

Notice of Appeal regarding the decision to approve the "Mount Scopus National Park" Plan

Before the Committee of Appeals of the National Planning and Building Commission

Appellants:

1. (Darwish Darwish and Hani Issawi) and 38 others
2. The Alisawiyah Association for Development and Progress
3. Bimkom - Planners for Planning Rights

- Vs. -

Respondents:

1. The Jerusalem District Planning and Building Committee
2. The Jerusalem Local Planning and Building Committee
3. The Jerusalem Municipality
4. The Israel National Parks Authority, Central District
5. The Jerusalem Development Authority

Notice of Appeal

An appeal is hereby submitted against the decision of the District Planning Committee dated November 14, 2013 concerning the appellants' objection to Plan #11092 A "Mount Scopus Slopes National Park" and the subsequent approval of this plan.

Application for permission to appeal was filed on December 12, 2013. Permission to appeal was granted on January 1, 2014.

Note: some clauses with overly technical information have not been included in this translation.

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Preface

1. Let us say at the outset that not only was the decision regarding the objection taken without due process, and worded in an unclear manner, but more importantly it **does not provide any answer to the plight of the residents of al-Isawiyyah, other than a symbolic and insufficient gesture**. Should this decision be upheld, it will effectively end the hopes of the residents for a resolution of their planning distress and for a better future.

Introduction

2. The issue at hand is a plan for zoning land in East Jerusalem for a national park. This land, the justification of whose designation as a national park is questionable (see below), is bordered to the south by the at-Tur neighborhood and to the north by al-Isawiyyah (the latter of which is the subject of this appeal). Al-Isawiyyah suffers from acute planning distress and subsequently has an acute lack of residential and public areas, as described below. The only way to resolve this situation is to allocate land reserves for development of the neighborhood. Despite this, the respondents now seek to include the only land reserves of the neighborhood in a plan for a national park. **If this plan is approved, the chances of ever improving the neighborhood planning situation and solving the shortage of housing and education for its residents will be eliminated**. It should be emphasized that although there is no dispute that the boundaries of the national park plan will in effect determine the boundaries of the development of the neighborhoods bordering it, the District Planning Committee did not consider the development needs of these neighborhoods and did not try to balance between them and such needs as there may be for conservation of the land.

3. In order to provide a solution to the abovementioned difficulties, the residents of al-Isawiyyah, together with Bimkom's assistance, promoted a new Outline Plan for their neighborhood. The many years of working on the plan included extremely complex coordination with all the relevant authorities. However the residents of the neighborhood now face this process being thwarted by those selfsame authorities which supported their plan. If approved, the national park plan will bring an end to the hopes of local residents to improve the situation, and will completely eliminate the possibility of restoring the confidence of residents in the government authorities. The real and serious concern about such an outcome hovers over all of the claims in this appeal, as will be detailed below.

The Plan Under Discussion –Plan #11092 A for the National Park

4. The plan which is the subject of this appeal covers about 730 dunams (for comparison's sake, the area of the approved Outline Plan for al-Isawiyyah from 1991 is only 660 dunams).

5. The site of the plan lies on the eastern slopes of Mount Scopus and is bordered by al-Isawiyyah to the north, At-Tur to the south, National Highway #1 to the east, and the Hebrew University to the west. The aim of the plan is to designate the land a national park so as to allow for the park's declaration, and to set guidelines for the development of the park through the preservation of

heritage, nature and landscape (as stated in the plan's directives). We should already note that **the appellants do not believe that in this case, these values justify national park zoning for the land** - see below.

6. The plan was authorized for deposition by the District Planning Committee on April 5th, 2011 and deposited for objections on November 18th, 2011. The date for filing objections was postponed due to legal processes dealing with the translation of the plan documents into Arabic. Ultimately, the appellants filed an objection on April 3rd, 2013 and the hearing (which lasted over eight hours and was conducted in the absence of a representative of the Nature and Parks Authority - see below) was held on November 14, 2013. Immediately after the public hearing, an internal discussion was held and a decision regarding the objections was made that night (!).

7. The District Committee's decision rejected most of the claims of the objections, while relating to most of them only superficially, as will be detailed below.

Background Regarding Al- Isawiyyah

8. Al-Isawiyyah is located in East Jerusalem, on the north-eastern edge of the Old City basin, and spreads over the eastern slope of Mount Scopus and the adjoining valley. The neighborhood started as a small village in the 16th century. Originally, the built-up area of the village sat on the hillside, and its agricultural territories covered some 10,000 dunams, from the hilltop in the west to Khan Al-Ahmar (the Adumim plain) in the east.

9. Between 1948 and 1967, part of the village was included in the Israeli enclave of Mount Scopus, while the other part was under Jordanian rule. After 1967 the entire built-up area of the village, but only a quarter of its land, came under the jurisdiction of the Jerusalem Municipality. Since then, much land has been confiscated from the residents of al-Isawiyyah for Israeli construction and their territory has shrunk, while the population of the neighborhood has grown. Today, the neighborhood is cut off from the other Palestinian neighborhoods of East Jerusalem, and it is trapped between neighborhoods, institutions and development projects that limit its growth: The Hebrew University Campus; Hadassah Hospital; French Hill; National Highway#1; the Eastern Ring Road; the Municipal Boundary of Jerusalem; and two military bases.

10. Because it is blocked on all sides, as mentioned, and because of poor planning over the years, al-Isawiyyah is now over-crowded. The population of the neighborhood stands at about 15,500 inhabitants (this number was reached using the figures of the Statistics Yearbook of the Jerusalem Institute for the Study of Israel from the beginning of 2008, and the presumed population growth rate indicated in the yearbook of 2.9 % per year). The built-up area of the neighborhood covers about 800 dunams (including built areas that are not allocated for housing in statutory plans, and land located outside the boundaries of Outline Plan #2316 for the neighborhood). **Thus, the neighborhood population density reaches 20 persons per dunam; that is, a density 2.5 times that of the nearby French Hill (8 persons per dunam) and three times (!) the average density for the whole city (about 6.5 persons per dunam).**

11. This excessive density of population is a direct result of long-standing planning distress (as mentioned in detail in the objection). Al-Isawiyyah is already in need of 800 housing units, and there is a lack of available educational frameworks in the neighborhood; some 1,200 pupils of school age (not including special education) do not have space in the system. In addition, there is not a single playground in the neighborhood (!). Of their own initiative, residents have developed the area around an ancient carob tree about which there are sacred traditions. The tree, which is marked in the plan for the national park as an oak tree, is located in the western strip of the park, but in the end will probably not be included in the plan - see below.

