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Solicitors & Notaries

URBAN PLANNING AND ENVIRONMENTAL LAW

QUARTERLY

(Published since May 1992)

簡家驄律師行 . 城規環保簡訊

Native forests throughout the world are being exploited on a plainly unsustainable basis. Hong Kong has no forests to protect, but we - the community as well as the government - have an influential role as consumers. The feature article in this Quarterly argues that we should be pro-active in using that influence to help conserve forests, wherever they are.

The Editors

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HONGKONG DISNEYLAND UPDATE	5	Forests and wood-lands, both natural and plantation, cover approximately one third of the earth's land surface. However, they are being destroyed at an alarming rate. In just the period 1990 to 1995, 65.1 million hectares (160 million acres) of forests were lost in developing countries alone. Even today, with all the knowledge that we have gained of the immensely important role that forests play in reducing global warming and as a key component of ecological biodiversity, a developed country such as Australia still is clearing its natural woodlands and forests at the rate of more than a football - field area per minute. Worldwide, we lose 15 million hectares of forests a year, about the size of the state of Georgia (USA).
ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)	5	Rainforests, in particular, are being logged by both legal and illegal means on unsustainable bases in countries such as Brazil, Cambodia and Thailand. On a proportional basis, the highest rate of destruction of native forests is in the Solomon Islands, where the once extensive rain forests will be completely obliterated within ten years should the current rate of harvesting continue. Tragically, this ultra-poor country's sacrifice of its forests has not even brought the immediate wealth to the community which some might argue justifies extinction of forests. Solomon Islands is virtually bankrupt. Profits have gone mostly to foreigners, particularly rapacious Malaysian logging companies.
TOWN PLANNING	8	It has been estimated that a mere ten companies could collectively put a stop to logging of all old-growth forests, and yet still be able to provide for the world's industrial wood and wood fibre needs. [An old-growth forest is usually accepted as one at least 200 years old with natural diversity.] In this report on
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the topic, dated 14 March 2001, *Worldwide Fund for Nature* (WWF) identified the ten companies and persuasively made out a case for a realistic alternative to indiscriminate harvesting of old-growth forests. If managed correctly, WWF has calculated that one-fifth (approximately 600 million hectares) of the world's forests, which would include naturally regenerated and plantation forests, could meet projected timber demands of the 21st century. However, this is possible only if the ten global companies adopt environmentally responsible management processes recommended by the *Forest Stewardship Council* (FSC).

FSC was established in 1993 on the initiative of WWF and other concerned NGOs and institutional parties. A primary aim of FSC is to set international benchmarks for responsible and sustainable forest management. FSC has established a certification programme under which forests which are managed on a prescribed sustainable basis are certified accordingly. There are today approximately 20 million hectares of forests in 35 countries carrying this certification.

The other major component of FSC's campaign for sustainable use of our forestry resources is to enlist the support of commercial timber trading companies, as well as logging/forest management companies, in purchasing only FSC certified timber. A number of the largest wholesale purchasers of timber, such as Home Depot, Lowes and IKEA, support FSC. However, only one of the five major forest managers, Stora-Enso of Sweden, has FSC certification. The five largest logging companies control approximately 20% of the world's industrial wood supply.

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FSC argues what is plainly obvious to all but the most rabidly anti-environment person or government today: forests of the world are a critical element in the chain of sophisticated causes and factors governing the sustainability and innate health of the earth's environment. Two ways in which this is prominently illustrated are:

- (a) in respect of global warming, forests act as a carbon dioxide (considered the main warming gas) sink in that the transpiration process entails absorption of carbon dioxide which is converted by trees to oxygen; and
- (b) forests are an anchor to soil and rocks, and so their removal usually eventuates in large scale flooding, as is repeatedly demonstrated in Asian countries such as Vietnam, Thailand, the Philippines and China.

Natural forests (as distinct from mono-culture plantation forests) are also oases of a rich variety of wildlife and under-story flora on which broader ecosystems depend, to a greater or lesser extent. Remove the forests and you lose the animals, insects and canopy-dependent flora as well. They have nowhere else to go, as some people might imagine.

