

FIGURE 2.10  
PLANNED NAIA 3 TERMINAL

# NAIA 3

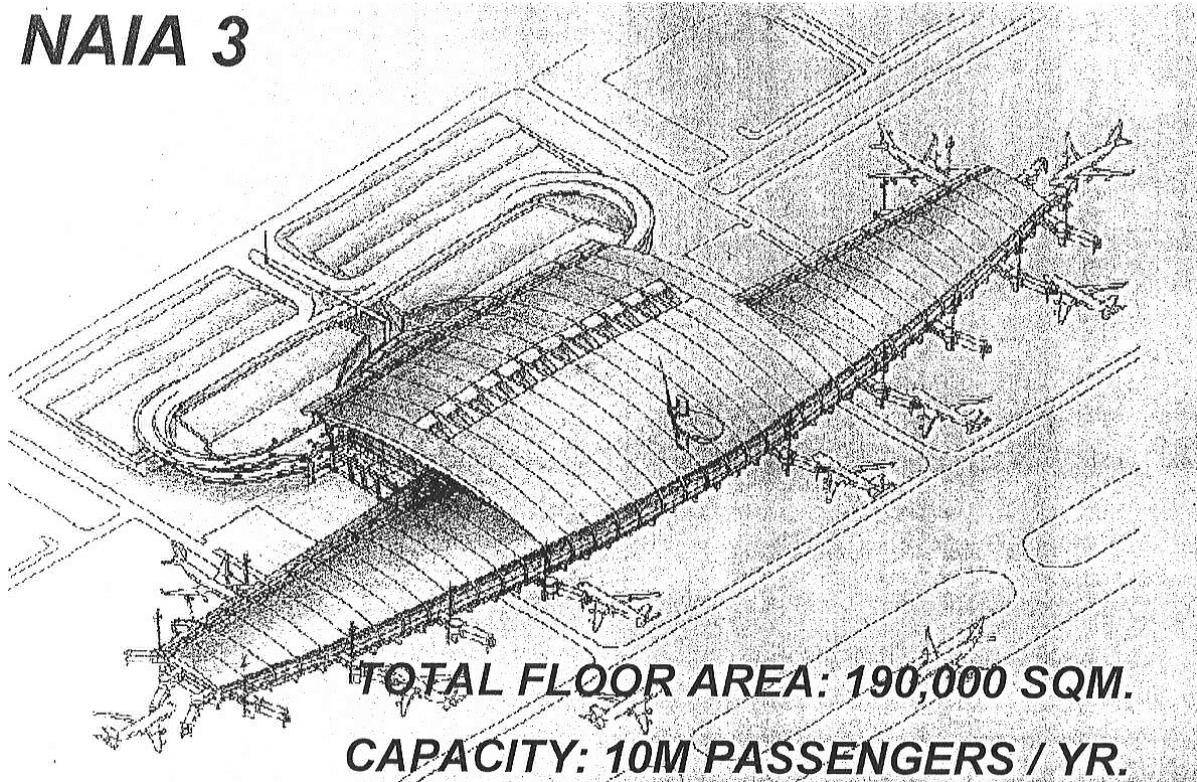
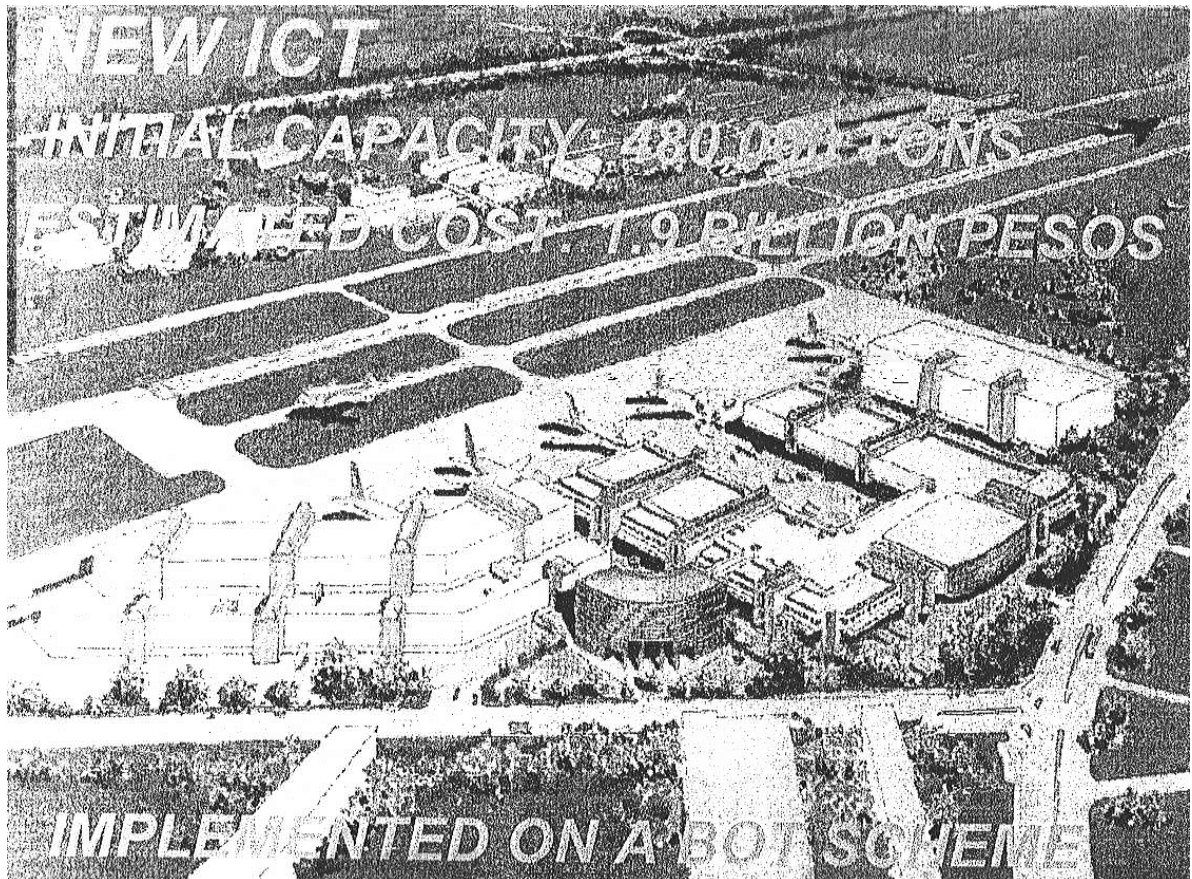


