

Land Acquisition Plan

Wastewater Treatment Plant (WWTP) City of Mostar GEF Water Quality Project Bosnia & Herzegovina May 2015

I. Introduction

This Land Acquisition Plan describes the process conducted to date and measures required to avoid, minimize and mitigate any potential adverse social impacts associated to the acquisition of an area of 63,541m² required for the construction of the Wastewater Treatment Plant (WWTP) at the city of Mostar, which is a subproject of the GEF Water Quality Project being supported by the World Bank.

This Plan has been developed based on existing available information and the Involuntary Land Acquisition and Resettlement Guidelines included in the GEF Water Quality Project's Environmental Policy Framework dated February 2005. The Guidelines are aimed at ensuring compliance with the national legislation applicable to land acquisition and expropriation and the requirements of the World Bank's Operational Policy OP 4.12 on Involuntary Resettlement.

II. Description of land

The City of Mostar's WWTP is located in the industrial zone of the City of Mostar. Until 1963 the subjected area was used for agriculture (pasture) and since then it was ceded to the construction company GP Hercegovina (which was later privatized and merged to the "Građevinar" Ltd Mostar) which used it as plant for the extraction and processing of gravel until 1991. The plant was destroyed in 1992 during the war. *Since 1992, there has not been gravel extraction, or any other type of economic activity. The land is not occupied and for the last 23 years it has become barren land, with some low vegetation.*

III. Valuation of land & ownership

A sworn court expert identified the market value of 1m² of the designated land. The valuated market value of 1m² was assessed as BAM 34¹. In May 2013, this valuated market value for the total amount of expected compensation - including transaction costs - was put into an escrow account of the City of Mostar.

For about 75% of the total area necessary for WWTP (i.e. 47,631m² - plot #1, #2, and #3 – see Annex II) there is no dispute over ownership. In November 2013, the registered owner of each of these three plots has received the mutually agreed compensation at replacement costs (including any transaction costs and regular interest for the amount of unpaid fees) and there was no complaint.

For the remaining 25% of the area necessary for WWTP (i.e. 15,910m² – plot #4 - #9 – see Annex II) there is a dispute over ownership of the land pending at the Cantonal Court. Although the precise boundaries of land is clear, ownership of the land is not clear due to two different land registry entries and competing claims by 35 private individuals vs. GP Građevinar Ltd

¹ This amount for payment of compensation includes transaction costs that are partially related to the immovable properties tax in the amount of 5% in the Herzegovina-Neretva Canton as well as notary processed contracts and other fees.

Mostar. Until today there is no decision on this appeal over ownership. There is no dispute over the amount to be paid in compensation. The expected compensation costs are still on the escrow account pending the outcome of the ongoing appeal. Evidence of the aforementioned is the account at Raiffeisen Bank Inc. Sarajevo-Main branch Mostar².

IV. Entitlements

According to section III, there is only one category of Project Affected Persons, i.e. legal land owners of land, who will be compensated at full replacement cost of the land. The acquisition of the land required for the WWTP only involves the *loss of assets (i.e. land)*. *It does not involve the physical displacement of population or restriction of access to productive land*. As there are no impacts on livelihoods, vulnerability of Project Affected Persons has not been assessed.

V. Consultations

A public hearing on the Environmental Impact Assessment and Framework, including the Involuntary Land Acquisition and Resettlement Guidelines, was held on November 11th 2011 in the premises of the Croatian Lodge “Herceg Stjepan Kosaca” in Mostar. Moreover, public debates on developing the urban regulation plan “Rodoč VI” (which covers the subject site) were held on June 25th 2012 and June 27th 2012. The location and purpose of the public meetings were published in daily newspapers (such as Dnevni List and Dnevni Avaz), and on the Ministry’s website as well as in the radio. According to the minutes from the public hearing and the debates, no objections to the location of the WWTP was issued by the public and no complaint or objection was announced through other sources (such as newspapers, media, etc).

