

A Land and Rights Professional's view on Contemporary Issues in the acquisition of rights for Infrastructure Projects

SARWA 21st Annual Educational Conference

A Land and Rights Professional's view on Contemporary Issues in the acquisition of rights for Infrastructure Projects

Presentation Contents

- Why do we need infrastructure
- Rights of Way impact on Infrastructure expansion
- Assessment of Compensation Values for Rights of Way
- Continuous Professional Development to master this profession

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Why do we need infrastructure

An Infrastructure Action Plan for Nigeria:

Closing the Infrastructure Gap and Accelerating Economic Transformation



Summary Report



AFRICAN DEVELOPMENT BANK GROUP



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Cover design : KeyConcepts
Cover Photo : AfDB Finance Projects
Typesetting and interior design: KeyConcepts
Maps: Kroll Maps
Photography: AfDB

Why do we need infrastructure

Roads

construction of new Federal primary road infrastructure; and

Ports

build two "Greenfield" new port facilities;

Gas Transport

establishing of a network of gas hubs comprising gas gathering and processing facilities, and a network of gas transmission pipelines that will result in a reduced cost of gas supply in Nigeria and eliminate flaring.

Generation

expansion of hydropower to bring hydro capacity of the country to 6,170 MW; and

Transmission

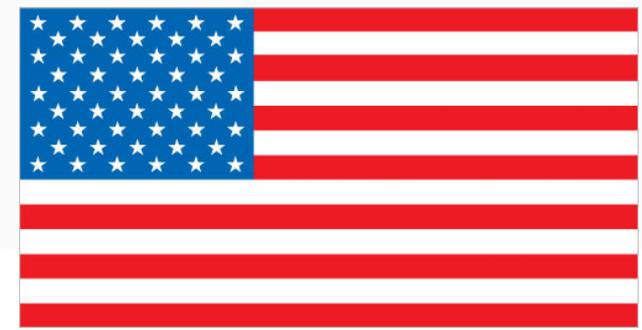
build a transmission grid that can efficiently evacuate all generated power;

Information and Communication Technologies

establish a national ICT backbone network;



Why do we need infrastructure



TO THE CONGRESS OF THE UNITED STATES:

I have enclosed with this message my Administration's framework for rebuilding infrastructure in America. Our Nation's infrastructure is in an unacceptable state of disrepair, which damages our country's competitiveness and our citizens' quality of life. For too long, lawmakers have invested in infrastructure inefficiently, ignored critical needs, and allowed it to deteriorate. As a result, the United States has fallen further and further behind other countries. It is time to give Americans the working, modern infrastructure they deserve.

To help build a better future for all Americans, I ask the Congress to act soon on an infrastructure bill that will: stimulate at least \$1.5 trillion in new investment over the next 10 years, shorten the process for approving projects to 2 years or less, address unmet rural infrastructure needs, empower State and local authorities, and train the American workforce of the future.

Why do we need infrastructure



PRESIDENTIAL INFRASTRUCTURE COORDINATING COMMISSION

Provincial and Local Government Conference A summary of the Infrastructure Plan



Why do we need infrastructure



Government adopted an Infrastructure Plan that is intended to transform the economic landscape of South Africa, create a significant number of new jobs, strengthen the delivery of basic services to the people of South Africa and support the integration of African economies.

Seventeen Strategic Integrated Projects(SIPs) have been developed and approved to support economic development and address service delivery in the poorest provinces.

Each SIP comprise of a large number of specific infrastructure components and programs.