FIGURE 2.11  
PLANNED NEW ICT





### **3. REVIEW OF THE PROJECTS**

#### **3.1 Legal / Institutional Aspect**

Most of the major transportation projects are implemented through the BOT Law (RA 6957, as amended). The basic financing scheme that is to be employed in the project comes within the ambit of the BOT Law. Nevertheless, the project proposal should be consistent with the provisions of PD 1112, the Toll Operation Degree and Constitution of the Philippines.

##### **3.1.1 BOT Law**

Way back in July 1990, Congress enacted into Law R.A. No. 6957, entitled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, for Other Purposes”. Exactly three years thereafter, R.A. No. 7718 was enacted in law to amend certain sections of the R.A. No. 6957 which is also known as the BOT Law.

The BOT Law recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resource for the purpose of financing the construction, operation and maintenance of the infrastructure and development projects, normally financed and undertaken by the Government. Infrastructure and development projects can now be wholly or partly implemented by the private sector such projects shall be undertaken through contractual arrangements as defined in the law and such other variations as may be approved the President of the Philippines.

For the construction stage of this infrastructure projects, the project proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor. Provided that projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent of the project cost, and the balance to be provided by the project proponent.

These are at least 9 contractual arrangements defined in the BOT Law. These are:

- a. Built-Operate-and-Transfer / Supply-and-Operate
- b. Built-and-Transfer
- c. Built-Own-and-Operate
- d. Built-Lease-and-Transfer
- e. Built-Transfer-and-Operate
- f. Contract-Add-and-Operate
- g. Develop-Operate-and-Transfer
- h. Rehabilitate-Operate-and-Transfer
- i. Rehabilitate-Own-and-Operate

(Fortunately, there is a tenth contractual arrangement that variation as may e approved by the President of the Philippines. This may include contractual and equity joint venture arrangement that utilize BOT financing principles)

Under Sec. 2 Definition of Terms, three major players are recognized. These are:

- a. Project Proponent: The private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.
- b. Contractor: Any entity accredited under Philippine laws which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.
- c. Facility Operator: A company registered with the Securities and Exchange Commission, which may or may not be the project proponent and which is responsible for all the aspects of operation and maintenance of infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users, Provided, that in case the facility requires a public utility franchise, the facility operator shall be Filipino or at least 60% owned by Filipino.

Two phases which impact on the financial aspect of the project are defined. These are:

- a. Direct Government Guarantee: An agreement whereby the government or any of its agencies or local government units assume responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of a loan default.
- b. Reasonable Rate of return on Investments and Operating and Maintenance: The rate of return that reflects the prevailing cost of capital in the domestic and international markets.

The project proponent utilizing BOT management or its variations shall be repaid by authorizing it to charge and collect reasonable tolls, fees and rentals for the use of the project facility not exceeding those incorporated in the contract and where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project or other monetary payments. In case of built or transfer arrangement, the repayment scheme is to be effected through amortization payments by the government agency or local government unit concerned to the project proponent according to the scheme proposed in the bid incorporated in the contract.

In the event that the project is revoked, canceled or terminated by the Government through no fault of the project proponent for its actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination.

Every infrastructure project undertaken under provisions of the BOT Law shall be in accordance with the plans, specifications, standards and costs approved by the concerned agency and shall be under the supervision of the said agency or local government unit in the case of local projects.

### 3.1.2 Toll Regulatory Board

In March 31, 1997, PD 1112 was enacted, “Authorizing the Establishments of Toll Facilities on Public Improvements, Creating a Board for the Regulation thereof and for Other Purposes”.

The objectives of PD 1112 are as follows:

- a. To seek out alternative sources of financing to ensure the prosecution of certain desirable infrastructure projects that complement the over all national development effort;
- b. To tap private sector resource with the end in view of dispensing the availment of additional domestic and foreign borrowing as well the utilization of government guarantee or security; and
- c. To authorize the collection of toll fees the use for the use of certain public improvements, that would allow a reasonable rate of return on investment.
- d. To provide for the supervision of regulation, in the public interest, of the collection of toll fees and operation of toll facilities.

A Toll Regulatory Board was created with the following powers and duties:

- a. Subject to approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of the toll facilities. Contract shall be open to citizens of the Philippines and/or corporations or associations qualified under the construction and authorized by law to engage in toll operations.
- b. Determine and decide the kind, type and nature of public improvement that will be constructed and/or operated as toll facilities;
- c. Condemn private property for public use subject to the provision of existing law;
- d. Issue, modify and promulgate from time to time the rates of the toll that will be charged and direct users of toll facilities and upon notice and hearing to approve or disapprove petitions for the increase thereof; and
- e. To grant authority to operate a toll facility and to issue therefore the necessary “Toll Operation Certificate” subject to such conditions as shall be imposed by the Board, including interalia:
  - i) That no guarantee, Certificate of Indebtedness, collateral, securities or bonds shall be issued by any government agency or government owned or controlled corporation on any financing program of the toll operator in connection with his undertaking under the Toll Operation Certificate.