On May 21st 2013, there was a procedure initiated for the expropriation necessary for building the WWTP. The City of Mostar was requesting information about the residence of the parties to the proceedings. A notice of the beginning of the expropriation proceedings was published in daily newspapers, on the City’s website and the City’s bulletin board. All necessary actions have been set to ensure that all people who have a legal interest in the expropriation proceedings (either personally or through an attorney and temporary representative) have participated.

VI. Next Steps

The Federation Government has granted access to the 25% of the area necessary for WWTP (plot #4 - #9 – see Annex II) where the dispute over ownership of the land is still pending at the Cantonal Court. With the Decision No.: UPI/03-23-2-310/13 ID from April 29, 2014 the City of Mostar obtained the approval for building the WWTP by the Federal Ministry of Spatial Planning. This Decision officially granted the right to perform necessary works on the related site. It became effective on June 16, 2014.

The amount of the expected compensation costs, including transaction costs, are still on the City’s escrow account pending the outcome of the ongoing court appeal. Payments to the owners of the land will be made as soon as the court ruling is announced.

² Evidence is the Statement of Account no.: 1610200009955402 at Raiffeisen Bank for the client City of Mostar on May 17, 2013, from which is clear that the compensation amount is secured.

VII. Public Disclosure

This Land Acquisition Plan was prepared by the City of Mostar in May, 2015 and it was made available to the public at the offices of the Municipality and in the „Official Gazette of the City of Mostar“ No. 6/15 of 19 June 2015.

Annex I

Additional Background Information

Site selection

The site is located in a peri-urban industrial area between the main road of the City of Mostar and the Neretva River and the local road towards the industrial zone. Currently the site is composed on barren land with presence of some low vegetation, with no evidence of any productive activities being conducted or presence of residential structures. The site for the construction of the WWTP was selected based on the Feasibility Study of water quality protection of the Neretva River, and it was conducted from 2004 to 2006 in collaboration with the World Bank. Changes in spatial planning documents were made based on this Study and one of the criteria was the distance of residential buildings from the very site.

Site description

The City of Mostar's WWTP is located on the right bank of Neretva River, between the river and local road in industrial zone of the City of Mostar, on the land marked as cp 3544/2 in the Cadaster Municipality (CM) Rodoč - according to a new survey, which is corresponding to cp 951/1, 951/2, 951/3, 951/4, 951/5, 951/6, 954/1, 954/2 and 956/1 in the CM Rodoč – according to an old survey. Until 1963 the subjected area was used for agriculture (pasture) and since then it was ceded to the construction company "HERCEGOVINA" (later Građevinar Ltd Mostar) for the purposes of the construction of a plant for production of building materials. It was used for that purpose until 1991, which is evident from the Decision on expropriation.

According to the Spatial plan of the municipality of Mostar (Official Gazette of Municipality of Mostar No.:11/90) the aforementioned site was intended for industry, services and storage. With the Decision on Amendments to the Decision on the adoption and implementation of spatial plan of the Municipality of Mostar, no.: 01-02-15/09 until November 30th 2009, the site was reserved for the construction of the WWTP of the City of Mostar. On November 21st 2011, on its regular meeting, the Mostar City Council adopted the Decision on the preparation of the Regulation plan "Rodoč VI" which included the site. On October 31st 2012, the Mostar City Council held a meeting and made the decision on adoption of the regulation plan "Rodoč VI" no.: 01-02-253/12.

Before adopting the abovementioned spatial documents, there were public hearings made in accordance with the program of public inclusion and no objection was made for the selected site. For the purpose of obtaining the Environmental permit for the site from the Federal Ministry of Environment and Tourism, an Environmental Impact Assessment (EIA) was made, and it studied in detail all the adverse impacts and how to mitigate them.

Land Claims and Expropriation Process as of May 2015

In 1963, the selected site was expropriated from a group of 35 owners by the then Mostar Municipal Assembly and ceded to the public company GP Hercegovina (which was later privatized and merged to the "Građevinar" Ltd Mostar) to be used as plant for the extraction and processing of gravel for construction. The company has had active and continuous possession of the land ever since. Although the government's expropriation decision taken in 1963 is documented, for some unknown reason the finalization of the process was not fully formalized and the payment of compensations was not recorded in the National Land Registry. There are decisions in the Registry on the expropriation from the 60-ies based on which the expropriation procedure was registered, but the same do not have the finality/validity clause. However, the land appears to be duly registered to the company in the Municipal Cadastre Registry of the City of Mostar and it has been paying taxes for the land since 1969. Aerial photography that recorded the land possession was conducted in 1969, and was effective from 1974.

