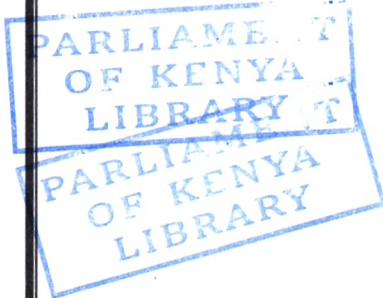


**REPUBLIC OF KENYA**



**MINISTRY OF ROADS**



**NAIROBI URBAN TOLL ROAD PROJECT**

**BRIEF TO THE DEPARTMENTAL COMMITTEE ON  
TRANSPORT, PUBLIC WORKS AND HOUSING**

**22<sup>ND</sup> FEBRUARY, 2011**

**BRIEF**





**MINISTRY OF ROADS**  
**BRIEF ON THE NAIROBI URBAN TOLL ROAD PROJECT**  
**11<sup>TH</sup> FEBRUARY 2011**

**Background:**

The provision of the required road infrastructure to support the Road Infrastructure development Strategy and lately, the Economic Pillar under the **Vision 2030** strategy requires a magnitude of investment that is beyond the ability of the Government to finance from taxes and borrowing.

In recognition of this financial constraint, the Government in 2001 approached the World Bank for assistance in evaluating the available options for road sector financing. The World Bank granted assistance under its Public-Private Infrastructure Advisory Facility (PPIAF) and a detailed technical study ("Concession Study") was commissioned to do the following:

- Evaluate the economic, financial and technical viability of introducing road concessions in Kenya.
- Determine specific concessionable road networks and formulate a transparent concessioning framework and mechanisms.

The findings of the Concession Study were as follows:

- a) Road concessioning is viable from an economic perspective and the potential for concessioning using conventional road tolling is greatest on the Northern Corridor.

The studies concluded that the Northern Corridor route measuring some 1295 km from Mombasa to Malaba, with a branch from Mau Summit - Kisumu – Busia was viable for concessioning.

**Proposed Nairobi Urban Toll Road**

The studies identified four (4) sections that could be implemented in distinct concession arrangements:

**Concession 1:** from Mombasa to Machakos Turnoff (466km)

**Concession 2:** from Machakos Turnoff to Rironi and the Nairobi Southern Bypass (106km)

**Concession 3:** from Rironi to Mau Summit, Mau Summit to Malaba and Mau Summit to Busia (693km)

**Concession 3** was found the most viable, and comprises the following scope of works:

Table 1

SECTION	ROAD	FROM	TO	LENGTH (KM)
1	A109	Machakos Turnoff	Athi River	21.5
2	A104	Athi River	JKIA Interchange	11.5
3	A104	JKIA Interchange	Langata Road roundabout	10.5
4	A104	Langata Road roundabout	Westlands Roundabout	5.3
5	A104	Westlands Roundabout	Kikuyu Interchange	16.2
6	A104	Kikuyu Interchange	Rironi	11.5
7(1)	Southern Bypass	St. James Hospital on Mombasa Road	Ngong Road junction (near Karen)	14.5
(7(2)	Southern Bypass	Ngong Road junction (near Karen)	Kikuyu	14.5
TOTAL				105.5

A design was made, and the project packaged into the proposed Nairobi Urban Toll Road to be implemented as a Public-Private Sector Partnership (PPP) road development project. The aim of the project was to help decongest traffic on the main road artery through Nairobi from Machakos Turnoff.

### **Selection of Concessionaire**

After preparatory designs were completed, the ministry invited bidders for prequalification. Three (3) international firms were prequalified to submit proposals for the road development. Bids were opened on 29<sup>th</sup> May 2007 and after evaluation, a consortium trading as the Nairobi Motorway Group, a Joint Venture composed of Messrs Strabag AG of Austria and Shikun-Binui of Israel was declared the Preferred Bidder (Project Sponsors). A letter of Intent on the proposed contract was exchanged with the Project Sponsors in November 2007.

Subsequently, an inter-ministerial committee for the concession, with the support of BKS as the Transaction Advisor undertook detailed contract negotiations with the Project Sponsors and their financiers, namely the World Bank Group and the African

Development Bank. A draft concession contract was agreed upon by the parties in November 2009.

The draft Concession Contract was submitted to the Office of the Hon. Attorney General for evaluation. The Hon. Attorney General's legal opinion clearing the contract was granted in April 2009. Thereafter, my Ministry sought and received Cabinet Approval for the proposed contract, which was then presented to Parliament for approval through Sessional Paper No 4 of 2009, in accordance with the Public Road Tolls Act (Cap 407 Laws of Kenya). Parliamentary approval was granted and communicated to the Ministry on 22<sup>nd</sup> December 2009.

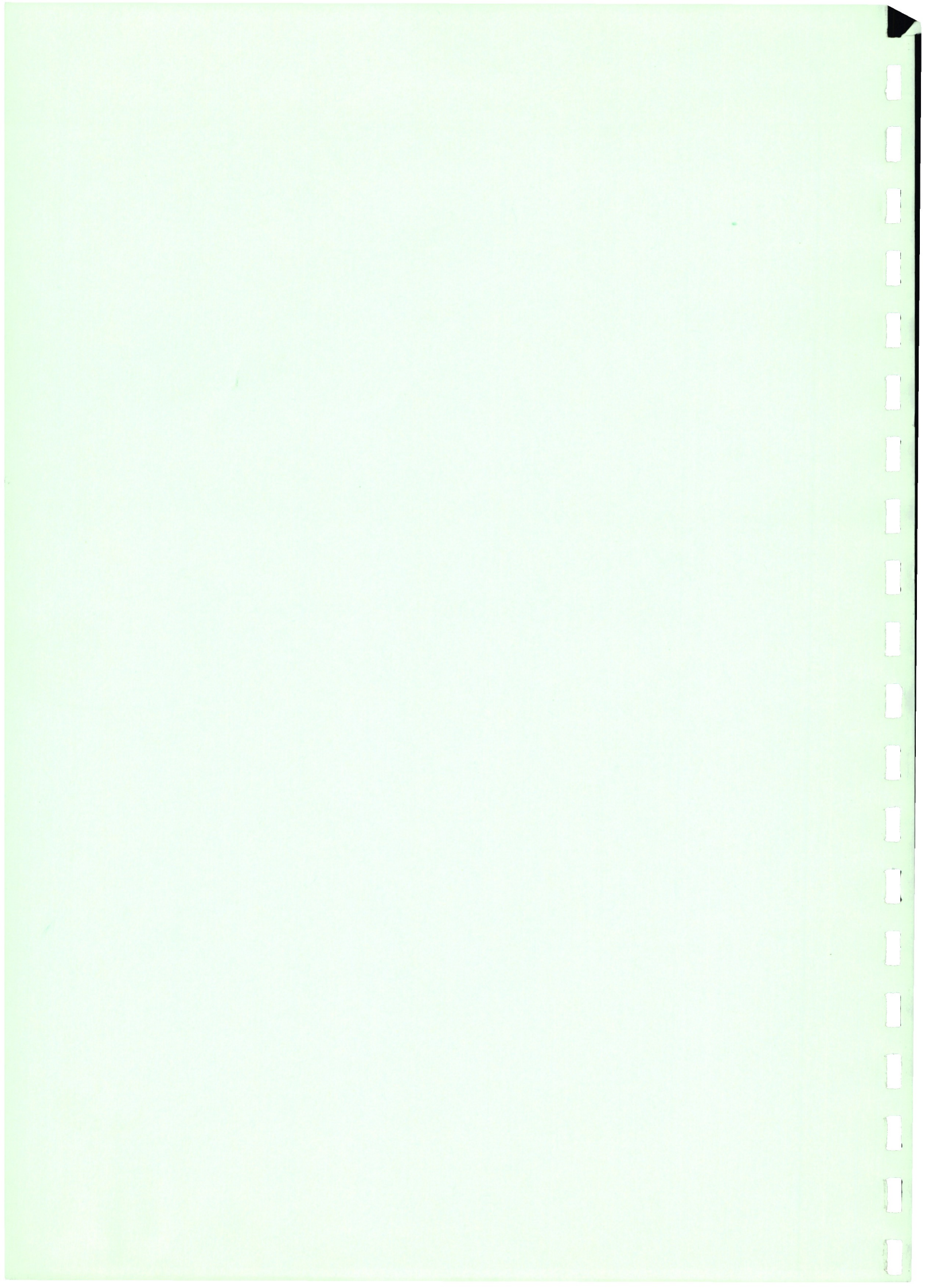
The road asset to be developed under the Toll Road Project was expected to revert to the Government after the 30-year concession period. It is in this regard that the Government was obligated under the Public-Private Partnership arrangement to provide land for the expansion of the roadway and other facilities, as identified by the Project Sponsor. Following the completion of the above requisite processes, the Ministry, in April 2009 requested the Ministry of Lands to acquire land for expansion of the road and other facilities.

