

Jerusalem, July 1st, 2026



Not for Wide Distribution

An E-1 Update: Tenders to be Published on August 5th

What just happened?

Israel Lands Authority has fixed a new date for the publication of the E-1 tenders. Originally scheduled for July 1st, the publication date is now August 5th, and the bidding period ends on October 5th.

Why is it important?

Earlier this year, the Government published its intent to issue tenders for the construction of E-1, which was, to all intents and purposes, a declaration of intent. The actual tender process begins on the date upon which the tender documents are published. Before that date, contractors and developers do not have the details needed to file the copious documents required to submit a bid. That date has now been fixed. That means that the clock begins ticking on August 5, and the contractors and the developers will have until October 5th to submit their bids.

Once a bid is selected and the contract awarded, it will be virtually impossible to stop E-1. Until now, the Government has been able to suspend all of its plans regarding E-1 at its sole discretion. Once the contracts are signed, third-party rights come into play, and reversing course on E-1 becomes almost impossible.

The countdown that begins on August 5th will culminate shortly after the end of the bidding period on October 5th, with the signing of contracts for the construction of E1, at which time the project will have reached the point of no return.

Are these dates final?

No. Either date may be deferred again at the Government's sole discretion. It is unlikely that the August 5th publication date will be changed. The postponement of the June 1 date was necessary because not all final documentation had been completed, and the new date indicates that this is no longer the case.

On the other hand, there is a real possibility that the end-of-bidding date could be postponed. Of the sixty days allotted to the developers to prepare their bids, one month is in August, when people are on summer holiday, and the Jewish High Holidays are all in September, half of which are consequently not working days.

That said, it is essential to act under the assumption that these are indeed the final dates.

Is there any significance to the timing?

The new dates mean that the entire bidding period will take place in the heat of the upcoming Israeli elections. Firstly, this makes the already unlikely possibility of Netanyahu freezing E-1 even less likely. He is already consolidating his rather extreme right-wing base. Secondly, E-1 may become a wedge issue in the campaign. By touting the implementation of E-1, Netanyahu will force the opposition to take a stand on the plan – and that is the last thing the opposition would like to do. Regardless, there is little likelihood of significant and vocal opposition to E-1 during the election campaign.

Does this change the available options for stopping E-1?

No. It remains highly unlikely that Netanyahu will suspend the implementation, or that he would come to see “the point of no return” as a problem.

As we have explained at length in the past, the only reasonable prospect of stopping E-1 is for states that remain committed to the two-state solution to issue statements cautioning any body corporate or individual that they will risk their ability to do business in and with their country if they participate in the construction of E-1.

As we noted in our June 10 bulletin, several recently made statements by key states, heads of state, and foreign ministers are very much in line with our proposal. These, however, fall just short of what is essential for being a credible threat: explicitly stating that this cautionary note also applies to financial institutions.

Having no intention of building in Europe, the contractors are unlikely to be deterred by such statements. Banks, however, are obligated under law to report their risks and to mitigate them. Raising the prospect that financing the construction of E-1 jeopardizes vital aspects of the bank's operations will make the bank extremely reluctant to take such a risk.

There is no guarantee that even these statements will succeed. That said, we are aware of no other reasonable option with any chance of success. These statements remain the last, best hope for stopping E-1.

What is the timeline?

Once the bidding period opens, the contractors will prepare all of the documentation required to submit their bids. Two matters are relevant in this regard. Along with the rest of the documentation, all bidders must attach a bank guarantee with the Israel Land Authority as its beneficiary, generally in an amount equal to 10% of the bid. Secondly, the bidder must attach a signed copy of a conditional agreement drafted by the Israel Lands Authority. This agreement automatically takes effect once the bid is selected. Thereafter, the developer has a predetermined period (generally 60 days) to secure financing for the land purchase and the actual construction. This is invariably achieved through a construction loan from a financial institution.

The significance of all this is that the pivotal role of banking institutions begins during the bidding process (regarding bank guarantees) and, in earnest, in the period immediately thereafter.

The statements regarding the potential risks entailed in participating in E-1 must be published at the very latest in the first half of the bidding period – currently scheduled to be at the beginning of September. To be effective, statements regarding financial institutions must be made before that date. Publicizing these statements after the bank has already made a commitment regarding construction and is already invested – literally and figuratively - in E-1 will make the statements considerably less effective.

Is making such statements doable?

Emphatically, yes. It is only a matter of decision. If the international community's commitment to the two-state solution is to be taken seriously, making a statement regarding the settlement that has the most devastating impact on the very possibility of a two-state outcome should not be difficult. We are, however, fully aware of concerns that deserve attention.

Consequently, we will briefly address several of the concerns we have heard from friends in the international community.

Our proposal does not impose sanctions; rather, it is a statement whereby those engaged in the construction of E-1 could face reputational and legal consequences. That is both a statement of fact and a credible cautionary note. The statement does not commit to imposing sanctions, nor does it make any representations regarding matters concerning the domestic laws of the respective countries. The question of whether the imposition of sanctions requires the consensus of many or all EU member states is moot: this is a cautionary note that does not impose sanctions (as an aside, there have been precedents in which an individual EU member state has imposed sanctions on banks alone). There have been numerous occasions when the sanctions of a single country have had a major impact on the bank in question.

Most importantly, experts on sanctions (which we do not purport to be) have told us that a statement like the one under consideration poses a credible threat to the bank's operations and would likely be taken very seriously indeed.

Barreling towards annexation.

The pending move to begin the construction of E-1 is not taking place in isolation. The prospect of the demolition of Khan al-Ahmar and the expulsion of its residents is very real indeed, possibly imminent. The statutory plan (Plan No. 1627) that designates a site near Abu Dis for the construction of 900 residential units is proceeding at an unprecedented pace. The Plan was deposited for public review earlier this year, and the hearings that led to final approval are already underway. This is an ominous development. The site, located outside E-1, is being created to enable the expulsion of thousands of Bedouins (excluding those in Khan al-Ahmar, whose expulsion is imminent) from the E-1 salient. Tenders for the construction of an employment zone adjacent to E-1 are to be published on July 7th, and the bidding period will end on September 14th. The construction of the sealed segregated road will make the E-1 salient accessible to Israelis but inaccessible to the Palestinians under Israeli occupation.

This is no random compendium of bad deeds. As serious as each of these developments is on its own, seen together, they are much more than the sum of their parts. They are systematically creating a reality where, in the area between east of Jerusalem and the Jordan River Valley, there will not only be exclusive Israeli control but also exclusive access. The area will have been cleansed of its Palestinians. The roads will exclusively serve Israelis, with Palestinians relegated to sealed roads. At the same time, large-scale settlements like E-1 will consolidate the sole Israeli presence and control by adding tens of thousands of additional settlers. The West Bank would be fragmented into a northern canton and a southern canton, and East Jerusalem sealed from its environs in the West Bank.

The cumulative impact of all these developments is tantamount to *de facto* annexation, accompanied by the ethnic cleansing of the Bedouin populations, and policies and physical realities that are indistinguishable from apartheid.

This is *de facto* annexation, with *de jure* annexation a mere pen stroke away - which is precisely the reason that stopping E-1 is absolutely essential.

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