The gravel processing plant was destroyed in 1992 during the war and the land was used by the company as a gravel pit and gravel landfill during and after the plant was destroyed. *Since 1992, there has not been gravel extraction, or any other type of productive activities on the site and it has become barren land, with presence of some low vegetation.*

In May 2013, the City of Mostar has set aside the amount of BAM 2.086.041, 82 on a special account for the compensation for land suggested for expropriation and other costs related to the expropriation procedure. On June 4th 2013, as it is required by the Expropriation Act, a public statement was given in the media, on the website of the City of Mostar, and bulletin board, which had an aim to inform all the interested people of the beginning of the expropriation procedure and to invite all these people of unknown address of residence to inform the authority conducting proceedings of the same. Following the newspaper publication and the expiration of the 15 days period, in which the interested parties were able to contact the competent authority, the procedure of the expropriation was conducted in accordance with the provisions of the Expropriation Act. Three investigations on the spot were made as well as five public hearings and the parties were given the opportunity to participate in all the stages of the procedure, deriving all the evidence and to make statements on every evidence.

On September 20th 2013, after the procedure, three decisions were made adopting the proposal for expropriation. Two decisions became effective on October 9th 2013, and they refer to the plots in the table under the numbers of 1, 2 and 3, with total area of 47 631 m², which is about 75% of the total area necessary for WWTP. After the decisions became valid on October 23rd 2013, a public hearing was held in the presence of representatives of the expropriators and land owners and the agreement was concluded with which the expropriator is obliged to pay to the land owner for three plots for the area of 47 631 m² the amount of 1,619.454,00 KM. For those three undisputed plots the agreed compensation has been paid, as well as any transaction costs and regular interest for the amount of unpaid fees.

With this agreement the landowner agreed to submit the subjected property in the possession of the expropriator within 15 days of the conclusion of the agreement and stated that with the procedure of payment they consider themselves fully compensated for the subjected real estates and that they do not have, in relation to the same, any other claims against the City of Mostar. With this payment from November 8th 2013, the City of Mostar fulfilled their obligations under the said agreement within the determined deadline.

For a decision allowing the expropriation of 6 plots in the table shown under the numbers 4-9, with a total area of 15 910 m² (which is 25 % of the total area of the site), an appeal was filed. The case file was submitted for decision to the Federal Bureau for Geodetic and Property Relations on October 9th 2013. Until today there is no decision on this appeal. Since this procedure involves two parties with opposite interests that are in dispute over ownership issues on subjected plots, it is expected that one of the parties will initiate an administrative dispute against second-instance ruling, as well.

On November 4th 2013, the City of Mostar received a decision by the Government of the Federation of Bosnia and Herzegovina that it is allowed as expropriator and comes into possession of all the nine plots necessary for the WWTP construction. This decision was delivered to the land owner by the Real Estate Department of the City of Mostar. In a separate escrow account, the City of Mostar has set aside the funds needed for the payment of compensation³ for the 6 disputed plots for which a lengthy court proceeding is expected (see also chapter VIII).

Legacy of disordered real property registration in BiH

Records of real estate and real property rights in Bosnia and Herzegovina dates back to Austro-Hungarian period. The first survey was conducted in the period from 1880 to 1884 and on the basis of the same the cadastral maps and documentation were made, and then in the period from 1886 to 1910 there was a land registry founded containing all the data on ownership and other real rights on real estate and property

³ Secured amount for payment of compensation includes transaction costs that are partially related to the immovable properties tax in the amount of 5% in the Herzegovina-Neretva Canton, as well as notary processed contracts and other fees. All these costs are included in the estimated value of 1m² of land (BAM 34).

status. The land registry consists of a general ledger, collection of documents, plans of cadastral municipalities, the land registry itself and an alphabetical list of owners.