The loss of forests is not just an issue of yet another form of our wilful destruction of our own "home", that is, the environment. Increasingly, bio-technical and medical science research companies and organisations are sourcing new drugs solely from native forests. Yet even this purely commercial consideration fails to deter our wise world leaders from increasingly allowing access for legal logging (leaving aside the enormous losses of timber from illegal logging).

Governments throughout the world usually emphasise short-term exploitation for profit in their forestry policies. Notwithstanding overwhelming evidence that we cannot continue to cut down native, old-growth forests, even developed (some might say "sophisticated") countries, such as the United States and Australia, maintain policies which ensure the virtual obliteration of their old-growth forests. In the United States barely 2.5 million acres of old-growth forests exist on federal land. Consider that in the context that the federally administered National Forests exceed 196 million acres, quite apart from the millions of acres of other land administered by federal agencies.

Australia has some of earth's most important remnant examples of tropical and temperate rain forests. Nevertheless, the federal and state governments have sanctioned access to a significant proportion of these remnant forests for commercial harvesting. Even more sadly, much of the exploitation is conducted by foreign companies which use magnificent 200 plus-year old specimens of some of the tallest trees in the world, such as Tasmanian blue-gum, for wood-chips to produce paper! In Western Australia, most of the regal kauri trees (the source of jarrah timber) have been removed. [Only a recent change of government in Western Australia has ensured protection of the tiny remnant example of these magnificent trees.]

We in Hong Kong might say that all of this has nothing immediately to do with us (although the health of the earth's environment certainly does). But this is not true, of course. Consumerism drives both legitimate logging companies and the illegal loggers (who are a particularly serious problem in developing areas such as Indonesia and African countries), to continue to exploit our forests unsustainably. For years Hong Kong consumers have unthinkingly put pressure on threatened resources and ecosystems located in other countries. Massive destruction of coral reefs caused by destructive fishing methods – such as the use of cyanide and explosives – to harvest live tropical fish for Hong Kong restaurants (and elsewhere) is a prominent case in point. In the case of threatened forests, construction companies and even the government itself have long been major customers of rain forest loggers. This irresponsible consumption of timber from endangered forests is even more indefensible when you observe that much of the timber is being used merely as form-work on construction sites.

A significant, single step towards reducing the destruction of native forests occurred in 2000 when the Clinton administration in the United States procured the passing of the *Tropical Forest Conservation Act* (TFCA). The broad objective of TFCA is to authorise the federal government to reduce debts owed to it by countries with significant tropical forests, in exchange for those countries adopting effective forest conservation measures.

The advent of the Bush administration, with its much weaker commitment to environmental protection (e.g. the federal government is moving towards opening up wilderness areas in Alaska for oil exploration and extraction) casts a shadow over the implementation of the TFCA.

Illegal logging is a discreet, major pressure on our forests. In July 2000 the G8 countries (G7 plus Russia) resolved to take steps to do more to halt illegal logging. Regrettably, not much has transpired since then. However, the United Kingdom has at least required government purchasers to order timber only from legal suppliers, particularly those with FSC certification. Each central government department is now required to report annually on its timber purchases. It must explain what steps it is taking to pursue the objective of sourcing timber from the most environmentally responsible suppliers. There is also a requirement to demonstrate what assurances the department has received that the timber is harvested both sustainably and legally.

Hong Kong's government has done little to dissuade consumers (particularly the construction industry) from using timber supplied from the world's endangered forests. According to a Greenpeace public statement (issued at the time of a protest demonstration at Government House) on 16 February 2001, the government itself continues to buy timber harvested from tropical and temperate rain forests.

As is so often the case, Hong Kong has opted for "encouragement" rather than more effective methods of protecting the environment. In 1992 the *Building*

Authority published recommendations that the construction industry avoid using tropical hardwood, particularly for non-value purposes such as hoardings, covered walkways and temporary form-work. The BA admits that form-work is by far the largest volume-use of tropical timber on construction sites. The sheer nonsense of this practice is exacerbated by the fact that after one or perhaps two or three uses, form-work timber is discarded and added to the massive volumes of waste material generated by the construction industry.

In Hong Kong there are limited legal bans on the importation of critically endangered timbers. For example, under the *Animals and Plants (Protection of Endangered Species) Ordinance* (Cap 187) a number of rain forest hardwoods, such as Brazilian rosewood and Mexican mahogany, may not be imported into Hong Kong without a licence. We have no information on whether, or how many, licences have been granted in recent years.

