

Insiders' Jerusalem - Urgent. Givat Hamatos tenders to be published.

1 message

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Insiders' Jerusalem

November 11, 2020

Urgent: Givat Hamatos tenders about to be published

Dear Friends,

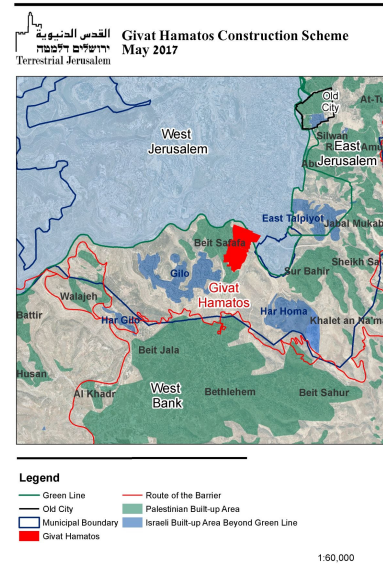
In recent hours, our friends at Peace Now have learned from a highly reliable Israeli government official that the **publication of the tender booklet/terms will take place by the end of this week**. As many of you know, Givat Hamatos has long been considered a "doomsday" settlement, having major strategic ramifications on the very possibility of any future political agreement, and this publication will bring the scheme to the brink of implementation.

The next 24 hours may prove to be critical to deter the Israeli government to proceed with the publication.

Our detailed analysis of Givat Hamatos that we published on February 29, 2020 appears below. This is a brief summary of the current acute situation.

1. For decades, there has been a broad consensus in the international community that two Israeli settlement schemes - Givat Hamatos and E-1 - would have a devastating impact on any future political agreements (see the enclosed map). Throughout much of this period, there has been a coherent, focused and sustained international effort, cautioning Israel that this would meet broad and resolute international opposition. Those efforts have, until now, succeeded, and no Israeli Prime Minister, including Netanyahu, has dared take major steps towards implementation.

2. This began to change last February when Netanyahu, fighting for his political life, took steps towards implementation. Specifically, the Israel Land Authority announced the publication of tenders for



the construction of Givat Hamatos, along with moving e-1 towards final statutory approval. The publication of tenders is generally viewed as "the point of no return" after which the construction of the settlement becomes virtually inevitable.

3. Then Netanyahu balked, and did not proceed further with either plan. In the case of Givat Hamatos, the tenders were announced, but not the booklet containing the terms of the tender. With no booklet, there can be no bidding. Time after time the Land Authority published the date upon which the booklet would be published, and time after time the date was deferred. This has been a likely indication that the generally risk averse Netanyahu was still deterred. The last "deadline" came and went on November 2, with no publication.
4. Today, Peace Now's reliable source informed them that publication was expected "this week". Once published, bidding can take place, a process that generally lasts for 1-2 months. At that point tenders are awarded, and the settlement becomes a foregone conclusion.
5. The time to stop this is literally now:
 - Today, Netanyahu can refrain from publication at no political cost to himself, just as he has done for the last 11 years.
 - Once the booklet is published, Netanyahu will be required to expend considerable political capital in order to freeze the process.
 - Two-Three months after the publication, stopping Givat Hamatos will be virtually impossible

6. The timing . It is highly unlikely that the timing of this is unrelated to the complex and sensitive situation that exists after the US elections and before the inauguration of President Biden. The Trump administration has not objected to, and at times has been supportive of Israeli settlement expansion. Under the Trump Plan, all of Jerusalem, including Givat Hamatos, are destined to remain under exclusive Israeli sovereignty.

The awarding of tenders in the interregnum between the Trump and Biden administrations would not augur an auspicious beginning to Netanyahu's relation with the Biden administration. Still, Netanyahu seems to assume that what he can do this week (as far as DC is concerned) will be far more costly to him as of January 20. And if he succeeds with Givat Hamatos, the final approval of E-1 is much more likely.

Friends of Israel would do well to engage Israel on this matter, and at senior echelons, be it the nation capitals, Washington or here in Jerusalem.

TJ will do its best to keep you posted.