During World War II, land cadasters were destroyed in many municipalities. Yugoslavia took over the established system, but the cadaster and land registry were not properly managed, and in places where the cadasters had been destroyed, they were not renewed. When it became necessary to secure real estate records for the purpose of taxation, the cadaster was revised. The existing data were used for taxation, but they could not meet the growing need for information on real estate (design, studies of the area, geological backgrounds...) so that a new survey of the entire territory of Bosnia and Herzegovina was conducted. Data from new survey derived by using aerophotogrammetry methods were used to create a new cadaster that contained updated data (topographic data on the land, details of the land area, culture and class, cadastral income and details of the land owner).

After recording the field, deciphering, and data processing for the basis of the cadastral documentation (elaboration of the survey and cadastral land classification) the presentation of the survey data was made on the basis of Ordinance on presentation to the public of the survey data and cadastral land classification ("Official Gazette of the Socialist Republic of Bosnia and Herzegovina", No. 47/69). Presentation of the data for public inspection includes checking the data by the determined re-measurement, communication, filling, removal of errors and omissions in the data survey, handling complaints, and recording changes in property incurred in the period between the time of recording and presentation.

Data presentation was conducted by the Commission for data presentation, which was required to meet and present to any interested person all the plots registered on the census list, and consent to the data entered on the census list was affirmed by the party's signature. It was possible to file an oral or written objection to the Commission on the registered data, and it was possible to file a complaint against the Commission's decision to the Republican administration authority in charge of the geodetic operations, which was obliged to resolve all the complaints before the new cadastral documentation became effective.

New cadastral documentation for the cadastral municipality Rodoč became effective in 1974, all based on the Law on Survey and Land Cadastre ("Official Gazette of the Socialist Republic of Bosnia and Herzegovina", No. 16/73). In the areas where the new survey was conducted and the land registry preserved (which is the case in Mostar) there is a complete disagreement between the land registry and the cadaster. Data synchronization was performed only in cases where there is an explicit request of the person, but the claims were rarely filed due to a lack of commitment of the owner to register the facts that change the existing situation in the land registry. Because of the aforementioned as well as the reason that changes in the land registry are conditioned by the payment of taxes, fees and other obligations to the country, for many years the sales, divisions, donations, exchanges and similar legal arrangements remained unreported.

All this brought subsequent land acquirers, who acquired the land from its real owner, in a difficult position. But these legal acts or decisions of the competent authorities (e.g. decision on inheritance) could not be implemented because in the land registry the other person or persons were registered as owners, so that this would require prior implementation of long-term trails, which very few people were willing to undergo. To this disordered state contributed a large number of unsettled usurpations of state land.

Institutional Arrangements, Applicable Legal Framework and Compensation Criteria

a. Bosnia & Herzegovina

Responsible Agency: In Mostar, the municipal authority responsible for Real Estate Affairs is called the Finance and Real Estate Department. It conducts all activities related to the expropriation proceedings (provides evidence on the condition and value of the land, discusses ownership and legal issues on property proposed for expropriation, informs all interested parties of the facts set forth in the proceedings). It issues a decision according to which the proposal for expropriation is adopted if all the statutory conditions are met (defined public interest and provided funds to pay the compensations for land

and expenses of the proceedings) and it mediates between the parties for the purpose of reaching an agreement on the amount of compensation.

Applicable Law and Compensation Criteria: Articles 45 - 68 of the Expropriation Act regulate the procedure of determining compensation for expropriated land. The compensation is usually determined by providing other suitable property, and if that is not a possible solution, then by providing cash according to the amount of the market value of the property. The compensation to the previous owner can be increased in case that expropriation affects their material existence (especially if the expropriated land was used for agricultural or other approved activity). The owner is entitled to receive a compensation for crops, legally constructed buildings, as well as a compensation for loss of benefits that would be achieved with the former way of exploiting properties during the time from the submission of the possession to the expropriator until the expiration deadline set for the payment of compensation.