Importation of a range of plants is prohibited by the *Plants Importation and Pest Control Ordinance* (Cap 207) but these are pest plants, such as rubber trees from specified countries (Schedule 1 Part 1), rather than endangered species. Specifically, "timber and timber products" are "plants" which require no import licence (Schedule 2, Part 1).

Our vanishing forests provide a catalyst example, as do the world's disappearing coral reefs, for consumers and the government in Hong Kong to take realistic and meaningful steps in doing their small bit towards saving the earth's environment. However, until the government here recognises that mature environmental responsibility extends far beyond combating local pollution, Hong Kong will remain a major contributor to the unsustainable exploitation of natural resources in places far beyond our shores

LEGISLATION DIGEST

Noise Control (Amendment) Bill 2001

The Noise Control Ordinance (Cap.400) ("Ordinance") was enacted in 1989 to deal with: (i) the prevention, minimisation and abatement of noise, (ii) the appointment of a Noise Control Authority, (iii) the powers and duties of the Noise Control Authority relating to the control of noise, and (iv) the creation of offences.

This Bill amends the Ordinance by adding new sections 28A, 28B and 28C and substituting a new Schedule.

s.28A Liability of directors

Where an offence under the Ordinance has been committed by a body corporate, any director or officer involved in the management of that body corporate shall be guilty of the like offence. However, if the director or officer proves that he has taken reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate, this amounts to a defence.

s.28B Restrictions on application of s.28A

Section 28A applies to a director or officer where: (a) proceedings for the offence have been instituted against the body corporate, (b) the Noise Control Authority has served a notice in connection with those proceedings on the director or officer and (c) a like offence is repeated after the service of such notice.

s.28C Codes of practice

The Noise Control Authority has power to issue codes of practice specifying practical guidance for the purpose of good management noise control practice.

Schedule

The Schedule provides a form of notice to be issued by the Noise Control Authority under s.28B.

HONG KONG BRIEFING

Noise Control (Amendment) Bill 2001 gazetted

The recently gazetted Noise Control (Amendment) Bill 2001 sets out the responsibilities of the management of a body corporate for offences under the Noise Control Ordinance (NCO) committed by the body corporate. The objective of the Bill is to promote changes in corporate philosophy with regard to environmental compliance so as to deter recurrent noise offences.

Violation of the NCO by companies is considerably more serious than by individual proprietors. Of the 425 convictions related to construction and commercial/ industrial activities in 2000, more than 90 per cent involved companies. In the past three years, 39 companies were convicted five times or more; 17 of these companies had more than 10 convictions!

"The proposed amendments to the NCO will enhance the deterrent effect as the management of the corporations would be held explicitly liable for offences committed by the body corporate," a government spokesman recently stated.

In line with international practice, the Bill provides for a due diligence defence if the management can demonstrate that a proper system has been established and is in effective operation to (usually) prevent the offence.

"To facilitate the management in discharging their statutory responsibility, the Environmental Protection Department will issue a Code of Practice to provide practical guidance on good management practices to prevent violations of the NCO," the spokesman added.

To address the trade's concern that the top management might be prosecuted even if they have no reasonable chance to know of the offences committed at the sites, the Bill provides that the Director of Environmental Protection (DEP) should give a written warning to

the directors and officers concerned after the company has committed a first noise offence at a particular site. If the company commits an offence under the NCO at the same site after the warning, DEP will prosecute the directors and officers concerned without further warning.

[<http://www.info.gov.hk/efb/press/15062001.html>]

Seven major initiatives on prevention and recycling of domestic waste

The government announced seven major initiatives to enhance the prevention, separation and recycling of domestic waste in Hong Kong. These include the injection of \$100 million into the Environment and Conservation Fund and making available a long-term land site to set up a Recovery Park.

The Secretary for the Environment and Food, Mrs Lily Yam, said these new initiatives were put forward following the early completion of a review of the implementation of the 1998 Waste Reduction Framework Plan (WRFP).

The review found that although Hong Kong's overall waste recycling rate had increased from 32 percent in 1998 to 34 percent in 2000, much more work has to be done, especially on the prevention and recovery of domestic waste to help us manage better and contain the increasingly serious waste problem in Hong Kong.

