin of the Tietê River, and the specific aim of implementing the Várzeas do Tietê Park (PVT) to conserve its ecological functions, including flood reduction.

1.4 – The program is currently at the execution stage, with 58.8% of the funding granted by the IDB and 74.2% of the local counterpart funding having been allocated, and 23% of the loan already disbursed.

1.5 – The disbursement date originally established in the loan contract was 13 July 2016; however, at the request of the State of Sao Paulo, a contractual amendment that will extend the deadline to 13 July 2018 is awaiting the final approval of the Federative Republic of Brazil in its capacity as guarantor.

1.6 – There are currently 730 families that will be subject to relocation as part of the program. Before the registration of these families could begin, it was necessary for 10

families to be removed by the municipal Civil Defense Force of Guarulhos because of the 2013 floods. Of the remaining 720 families, and according to the Resettlement Master Plan (RMP), and the Socioeconomic Cadastre (“SEC” or “cadastre”) finalized in December 2014 (the registration records of which remain on file with the Executing Agency), 667 families were identified as eligible for resettlement in the Lavras Housing Complex, and 53 families were identified as eligible for other means of compensation. On 2 August 2016, the program’s Executing Agency initiated the process to move the 667 families to the Lavras Housing Complex. Once the resettlement is finalized, the process will begin to re-register the remaining families in the project area, for purposes of identifying the appropriate solution for them in keeping with the RMP. The Executing Agency is in the process of hiring the Compañía Paulista de Obras y Servicios (CPOS) to conduct the re-registration. With this update to be conducted by CPOS, the number is expected to reach a total of some 800 families.

2. Management responses and comments regarding the Request

2.1 – In their Request, Messrs. Robson dos Santos Silveira, Ilton Rodrigues de Macedo, and Maicon Bessa de Queiroz, residents of Estrada do Itaim Nos. 3375, 3387, 3573, respectively, assert: *“We fear we will be adversely impacted by the project, given the lack of transparency of said project regarding some potential damages, including impact on the environment, [and] relocation. As claimants we refuse to accept the offered housing proposal, given our right under our adverse possession document and we want the DAAE to offer alternatives as stipulated in the RMP (Resettlement Master Plan BR-L1216)...”* (sic).

2.2 – Management reports that the State of Sao Paulo, through State Decree No. 59.531 of 13 September 2013, declared that the real properties needed for the partial implementation of the Any Jaci Recreation Center—an integral part of the first stage of the program (Annex I)—were of public use. Since 2014, when the cadastre was compiled, the Project Management Unit (PMU—Várzeas) has held periodic informational meetings with the residents of the affected sectors. In addition, between July 2014 and March 2016, the PMU held question and answer sessions at the “Batista da Lagoa” Church located at what is now Estrada do Itaim No. 3.451, a few meters away from the addresses mentioned by the Requesters, according to the attached map (Annex I). As such, it is our opinion that there has been transparency from the time the cadastre was conducted to the initiation of resettlement on 2 August 2016, and that the Requesters have had various opportunities not only to register to have their eligibility examined but also to obtain clarification with respect to the process.

2.3 – With regard to the general allegations of potential environmental harm made in the Request, Management reaffirms that the program’s principal objective is to recover and protect the function of the banks of the Tietê River, in addition to regulating floods, thereby saving lives and property. In order to meet this objective, the program provides for: (i) recreation areas for the population that are compatible with the use of the preserved riverbanks; and (ii) managing the occupation of the areas in question, moving families from high risk areas to decent and safe housing. These interventions are designed in accordance with the Bank’s Environment and Safeguards Compliance Policy (OP-703).

2.4 – Of the 730 families identified when the SEC was prepared in 2014 to initiate the community participation and mobilization actions, only 32—that is, nearly 4%—refused to provide information.