Why do we need infrastructure



SIP 1: Unlocking the Northern Mineral Belt with Waterberg as the Catalyst

SIP 2: Durban- Free State– Gauteng Logistics and Industrial Corridor

SIP 4: Unlocking the economic opportunities in North West Province

SIP 6: Integrated Municipal Infrastructure Project

SIP 8: Green Energy in support of the South African economy

SIP 10: Electricity Transmission and Distribution for all

SIP 12: Revitalisation of public hospitals and other health facilities

SIP 14: Higher Education Infrastructure

SIP 16: SKA & Meerkat

Strategic Integrated Projects (SIP's)

SIP 3: South Eastern node & corridor development

SIP 5: Saldanha-Northern Cape Development Corridor

SIP 7: Integrated Urban Space and Public Transport Programme

SIP 9: Electricity Generation to support socio-economic development

SIP 11: Agri-logistics and rural infrastructure

SIP 13: National school build programme

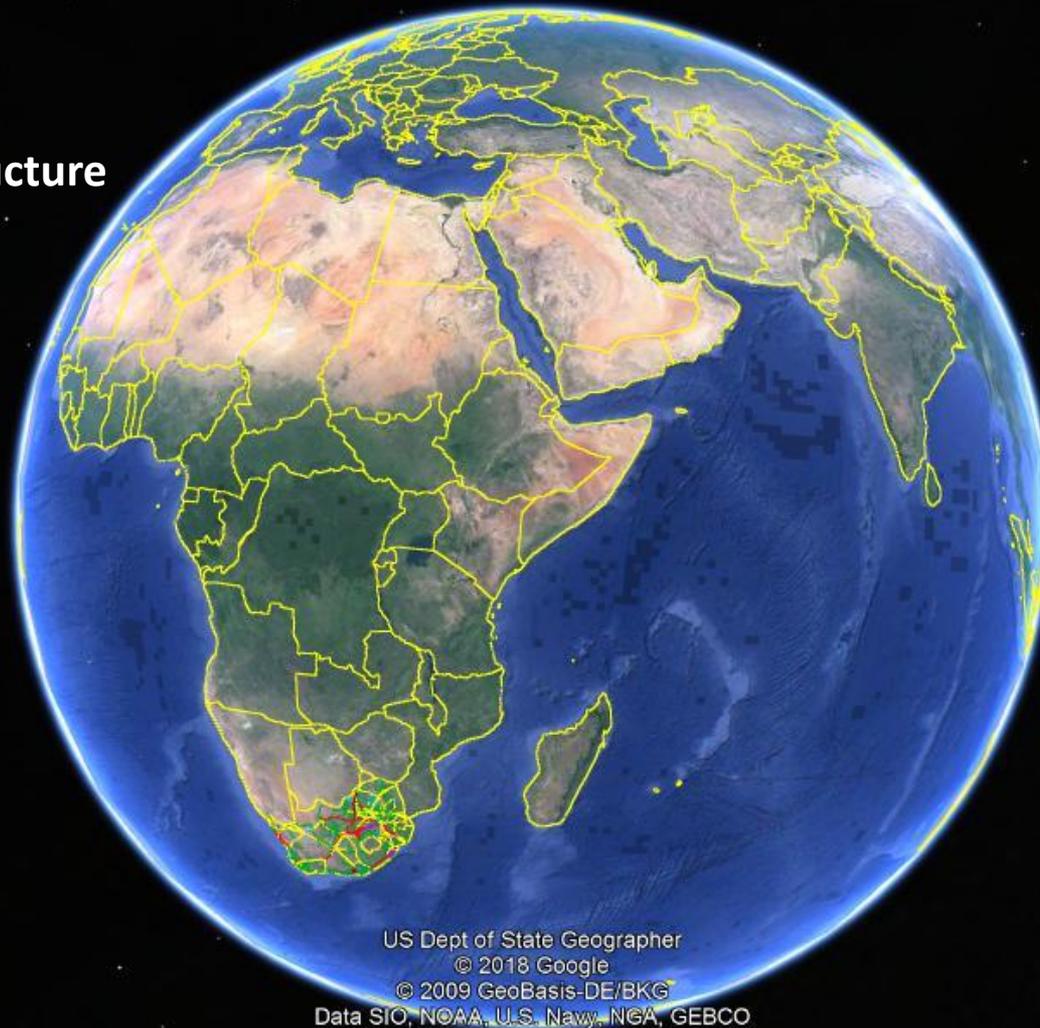
SIP 15: Expanding access to communication technology