### 3.1.3 Project Risk

Toll infrastructure project which are converted by concession agreement that span many years are exposed to a variety of risks which may be internally or externally generated. As protection such risk, investors, lenders, borrowers and operators normally require government guarantees. Likewise, there are risks to the government that may occur at various stage of the project (i.e., design, construction, maintenance, operation and management of the system to be operated).

#### 1) Possible Cost Increase

The financial returns from the project are greatly affected by any increase in costs. If there are sections which are difficult to construct, the financial viability becomes low depending on the construction methodology. When the detailed design is prepared, the cost should be carefully reviewed and investigated again.

#### 2) Inflation

Infrastructure projects are very vulnerable to sharp upward movement in prices which may bring cost overruns (especially during construction) or stiff increases in project operating and maintenance costs. The investors, lenders, borrowers and operators may insist on some kinds of protection against the risk of inflationary changes, and usually, arrangements have to be included in the related agreement. Over the last eight years (1988-1995), the Philippines has had an inflation rate of 7-19%. As shown in Table 3.1, inflation is slightly higher in Metro Manila than the national figure.

**TABLE 3.1**  
**INFLATION RATE FOR THE PHILIPPINES AND METRO MANILA**

Year	Philippines	Metro Manila
1988	8.9	10.4
1989	12.2	9.6
1990	14.2	16.2
1991	18.7	20.7
1992	8.9	12.2
1993	7.6	10.4
1994	9.0	10.2
1995 (June)	7.2	8.3

#### 3) Foreign Exchange Rate

For project, the financial requirements are so substantial that it is inevitable that long-term foreign funding component, the project is very vulnerable to exchange rate fluctuations. A devaluation penalizes a BOT concessionaire by making the debt servicing of the firm's foreign obligations more burdensome in peso terms.

The other component of this risk is whether foreign exchange is available when needed for the BOT company to make a transfer, i.e., to settle an obligation or to remit profits.

During the decade of 1980's, the Philippines did not exactly have an enviable record in exchange rate stability. The country experienced sharp exchange rate deterioration especially in the afternoon of the economic and foreign exchange crisis after 1983. From January 1989 to December 1990, the peso-dollar rate deteriorate to the extent of 31.15% (from ₱ 21.35 or ₱ 28.00). Between 1980 to July 1992, the exchange rate deteriorated to the extent of 229% (from ₱ 7.6 to US\$ 1 to an average of ₱ 25.00).

In the view of the risk of constantly fluctuating exchange rates, complex protective arrangements have to be built into the transaction in order to protect the various foreign creditors and investors against losses caused by exchange convertibility, particularly if government policy changes regarding restrictions on convertibility and/or transfer into hard currency.

#### 4) Poor Performance

For the BOT investors, lenders and the Government, there is the risk of poor performance by the various parties at any stage of the project implementation process. Poor or delinquent performance could have serious financial consequences for the project, which may eventually lead to losses and even project failures. The related project agreements must thus include measures that will provide protection against such risks. Those could include provision of penalties to various parties (notably constructors), subsidies or guarantees from the government to protect the investors and, to protect the government, access to key data or information for better monitoring of the project. Penalties can be imposed on those who do not meet deadlines or project milestones.

#### 5) Toll Rate Adjustment

The government had social or equity goals which may constrain the flexibility of a BOT company to continually adjust toll rates in response to changing cost conditions. For example, for a toll road facility, the operation of which affect thousands of users, the adjustment of toll rates have always been sensitive to social and political issues in the Philippines. The toll road operator usually has to contend with various pressure groups. In the event that government social goals result in lower revenue or higher costs, there will be a need for some forms of protection to be built into the various agreements. Also, some flexibility is to be provided in order to allow the government to respond to changing priorities and at the same time some protection will be needed to prohibit these changes in resulting to potential losses.