#### **Compliance Review By World Bank Group**

In February 2010, arrangements were put in place for the Government to proceed and sign the concession contract. However prior to this, the World Bank Group requested the Government to defer the signing of the Concession Contract, pending further Due Diligence and Compliance Review by the World Bank Group on the Project Sponsors, as constituted. During the intervening period, the Government maintained contact with the Project Sponsors and the World Bank, and several meetings to review the progress were held, both in Nairobi and at the World Bank Headquarters in Washington DC.

It is noteworthy that the World Bank Group's Compliance Reviews were on the Project Sponsors to whom the World Bank was going to lend money for the project. It is instructive to note that under the PPP arrangement, the Government was to provide land for the project, while the Project Sponsors were to meet the cost of developments. The World Bank has formally communicated to the Government on 2<sup>nd</sup> February 2011 that as a result of the Compliance Review process, the World Bank Group is not in a position to support the Project Sponsors (Consortium) as currently constituted. It is now possible therefore for the Government to consider other options on the way forward.

# **CHRONOLOGY OF EVENTS**





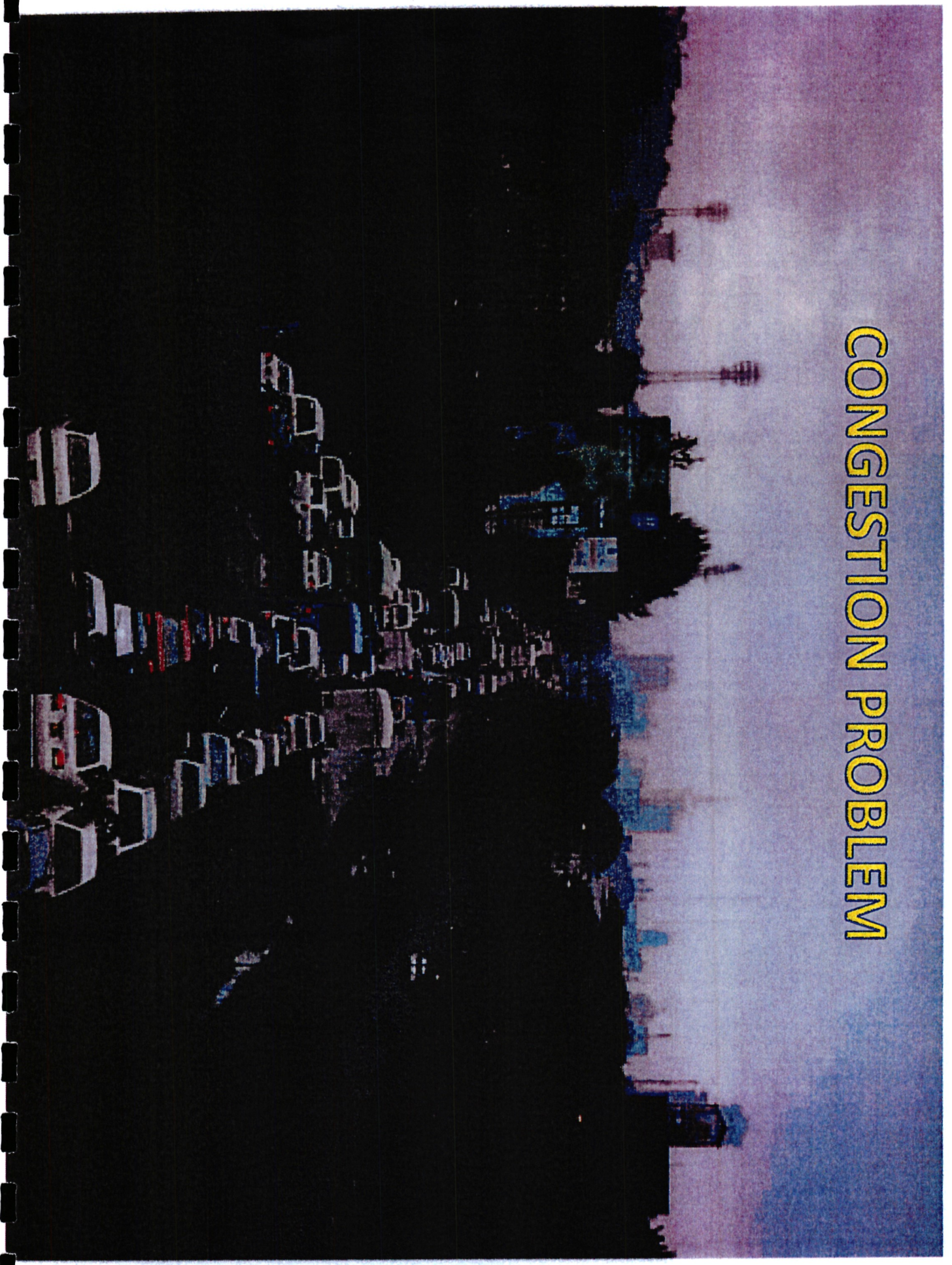
## MINISTRY OF ROADS

AN OVERVIEW OF TIMELINES,  
PREPARATORY PROCESS AND WAY  
FORWARD FOR THE NAIROBI URBAN  
TOLL ROAD

ENG. MSM KAMAU, CBS, HSC.  
PERMANENT SECRETARY

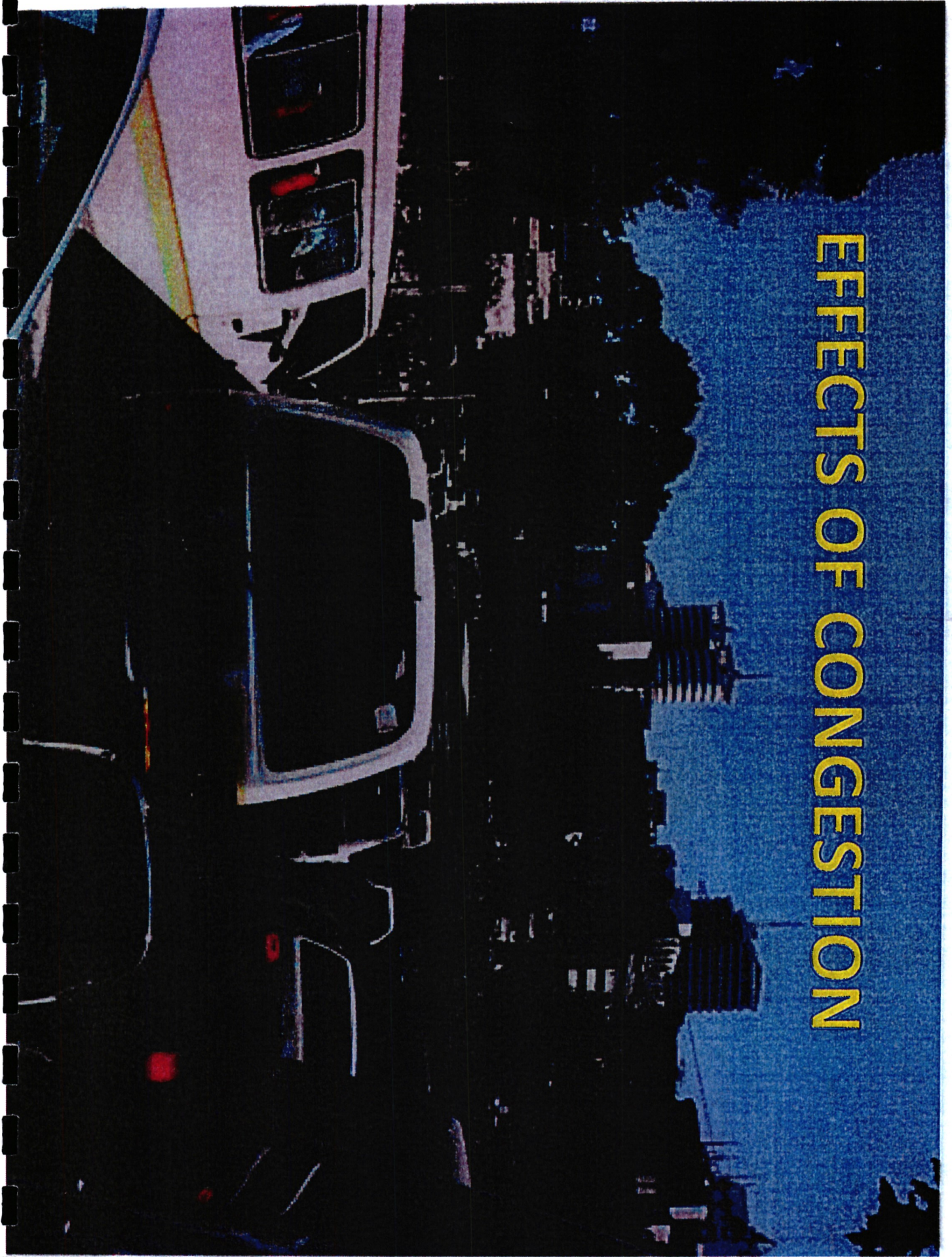


# CONGESTION PROBLEM





# EFFECTS OF CONGESTION





# CONGESTION

- **Congestion imposes increasingly severe costs on road users in terms of travel time and vehicle costs.**
- **City motorists on Langata Road, including those destined for the National Park main entrance, will recall the severe delays prior to dualing of Langata Road in 2001.**
- **Absence of viable alternative routes will soon result in extreme congestion conditions of pre-2001 but on a larger scale.**

# EFFECTS OF CONGESTION



# CONGESTION

- **The result of the non-investment in roads together with ever increasing vehicle numbers is serious traffic congestion.**
- **The congestion problem is worsening and is decreasing the attractiveness of Nairobi and Kenya to business and tourists.**
- **In recent years, initiatives to address congestion have commenced, through construction of missing links and bypasses, and development an urban Toll Road Concession.**

## CHRONOLOGY EVENTS ON THE NAIROBI URBAN TOLL ROAD PROJECT

Date	Activity	Remarks
July 2001	Employment of consultant for concession viability studies	Consultant BKS of South Africa engaged Study Report concludes the Northern Corridor road is viable for conventional PPP Concession.