The seven major initiatives are:-

- Setting up a 20-hectare Recovery Park at Tuen Mun Area 38 by early 2004
- Injection of \$100 million into the Environment and Conservation Fund
- Enhancing collection of separated waste and adding 8,000 newly designed separation bins
- Introduction of a help-line on recycling

- Enhancing public education and community work
- Government to set an example for waste reduction practices
- Introduction of a scheme to reinforce producer (of waste) responsibilities.

In announcing these initiatives, Mrs Yam said: "The government recognises that the processing of recovered materials for recycling needs space." "Twenty hectares of industrial land at Tuen Mun Area 38 have been set aside for the Recovery Park. The government will undertake the necessary procedures to secure this for exclusive use by the recycling industry.

"This piece of land has an area bigger than the Victoria Park and can be accessed by sea to facilitate easy loading and unloading of materials. We expect the first phase of the Park to start operation in early 2004," Mrs Yam added.

To enhance waste prevention and recovery work, the government will seek the approval of the Finance Committee of the Legislative Council to inject \$100 million into the Environment and Conservation Fund. These funds will be applied mainly for supporting community-based waste prevention and recovery programmes, and will be available to district organizations, green groups, voluntary agencies, etc. to carry out waste prevention/recovery work and activities.

Mrs Yam stressed that Hong Kong is facing a serious waste disposal problem which the community might not be aware of. The amount of waste generated continues to rise with an increasing population.

At present over 6.5 million tonnes of wastes are disposed of in landfills each year. The average increase in the overall volume of waste over the past five years is 3.5 per cent per year and domestic waste alone has an average annual increase of 4 per cent. This growth of domestic waste is much

higher than the population growth of 0.9 per cent each year.

"Much greater public awareness of the problem, and community participation in preventing and separating waste is required to help us better manage and contain the increasingly serious waste problem in Hong Kong," she added.

[<http://www.info.gov.hk/efb/press/11092001.html>]

HONG KONG DISNEYLAND UPDATE

Contract for works on water supply

In order to provide a fresh water supply for the future theme park, Disneyland, a contract for the construction of the required facilities was signed between the Water Supplies Department and Chun Wo Construction & Engineering Co. Ltd. in August, 2001.

Under the contract, a service reservoir with a total storage capacity of 13,000 cubic metres will be constructed. Provision for future extension will also be taken into account when constructing the reservoir. A 1,100-metre single-track access road will also be constructed linking the Cheung Tung Road in Tung Chung with the service reservoir.

On completion, fresh water will be pumped from the treated water pumping station at Siu Ho Wan Treatment Works to the Yam O Tuk Fresh Water Service Reservoir through the existing 800mm diameter fresh water trunk. The distribution network will then gravity feed fresh water to Penny's Bay.

It is estimated that the work will cost approximately \$137 million and will probably be completed by the end of 2003.

[*Disneyland Press Release*, 7 August 2001]

Dredging work halted

Reclamation work for the Disneyland project might not be finished on time because of sedimentation of a coral site near Po Toi, which is the site from

where the sand-fill material for the reclamation work was to be taken.

The Civil Engineering Department had allowed the SAR-Netherlands joint venture contractor, HAM-Hong Kong Construction, to dredge sand on a trial basis from West Po Toi since May 28. But when a weekly survey disclosed sedimentation had occurred at the coral site, the trial dredging was halted in June. Sedimentation will affect the ecological balance of the site. Sand extraction work will be suspended until an investigation into the cause of sedimentation is completed.

The contractor and the government are anxious to speed up the work because, with 20 months of the contract period remaining, only 17 hectares, or 8.5 percent, of the 200 hectares of land, have been reclaimed. Moreover, if the contractor and the government are unable to honour their contract with Disney Corporation by completing the reclamation work by 2003, both will be penalized under the terms of the contract.

A total of 66 million cubic metres of sand-fill material is required for the Disneyland project, but the government has had difficulty in securing a reliable source of supply of sand. Originally, more than half the sand-fill material was expected to be obtained from the mainland, with the remainder from the East Lamma Channel and West Po Toi; but the government was unable to obtain sand from mainland sources because of red tape and a dispute over price. Despite the slow progress, the government said the target completion date for the reclamation work remained unchanged.