2.5 – Specifically, Management and the program’s Executing Agency have found that:

- The first Requester, Mr. Robson dos Santos, did not wish to provide registration information when the SEC was conducted, and therefore it was impossible to complete the information needed to meet the eligibility criteria set forth in the Resettlement Plan (RMP);
- The second Requester, Mr. Ilton Rodrigues de Macedo, already received housing services from the Urban Housing Development Company (CDHU) as a beneficiary of the SH1-PRO program,¹ having assigned the rights to the real property he received (Annexes II and III). This makes him ineligible for a new property according to the National Housing Policy (NHP) (Annex IV), in which the guidelines on the Management of Subsidies state that the “*subsidy is granted to the family and not to the property, in a manner that is ‘individual, temporary, and non-transferrable.’ The subsidy will be given one time only, anywhere in the country, to families that do not have any other real property, which means that an information system is needed.*” In addition, State Decree No. 51.241 of 3 November 2006 (Annex V) prohibits the acquisition of a government subsidized housing unit by persons who “*have previously been served by one of the housing programs of the Urban Housing Development Company of the State of São Paulo – CDHU or other sponsor agencies of social housing programs*” (Article 4, II); and
- Ms. Rosane Teodoro, who refused to be registered, was living at the address specified by the third Requester, Mr. Maicon Bessa de Queiroz, when the SEC was conducted, and there is no information about the family or business relationship between Mr. Maicon Bessa de Queiroz and Ms. Rosane Teodoro.

2.6 – In addition, Management investigated the allegation of adverse possession (*usucapião*) mentioned in the Request, and based on the information provided by the Executing Agency, verified that case No. 1021525-09.2015.8.26.0224, which arose from the special adverse possession action filed by Messrs. Robson dos Santos Silveira and Rosangela Dias dos Santos, is pending before the 8th Civil Court for the District of Guarulhos. However, that case is pending trial, according to the attached certificate provided to the Bank by the Executing Agency (Annex VI).

2.7 – In view of the ongoing resettlement activities and relocation to the Lavras Housing Complex in Guarulhos, the 2014 cadastre will be updated. This will take place after the families are moved and resettled, and: (i) have been approved in the Single Registry (CadUnico), a database on Brazilian families living in poverty and extreme poverty (who receive up to one half of one minimum salary per person, or a total of up to three minimum salaries per month) that is used by the governments for the implementation of public policies; and (ii) have signed a contract with the Caixa Econômica Federal (CAIXA) to receive the housing unit in that development. After the cadastres are updated, the status of all of the potentially remaining families will be examined, and the eligible families will be sent to the housing programs of the municipality of Guarulhos and the State of São Paulo, in keeping with the criteria of the RMP and the NHP. Accordingly, the Requesters will have a new opportunity to register and present their specific situations for review in light of the RMP. The particular cases of families who

¹ SH1-PRO, Ministry of Housing [*Secretaria de Habitação*], Program 1, is a low-income public housing program of the State of São Paulo unrelated to the Bank-financed program.

already benefitted from public housing in another program and under Brazilian law cannot receive another housing unit may be treated on an exceptional basis through a specific social support program.

2.8 – In addition, according to the follow-up provided for in the RMP, a Resettlement Implementation Plan (RIP) was prepared for the areas at issue in Guarulhos – Vila Any Jacy, Vila Laurita, and Jardim Guaraci – and approved by the Bank in July 2015. The moves and the application of the replacement alternatives for housing, assets, and services are being conducted in accordance with the RIP and subject to ongoing Bank supervision. The Bank recently sent its environmental and water and sanitation sector experts on a supervision mission, carried out from 27 July to 3 August 2016 (Aide-Memoire - Annex VII - **confidential**).

2.9 – The RIP is currently being updated to take account of the increased support for economic activities that will be provided, which represent an additional payment on top of the construction payment and consist of a bonus to cover the merchants' costs during the transition period. This update will respect the provisions of the RMP, the NHP, and the determinations of the Bank's Resettlement Policy (OP-710), there being no possibility of modifying the criteria that can trigger privileges for residents who did not accept the housing services proposed for their income category in the RMP.