12. From these figures it is clear that additional land is needed in order to allow the proper development of al-Isawiyyah.

Plan#11500 – The Residents’ Plan

13. In 2003, in an attempt to improve the poor physical and planning situation of the neighborhood, the residents, together with Bimkom, began to promote a new neighborhood Outline Plan that would meet present and future needs while maintaining accepted planning standards. Thus, plan #11500 (also referred to as the Residents’ Plan) was prepared, and in 2007 it was approved for deposition by the Jerusalem Local Planning Committee.

14. Preparation of the Residents’ Plan involved extraordinary coordination with the National Parks Authority (NPA), the Jerusalem Municipality, the Jerusalem Development Authority, and others, who all recognized the importance of the matter. To complete the picture it should be noted that among other issues, the coordination included agreements regarding the boundary of the plan for the national park, then being promoted in its previous version (Plan #11092) which included less area than the present plan (#11092 A).

15. As part of the feasibility study in preparation of the Residents’ Plan, it was found that it would only be possible to build 500 additional housing units within the existing neighborhood boundaries, and that in order to meet the estimated population forecast in the target year of the plan (about 19,000 inhabitants in 2020) the area of the present neighborhood plan would need to be doubled. In other words, the neighborhood requires the addition of some 325 dunams for housing, and a further 150 dunams for public buildings (in addition to another 200 dunams for roads and open areas).

16. The Residents’ Plan suggests three areas for the needed expansion of al-Isawiyyah: two relatively small ones, to the north-west and east, in addition to the significant area, now under question, in the south. All these areas, according to the Residents' Plan, would contain a mixture of residential and public areas. In addition, a fourth area on the northern side of Road 1 was set aside as a “future planning zone” for industry and public buildings. **However, rather than working to preserve these important zones for future development, the planning authorities have done the opposite.**

17. The two smaller expansion areas have been allocated in the Jerusalem 2000 Outline Plan (which has still not been deposited for public review) as part of the metropolitan park (in negation of the aforementioned agreements, and without relating to Bimkom's position regarding the Jerusalem 2000 Outline Plan whose instructions are being used despite the planning procedures not having been completed). The future planning zone is threatened by Plan #13900 to establish a solid waste landfill on the same parcel of land (an objection to the plan for the landfill has been filed by the appellants, among others, but has not yet been heard). Finally, the larger and most important expansion area - which is partially designated in the (un-deposited) Jerusalem 2000 Outline as a "proposed urban residential zone" - is now threatened in its entirety by the proposed plan for the national park, (**see Map A: Overlap between Plan 11092 A and the Jerusalem 2000 Outline Plan**) putting an end to any hope for a better future for al-Isawiyyah.

The objection to the Plan for the National Park (11092 A)

18. The basis of the residents' original objection to the plan for the national park was the severe planning distress of al-Isawiyyah, hence the expectation that the relevant authorities continue the process initiated in Plan#11500 or, at the very least, actively help to find planning solutions for the neighborhood. The appellants therefore claimed that:

- The National Park Plan takes away from al-Isawiyyah vital lands required for its development;
- The plan prevents access to al-Isawiyyah from the direction of the Hebrew University - access that is vitally necessary both now and in the future in order to complete the neighborhood ring road (note that this claim received a partial response in the decision);
- The transfer of responsibility for the land from the local authority (the Jerusalem Municipality) to a national authority (the National Parks Authority) was motivated by extraneous considerations;
- Neither the natural nor the archeological significance of the land justifies the designation as a national park. Flawed emphasis was given to these values over the fundamental right of the people of al-Isawiyyah to an adequate standard of living and sufficient public services;
- The plan severely damages the public's trust and violates previous promises, which amount to an official promise made to the residents by the authorities regarding the provision of suitable solutions for the planning difficulties of al-Isawiyyah. The National Park Plan thwarts these solutions. (The promise was "made" during the dealings regarding Plan #11500, as previously mentioned.)
- The inclusion of the sacred carob tree in the boundaries of the National Park would be a serious blow to the feelings of the residents (in the partial acceptance of the claim regarding accessibility, this claim was also accepted, although it did not receive separate mention);
- The decision is tainted by conflict of interest in that the city engineer, representing the Municipality as the initiator of the plan, was present in the closed discussions, while the

residents, and Bimkom, as their representative, were excluded from these closed discussions.

19. This appeal is based on the above claims, to which are added allegations regarding substantial flaws in the proceedings before the District Committee.

The Claims of this Appeal

20. The appellants argue that the decision regarding the objections, and the approval of the National Park Plan should be overturned, for the following reasons:

Preliminary Comment- the decision is not clear

21. The District Planning Committee's decision calls for a symbolic change in the boundaries of the plan, as a condition for its approval. The wording of this decision is not clear and has internal contradictions. To the best of the appellants' understanding, the change is to the boundary in the north of the National Park, which is moved south, such that an area of about 40 dunams (probably) is subtracted from its territory. But the number specified in the protocol is inconsistent with another statement in the protocol whereby the boundary of the plan "will be adjusted to the boundary of the area designated for a metropolitan park in the new Outline Plan" (meaning the Jerusalem 2000 Outline Plan). However, to do this would mean subtracting a total of 120 dunams from the plan, including some 30 dunams in the strip extending west. We also note that the city engineer's remark in the debate that there is no practical justification for designating the western strip as part of the national park, raises the question why it was included in the plan in the first place (and indeed in an earlier version, in line with Plan #11500, the strip is not included). In any case, until a graphic representation of the changes to the boundary is presented, this issue remains unclear and cannot be related to appropriately.