In the administrative proceedings it is possible that before making a decision on expropriation an agreement on the acquisition of the rights is concluded between the land owner and its expropriator. If an agreement is concluded, the expropriation procedure is ended. In the opposite case, the expropriation procedure is conducted and after the decision on expropriation becomes valid an oral hearing is held where the parties are able to seize an agreement on the amount of compensation whereby the duty of the first-instance authority is to warn the parties of their rights and obligations under the Expropriation Act and to seek that the parties reach an agreement on compensation.

According to the Expropriation Act the amount of compensation is determined by the court in an extra-contentious proceeding so that the administrative proceedings do not determine the impact on the income of the land owner or other criteria which the Expropriation Act provides for a corrective of magnification of compensation for expropriated land.

For all nine plots that are proposed for expropriation for the construction of the WWTP in Mostar, the first-instance authority had an on-spot investigation and provided evidence about the state of the land before the expropriation implementation (there are neither crops, buildings, nor other assets – legally or illegally owned - on the land to be expropriated). A sworn court expert identified the market value of 1m² of the designated land. The valuated market value of 1 m² was assessed as BAM 34⁴. In June 2013, the total amount of expected compensation, including transaction costs, was put into an escrow account pending the court decision on ownership. Evidence of the aforementioned is the account – the expropriation procedure-WWTP's- at Raiffeisen Bank Inc. Sarajevo-Main branch Mostar⁵.

The valuation criteria used by the court appointed expert included a land assessment which was conducted in accordance with the rules of profession, and offer and demand of the subjected real estates on the market in the given period. The free market value of the land includes parameters that are normally listed in the assessment of court experts, namely: area, location, shape of infrastructure, real estate equipment, and offer and demand of the same.

b. World Bank Policy OP 4.12

This is a brief summary of the World Bank Policy objectives and principles as agreed on in the “Involuntary Land Acquisition and Resettlement Guidelines for the Water Quality Project”, which are part of the “BiH Water Quality Protection Project – Environmental Framework Policy”.

⁴ This amount for payment of compensation includes transaction costs that are partially related to the immovable properties tax in the amount of 5% in the Herzegovina-Neretva Canton as well as notary processed contracts and other fees.

⁵ Evidence is the Statement of Account no.: 1610200009955402 at Raiffeisen Bank for the client City of Mostar on May 17, 2013, from which is clear that the amount of BAM 2,086,041.82 is secured on a special account.

All World Bank financed projects involving resettlement components are subject to the World Bank Operational Policy (OP) 4.12 on Involuntary Resettlement (revision March 2011), and the Bank Procedure (BP) 4.12 (December 2001), which describe instruments and procedures for eliminating negative economic, social, and environmental issues that may arise. The policy is triggered not only with physical relocation, but any loss of land resulting in relocation or loss of shelter, loss of assets or access to assets and loss of income sources and means of livelihood. The overall objectives of the policy are the following:

1. Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.
2. Displaced persons should be assisted in improving their former living standards, income earning capacity, and production levels, or at least in restoring them.
3. Displaced persons should be meaningfully consulted and should be encouraged to participate in planning and implementing resettlement.

For subprojects to be prepared during project implementation, the Bank requires that subproject resettlement plans (or land acquisition plans) consistent with the project's policy framework are prepared and submitted to the Bank for approval. The borrower's obligation to implement these plans are provided for in the loan package and the full costs of activities are included in the total cost of the project.

The subproject specific resettlement plan (or land acquisition plan) minimally needs to include: baseline census and socioeconomic survey information, specific compensation rates and standards (including transaction costs), policy entitlements related to any additional impacts identified through the census of the survey, a description of resettlement sites and programs for improvement or restoration of livelihoods and standards of living, implementation schedule for resettlement activities, and a detailed cost estimate.

For subprojects where impacts on the entire population are minor, or fewer than 200 people are displaced, an abbreviated resettlement plan (or abbreviated land acquisition plan) may be agreed with the borrower. Such an abbreviated plan covers the following minimum elements: a census survey of displaced/ affected persons and valuation of assets, description of compensation and other assistance to be provided, consultations with displaced/ affected people about acceptable alternatives, institutional responsibility for implementation and procedures for grievance redress, arrangements for monitoring and implementation, and a timetable and budget.