June 2004	Design of Concession Framework and Identification Studies	Completed by Consultant and accepted by Ministry.
August 2004	Preparation of documents for prequalification	Commenced for Machakos Turnoff – JKIA – CBD – Westlands – Rironi (Northern Corridor Concession 1).
November 2004	Investors Conference to introduce/market PPP Projects in Infrastructure	Nairobi Conference discussed options for concessioning in Kenya. Participants included Representatives from Government Ministries, local financial institutions, development partners, potential concessionaires and other investors.
18 <sup>th</sup> Jan 2006	Concession Committee	Inter-Ministerial Committee on Concession formed.

Step	Activity	Remarks
March 2006	Prequalification Documents	Prequalification Documents completed under BKS Phase 3A (documentation services) and approved.
July 2006	Bidding documents	Preparation of bidding documents for selection of Concessionaire (Phase 3A) completed .
February 2007	Invitation of bids	Procurement Notice widely published, in local and regional newspapers, technical journals and in the Financial Times of London.
March 2007	Employment of Transaction Advisor	BKS Global of South Africa engaged as Transaction Advisor for the Concession.
27th April 2007	Prequalification of Bidders	Prequalification of Concessionaires advertised. Four (4) PQ Applications. Three firms were prequalified i.e. <ul style="list-style-type: none"> <li>• A-Way/Strabag/IPS Consortium (Austria)</li> <li>• Plus Mudajaya Joint Venture (Malaysia)</li> <li>• NLPI (PVT) Ltd (Mauritius).</li> </ul>
3 <sup>rd</sup> May 2007	Restructuring within A-Way/Strabag/IPS Consortium	A-Way/Strabag/IPS consortium requests replacement of A-Way and IPS with HCH (Shikun Binui) in the Consortium. Request approved.

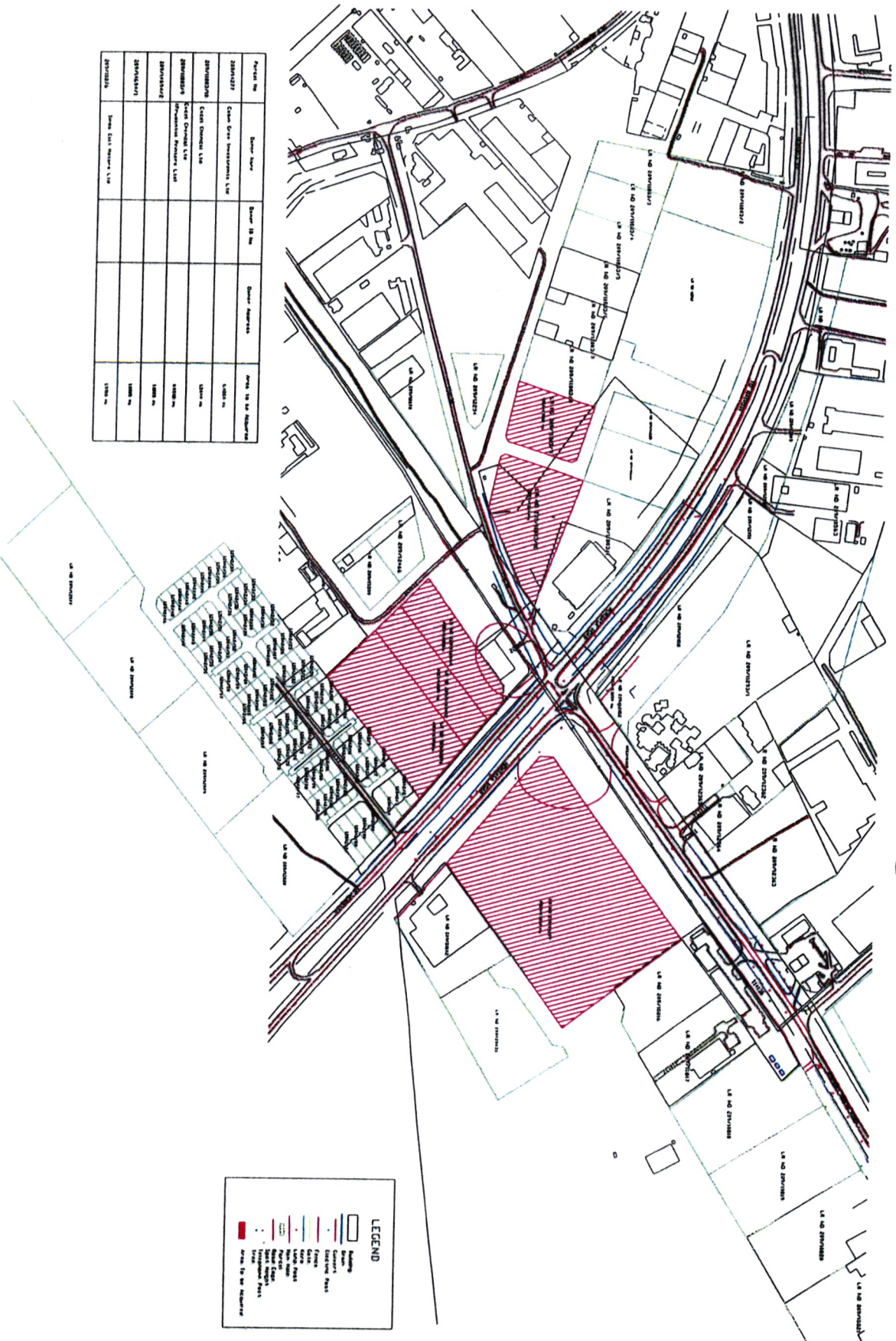
Step	Activity	Remarks
29th May 2007	Tender Administration and Evaluation	Standard and alternative bids received from sole bidder Messrs Strabag/HCH Consortium (Nairobi Motorway Group).
October 2007	Examination of Bids	Preliminary examination of Standard and Alternative Bids Completed.
28 <sup>th</sup> Nov 2007	Exchange of Letter of Intent	Letter of intent exchanged with Preferred Bidder (Nairobi Motorway Group).
5 <sup>th</sup> Dec 2007	Concession Contract negotiations	Detailed contract negotiations with preferred bidder/financiers commenced, process lasting 2 years to Nov 2009. Technical support provided by Transaction Advisor and AfDB, WB, IFC.
1st March 2008	Request for Investment Guarantees	Request made to World Bank through the Ministry of Finance for Investment Partial Risk Guarantees (PRG). Formal request by the Treasury forwarded to World Bank 20th March 2008
11th Sept 2008	Determination of Land Requirements	Request made to Preferred Bidder through Transaction Advisor for comprehensive details of land required for project. Details submitted April 2008