TJ's February 29, 2020 "Insiders' Jerusalem"

Givat Hamatos

Two decisions were made in regard to Givat Hamatos: the publication of tenders, which poses a dire and immediate threat, and the long-term expansion of the building capacity of Givat Hamatos. It is important to distinguish between the two, the ramifications of which will be examined below.

Tenders published: what does it mean?

- What happened? On February 24, four days after Netanyahu [announced](#) it, the Israel Lands Authority published tenders for the construction of 1077 units in

Givat Hamatos , the first new large Israeli settlement neighborhood in East Jerusalem since Har Homa in the 1990s. A copy of the publication may be viewed [here](#).

The 1077 units are part of Givat Hamatos A (Plan 14295), which has a total capacity of 2610 units. Of the 2610 units, 1500 are on state land, and the rest on privately owned lots. The tenders refer to 1077 of the 1500 units located on State land (for background and ramifications of the construction of Givat Hamatos, see below).

- What are the immediate implications of this decision? All required planning and approval for construction in Givat Hamatos has already been completed. This makes it possible to publish and award tenders, and commence construction.
- Can Anything be Done to Stop the Tenders? A tender is technically an invitation by the government for the private sector to submit bids to carry out a project. If a bid is accepted, a contract then signed between the relevant government authorities and the developer. Once tenders have been issued and contracts awarded (i.e. signed), third-party rights – those of contractors, developers, investors, etc. – come into play. At this point, any effort by the government to freeze a plan would open up the government to legal actions by these parties. This makes a rescission of the contract highly unlikely, perhaps impossible.

Our caution on this issue derives from a single precedent (which took place in the West Bank rather than East Jerusalem): In the early 1990's, the Rabin government imposed a settlement freeze in the West Bank, which included freezing construction already under way. The government's right to rescind the contracts was upheld – but this required payment of considerable compensation to contractors, etc.

In the present case, although it is unlikely that the tender process can be stopped, there is a very small crack that may, under certain circumstances, create an opportunity to delay or suspend the tender process. At the very least, these possibilities are worth exploring:

Generally, but hardly always, the announcement of tenders is accompanied by the publication of a tender booklet, which contains all of the terms and vital information critical to potential bidders. That did not happen with the tenders published on February 24. The publication indicated that the tender booklet would become available on May 3, 2020. In the absence of a booklet, the developers cannot prepare their bids, much less submit them.

In addition, the final date for the submission of tenders has been set for June 22, 2020. The text of the publication highlights the following standard provision: "The bidders are responsible of keeping up-to-date regarding any change and/or clarification, and/or update of the tender on the website of the Israel Lands Authority until the last date upon which bids may be submitted".

It is not uncommon for the date for submitting bids to be extended, whether due to technical reasons, a too small number of bids, etc.

It is not unthinkable that, under appropriate circumstances, the use of one of these two mechanisms will serve as a pretext to make the tenders

“disappear”. Yet, tenders of this notoriety cannot merely vanish into thin air, but they can possibly be deferred for an extended period of time. It is definitely worth the effort.

- Is there any precedent in which these methods were used to halt the tender process after it commenced? Not exactly, and not under circumstances as these. However, two vaguely similar precedents do come to mind:

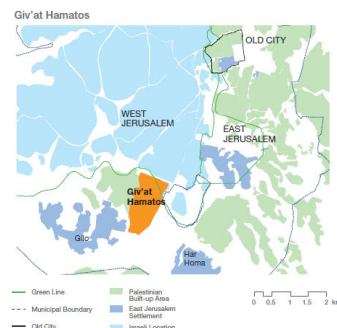
In 1995, Israel announced the expropriation of 530 dunams in East Jerusalem, a pittance in comparison with the 24,000 dunams already seized. But given the ongoing negotiations between Israel and the PLO, the move caused a major uproar, and the possibility of a Security Council condemnation, without a US veto, became very real. Rabin “froze” the expropriation. When announced, the expropriation caused an international uproar; when cancelled no one noticed.