### 3.2 Project Integration Aspect

Transportation projects described in Chapter 2, they have been proposed and are undertaken by different proponents. To formulate an effective transportation network in the study area, on-going and proposed transportation projects should be fully integrated each other. From the viewpoint from physical integration among the on-going/proposed projects, following issues are pointed out:

### 3.2.1 Physical Aspects

#### Integration of Toll Road Projects

- Physical connection of tollways under different management

At the end point of some on-going/proposed projects, their alignments are connected directory to the ordinary road, not to the other tollways near to the endpoint. To ensure continuity of tollways as a network, each tollway's alignment should be physically connected.

- Appropriate location of tollway entrances/exits

Along the major corridor of South Super Highways, some toll road projects are on-going and being proposed, such as Metro Manila Skyway and Pabahay sa Riles Tollway, and South Luzon Tollway is in operation. It is predicted that high volume of traffic demand on these tollways will be realized. When the projects are completed, it is certainly expected that traffic situation around the entrances/exits of the tollways (i.e., Ayala Ave. & Don Bosco Ramps and Bicutan, Sucat and Alabang ICs along the Skyway) will be more serious. Further, operation of PNR Commuter Line and MCX will affect a road traffic because their grade of crossings is not separated with roads. Therefore, the location of entrances/exits should be carefully considered to minimize the impacts to the traffic on ordinary road.