Step	Activity	Remarks
29th April 2009.	Site Acquisition for Interchanges (ICs) and Toll Plazas	Land requirements submitted by Preferred Bidder for Enterprise Road IC and Toll Plaza, Southern Bypass IC, James Gichuru I/C and Westlands mainline and ramp plazas. Request to acquire lands, with Acquisition plans sent to Commissioner of Lands.
5 <sup>th</sup> May 2009	Legal clearance of draft contract	Clearance of the draft contract by State Law Office granted.
7 <sup>th</sup> July 2009	Cabinet approval of Concession Contract	Cabinet approval granted on draft Concession Contract earlier forwarded in May 2009
22 <sup>nd</sup> May 2009	Tax Exemption	Approval of Tax Exemption (Importation Taxes, duties and other Levies) approved by the Treasury further to request by MoR.
27 <sup>th</sup> July 2009	Meeting of MoR with WB/AfDB and PB.	Several Joint meetings held at MoR/South Africa with WB and Preferred Bidder to discuss Contract Clauses, including PRG, Revenue Guarantees, Termination Clauses, and Shareholding in Concession Company.

Date	Activity	Remarks
12 <sup>th</sup> Nov 2009	Concession Contract	Final version draft concession contract agreed upon.
26 <sup>th</sup> Nov 2009	Forwarding of Concession Contract to Parliament	Concession Contract incorporated into Sessional Paper No 4 of 2009 and forwarded to Parliament for approval, pursuant to Public Roads Toll Act (Cap 407) Laws of Kenya.
22 <sup>nd</sup> Dec 2009.	Certificate of approval from National Assembly	Certificate of approval for Sessional Paper No 4 of 2009, which was accompanied by the concession contract, issued.
17 <sup>th</sup> Feb 2010	Formal signature of Concession Contract	Ceremony for signing Concession Contract postponed due to indicated need for additional due diligence by financiers on the preferred bidder. Signing of Concession Contract postponed twice. Draft Contract in abeyance from Feb 2010.
June 2010	Nairobi Southern Bypass	Treasury approval granted for construction of Nairobi Southern Bypass through support by EXIM Bank (China). Design reviews completed, and Commercial Contract signed 22 <sup>nd</sup> November 2010. Loan Approval awaited.

7 <sup>th</sup> Oct 2010	Discussions with World Bank Senior Management	Continuous discussions held on various dates, latest one on at high level discussions in Washington DC on 7 <sup>th</sup> October 2010 to formulate way forward on the project. Meeting recommended completion of compliance review by end December 2010.
31 <sup>st</sup> December 2010	Gazetement for Land Acquisition	Official gazetement by Commissioner of Lands of intention to acquire land as per original plans of 29 <sup>th</sup> April 2009.
22 <sup>st</sup> Jan 2011	Follow up on Compliance Review	Letter addressed to World Bank Country Director to enquire on the results of the Compliance Review. Meeting scheduled with Bank's senior management in Kenya.
2 <sup>nd</sup> February 2011	World Bank Response	World Bank formally communicates to the Government the Bank's decision that the Bank will not support the Consortium (Nairobi Motorway Group ) on the project
3 <sup>rd</sup> February 2011	Meeting with Preferred Bidder and World Bank	Joint meeting of MoR, Preferred Bidder and the World Bank discussed the outcome of the Compliance Review and way forward.
7 <sup>th</sup> February 2011	Meeting of Concession Committee	Meeting to brief the Inter-Ministerial Concession Committee on possible way forward.

# NORTH AIRPORT ROAD (CITY CABANAS) ACQUISITION DRAWING



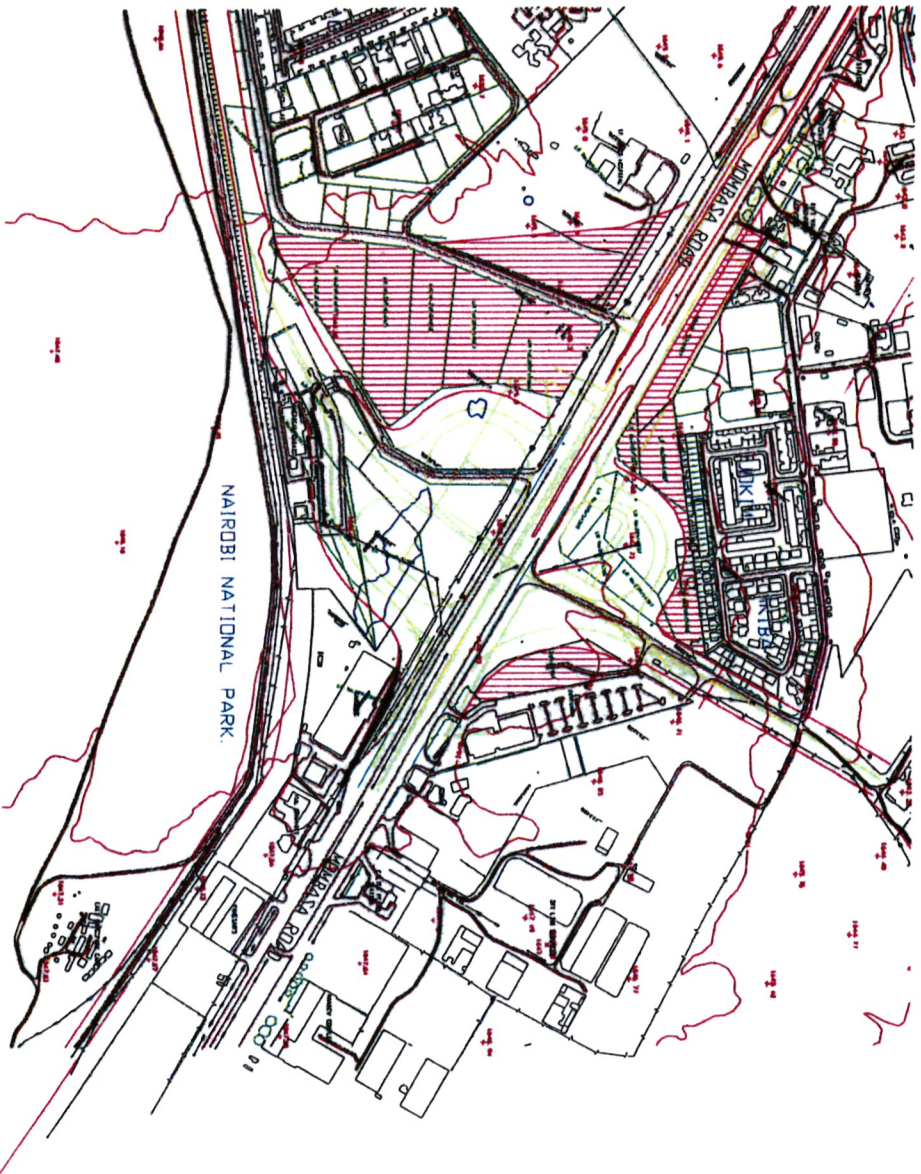
Parcel No.	Owner Name	Owner Address	Area to be Acquired
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287042018	Cham, Eric Investments, Ltd	1400 St. ...	1400 St. ...
287042019	Cham, Eric Investments, Ltd	1400 St. ...	1400 St. ...
287042020	Cham, Eric Investments, Ltd	1400 St. ...	1400 St. ...
287042021	Cham, Eric Investments, Ltd	1400 St. ...	1400 St. ...
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287042099	Cham, Eric Investments, Ltd	1400 St. ...	1400 St. ...
287042100	Cham, Eric Investments, Ltd	1400 St. ...	1400 St. ...