2.10 – The eligibility requirements set forth in paragraph 22 of the Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6) stipulate that the Request must be filed by two or more persons who believe that they have been or may be affected, with a description of the harm that could result from potential noncompliance with one or more of the Bank's Operational Policies. The Request does not contain a clear description of the potential or actual harm, or of a connection between the alleged noncompliance of the Bank's policy and potential harm to the three Requesters.

2.11 – In addition, the Requesters could still participate in the updating of the cadastre, at which point their situation could be examined taking account of the perspective of the NHP and the Bank's policies.

3. Conclusion and Request for the Suspension of the Eligibility Determination Process

3.1 – The program's resettlement process is currently underway, as stated in the above paragraphs. To date, Management has not identified any harm or potential harm resulting from noncompliance with any of the Bank's policies. The resettlement actions and release of program information have met and are meeting all of the criteria of public participation, information disclosure, and the offering of resettlement solutions governed by the provisions of the Bank's Resettlement Policy (OP-710). In addition, the Requesters have the specific opportunity during the updating of the cadastre to be able to register and have their situation examined in light of the NHP and the Bank's policies for the potential application of alternatives provided for in the RMP and the RIP, without prejudice to extraordinary actions.

3.2 – Notwithstanding the evidence of the Bank's compliance with its Operational Policies, Management finds that there is an opportunity to establish direct communication with the Requesters. Accordingly, Management asks the MICI to temporarily suspend the process for determining the eligibility of the Request, pursuant to paragraph 23(c) of the MICI Policy in order to: (i) contact the Requesters to update

their status in the cadastre; (ii) make the pertinent adjustments to the resettlement instruments (RMP and RIP); (iii) provide the Requesters with additional information beyond what is already made available in compliance with the Banks's Operational Policies regarding the project and the details of the RMP; and (iv) develop mechanisms and timelines for monitoring the agreements and progress made during this period.

4. Action Plan

4.1 – The action plan proposed as part of the process for suspending the eligibility determination consists of the activities detailed in the chart below:²

STAGE	ACTIVITY	RESPONSIBLE PARTY	PARTICIPANTS	EXPECTED OUTCOMES	DEADLINE
Definitions	Hiring of negotiator	IDB	IDB	Signing of contract	10 Oct. 2016
	Mobilization of the social and technical PVT team	PMU	PMU and IDB (project team and ESG ³) and Negotiator	Establishment of working group in charge of negotiating and drafting the Final Agreement	12 Oct. 2016
	Identification of each particular situation of the Requesters	PMU	PMU	Identification of each Requester in the social cadastre of the PVT, with his or her specific adverse situation	12 Oct. 2016
	Meeting to define work methodology, topics of discussion, and expected outcomes	PMU	PMU and IDB (project team and ESG) and Negotiator	Participatory definition of a working plan that addresses all of the Requesters' concerns	12 Oct. 2016
Negotiation	Meeting to negotiate key issues identified and next steps	PMU	Requesters, PMU, IDB (project team and ESG) and Negotiator	Agreement on the potential modifications to be made, and agreement on deadlines and parties responsible for drafting the Final Agreement. Signing of the agreements & next steps.	07 Nov. 2016
Final Agreement	Sending copy of the agreement to the Bank	PMU	PMU	Final Agreement document signed by the Requesters, PVT, and the Bank	15 Nov. 2016
	Sending copy of the Final Agreement to the MICI for its information	PMU	IDB	End of the MICI suspension period	20 Nov. 2016

² The implementation and realization of the activities and deadlines proposed in the action plan will depend on coordination with the PVT and the IDB. Therefore, the activities and dates proposed in the action plan may be adjusted according to the team's availability, taking account of the suspension period.

³ ESG: Environmental Safeguards Unit of the Bank.

C.C:

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