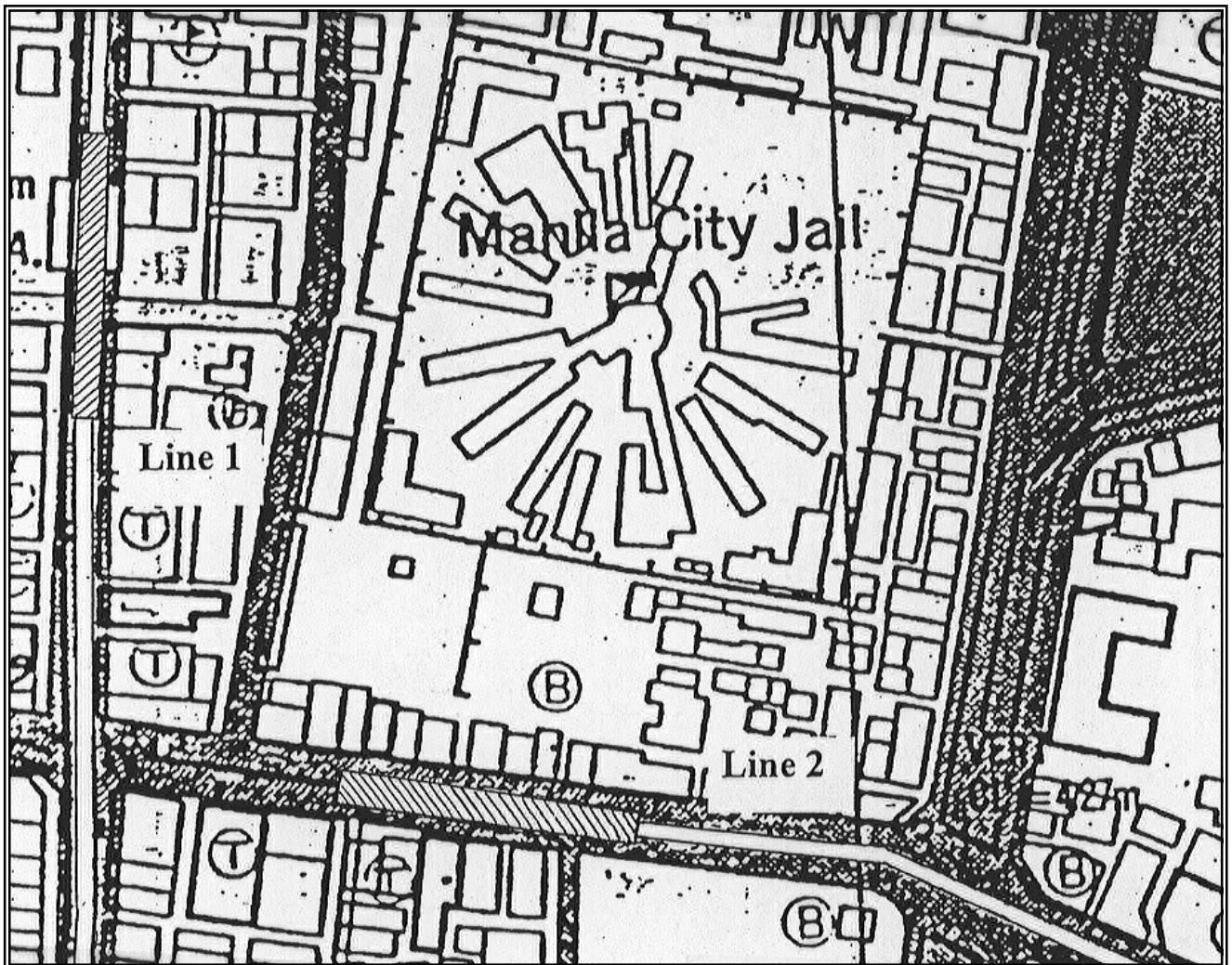
#### Integration of Rail Projects

- Minimize inter-line passenger movement

When the on-going/proposed rail projects are completed, it is expected that high volume of passenger flow to transfer between lines will be visible at some terminal stations. To minimize the time for transferring and to provide convenience for the transferring passengers, those terminal stations should be designed to be located closely each other.

For example, the MRT projects of Line 2 and Line 3 now on-going, the terminal stations connecting these lines including the existing Line 1, are not designed to be located closed to each other. The Doroteo Jose Station of Line 1 will be connected with the Recto Station of Line 2, a walking distance of about of about 200 m, as shown in Figure 2.3. While at the corner of EDSA and Aurora Blvd. In Cubao, Lines 2 and 3 are interconnected, but location of terminal stations (both of them will be called "Cubao") are located with a walking distance of about 250 m, as shown in Figure 3.2.

FIGURE 3.1  
LOCATION OF TERMINAL STATIONS OF LINE 1 (DOROTEO JOSE) AND LINE 2 (RECTO)





- Provide terminal plaza for passenger movement to/from other transportation modes

As the traffic congestion is visible in the areas near to the stations of the existing LRT Line 1, it is caused by buses and jeepneys for loading/unloading of passengers. Most of LRT passengers are transferring to/from other transportation mode. Therefore, to provide easy transferring to/from other transportation modes and to separate the loading/unloading activity with the main flow of traffic, it is required to develop the station squares in front of the stations.