22. It should be noted that the subtraction of the western strip from the Park Plan partially answers the claim in the objection regarding access to the neighborhood. The subtraction also incidentally provides a solution for the claim regarding the carob tree (see above). The entrance to al-Isawiyah from the direction of the Hebrew University will indeed remain; however as long as the size of the subtraction from the park for, in favor of the development of al-Isawiyah, is unclear, we cannot tell whether the paving of the proposed ring road will be possible.

23. The decision also makes unclear reference to the number 80. Our concern is that at the time of the decision to deposit the plan, the District Planning Committee was under the impression that the plan expanded the metropolitan park (marked in the unapproved Jerusalem 2000 Outline Plan) by only 80 dunams. In reality, the plan increases the metropolitan park (and shrinks the "proposed urban residential zone" for the neighborhoods bordering the plan) by approximately 170 dunams -- 90 dunams to the north and another 80 dunams to the south, in Khamlet al-Ein (a sub-neighborhood of at-Tur). It seems that the members of the District Planning Committee were not aware of this. **(See Map A: Overlap between Plan 11092 A and the**

Jerusalem 2000 Outline Plan) Please note that below we shall once again refer to the number 170 but there is no connection to this matter.

Preliminary Claims

A. Approval of the plan for the national park in opposition to the stand taken by the national authority in charge of national parks

24. As noted above, the discussion of the objections was held without the participation of a representative of the NPA - the most important of the plan's promoters, who advanced it over the years and negotiated the boundaries with the appellants. The NPA representative came early in the hearings and asked to delay them in order to maximize efforts to find a compromise with the filers of the objections, who are now the appellants. The Minister for the Environment even sent a letter regarding this matter to the Chairperson of the District Committee. Nonetheless, after a representative of the Jerusalem Municipality (Respondent 3) announced that the municipality - which also appears in the articles as one of the plans initiators - intends to continue to promote the plan, the request of the NPA was rejected and the discussion took place only in the presence of respondents 3 and 5. According to the appellants, **when the statutory authority entrusted with national parks in Israel explicitly requests to delay the advancement of the national park, the hearing should not have been held.** This preliminary claim should be sufficient to invalidate the decision regarding the objections outright.

B. The decision was not taken with an open and receptive mind

25. The District Committee is required to listen to objections and discuss them "with an open and receptive mind" so that objectors are given a genuine opportunity to influence the decision. In the present case, to the best knowledge of the appellants, the Minister of Interior's media advisers announced that the Minister had agreed with the Prime Minister on the advancement of a number of different building plans in Jerusalem, all beyond the Green Line, including the plan in question. There is a heavy suspicion that this announcement was the background to the hearing and its results were therefore a foregone conclusion. The manner in which the hearing was conducted reinforces this concern, as we will explain.

26. After more than two and a half years had passed since it was decided to deposit the plan, including seven months since the filing of objections, without any sign of urgency in the matter, the hearing of the objections was suddenly set at the soonest date possible within the constraints of the law. The hearing was set for the hours 12:40 to 15:40, but actually took close to 9 hours (!). This long a debate is unreasonable by any standards, especially given that the objectors repeatedly expressed their wish to continue the discussion at a later date.

27. The claim in the decision that the length of the hearing was to the benefit of the objectors is irrelevant given that the objectors themselves requested that the continuation of the debate be postponed. A 9 hour debate is simply not reasonable when the hall is full to the brim with objectors, some with small children on their laps. These people, who had full right to take part in

the public debate, and who made a concerted effort to realize that right, had no choice but to give up and go home one after another, due to the unreasonable length of the proceedings.

28. The defective way in which the hearing was conducted, raises serious concerns that the District Committee was obligated to approve the plan that very day, hereby deviating from the very duty to act fairly. We should emphasize that the duty of fairness of the administrative authority also includes appearances. Decisions and actions of the committee should not only be fair but also be seen to be fair. The description above indicates a significant distortion of the appearance of justice.

C. Conflict of interest in the decision of the District Committee to deposit the plan

29. On April 5th, 2011 architect Efrat Cohen Bar participated as a representative of Bimkom during the plenary hearing before the District Committee regarding deposition of the National Park Plan. After the public hearing, an internal discussion was conducted. The City Engineer was present at the closed debate, despite his being directly connected to one of the plan's initiators, namely the Jerusalem Municipality. During the closed debate the City Engineer referred to the plan and began his response to the residents' and Bimkom's claims as follows (all emphases added):

"I will respond. **At least for a moment, I must tell the committee members what happened...Efrat is presenting a position that has not passed our test...**I want to say something, **the Jerusalem municipality didn't ask Bimkom to leave without any reason, it's much more convenient for us...**one of the strongest criticisms is that the Isawiyah plan that Bimkom prepared doesn't touch the village... "

30. Throughout the closed discussions, questions were presented to the City Engineer and explanations were requested from him regarding the plan. At the end of this internal debate, the decision was taken to deposit the plan.

31. According to the rules of proper procedure, and according to the Supreme Court ruling regarding conflict of interest, the City Engineer's presence in the closed debate creates two fundamental flaws in the decision taken in this hearing: Firstly, participation of a person representing those submitting the plan leads to an institutional conflict of interest; Secondly, he was provided with the right to be heard when the residents' representative was not given a similar right.

32. [not included in translation]

33. Directive No. 21.929 of the Attorney General from 1976 prohibits city engineers and representatives of local planning committees from taking part in the internal discussion held by planning committees regarding objections to plans.

34. In our case, the adversarial nature of the discussion that took place regarding the District Committee's decision to deposit the plan for public review requires application of the rule regarding conflict of interest. The closed discussion was preceded by a presentation by Bimkom's

representative on behalf of the neighborhood residents, and during the closed debate, the City Engineer attacked her presentation. Once it became clear in the public hearing that Bimkom had reservations about the conduct of the municipality regarding the plan in question, it was inappropriate to hear the position of city engineer about this during the closed hearing without allowing the representative of Bimkom to respond. This was an infraction the appellants' right to be heard.

35. This clear case of institutional conflict of interest in relation to the decision regarding deposition of the plan is a fundamental flaw, which is sufficient to invalidate the decision and all subsequent planning processes.