[*SCMP*, 15 June 2001]

Disneyland in Beijing?

It has been rumoured that Michael Eisner, chairman and chief executive of Disney Corporation is considering a proposal that the company build a theme park on the mainland. These rumours have aroused much concern in the SAR about the effect a Disneyland in China would have on

Hong Kong's Disneyland, scheduled to open in 2005.

Speculation came to an end, finally, when the Chief Secretary, Donald Tsang Yam-kuen, said Mr Eisner had told him that Disney Corporation would not consider other projects in China before Hong Kong Disneyland was well established. Speaking in Los Angeles on 7 September 2001 at the beginning of his eight-day tour of the United States, the Chief Secretary said he has obtained reassurance from the company that they would allow Hong Kong's Disneyland to reach commercial maturity before thinking about building another in the region.

Under the 1999 contract between the government and the Disney Corporation, Disney is not barred from developing another Disneyland in China, or even within Hong Kong. Nevertheless, Mr Tsang said he believed that since Hong Kong Disneyland is a joint investment between the government and the Disney Corporation, the company would not damage its profits by rushing to develop a competing park on the mainland. Under present arrangements, Disney Corporation holds a 43 per cent stake, representing an investment of \$4.7 billion, in the Hong Kong theme park company, which it is not allowed to sell when the project is completed. He also said that the important issue is not how far apart the theme parks would be, but where the main tourist areas are centred. This is illustrated by the fact that there are two Disneylands in the US, one in Florida and the original Disneyland in California.

[*SCMP*, 8 September 2001]

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Report of the 60th Environmental Impact Assessment Subcommittee Meeting (ACE Paper 29/2001)

Strategic Assessment and Site Selection Study for Contaminated Mud Disposal (ACE-EIA Paper 6/2001)

The contaminated mud pit at East Sha Chau will be exhausted by late 2007. At present there is too much uncertainty to identify a management option for the long term (post 2010) but planning for the intermediate period of 2007 to 2010 should start now. The Strategic Assessment and Site Selection Study for Contaminated Mud Disposal (the Study) was commissioned to (a) provide an analysis of viable methods of disposal of contaminated mud and (b) to identify and evaluate suitable sites on the basis of the characteristics and constraints of the viable options as an intermediate measure for 2007 to 2010.

Contaminated mud disposal options include: contained aquatic disposal (CAD), confined disposal facility (CDF) and special treatment/disposal. CAD, the system currently in use in Hong Kong involves filling a seabed pit with contaminated mud and capping it with uncontaminated material such that the contaminated mud is isolated from the surrounding environment. CDFs are near-shore or artificial island containment facilities which isolate contaminated dredged material, but extend up to and possibly above sea level. Materials requiring special treatment go through a process of physical or chemical stabilization and then subsequently disposed of at either a CAD or CDF.

The Study identifies a total of twenty sites within Hong Kong waters which have the potential as locations for contaminated mud disposal options. Although a CDF has potential in the long term, it is not considered a suitable disposal method for the 2007-2010 period. After screening sites' suitability against environmental, engineering and planning criteria, the Study reduces the number of strategies/sites to seven CAD strategies: North Brothers, East Sha Chau, Airport East, Airport West, Hei Ling Chau, Shek Kwu Chau and Southern Waters. Potential constraints at the seven strategies are further evaluated and it is concluded that the

strategy of developing a CAD at Airport East is less restrictive and, in terms of environmental protection ranking, is the most suitable option.

At the Subcommittee meeting the discussion focused mainly on: the reason for adopting an intermediate measure instead of a long-term strategy; the present position of a long-term strategy; whether there are other engineering methods that will reduce or even avoid dredging of contaminated mud; whether marine disposal is commonly adopted in overseas countries, and, if an intermediate CAD for 2007-2010 is required, and the reason for selecting Airport East instead of East Sha Chau.

Members had reservations on the intermediate measure as it might cause adverse environmental impacts in the long run. They preferred to leave contaminated mud in place as far as practical. Furthermore, members considered that more options, such as a low growth option and a high growth option, on contaminated mud rising should be provided in the analysis.