SIP 17: Regional Integration for African cooperation and development

Why do we need infrastructure

Nigeria, South Africa and USA have the same Infrastructure Development Plans

In fact Globally all countries do have or should have Infrastructure Development Plans



US Dept of State Geographer
© 2018 Google
© 2009 GeoBasis-DE/BKG
Data SIO, NOAA, U.S. Navy, NGA, GEBCO

Google Earth

2°25'50.79" N 41°50'57.92" E eye alt 15305.44 km

Why do we need infrastructure

**Nigeria, South Africa and USA have typically the same
Infrastructure Development Plans**

The common thread in all development plans

Closing the infrastructure gap and accelerating economic transformation

Increases the country's competitiveness and the citizen's quality of life

Transforms the economic landscape of the country, creates a significant number of new jobs and strengthens the delivery of basic services to the people

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Rights of Way impact on Infrastructure expansion

SUCCESSFUL PROJECT DELIVERY

Integrating right of way from project inception to completion

Published January 10, 2013

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ESKOM
South Africa



Rights of Way impact on Infrastructure expansion

There are seven myths that developers have

Acquiring the necessary rights of way is a critical step, yet time and time again, developers of large-scale projects end up with compressed schedules and then **expect the right of way professional to complete complex tasks at the eleventh hour.**

Rights of Way impact on Infrastructure expansion

MYTH #1: You don't need the property rights to launch a new project.

MYTH #2: Acquiring land & rights is fairly simple and straight-forward process.

MYTH #3: Realty costs represent a small percentage of the overall project.

MYTH #4: The schedule should not be impacted by the realty function.

MYTH #5: You don't need a clear definition of how the property will be used in order to obtain the rights.

MYTH #6: Everyone is an expert.

MYTH #7: Developing relationships with the affected owners and the project team is easy.

Acquiring real estate is not a simple and straight-forward process.

Land Use Act of Nigeria

Land Use and Allocation Committee in each State

2.2 (b)

(b) Advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under this Act; and

(c) determining disputes as to the amount of compensation payable under this Act for improvements on land.

28. (1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.

29 (4) Compensation under subsection (1) of this section shall be, as respects -

(a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;

(b) building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;

(c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.

39. (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:-

(b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act.

47. (2) No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.

In South Africa

**Linear projects on average affect a new landowner every 1.5 kilometres
Each Landowner deems their property to be the best property in the area**

2) The Constitution of South Africa – Act 108 of 1996 section 25

(2)Property may be expropriated

25 (2) a for a public purpose or in the public interest.....

25 (2) b subject to compensation

25 (3) **payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected,**

having regard to

a. the current use of the property;

b. the history of the acquisition and use of the property;

c. the market value of the property;

3) The EXPROPRIATION ACT NO. 63 of 1975

Section 12. Basis on which compensation is to be determined

.....

- a. in the case of any **property other than a right**, excepting a registered right to minerals, the aggregate of—
 - i. the amount which the property would have realised if sold on the date of notice in the open market by a **willing seller to a willing buyer; and**
 - ii. **an amount to make good any actual financial loss caused by the expropriation; and**

- b. in the case of **a right**, excepting a registered right to minerals, **an amount to make good any actual financial loss caused by the expropriation or the taking of the right:**

Rights of Way impact on Infrastructure expansion

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Realty costs represent a small percentage of the overall project

The cost of rights acquisition even though a small percentage of the project is a sensitive issue with landowners and occupiers.

An adequate Budget allocated to a RoW Project Number must be awarded.

An adequate budget can only be estimated by the RoW Professional in consultation with the Professional Valuer.