36. [not included in translation]

Claims directly relating to the decision and the plan

D. “The poor man’s sheep” – Eliminating the last remaining land reserves for the development of al-Isawiyyah

37. As stated above, after authorization of the Jerusalem 2000 Outline Plan for deposition, the only area left for development, of those proposed by the residents in Plan #11500, is the area to the south of al-Isawiyyah. Now, even this option is being taken away, leaving the neighborhood with nothing.

38. **Realization of al-Isawiyyah’s development needs requires at least 170 dunams, which to date are included in the plan for the National Park (11092 A).** Those 170 dunams include the area of the “City Engineer’s line” (a compromise suggested by the City Engineer at the time, in the framework of the ongoing coordination) and an additional 60 dunams (**See Map B: Overlap between Plan 11092 A and Residents' Plan 11500**). It should be noted that the planners of al-Isawiyyah thought that the limitations on the development areas inherent in “the City Engineer’s line” were too harsh, and they continued negotiating with the NPA to achieve an agreed-upon boundary.

39. That is, in order to realize the development needs of the neighborhood and its more than 15,000 inhabitants, the boundary of the National Park Plan needs to be changed significantly, and not just symbolically. The proposed (and unclear) change is not enough to meet the needs of the residents. **This is the main argument of this appeal, on which all the following claims are based.**

40. It is important to mention in this context that the National Park Plan encompasses 770 dunams, of which the appellants seek to allocate only some 170 dunams for development of the neighborhood. That is to say, the argument is not about choosing between open space and built space, but about finding the right balance between the two. After appropriate development areas are allocated to the two neighborhoods (Al-Isawiyyah to the north and at-Tur to the south), it is certainly reasonable to designate a significant portion of the land between them as open space, whether it be public, private or national.

E. New and harmful interpretation of the Jerusalem 2000 Outline Plan (which has not yet been deposited for public review)

41. The Jerusalem 2000 Outline Plan allocates land reserves for expansion of various neighborhoods throughout the city. These areas are indicated by orange polygons and defined as "proposed urban residential zones." Al-Isawiyyah, as noted, has been allocated one such expansion area, of about 230 dunams. Of these 230 dunams, about 90 dunams are free of existing building and have been included in the proposed National Park. The rest of the polygon, about 140 dunams, is entirely built up, with construction carried out without permits due to planning distress. This construction is for the most part on land designated as open scenic area within the framework of neighborhood plan #2316 and partly (about 50 dunams of the 140) on unplanned land outside of the boundaries of Plan #2316.

42. The objection included detailed data regarding the development needs of al-Isawiyyah, which already suffers from overcrowding and unreasonable planning neglect. Special emphasis was placed on the limitations of densifying the neighborhood, showing, as noted, that only some 500 housing units can be added within the existing built-up fabric of the neighborhood. However, plan #11500, in its revised version according to the deposition recommendation of the Local Planning Committee, integrates building rights in accordance with those stipulated by the Jerusalem 2000 Outline Plan. It should be noted that in practice, only two compounds in al-Isawiyyah meet the densification conditions listed in the Jerusalem 2000 Outline Plan.

43. Given this, the statement that "the main development of the neighborhoods should be designated within the built-up areas of these neighborhoods, while the compounds designated as reserves for development ['proposed urban residential zones' in the terminology of the Jerusalem 2000 Plan] will address the needs for public spaces, both buildings and open areas as required", is particularly surprising. This decision goes against the obvious literal meaning of the term "proposed urban **residential** zone" which is meant to be just that: primarily residential. Indeed, in other neighborhoods, large scale housing projects have been approved in accordance with the guidelines of the Outline Plan in "proposed urban residential zones" (for instance in Gilo, Ramat Shlomo, Har Homa, Malcha, and Massua).

44. If the 2000 Outline Plan is to be changed (although it is unclear how this can be done given that the plan was never deposited), the change needed here is the inclusion of the extensions to the east and north-west of al-Isawiyyah, as proposed and agreed upon in Plan #11500 . If the Jerusalem planning committees stand behind their statement that the Outline Plan is a policy document that can be changed as needed, this would be a good opportunity to prove it.

F. Decisions made regarding the objections without a sufficient factual basis

45. The symbolic change which was proposed in the decision and the unclear reference to numbers (see above) highlight the flawed data which underlie the decision. A key issue in the objection was the elimination of development reserves for al-Isawiyyah through the designation of all the land between it and at-Tur as a national park. The decision shows that the Committee is

well aware that the boundaries of the national park will become the de facto boundaries of development for the neighborhood. Nonetheless, basic data, such as social profiling of the community; average built area per capita for housing and public use; public open space per capita; the feasibility of increasing the density in the neighborhood; and the like, were not available to the District Committee when discussing the plan. Some of the data was presented by the appellants in the objection, but this was not taken into account in the decision.

46. As an administrative authority which is required to examine the consequences of this decision on the relevant actors/stakeholders, the District Committee should examine all relevant considerations, including the impact of the plan on various population groups, as well as the planning and social reality.

47. The committee dismissed this critical issue by saying that the development needs of the neighborhoods would be examined in the framework of plans for these neighborhoods. At the same time, they determined, as noted, that the boundaries of the national park are in fact the development boundaries of neighborhoods. Moreover, the transcript of the hearing strongly suggests that Committee members did not know the situation in the neighborhoods in question, and despite this, made sweeping claims in the matter of the development areas that are (or are not) at their disposal.

48. The Committee ignored the fact that the development needs of the neighborhoods had already been researched, within the framework of the Residents' Plan, justifying, *inter alia*, the subtraction of about 170 dunams from the proposed national park, as stated above. The appellants would argue that it is unreasonable to de facto determine the development boundaries of the neighborhoods bordering the plan, when their needs have not been examined and / or not brought before the Committee, and in any case were not taken into account. Since this in fact was done, it would seem that the decision was made without sufficient, or any, factual basis.

49. [Not included in translation]

50. In the absence of a proper factual basis, the decision cannot be taken as reasonable and is therefore void

51. Therefore, the decision should be overturned, and the development needs of al-Isawiyah and its residents should be discussed, in order to decide on planning priorities that grant due weight to these needs so that they will be properly reflected in the decision.