Grievance Redress

In general, any citizen who has a grievance regarding the land acquisition project, relating the eventual impacts during project implementation, i.e. the construction of the objects, may contact the members of the PIT team, that on behalf of the Vodovod Ltd. Mostar, monitors the implementation of the project itself, where some harmful and similar emissions might appear that might eventually affect the lives and health of people, and members of this team will forward them to the relevant Department for inspection of the City of Mostar for further proceedings. The procedure itself consists of formal submission of a written application to the mentioned members of the team in which there will be indicated these adverse events and emissions, and further procedure is solved through the PIT team and the authorized inspection service in the Administrative Procedure by adopting a decision that solves the claim.

The expropriation procedure is conducted by the Real Estate Department of the City of Mostar, and in this procedure it discussed as preliminary issue the ownership and legal relations on real estates proposed for expropriation and as a result of the procedure it determines the person that is the real owner of the real estate and who has right on compensation for expropriation. The expropriator and the person that was determined to be the real owned in the procedure can, after the decision on expropriation becomes valid, before the relevant Department conclude agreement on the amount of compensation for expropriated land. If the identified owners are not satisfied with the offered compensation, the amount of compensation will be determined by the authorized court (Municipal court in Mostar).

Appellations Authority: Federal Geodetic Administration in Sarajevo, which resolves a complaint against the first instance decision. Against the decision to adopt the proposal for the expropriation, the unsatisfied party can file an appeal within 15 days. The appeal shall be submitted to the competent appellate authority – the Federal Bureau for Geodetic and Property Relations Sarajevo. The Federal Bureau may reject the appeal as unfounded or annul the said decision and remit the case back for retrial. Against the decision of the Federal Bureau, an unsatisfied party may initiate an administrative action with a lawsuit that is to be submitted to the County Court in Mostar. The court in the administrative dispute may reject the appeal or annul the decision and return the case for retrial.

Administrative Dispute: Municipal Court Mostar resolves a lawsuit with which the affected party contested appellate decision in administrative proceedings and the outcome of the proceedings may be rejection of the appeal, the adoption of the appeal, decision annulled and return the case for retrial, or the court may render a judgment which will replace the decision or resolve administrative dispute in meritum.

Schedule

The City of Mostar as expropriator has already paid the compensation for three land plots (1, 2, 3) for which an agreement was reached and the amount of compensation was determined by a mutual agreement of the parties. The City of Mostar, through the Public Attorney's office, instituted proceedings for the issuance of a building permit to the competent Federal Ministry. After obtaining the Site information number: UPI/03-23-2-119/11 ID from November 14, 2012 by Federal Ministry of Spatial Planning, an official record which contains the information on type of works that are going to be performed, site, area, access to the site, urban and technical conditions, necessary approvals, studies and other documentation, but which does not give the right to build; the City of Mostar has obtained the Decision No.: UPI/03-23-2-336/13 ID from January 6, 2014 – on the principle approval for constructing the WWTP by phases (with this Decision the investor and the executor can perform only *preliminary* works). With the Decision No.: UPI/03-23-2-310/13 ID from April 29, 2014 the investor (City of Mostar) obtained by the Federal Ministry of Spatial Planning the approval for building the WWTP, which gives the right to performing necessary works on related site. This Decision became effective on June 16, 2014.

The Federation Government has granted access to the other 6 plots where the ownership is still disputed (and as there is no decision on the dispute by the Cantonal Court in Mostar expected during the time of the project). The contractor AKTOR S.A. GREECE concluded a contract with J.P. "Vodovod" Ltd. Mostar and on February 7, 2014 according to the Principal approval for building no.: UPI/03-23-336/13 ID from January 6, 2014 was vested in the property as an investor. The valuated market value for the total amount of expected compensation, including transaction costs, was put into an escrow account of the City of Mostar and on April 1, 2015 and it amounts 464,258,43 BAM. In the Budget of the City of Mostar the transaction of 76.721 BAM is secured and foreseen in the City Budget for 2015, necessary for payments to the owners of land, pending the court decision on ownership.