- Historical actual vs budget + typical % growth
- Recent precedents e.g. mine payments, etc.
- Legal costs

Rights of Way impact on Infrastructure expansion

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Rights of Way impact on Infrastructure expansion

How to overcome RoW impacts on Infrastructure expansion

RoW Professional, Professional Surveyor, Engineer, make appointments to consult with:

- The Authority who has jurisdiction of the area to be traversed
- Farmer Associations
- Community representatives
- Environmental Agency
- Water Agency
- Road Agency
- Main commercial land user e.g. mine etc.

Important note: Each of the above appreciate it to give an input on the best routing and then,
Give feedback on the final routing and reasons

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How the property will be used in order to obtain the rights

95% of South Africa is Surveyed and Registered

Printed: 2017/06/27 07:52
windeed
 A LexisNexis® Product

WinDeed Database Property Report

RIETFontein, 464, 3 (PRETORIA)

GENERAL INFORMATION	
Date Requested	2017/06/27 07:51
Deeds Office	PRETORIA
Information Source	WINDEED DATABASE
Reference	-



PROPERTY INFORMATION	
Property Type	FARM
Farm Name	RIETFontein
Farm Number	464
Portion Number	3
Local Authority	-
Registration Division	JP
Province	NORTH-WEST
Diagram Deed	T6870/909
Extent	137.874H
Previous Description	-
LPI Code	T0JP0000000046400003

OWNER INFORMATION	
Owner 1 of 1	
Type	TRUST
Name	AGAPE TRUST
ID / Reg. Number	10085/1996
Title Deed	T23785/2017
Registration Date	2017/03/31
Purchase Price (R)	2,500,000
Purchase Date	2016/11/11
Share	0.00
Microfilm	-
Multiple Properties	NO
Multiple Owners	NO

Form C

S. G. No. A 2709/08

SIDES	ANGLES	(X) CO-ORDINATES (y)
KL 79.15	46°36'10"	K - 8513.91 + 1462.18
LA 1032.84	100°11'20"	L - 7611.40 + 2101.86
LB 226.82	91°56'20"	B - 7038.88 + 1210.97
LC 832.74	78°21'40"	C - 7550.05 + 858.49
BC 113.28	272°00'20"	B - 7300.11 + 1640.69
CD 300.82	113°57'00"	C - 7904.27 + 1396.19
DE 849.82	125°07'10"	D - 8176.90 + 1305.96
EF 20.99	242°39'00"	E - 8264.92 + 1376.01
FG 21.41	88°09'30"	F - 8261.48 + 1368.11
GH 19.47	120°08'40"	G - 8275.20 + 1918.43
HI 147.30	200°53'40"	H - 8261.79 + 1922.96
IK 401.78	212°16'20"	I - 8216.53 + 2072.16
		B - 8124.48 + 462.00

Rect. Area 1360 Mq. 97.98
 C. is in Middle of Spruit
 A. & d. Spruit: 180'

The above Figure lettered K L A a b c d e f g h i k (portion of Portion 10) represents 1346.247 Square Rods of Land being Portion 3 of 3 of Portion 10 of the Farm Rietfontein. T6403.

transferred to Adriaan Erasmus de Lange & Stefanus Lourens de Lange by Deed of Transfer No. 667/1908 dated 29 March 1908 situated in the District of Rustenburg Ward Zwart Ruggens. Transvaal Colony.

Bounded as indicated above

The Beacons were pointed out by A E de Lange, J J Beron, J J Combrink & E Moll and have been properly erected according to Law. Surveyed in Aug. 8. Sept. 1908. by me *E. Moll*

Government Land Surveyor

No. 3566
 Examin'd. Approved. *E. Moll*

The numerical data of this Diagram are in favour of

This Diagram belongs to Deed of Transfer No. *667/1908* made this Day

Surveyor-General's Office, Pretoria. Registrar of Deeds, Pretoria.