G. Inappropriate balance between the relevant considerations

52. [not included in translation]

53. In this case, as mentioned, subjective values such as "scenic experience" and "visibility" were given full weight as primary considerations, whereas the legal duty to provide adequate living conditions, adequate housing, education and health services, and/or to allow residents access to

these basic services, has not received any weight in the decision. Additionally, the destructive effects of the plan on the public trust between residents of al-Isawiyyah and the Israeli authorities, was given no weight in the decision, as detailed below. It should be remembered that the Supreme Court acknowledged that maintaining public trust is a weighty matter, in as much as public trust is a necessary condition for the proper functioning of public administration.

54. An administrative decision made without the appropriate balance between considerations - particularly when one issue receives full weight and other is not taken into account at all - is an unreasonable decision which should be repealed. In this case, the decision considered first and foremost the needs of the "scenic experience" and only then, if at all, the residents' needs, rather than vice versa.

55. Given the sensitivity of this issue and the importance of public trust, especially the public in question (see below), and since the duty of the administrative authority is to make decisions grounded in a proper factual basis, the District Planning Committee should have done so, taking into account the various interests and giving due weight to each of them. Given that the Committee did not do so, the decision reached was unreasonable in the extreme and should be repealed.

H. The national park is inappropriate for its surroundings; there is no justification for the cancellation of open public space

56. Although the District Committee allegedly justified the need to designate the land included in the plan for the national park as open, it did not explain the need to designate the land specifically as a national park. It should be noted that there is a mistake in the presentation of the existing statutory situation included as part of the documents of Plan #11092 A; it does not mark the area as open public space, even though most of the land in question is in fact already allocated as open public space by statutory Plan #4752. If not for this mistake, perhaps the committee would have been required to explain the rezoning of land from one type of open space to another (open public space to national park), particularly for such an extensive area.

57. We emphasize that the appellants do not object to preserving open space and developing open spaces for the benefit of the public. Our discussion of open spaces versus development areas assumes that the two concepts do not contradict each other, but rather there exists a broad and diverse range of options to realize both at the same time. In this case, designating the open area as a national park and setting its boundaries such that they block any possibility of development for al-Isawiyyah and at-Tur is a fatal blow to the residents. Conversely, setting a smaller area as municipal open space, and developing it for the benefit of the residents, would be a most positive move.

58. The two neighborhoods affected by the National Park Plan, are severely lacking playgrounds and open spaces suitable to serve their basic needs, but the National Park Plan does not answer this lack.

59. The national park in question is part of a larger trend whereby the Jerusalem Municipality cedes responsibility for open areas under its jurisdiction (some of which they can expropriate according to law, while providing some compensation to landowners, in order to develop them for the welfare of the public) and transfers them to the National Parks Authority. In this way, lands pass from the municipal to the national level¹. Meanwhile, the national body responsible for national parks has no obligation to the residents of the city nor to maintaining adequate quality of life in a crowded urban area. This duty, which clearly belongs to the municipality, falls between the cracks in this case.

60. Defining this area in particular, and other lands in East Jerusalem in general, as national parks, with the resultant transfer of authority and responsibility from the Jerusalem Municipality to the NPA, is seemingly done in order to more effectively prevent Palestinian building outside areas already designated as residential neighborhoods. Lands that should be available to be used by people living in the neighborhood in accordance with their needs, are passed on to a national body for extraneous reasons. Such use of planning tools regarding lands and situations for which they are not appropriate, instead of proper planning as the basis for justified and appropriate enforcement, is an abuse of authority, and utilization of a powerful planning tool for a purpose entirely at odds with its intention. This use violates the fundamental right of residents to an adequate standard of living and to suitable planning procedures which are designed to enable the realization of this right, and also raises doubts about the justification for other national parks.

61. In this case, the District Committee ruled that the main justification for keeping the land open, and consequently establishing a national park therein, is the view from the eastward lookout point near the Hebrew University (known as the Yehudai Lookout), even though it strangely appears from the transcript of the hearing that the committee members could not even locate the precise field of vision on the map. Moreover the “ancient” which the authorities are supposedly interested in maintaining, no longer exists. While one can see some virgin desert landscape from the Yehudai Lookout, one also sees az-Zaim, Ma'ale Adumim, two military bases, highways and the hilly area known as "E1" which is designated for Israeli development. Even without the (controversial) development in E1, what one can see today from the lookout is a view of a city in the making (**See Map C: View from Yeudai Lookout**). The designation of an oversized national park around Wadi Abu Harub (The Abu Harub Valley) – as the land between al-Isawiyyah and at-Tur is called – is an attempt to recreate a view that is long gone; the view is really just an excuse for disregarding of the pressing needs of the residents. It should be noted that the proposed expansion to al-Isawiyyah, which would be visible from the lookout, is low-rise (**see map C: View from Yehudai Lookout**) and includes mainly public buildings, as agreed between the municipality and the residents of the neighborhood during preparation of the Residents’ Plan. It should also be noted that according to the Residents’ Plan, even before coordination with other authorities, the intention was to designate the area of the valley as open private space.

¹ For more on this problematic issue, see Bimkom’s publication “From Public to National: National Parks in East Jerusalem” http://bimkom.org/eng/wp-content/uploads/From-Public-to-National-English-FINAL2012_withMAPS_lowres1.pdf

62. The size of the national park is clearly disproportionate in an urban setting. Even if there is some justification for the land in question to become a park, there is no reason not to significantly reduce its size in favor of realizing the fundamental rights of the local residents; rights that unquestionably require the designation of land reserves for development.

I. Excessive weight given to the archaeological survey and disregarding of the proposal to include a burial cave in the grounds of a school

63. Our objection included a detailed section on archeology. We wish to emphasize here that there is clearly no barrier to development while simultaneously conducting professional documentation of archaeological findings including their preservation where appropriate. In any event, the findings that ought to be preserved are concentrated in Ras es-Salam (on which a military base is built) and Ras Tamim, which in any case was intended to be left as open space.