- Coordination of projects being proposed on the same corridor

Recently, two projects by different proponents are being proposed on the same corridor and or same area. These projects are named LRT Line 6 and Manila Airport LRT, respectively. Said projects involve the construction of rail system from Baclaran Station of Line 1 towards the southern area of Metro Manila such as Zapote, Cavite. However,, these projects have not been committed yet. Therefore, to formulate an effective rail transit network, these projects must be integrated by the concerned Government Agencies.

- Intersection design of several transportation projects

Most alignment of on-going/proposed projects are running and crossing on the major corridor in Metro Manila. For example, at some intersections along EDSA, several MRT lines cross the existing EDSA. In this case, all alignments must be vertically separated. However, alignment of rails is not able to set on higher level, because rail system can not accept high vertical gradient and station is also not set higher because it will worsen its accessibility. Therefore, intersections along major corridors should be carefully designed.

### **3.2.2 Operational Aspect**

Several transportation projects of toll road and rail system are on-going and/or being proposed under different groups of proponents. Toll rates or toll system will be different level by project. However, to provide convenience for the users of toll road and the MRT passengers, toll system including issue of ticket must be simple. These projects should be also integrated operationally.

FIGURE 3.2  
LOCATION OF TERMINAL STATION OF LINE 2 AND LINE 3 (CUBAO)