How the property will be used in order to obtain the rights



PROPOSED ROUTE OF 3 HIGH VOLTAGE TRANSMISSION LINES INDICATED IN RED VOORGESTELDE ROETE/S VAN 3 HOOGSPANNINGS KRAGLYNE AANGEDUI IN ROOI		N  I	
SIGNATURES / HANDTEKENING			
REG. OWNER GEREG. EIENAAR	ROUTE ROETE		MASA - SELEMO
WITNESS 1. GETUIE	PROPERTY EIENDOM		RIETFontein 454-JP/3
WITNESS 2. GETUIE	DATE DATUM		
	SCALE SKAAL	1:10,000	

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Developing relationships with the affected owners and the project team

Issues with landowners and communities whose concerns are disregarded will delay construction.

An Eskom Resolution which has been successful

Terms of Reference for the Landowner Liaison Officer (LOL)

- To take instructions from the RoW Professional to resolve legal servitude enquiries and concerns raised by landowners.
- Enquiries and concerns raised by landowners could be sourced from the Environmental Control Officer, Eskom site staff, RoW Professional or Land & Rights Registration Officers.
- Liaison with landowners during construction will be to clarify the clauses in the Option to Acquire a Servitude which the landowner granted Eskom. This will mainly be related to occupation of the property on exercising of the Option, the process of payment for servitudes and the location of anchor foundations which can as per the option be outside the restriction distance from the center line.
- To resolve any Tribal issues which could arise from land users who have not been informed of a Tribal resolution which was issued to Eskom, in these instances the Tribal Office representative will also be liaised with to ensure resolution of any concerns.

Rights of Way impact on Infrastructure expansion

Getting a Seat at the Decision-Making Table

For an infrastructure project to be cost-efficient and ultimately successful, assembling the right team is essential.

Typical Team

Finance

Engineer

Project Management

Planner

Commercial

Should also be at the table

Right of Way Professional

Professional Surveyor

Professional Valuer

Contemporary Issues in Assessment of Compensation Values for Infrastructure Projects in Nigeria and Global Best Practices

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- Introduction
- Why do we need infrastructure
- Rights of Way impact on Infrastructure expansion
- **Assessment of Compensation Values for Rights of Way**
- Continuous Professional Development to master this profession

Assessment of Compensation Values for Rights of Way

In Nigeria, Estate Surveyors and Valuers are elected by the Nigerian Institution of Estate Surveyors and Valuers (NIESV) and registered by the Estate Surveyors and Valuers Registration Board of Nigeria. (ESVABON)

In South Africa Surveyors are registered by South African Geomatics Council (SAGC) and the Valuers are registered at the South African Council for the Property Valuers Profession (SACPVP)

Globally these institutions, boards and councils register these professionals who play an important role in the overall development of countries.

These bodies elevate the ethics and standard of practice to globally acceptable standards.