**LEGEND**

- Right-of-Way
- Easement
- Utility Line
- Property Line
- Lot Line
- Building Footprint
- Proposed Road
- Area to be Acquired



# CELTEL ACQUISITION DRAWING



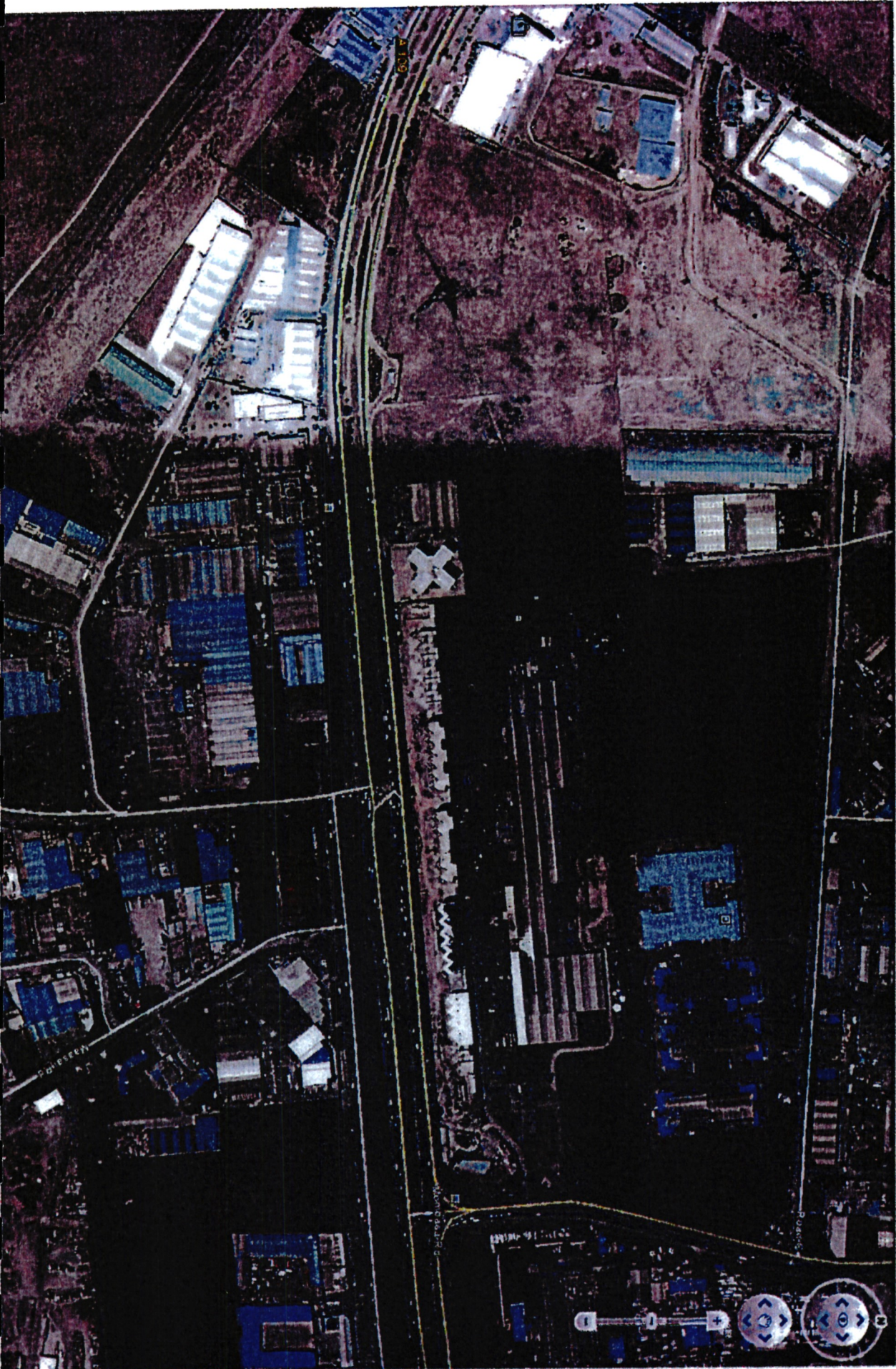
SCHEDULE FOR LAND ACQUISITION

Particulars	Quantity	Unit	Value
1. Buildings		Sq. Mts	1000.00
2. Land		Sq. Mts	10000.00
3. Vegetation		Sq. Mts	1000.00
4. Other		Sq. Mts	1000.00
5. Total		Sq. Mts	13000.00
6. Less: Land to be Acquired		Sq. Mts	1000.00
7. Net Land to be Acquired		Sq. Mts	12000.00