As far as the intermediate measure is concerned, the proponent clarified that changes had taken place which had considerably reduced the accuracy of the forecast of contaminated mud rising, making it imprudent at this time to commit to a disposal option for the long term. Whilst there should be sufficient information in one or two years' time to identify a long-term strategy, there is now a pressing need to identify an intermediate disposal facility for the years 2007 to 2010 because the implementation of a CAD, including the EIA process, design and construction will take about five years. Early planning is required, otherwise fast tracking of the project will be required later.

On the question of a CDF as a long-term strategy, the proponent pointed out that the Civil Engineering Department was conducting a study on the feasibility of co-disposing dredged and inert construction and demolition materials. An artificial island CDF would be examined under this study.

As far as reduction of dredging of contaminated mud is concerned, the proponent indicated that Works Bureau Technical Circular 3/2000 was being revised to require even more justification for dredging of mud, especially contaminated mud. However, there were projects such as tunnels, navigation channels, river-training and maintenance dredging for which removal of the seabed is unavoidable. Such projects contributed to about 50% of the contaminated mud rising.

On the method of marine disposal in overseas countries, the proponent indicated that CAD is used in the US while CDF is used in the Netherlands.

Members were unclear about the environmental benefits of Airport East in comparison with East Sha Chau. The project proponent clarified that Airport East was much less frequented by the Indo-Pacific humpbacked dolphin. Strong resistance would be expected if further expansion were planned in the areas more commonly used by the dolphins.

To sum up, the project proponent explained that the purpose of the submission was to seek members' view on the proposal to conduct an EIA on a short-term CAD at Airport East. Whilst members did not rule out an intermediate CAD option at the Airport East site, they did have reservations on an intermediate strategy as against a long-term strategy. In addition, they considered it inappropriate to endorse a specific site for the conduct of an EIA. Members recommended that the subject be referred to the full Council for consideration.

EIA Study on the Decommissioning of Cheoy Lee Shipyard (ACE-EIA Paper 5/2001)

Decommissioning of Cheoy Lee Shipyard (CLS) is a designated project under the EIA Ordinance. When the Council considered the EIA report on the Northshore Lantau Development Feasibility Study in April 2000, members were concerned about

possible contamination of the CLS site. Against this background, the Administration made a commitment that no works within CLS, except for investigation works necessary for the decommissioning of the EIA study, should commence before completion of the decommissioning EIA study and the issuing of an environmental permit by the Director of Environmental Protection.

Asbestos surveys conducted in December 2000 and April 2001 confirmed the existence of asbestos-containing materials (ACM) in the buildings at CLS. As asbestos is hazardous to health, it is essential that removal and abatement works at CLS be carried out at the earliest opportunity. It is considered that the asbestos abatement works would not affect ground soils and if it is carried out with appropriate mitigation measures is unlikely to cause adverse environmental impacts.

The project proponent will apply to Director of Environmental Protection under section 5(11) of the Ordinance for issue of a direct permit for the proposed asbestos removal work. The proposed work will need to comply with all relevant environmental standards and guidelines.

As for the decommissioning EIA study, it is progressing on schedule. It is expected that the study will be completed in November 2001 and will be submitted to the Council at the end of the year or the beginning of next year. Decommissioning work should commence in mid 2002.

At the Subcommittee meeting, members supported the proposal to undertake ACM abatement and removal works ahead of the completion of the decommissioning EIA study. The discussion focused mainly on whether the removal works would affect the ground soil of the shipyard and the surrounding environment, whether the buildings of the shipyard will be removal or not and how the works would be carried out.

The project proponent indicated that the ACM abatement and removal works

would not affect the ground soil of the shipyard. The floor slabs of the buildings would be covered with a heavy-duty impervious membrane to prevent soil contamination. Removal of ACM is controlled under the Air Pollution Control (ACO) Ordinance. A contractor registered under the ACO Ordinance will undertake the necessary works. The contractor will need to comply with relevant environmental standards and safety guidelines so that the workers concerned will be protected and dust and particles generated during the work process will not affect the outside environment.

Status Report on Sand Dredging at West Po Toi Marine Borrow Area (WPTMBA) (ACE-EIA Paper 6/2001)

In November 2000, the Marine Fill Committee allocated West Po Toi (WPTMBA) as a supplementary sand source to the Penny's Bay project. (WPTMBA had been used before between 1993 and 1995.) The allocation was made with a condition that an assessment should be carried out to establish whether there would be adverse cumulative environmental impacts in association with other concurrent works.