Assessment of Compensation Values for Rights of Way

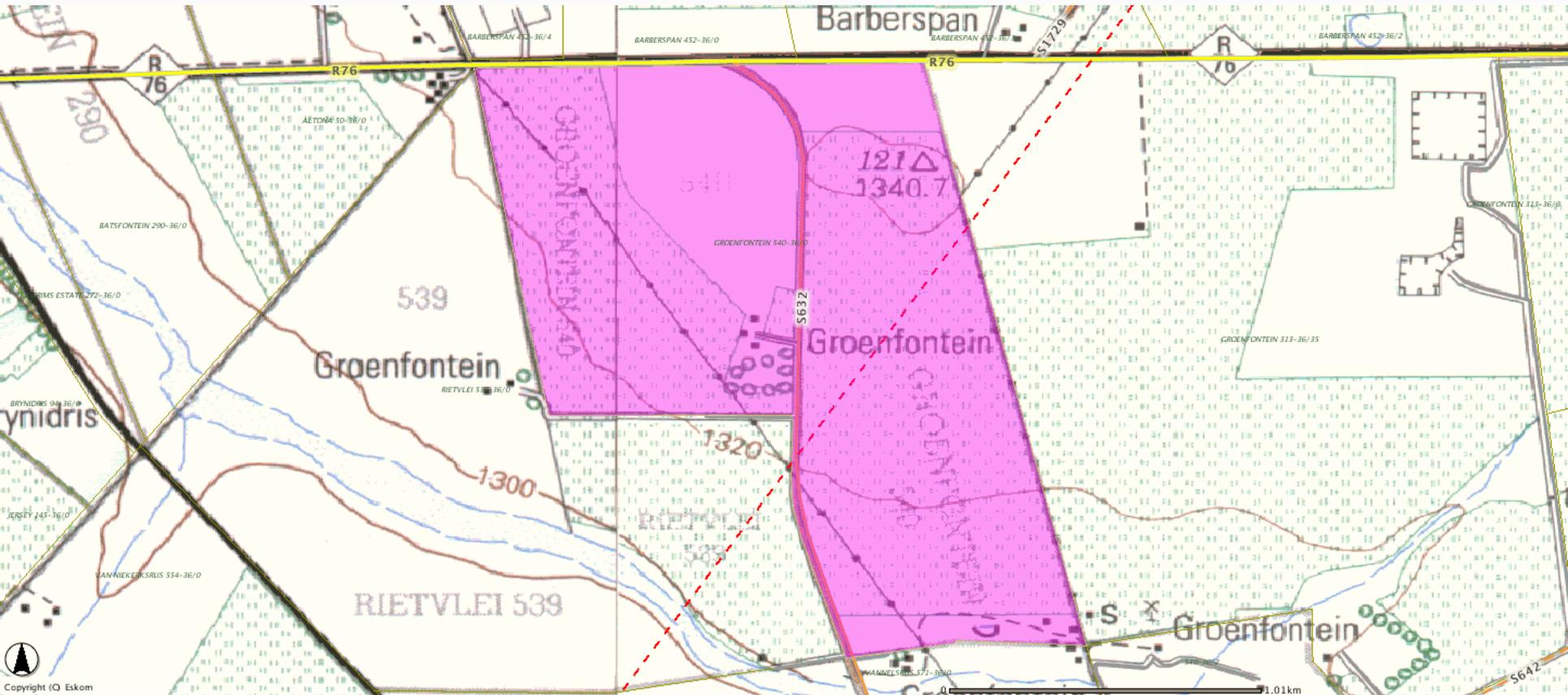
Compulsory Acquisition Practices and the Determination of Compensation Payable in the Niger Delta - Paper by – Victor A Akujuru and Les Ruddock

- Compulsory Purchase / Expropriation is rooted in legal systems but frameworks to exercise this power is lacking.
- Compulsory Purchase / Expropriation must be done upon payment of just compensation
- Landowners/Land Right Holders are neither impoverished nor enriched
- Market value plus actual financial losses
- There is no universally appropriate method for calculating actual financial loss
- Crop damage
- Relocations
- Predetermined rates adopted by oil companies

Assessment of Compensation Values for Rights of Way

Compulsory Purchase / Expropriation

Payment of just compensation



Assessment of Compensation Values for Rights of Way

There is no universally appropriate method for calculating actual financial loss

Professional Valuers have the professional right to determine the actual financial loss

Will a thumb suck work?

Is it 5% of total land value?

Is it 25% of total land value?

Is it 0% of total land value?

Which Valuers thumb suck will a Judge rely on?

Shall we build invisible power line towers to reduce compensation to landowners?