64. Area 1 of the Archeological Survey from 2008 is congruent with the expansion area for al-Isawiyah and includes some 40 archeological findings: a number of burial caves, most of them demolished; ancient stone quarries, which are small and unimpressive; and a wine press. One burial cave is large enough and well enough preserved that it may be worth saving. This cave is located at the edge of the area proposed for development in Plan #11500, on land designated for a school. It would definitely be possible to preserve the cave without impinging upon the development of al-Isawiyah. **Excavation and preservation of the cave are consistent with the planned development, and its integration in the school yard could have significant educational value.** This suggestion, which was included in the appellants' objection, was not referred to by the District Committee in its decision.

65. In light of the above, the District Committee's decision - namely that the archeological findings justify the establishment of the area as a national park - is puzzling, especially since the representative of the Israel Antiquities Authority (IAA) stated clearly that the IAA was never asked for its opinion on the boundaries of the National Park Plan (!) .

66. In summary, it should be emphasized that the promoters of the National Park Plan interpreted the archaeological survey of the Antiquities Authority as a definite exaggeration. The findings do not differ essentially from similar findings discovered in adjacent areas (Ramat Shlomo, Pisgat Zeev, the Hebrew University campus) where archaeological considerations were not a reason to prevent development. In balancing between the fundamental right of the people of al-Isawiyah to an adequate standard of living, and the existence of archaeological findings of dubious value in the area of the National Park Plan, it is clear that the right of residents should take precedence.

J. Areas included in the national park compared to those not included therein

67. The central area of the national park is the Abu-Haruv valley and the slopes that descend to it. The hilltops themselves, since they are built and developed, form the edges of this view. West and north, the Hebrew University campus ring road and the military base form the boundary. But

not all the area embraced by the road and the base are included in the planned park. Specifically, the above-mentioned Yehudai Lookout, which according to the promoters was a focal point of the conception of the National Park, is not included in the plan. The western edge of the national park is planned to start a few meters from the ring road of the university, and the connection between them is provided through the addition of a long narrow strip. Ironically, the zoning of this strip is open public space even though it will serve as the access to the national park's entrance booth, and the planned parking lot.

68. The solution described above is puzzling and even outrageous. **The NPA is relinquishing areas whose relevance to the valley are clear, since obtaining them would mean dealing with powerful and resourceful institutions. Meanwhile, land which is not an integral part of the valley by any means is added to the national park, only because its owners are the weakest link in society** - private landowners who are Palestinians residents of Jerusalem. The plan is therefore based on considerations which are not relevant. The ruling does not address this claim.

K. Unwarranted opportunism in the discussion of the deposition of the plan before the Local Committee - The municipality against its citizens

69. In January 2010, the Local Planning Committee discussed the National Park Plan after its previous version, Plan 11092, was shelved. Instead of the shelved version, which was coordinated with the Residents' Plan as mentioned above, a revised version was filed - Plan 11092 A, without respecting the agreements concerning the boundaries of the national park. During the Local Committee's hearing regarding the deposition of Plan 11092 A, the committee chairperson suggested that the area of the park be further expanded to include all the vacant land on the slope, right up to the boundary of the existing construction. This proposal returned the national park to its vast size in the original version, which was shelved even before the coordination with the residents' plan. Thus all the land reserves of al-Isawiyyah have been included in the current version of the National Park Plan (including the vacant part of the expansion area proposed for the neighborhood in the Jerusalem 2000 Outline Plan – **see Map A**).

L. The decision violates a governmental promise and seriously harms public trust

70. Community participation in planning is not a given, especially when it comes to the Palestinian population in East Jerusalem, but it is necessary, particularly for this population. To arrive at the landmark that was reached at the end of 2007, when a plan which was accepted by the majority of residents received the recommendation of the Local Committee, it is necessary to work cautiously and to mediate between all parties concerned. The most important factor of planning for al-Isawiyyah was building and keeping the residents' trust. This does not mean just trust between the residents and Bimkom (even though this too required some effort) but more importantly, the trust of the residents in the Israeli planning system, the Interior Ministry and the Jerusalem Municipality.

71. Residents of al-Isawiyyah, like residents of other Palestinian neighborhoods in East Jerusalem, have suffered for decades from discriminatory treatment in planning and neighborhood

development. The Jerusalem Municipality recognized this, in a document dated December 19th, 2007, entitled "The Policy of Enforcing the Planning and Building Law in Jabal al-Mokabber." This document clearly states that inadequate planning is a cause of suffering for the residents and leads to building without permits. For the residents, submitting an outline plan to the Jerusalem Municipality, and to the District Planning Bureau in the Ministry of Interior, is not a trivial act. With this in mind, Bimkom worked with residents and leaders in al-Isawiyyah in an attempt to overcome the negative experiences and the rundown state of the neighborhood, in order to benefit its residents, for the sake of the next generations. This was a pragmatic decision, infused by the realization that working with the Israeli authorities is the best chance to make a difference and bring about the development of the neighborhood.

72. Indeed, in the early years it seemed that the trust-building had succeeded. The planning process was coordinated with the planning authorities, planning alternatives were proposed, and an alternative selected, negotiations were carried out with relevant authorities at the national and local level, and most importantly, there was a stop in carrying out demolition orders against structures which were built, due to lack of other options, without permits. **It is hard to describe the joy of the residents when the plan was approved by the Local Committee.** It was as if a dream had come true and a new era was about to begin.

73. There was great disappointment as one by one, agreements faded and governmental promises were broken: the letter of support for the collaborative planning from the City Engineer was forgotten; the agreement with NPA violated; the position of the executive director of the Municipality, referring to the authorities' promises and obligation to uphold them, was ignored.

74. In our case, the promise of the Planning Committees to promote proper planning for al-Isawiyyah can be considered a full-fledged "governmental promise". There is no dispute that during the planning process, a plan can be expected to undergo changes or even be rejected. But that does not change the fact that a government promise was indeed made **to reach a planning solution for the neighborhood.**

75. The case of the Residents' Plan meets all the conditions set out in case law regarding the existence of a governmental promise. The promise is detailed enough and implementable, and it was given by the bodies with the authority to do so.