**LEGEND**

- Building
- Land
- ▨ Vegetation
- ▧ Other
- ▩ Land to be Acquired

# ENTERPRISE ROAD







# SECTION OF PROPOSED SOUTHERN BYPASS



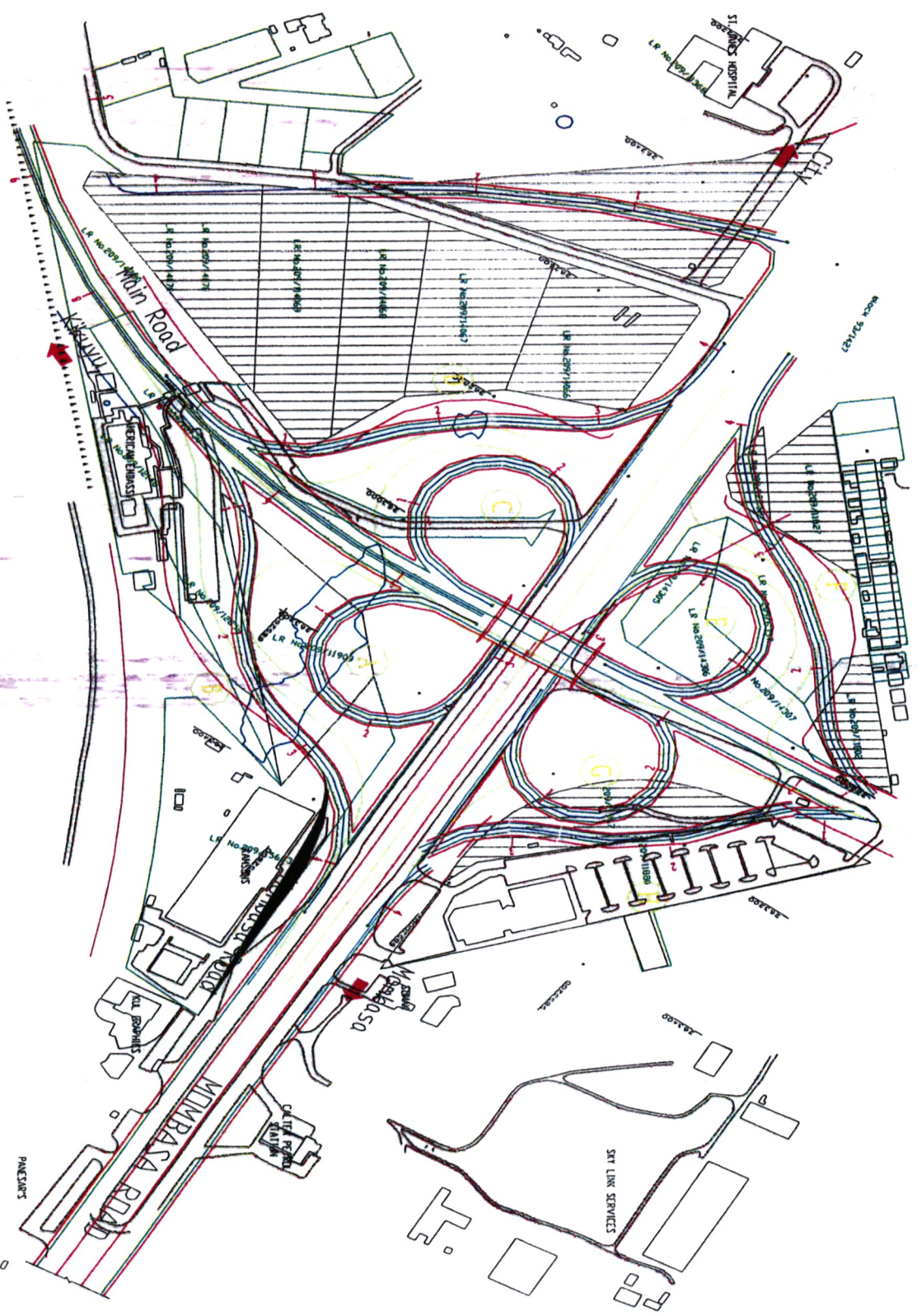
# SOUTHERN BYPASS JUNCTION



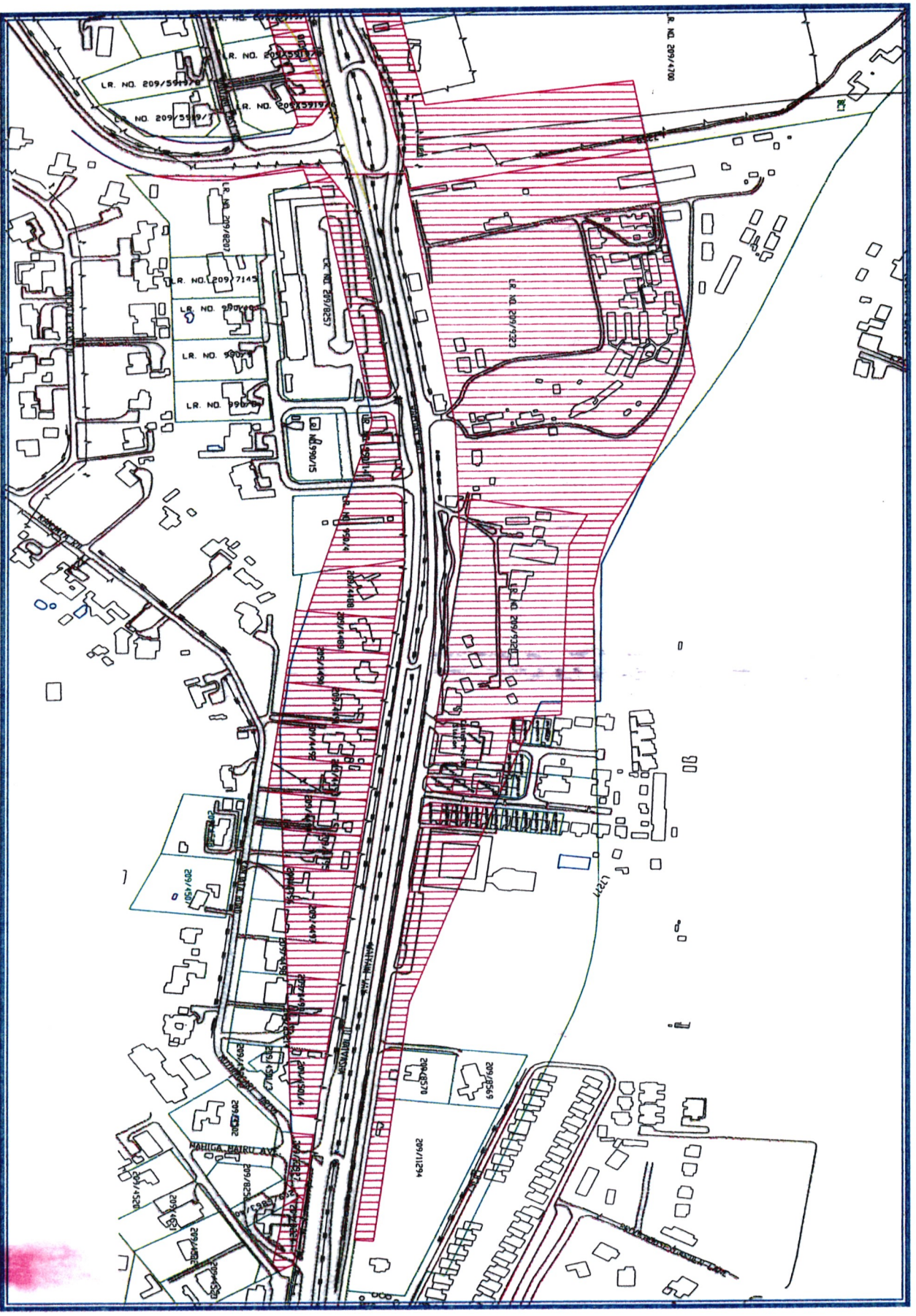




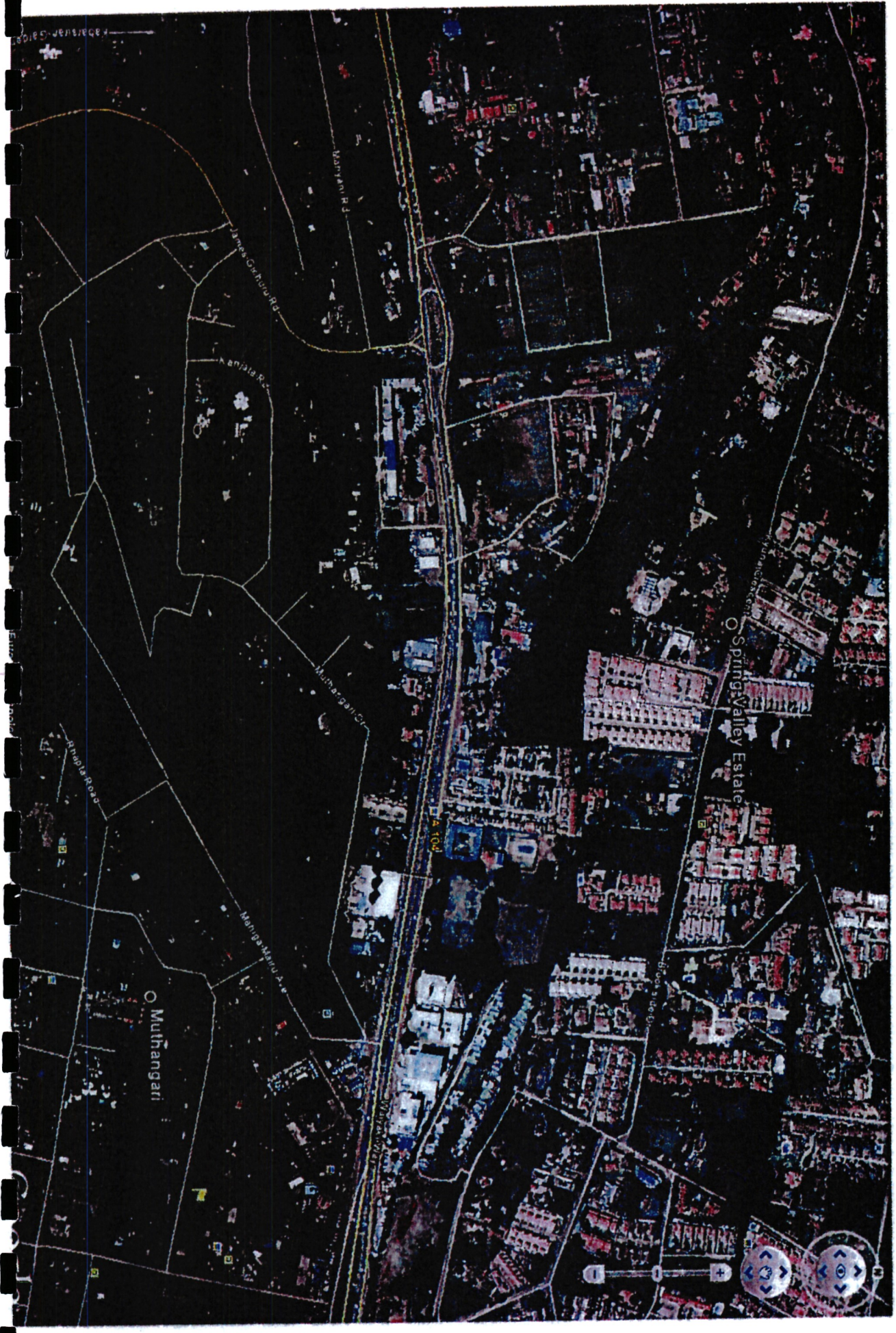
# SOUTHERN BYPASS INTERCHANGE



# KABETE BARRACKS ACQUISITION DRAWING



# JAMES GICHURU JUNCTION







THE END  
THANK YOU

80

BOMAG



**WAY FORWARD**



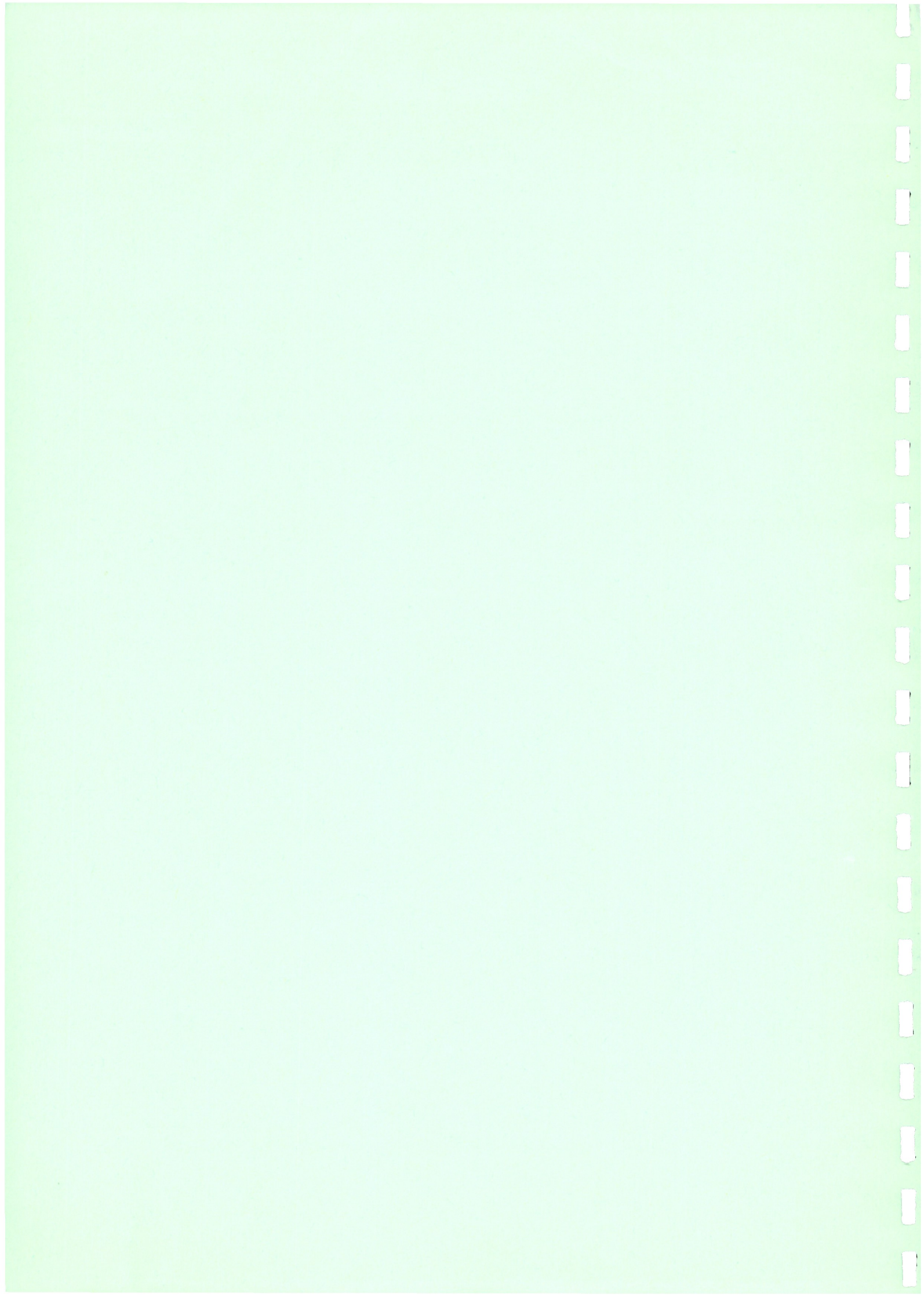


**MINISTRY OF ROADS**  
**BRIEF ON THE NAIROBI URBAN TOLL ROAD PROJECT**  
**11<sup>TH</sup> FEBRUARY 2011**

**Way Forward**

Further to communication from the World Bank, the concession project, as conceived through participation of the Consortium, is currently not feasible in the absence of World Bank's support. In view of the foregoing, the project, as envisaged through the consortium has regrettably collapsed. Consequently, the Government will now explore alternative ways for executing the project, which may involve restructuring and re-design. In this regard, the World Bank has expressed willingness to support the project through any other feasible form of contract, either as a concession, or as a conventional Public Sector lending project.

# **ANNEXES**



**MINISTER'S PRESS STATEMENT**





**MINISTRY OF ROADS  
PRESS STATEMENT  
NAIROBI URBAN TOLL ROAD PROJECT  
3<sup>RD</sup> FEBRUARY 2011**

In 2001, the Government, with the support of the World Bank engaged a consultant (BKS Global) of South Africa to undertake studies and design the proposed Nairobi Urban Toll Road as a Public-Private Sector Partnership (PPP) road development project. The aim of the project was to help decongest traffic on the main road artery through Nairobi from Machakos Turnoff.

After preparatory designs were completed, the ministry invited bidders for prequalification. Three (3) international firms were prequalified to submit proposals for the road development. Bids were opened on 29<sup>th</sup> May 2007 and after evaluation, a consortium trading as the Nairobi Motorway Group, a Joint Venture composed of Messrs Strabag AG of Austria and Shikun-Binui of Israel was declared the Preferred Bidder (Project Sponsors). A letter of Intent on the proposed contract was exchanged with the Project Sponsors in November 2007.

Subsequently, an inter-ministerial committee for the concession, with the support of BKS as the Transaction Advisor undertook detailed contract negotiations with the Project Sponsors and their financiers, namely the World Bank Group and the African Development Bank. A draft concession contract was agreed upon by the parties in November 2009.