Assessment of Compensation Values for Rights of Way

There is no universally appropriate method for calculating actual financial loss

Good news in South Africa

31 July 2019

Workshop hosted by SARWA

Valuation methods based on the SA Law and Guidelines

Presenter: The well known specialist Snr Council Gerrit Grobblers

Assessment of Compensation Values for Rights of Way

Crop Damage

Community Trees - Pre-determined compensation

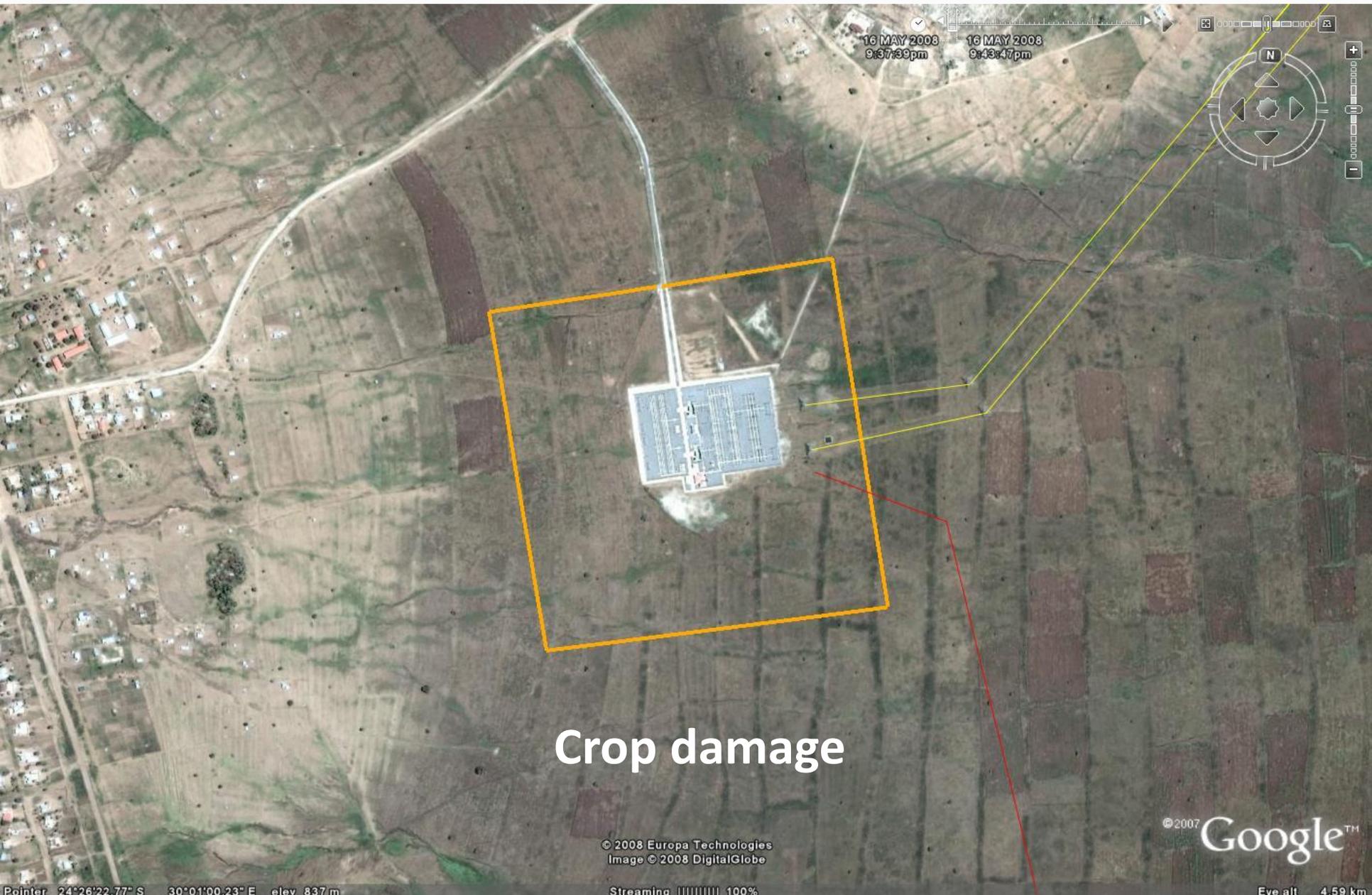
Commercial crops - Calculate damaged area - compensate using typical yield and crop price