76. Therefore, approval of the National Park Plan would be a gross violation of this governmental promise, riding roughshod over the principle of good faith and the duty to act in fairness, in which concomitantly with a commitment to the residents, a plan was promoted which entirely contradicts that commitment. Approval of the plan expresses indifference to the state of the neighborhood and disregards the efforts of the residents to focus on the future rather than on past wrongs, and to work in partnership with the authorities to improve the situation. Again it should be emphasized: even if the authorities do not guarantee *approval* of a plan, in this case there is a governmental promise to support the al-Isawiyyah plan, at the very least, and certainly to not act against it and block it with another plan.

77. The case of al-Isawiyyah is particularly severe – rather than a promise for a better future, the neighborhood residents have been left with nothing. The residents have invested their time and energy in the complex, highly sensitive and prolonged endeavor of planning, including coordination with and even gaining the approval of the planning authorities. At the same time, those self-same authorities promoted a plan which sabotages the residents’ actions: the Jerusalem 2000 Outline Plan, as noted above, did not include all the land reserves for development which were recommended by the Local Committee as part the procedure regarding the Residents’ Plan, and the National Park Plan which robs the residents of the last crumbs left by the Jerusalem 2000 Plan. **Such conduct of the authorities will severely damage public trust in the authorities in Palestinian East Jerusalem in general, and in al-Isawiyyah in particular** - trust that was acquired by intense effort on the part of all participants in the process, and that will be difficult or impossible to restore if the National Park Plan is approved. This reason alone, and certainly in combination with all the other factors, is reason enough to require the fulfillment of the governmental promise, to reject the plan for the national park, and to work toward a planning solution to the plight of the residents of al-Isawiyyah.

This claim, regarding governmental promise, was rejected in the decision, without sufficient explanation.

Summary

78. **Approval of the national park is an act of exclusion of landowners and generations of residents from the only area of land that could serve as a source of hope for a better future, and seals the fate of al-Isawiyyah to unalleviated planning distress and severe housing crisis with no solution.** Such a spatial approach is inherently flawed. In cases of housing shortage like the one that exists in al-Isawiyyah and at-Tur, the planning situation must first be regulated by way of determining appropriate areas of development according to the needs of the residents, who also want to retain open space in Wadi Abu Haruv. This process must include the allocation of sufficient land reserves for future development. Only following this, can one properly examine the qualities of the remaining open space between the two neighborhoods and intelligently determine what its designation should be, and develop it so that the general public can enjoy it.

79. Finally, in order to understand the harsh realities in al-Isawiyyah described in this appeal and underlying its claims, we suggest that the Appeals Committee conduct a site visit to the neighborhood and the nearby Wadi Abu Haruv in order to gain a firsthand impression of the reality as we have presented it here.