In 2005, the Israeli Ministry of Construction and Housing under Prime Minister Ariel Sharon secured the approval of the Jerusalem Municipality for the construction of 130 settlement units in the Muslim Quarter of the Old City. This time, there was no uproar but there indeed was discrete engagement by the Bush Administration. The plan was then sent to the Regional Planning Board as a standard part of the planning process, but never arrived, “mysteriously” disappearing. It was never to be seen again.

It is important to bear in mind that the circumstances and leadership in place today is far different than those of the mid-1990s. Whether these options will be at all possible depends very much on the results of the March 2 elections, and it would be pointless to speculate about those options now. A Netanyahu government will be very different from a Gantz government, and both will differ from a unity coalition. Regardless, these things can never be done “on the cheap”. Whether or not this possibility exists under ANY circumstances will in no small part be determined by the international response given to the publication of the tenders. In the absence of a very immediate and consequential response, it is difficult to see why the next government, whomever it may be, will have any incentive to “make this go away”.

Givat Hamatos: Background, History and Ramifications

1. Location: Givat Hamatos is located between the existing East Jerusalem settlement neighborhood of Gilo, on the west, and Har Homa to the east, and north of the Palestinian neighborhood of Beit Zafafa. To its south is the West Bank city of Bethlehem.
2. Key facts about the existing planning process of Givat Hamatos plan are the following:



- Givat Hamatos is the first major settlement neighborhood that is to be built since Har Homa in the 1990s.
- As of this date, the Givat Hamatos plans are divided into four statutory plans:
 - Givat Hamatos A (Plan 14295): 2610 units; the tenders published are part of this plan;
 - Givat Hamatos B (Plan 5834B): 549 units (located within Beit Safafa);

- Givat Hamatos C (Plan 5834C): 813 units;
- Givat Hamatos D (5834 D): 1100 hotel rooms.

Givat Hamatos A has been approved, Givat Hamatos C and D are in the planning process, and Givat Hamatos B, located in Beit Safafa, is not relevant to our discussion.

- The construction of Givat Hamatos A is planned, sponsored and implemented by the Government primarily, but not exclusively, on “state land”; parts of the plan are on lands privately owned by Israelis, Palestinians and Churches.
- As noted, the plans for construction in Givat Hamatos have been fully approved. The publication of tenders were the last steps before construction can start.
- It is not the first time that Netanyahu considers publishing these tenders. In the summer of 2014, Netanyahu was about to publish tenders for the construction of 1100 units in Givat Hamatos in retaliation for the murder of the three yeshiva students in West Bank, but pulled back at the very last moment.
- If Givat Hamatos is built, it will result – for the first time since 1967 – in a Palestinian neighborhood of East Jerusalem being completely surrounded by Israeli construction. This would have dire implications for the possibility of any future permanent status agreement. Prior to the construction of Givat Hamatos, it is still possible to implement an agreement based on the principle that Arab neighborhoods of the city will fall under Palestinian sovereignty, and Jewish neighborhoods under Israel sovereignty (as laid down in the [Clinton parameters](#)). Once Givat Hamatos is built, that will no longer be possible without the relocation of tens of thousands of Israelis.

In short, Givat Hamatos is not just another detrimental settlement; it is a border-changer, and border changers are game-changers.

The decision to expand Givat Hamatos

Under instructions from Netanyahu, the Regional Planning Committee also deliberated a skeletal (master) plan that will allow the additional expansion of Givat Hamatos and approved it for public review. The plan apparently provides for expanding the building capacity of Givat Hamatos to about 6,500 units. The skeletal plan governs the overall designated uses of land in any given area, and does not allow for building permits to be issued. Since the planning of this area is particularly complex, and since the process has barely begun, it will be many years, if ever, before a plan like this will become operational.

Under these circumstances, it is evident that the planned expansion of Givat Hamatos (as opposed to the Givat Hamatos tenders) has little or nothing to do with an actual planning effort, and everything to do with the theater Netanyahu is creating in his struggle to remain in power.

For further information contact us at: [Terrestrial Jerusalem](#). You can also follow Danny on Twitter at: [@DanielSeidemann](#)

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