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AND INVESTIGATION MECHANISM**

**BR-MICI006-2011
SAO JOSE DOS CAMPOS URBAN STRUCTURING PROGRAM
BRAZIL**

This documents 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: São José dos Campos Urban Structuring Program (BR-L1160)(Case Separation)
COUNTRY: Brazil
DATE: 22 August 2011
DOCUMENT DATE: 23 September 2011
ELIGIBILITY
DECISION: The Request is **eligible** for the Consultation Phase.

I. Summary of Request

- 1.1** On 10 June 2011, the Independent Consultation and Investigation Mechanism (ICIM)¹ received a Request from Central de Movimentos Populares na Cidade de São José dos Campos (the Requesters) through Mr. Cosme Vitor (Representative).² The Request describes the potential social and environmental impacts that the recently approved São José dos Campos Urban Structuring Program (PEUSJC)³ could have in the future.
- 1.2** With respect to the potential social impacts of that operation, the Requesters allege arbitrariness in the assignment of priority to lots for resettlement, and argue that significant socioeconomic degradation could be caused by irregular resettlement outside the framework of the IDB's Operational Policies. The Requesters also express their general concern that the PEUSJC would cause serious environmental harm.

¹ 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.

² Mr. Cosme Vitor presented evidence that he represents Central de Movimentos Populares na Cidade de São José dos Campos. However, this will be verified by the Project Ombudsperson during the Consultation Phase.

³ The PEUSJC Program was approved by the IDB's Board of Executive Directors on 12 May 2010.



- 1.3** The social and environmental impacts that would arise from the PEUSJC relate to OP-710 and OP-102 of 2006 and 2010,⁴ and the Environmental and Safeguards Compliance Policy (OP-703) of 2006.

II. Project Background

- 2.1** The objective of the São José dos Campos Urban Structuring Program (PEUSJC) is to support the structuring and management of urban development of the município of São José dos Campos through a group of environmental, urban infrastructure, transportation management, and institutional strengthening projects.⁵ The urban-environmental improvements component includes resettlement of approximately 400 families from Jardim Nova Esperança (the Banhado favela), the last irregular urban settlement located in an area designated for environmental conservation, and regularization of six illegal subdivisions where families live with makeshift infrastructure (approximately 2,000 lots).⁶
- 2.2** The PEUSJC was approved by the IDB's Board of Executive Directors on 12 May 2010 for a total of US\$178 million, with US\$85.7 million financed by the Bank.⁷ The loan contract was signed on 18 August 2011, so project disbursements have not yet commenced. The executing agency is the Municipal Government of São José dos Campos, acting through the Program Management Unit associated with the municipal strategic planning advisor's office.⁸
- 2.3** The program has been classified as category "B" under Operational Policy OP-703 based on its potential environmental or social impact. According to the project document, the program envisages "a series of favorable socioenvironmental impacts that will be very significant for the city."⁹ The program also envisages that the resettlement of families from Jardim Nova Esperança will offer them better living conditions and make it possible, among other things, to establish Parque do Banhado, an environmental compensation park financed by Petrobras.¹⁰ Resettlement will take

⁴ The Access to Information Policy (OP-102) approved in 2010 applies to information and documents produced after that policy's entry into force on 1 January 2011.

⁵ Loan Proposal, São José dos Campos Urban Structuring Program (BR-L1160), page 5.

⁶ *Id*, pages 6 and 7.

⁷ *Id*, page 12.

⁸ *Idem*.

⁹ *Id*, pages 10 and 11.

¹⁰ Petrobras will cofinance the creation of Parque Ecológico do Banhado as part of its environmental compensation program due to expansion of the Henrique Lage Refinery (REVAP). *Cfr.* Loan Proposal, São José dos Campos Urban Structuring Program (BR-L1160), Environmental and Social Management Plan, page 9.



place according to the municipal government's Integrated Social Action Plan (known by its Portuguese-language acronym, PIAS), which gives families options for housing in different parts of the city or compensation to obtain housing on the market. According to the PIAS, the municipal government will hold individual consultations with each family to determine the options more precisely, and will submit a specific report on the results. As a safeguard, the project financing is contingent upon "Bank review of the final results of the solutions selected by the families and of the public consultation on the program."¹¹

III. Eligibility Analysis

- 3.1** Article 38 of the Policy Establishing the ICIM (the Policy) states that *"The purpose of the Consultation Phase is to provide an opportunity, applying consensual and flexible approaches, 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 Eligibility Analysis is based on the eligibility criteria and exclusions set forth in Articles 40 and 37 of the Policy, respectively.
- 3.3** **In the case of PEUSJC**, the Request originally lacked a detailed description of the alleged social and environmental impacts. When given the opportunity by the Project Ombudsperson, pursuant to Article 41 of the Policy, the Requesters adequately supplemented their allegations for the complaint. Thus, the Request presents none of the exclusions of Article 37 of the Policy and fulfills the requirements of Article 40.
- 3.4** The results of this Eligibility Analysis are presented in the table below:

a) Summary of Eligibility Analysis

Eligibility Criteria	Ombudsperson Determination	Comments
Names and contact information for the Requester	Fulfilled	The contact information for the Requester is available.

¹¹ Loan Proposal, São José dos Campos Urban Structuring Program (BR-L1160), page 12.



Eligibility Criteria	Ombudsperson Determination	Comments
Names and contact information for the Representative, if any, and proof of the authorization	Fulfilled	The contact information for the Representative and proof of the authorization are available. However, the latter will be verified by the Project Ombudsperson during the Consultation Phase.
The project or operation is duly identified.	Fulfilled	São José dos Campos Urban Structuring Program
The Requester resides in the country where the operation is or will be implemented (or a qualified Representative has been duly appointed).	Fulfilled	The Requester organization is established in Brazil and its Representative resides in that country.
None of the exclusions set forth in Section 37 applies.	Fulfilled	None of the Art. 37 exclusions apply.
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	The Requesters have adequately related the potential social and environmental impacts under the PEUSJC.
The parties have agreed to participate in a consultation or mediation exercise.	Fulfilled	The Requesters and the Project team are amenable to dialogue.
The Requester has taken steps to bring the issue to the attention of Management.	Fulfilled	The Requesters have contacted the Country Office from 2010.

IV. Conclusion

- 4.1** In the performance of the duties and authority conferred by the Policy, the Project Ombudsperson has determined that the Request described in this document 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.
- 4.3** In the next five (5) business days, the Executive Secretary will proceed with registration in the Registry and notification to the Requesters, Board of Executive Directors, President, Country Office, Project team, and Executing Agency of this Determination of Eligibility.

Isabel Lavadenz Paccieri



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