80. We reserve the right to raise additional arguments during the hearing of the appeal.

Signed and Dated: February 2nd, 2014

Hani Isawwi

Sharon Karni-Cohen, lawyer

Sari Kronish, architect

Alisawiyyah Association

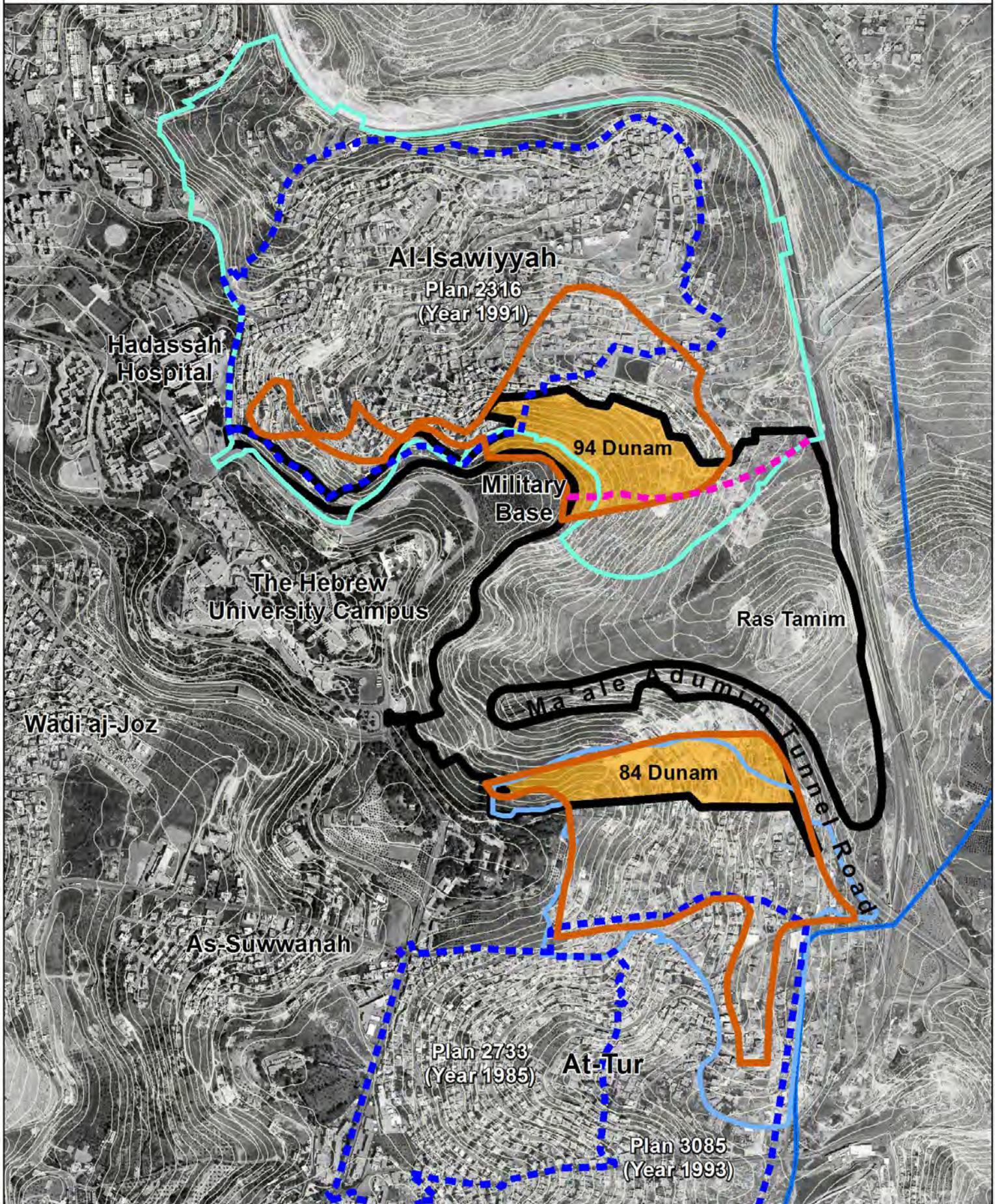
Bimkom

Bimkom

A

Appeal on the decision regarding the plan for a national park on Mount Scopus

Overlap between 11092 A and Jerusalem 2000 Outline Plan



 Plan 11092A	 Proposed Urban Residential Zone as marked in the unapproved Jerusalem 2000 Outline Plan	 "City Engineer's line" (2006)
 Approved plans	 Overlap between Plan 11092 and Jerusalem Outline Plan	 Municipal boundary
 The al-Isawiyyah Residents' Plan no. 11500 approved for deposition (2007)	 At-Tur Residents' plan submitted to Municipality (2009)	0 50 100 150 200 Meters

B

Appeal on the decision regarding the plan for a national park on Mount Scopus

Overlap between 11092 A and Residents' Plan 11500



Plan 11092A



The Residents' Plan 11500 approved for deposition (2007)



Overlap between 11092 A and Residents' Plan (168 Dunam)



Plan 2316 for al-Isawiyyah (1991)



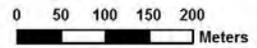
Proposed Urban Residential Zone as marked in the unapproved Jerusalem 2000 Outline Plan



Municipal boundary



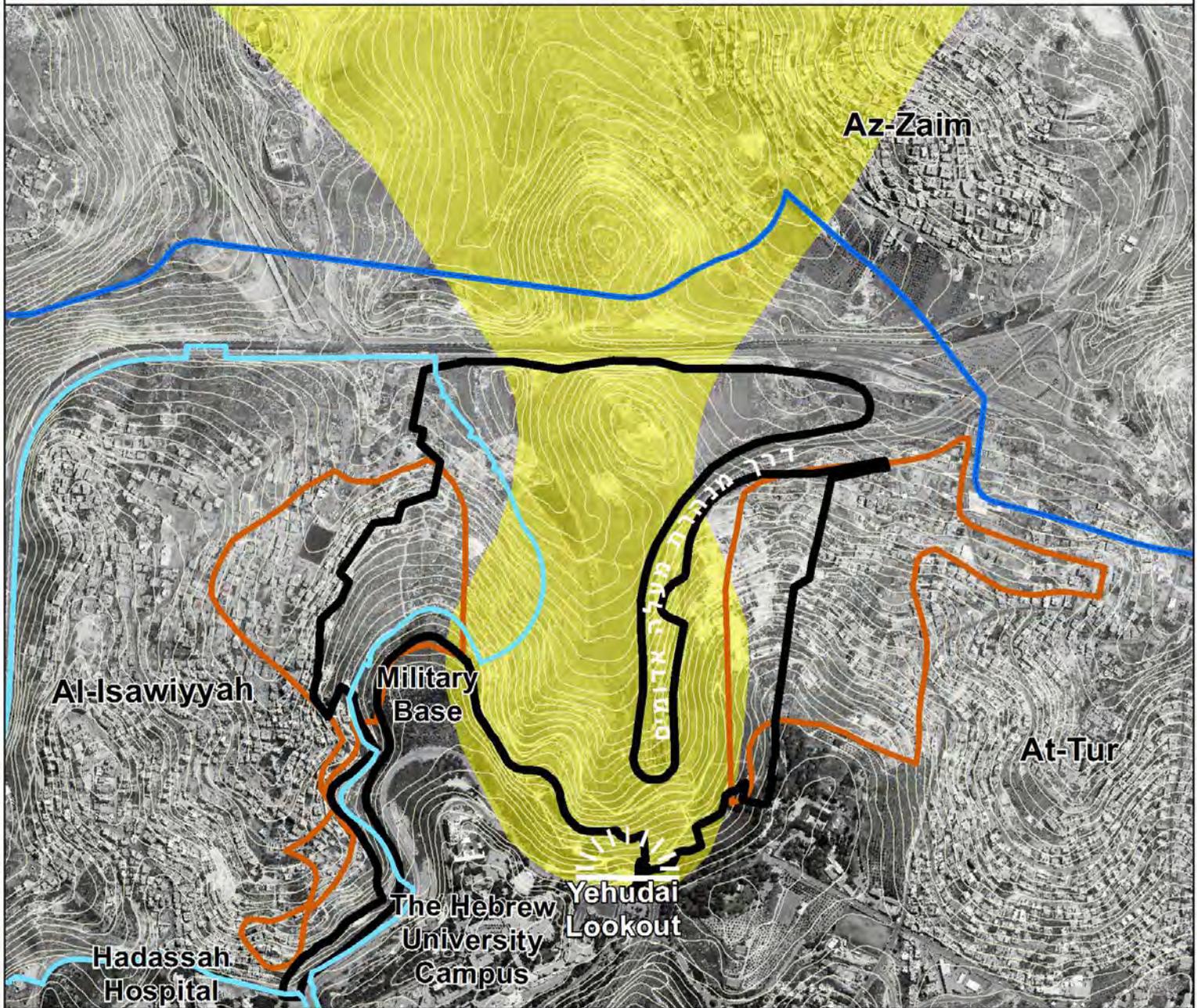
"City Engineer's line" (2006)



BIMKOM بمكوم بيمكوم

Planners for Planning Rights مخططون من أجل حقوق التخطيط

C Appeal on the decision regarding the plan for a national park on Mount Scopus
View from Yehudai Lookout



Simulation - proposed development boundary of al-Isawiyyah



-  Plan 11092A
-  View from Yehudai Lookout
-  The Residents' Plan 11500 approved for deposition (2007)

-  Proposed Urban Residential Zone as marked in the unapproved Jerusalem 2000 Outline Plan
-  Municipal boundary