Thereafter, my Ministry sought and received Cabinet Approval for the proposed contract, which was then presented to Parliament for approval through Sessional Paper No 4 of 2009, in accordance with the Public Road Tolls Act (Cap 407 Laws of Kenya). Parliamentary approval was granted and communicated to the Ministry on 22<sup>nd</sup> December 2009.

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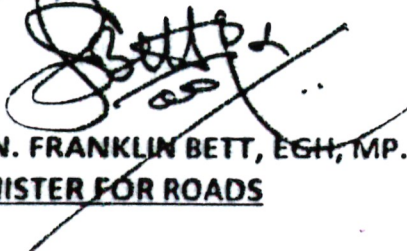
Diligence and Compliance Review by the World Bank Group on the Project Sponsors, as constituted. During the intervening period, the Government maintained contact with the Project Sponsors and the World Bank, and several meetings to review the progress were held, both in Nairobi and at the World Bank Headquarters in Washington DC. In these discussions, the World Bank was expected to communicate its decision on the results of the Compliance Review as soon as possible.

The World Bank has formally communicated to the Government on 2<sup>nd</sup> February 2011 that as a result of the Compliance Review process, the World Bank Group is not in a position to support the Project Sponsors (Consortium) as currently constituted.

It is noteworthy that the World Bank Group's Compliance Reviews were on the Project Sponsors to whom the World Bank was going to lend money for the project. It is instructive to note that under the PPP arrangement, the Government was to provide land for the project, while the Project Sponsors were to meet the cost of developments.

My Ministry is happy that the World Bank has at last come up with an official position on the Compliance Review and it is now possible for the Government to consider other options on the way forward. It is the view of the Government that the concession project, as conceived through participation of the Consortium, is currently not feasible. In view of the foregoing, the project, as envisaged through the consortium has regrettably collapsed. Consequently, the Government will now explore alternative ways for executing the project, which may involve restructuring and re-design. In this regard, we are also pleased that the World Bank has expressed willingness to support the project through any other feasible form of contract, either as a concession, or as a conventional Public Sector project.

With regard to land acquisition for the project and any other road project in the country, I want to assure all that the Government will abide by the Constitution and the Law. Let me also add that with respect to bona-fide road reserves, the Government will not relent in the protection and development of these as public property.



**HON. FRANKLIN BETT, EGH, MP.**  
**MINISTER FOR ROADS**

**WORLD BANK PRESS STATEMENT**



For the attention of:  
 Eng. Michael Kamau  
 Permanent Secretary  
 Ministry of Roads.



**THE WORLD BANK**

Working for a World  
 Free of Poverty

## Media Statement

*[Signature]* - 2 FEB 2011

### Contacts

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### **World Bank Group Will Not Participate in Financing of Nairobi Toll Road Project**

#### *Financing of Strabag possible if compliance and training procedures are expanded*

- In November 2007, the Kenyan government agreed to work with Strabag AG and Housing and Construction Holding Company to design, construct, finance, and operate a 106-kilometer section of the proposed Nairobi Toll Road (NTR) project, on a 30-year concessional basis.
- After completing a detailed review and due diligence on the project and its sponsors, including a compliance review conducted by external counsel, the World Bank found that the systems and approach to compliance procedures would not be commensurate with the circumstances of this project and the governance risks facing this sector. Accordingly, the World Bank Group is not prepared to participate in financing the consortium involved in this project as currently structured.
- Relieving traffic congestion in Nairobi is an important infrastructure undertaking for Kenya, and the World Bank Group desires to see a durable solution as quickly as possible. It is up to the government to determine whether it wishes to proceed with the NTR project (without World Bank Group financing) or pursue other options to achieve this objective.
- If the Government of Kenya so desires, the World Bank Group would be prepared to finance a concession undertaken by Strabag, on the condition that Strabag agrees to expand its integrity compliance procedures and training programs to cover the company more completely. Any World Bank Group support for a road construction project in Kenya would need to comply with Bank Group social and environmental safeguards as well as Kenyan law, including for any land acquisition. World Bank Group participation in any restructured NTR project would involve consultation with parties along the proposed route and respect existing court decisions.

- **The World Bank Group remains committed to partnering with the Government of Kenya in its efforts to improve the country's road network and urban infrastructure. Over the past five years, the World Bank Group has provided over US\$460 million (KShs 37 billion) in financing and private sector investment guarantees to Kenya's road sector. Major projects completed through this support, and that of other partners, include rehabilitation of the Northern Corridor (Mombasa-Malaba) transport system. Support to major roads projects such as the Kisumu-Kakamega-Webuye-Kitale corridor is currently under consideration. The World Bank Group has also helped develop the underlying governance structures for the public-private partnerships that have helped fast-track progress in the road sector.**
- **Under the World Bank Group's 2010 Country Partnership Strategy for Kenya, further support for the road sector of over US\$300 million (KShs 24 billion) is envisaged over the next three years.**
- **As part of the process to improve the management of the sector and mitigate inherent risks, the Government is implementing a Governance and Integrity Action Plan in the roads sector, with the support of the World Bank Group. Successful execution of this initiative is central to mitigating the many risks in this sector and we are seeing the results in the ongoing improvements in the country's road network.**

**Johannes Zutt**

**World Bank Country Director, Kenya**

**February 2, 2011**

**WORLD BANK LETTER TO  
PERMANENT SECRETARY**

**The World Bank**

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION

**Country office**

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P.O. Box 30577 00100  
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Fax: (254-2) 3226380, 3226381

February 2, 2011

Eng. M. S. M. Kamau  
Permanent Secretary  
Ministry of Roads

Dear Eng. Kamau,

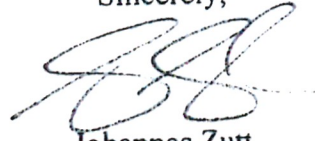
***Re: Nairobi Toll Road project***

Thank you for your time and attention during our initial due diligence into the Nairobi Toll Road project, including the compliance programs of the project company, Nairobi Motorways Company Ltd., and its sponsors.

After completing a detailed review and due diligence on the project and its sponsors, including a compliance review conducted by external counsel, the World Bank found that the systems and approach to compliance procedures would not be commensurate with the circumstances of the project. Accordingly, the World Bank Group is not prepared to participate in financing the consortium involved in this project as currently structured.

Relieving traffic congestion in Nairobi is an important infrastructure undertaking for Kenya, and the World Bank Group desires to see a durable solution as quickly as possible. In this regard, the World Bank Group will await the Government's decision on how it may wish to involve the World Bank Group in the construction of the central flyover above Uhuru Highway and any auxiliary works.

Sincerely,



Johannes Zutt  
Country Director for Kenya  
Africa Region

Cc: Mr. Joseph Kinyua, Permanent Secretary, Treasury

**WORLD BANK LETTER TO  
PREFERRED BIDDER**





International  
Finance Corporation

THIERRY TANOHI

*Vice President*

February 2, 2011

Strabag AG  
Donau-City-Str, 9  
A - 1220 Vienna  
Austria  
Attention: Mr. Wolfgang Zechmeister

Shikun & Binui Ltd.  
3 Shalem St  
Ramat Gan  
52215 Israel  
Attention: Mr. Amit Segev

Nairobi Motorways Company Limited  
3<sup>rd</sup> Floor, ACK Garden House  
1<sup>st</sup> Ngong Avenue  
Nairobi, Kenya

Re: Nairobi Toll Road

Dear Sirs,

Thank you for your time and attention during our initial due diligence into the Nairobi Toll Road project, including the compliance programs of the project company, Nairobi Motorways Company Ltd., and the Sponsors.

Given the heightened risks of this sector in East Africa and the need to have corresponding mitigants against these risks, we regret that the World Bank Group will be not be able to offer financing to the Sponsors of Nairobi Motorways Company Ltd. for this project.

Sincerely,

cc: Kenya Ministry of Roads