Vineyard, orchards, sugar cane, commercial forest etc. –

Determined by Agricultural economist

Permanent crop loss due to infrastructure need e.g. towers, roads etc – Capitalised compensation calculations to be done

Assessment of Compensation Values for Rights of Way



Crop damage

Assessment of Compensation Values for Rights of Way



Impact of power lines on adjacent property values

© 2016 Google
US Dept of State Geographer
© 2016 AfriGIS (Pty) Ltd.
© 2016 Google

Google earth

25°46'48.41" S 28°20'47.51" E elev 1408 m eye alt 1.41 km

Double Circuit 275kV power line in the up market Silver Lakes Estate

Assessment of Compensation Values for Rights of Way



Impact of power lines on adjacent property values

Double Circuit 132kV power line in the up market Cornwall Estate

Assessment of Compensation Values for Rights of Way

Impact of power lines on adjacent property values

Residential Rental Value Determination and the Power Line Factor in Lagos, Nigeria - Akinjare Omolade Adedoyin, Akinjare Victoria Adeola, Oluwatobi Afolasade & Emegie Ijeoma Jane

Concluded that there is little to no impact.

F Klopfer Eskom Chief Surveyor thesis on the same matter **concluded that there is little to no impact.**

HOWEVER – Acquiring new servitudes tells another story

Assessment of Compensation Values for Rights of Way

Incentives as an option to get quick acquisitions

At AltaLink we had approximately \$3billion of critical infrastructure to build (240kV and 500kV) in a span of 5-7 years.

In order to meet these critical in service dates we approached landowners with an early access payment of \$10 000/titled unit that allowed us the benefit to get on the lands prior to us receiving our Permits and License.

The benefits allowed us to get some key pre engineering geotech work, Traditional Land Use studies, Historical Land Use, Environmental surveys (water, plants, bugs, bunnies etc.).

This also played a key component in avoiding many Right of Entry Orders and expensive Surface Rights Board Hearings of which could be as high as \$100k/landowner. Our success rate on this approach was about 90% and only 10% of landowners continuing not to accept our compensation package and wanting the SRB to determine the rate of compensation.

I hope this provides you with some insight into what we did and possibly helping with your projects.

Justian Wylie

AltaLink Management Ltd.

W.Justian Wylie SR/WA R/W-AMC

Manager, Land

Email: justian.wylie@altalink.ca

www.altalink.ca

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Continuous Professional Development to master this profession

The faculty of compensation and right of way valuation of the NIESV, empowers members of the Nigerian Institution of Estate Surveyors and Valuers through capacity development in specialized skill of Compensation Valuation and Right of Way Acquisition and thus elevating ethics and standard of practice to globally acceptable practice.

In South Africa

SACPVP – Continuous Education and Training

SAGC – Professional Development Points

ECSA - Application is in progress

SACNASP – Application is in progress

Continuous Professional Development to master this profession

International Rights of Way Professional Accreditation

In South Africa a curriculum has been approved by SARWA to get RoW Professionals Internationally Accredited.

The first 10 Internationally Accredited **Right of Way Agents** have now received their accreditation.



Curriculum is offered through IRWA University in both online and class-room based formats instructed by a world class faculty of instructors with a depth of experience and knowledge who are critically trained in cutting edge learning and teaching methods

Continuous Professional Development to master this profession

Continuous development for new and experienced RoW Professionals

- Principals of Land Acquisition
- Workshop on the Application of Spatial Information for Land Use
- Ethics and the Right of Way
- Conflict Management
- Land and Rights Educational Workshops and Conferences



Without our profession there will be no new infrastructure no new investments therefore our countries economies will not grow

Be humble to be strong

Thank you

Presented by Ernest Grunewald – SSA / RWA

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Mobile: +27836327668