The major concern of the sand dredging work has been the potential impact of sedimentation on some high value ecological and conservation coral communities which are about two kilometres east from the WPTMBA. Results of the environmental monitoring and audit (EM&A) from 28 May up to 4 June 2001 indicated no adverse impacts resulting from the dredging. On 5 June, a high level of turbidity and suspended solids were recorded at North East Po Toi. Sedimentation and bleaching of some table corals at the same site were recorded on 7 June. Dredging work stopped on 8 June. On 18 June, a dive-survey jointly conducted by AFCD and the EM&A team confirmed that the sedimentation of corals recorded on 7 June had disappeared and, except for about 3% of the previously sedimented area, there had been no damage.

The proponent indicated that despite a thorough review of all available data it was not possible to draw definite conclusions as to cause of the sedimentation. The Independent Environmental Checker employed by the proponent has recommended that dredging can be resumed under the control plan provided by EM&A and its event and action plan.

At the Subcommittee meeting, members raised questions on: the ecological value of the table coral; the bases of the decision graphs and action limit level; the degree of risk of relying on the EM&A to monitor the impact of dredging; the effectiveness of the EM&A Manual; and whether in addition to the dive-survey it is possible to install automatic underwater devices to provide quick monitoring; and the issue of what triggers should be in place for the cessation of dredging and resumption of dredging.

On the ecological value of table coral, a representative from AFCD said that table coral had a restricted Indo-Pacific range and was considered a high-latitude coral, being relatively rare in lower tropical locations.

The proponent said the decision graphs and action limit levels were based on protocols adopted for the Great Barrier Reef. However, as such protocols were not previously applied to local coral communities, more precautionary criteria had been adopted.

Members considered that despite the EM&A Manual, there were still elements of risks, because by the time an impact was detected the coral might have been damaged. On this point, the proponent clarified that the EM&A Manual included a step-by-step action plan and there were different event levels so that mitigation measures could be implemented progressively. The proponent said that it had further improved the standards in the Manual, and all parties involved in the project, including the relevant enforcement authorities, had accepted the version of the EM&A Manual dated 9 July 2001. The proponent agreed to provide

the updated Manual to members for reference.

The AFCD representative added that they had offered advice/suggestions in drawing up the EM&A Manual, in particular the event and action plan for monitoring table corals. Subject to the implementation of the measures and the plan, they were satisfied that the EM&A Manual would be adequate and effective. The coral event and action plan would be subject to review and revision throughout the EM&A process as more data were gathered. In addition, because of the specialist nature of the assessment of coral health, AFCD would employ an independent coral specialist to audit dive-survey results.

On the installation of automatic devices, the proponent said that such automatic devices might be able to monitor the turbidity level, but not the more important suspended solids level. Moreover, such devices would not be able to survive the strong currents in the area.

On the trigger of cessation of dredging, as laid down in the event and action plan in the EM&A, the proponent said that according to the revised EM&A Manual (9/7/01), dredging would cease if there were a greater than 25% change in the cover of live coral colonies.

The proponent clarified that the Administration had accepted the recommendation of the Independent Environmental Checker that dredging could resume with the control provided by the EM&A Manual and its event and action plan. Dredging could resume as soon as possible. The proponent agreed to provide to the Subcommittee regular and frequently updates on dredging and the EM&A initially on a one or two weekly basis.

TOWN PLANNING

Public views sought on Hong Kong's urban design guidelines

As part of a new round of public consultation on the *Urban Design Guidelines for Hong Kong*, seven

vantage points have been proposed by the Planning Department (PD) as suitable for the preservation of views to ridgelines around Victoria Harbour and at the Peak which are valuable assets to Hong Kong.

The seven vantage points proposed are: the Quarry Bay Park, the Hong Kong Convention and Exhibition Centre in Wan Chai and the Sun Yat Sen Memorial Park in Sai Ying Pun, which are on the coast on Hong Kong Island; the Cultural and Arts District on West Kowloon Reclamation, the Cultural Complex in Tsim Sha Tsui and the proposed promenade at South East Kowloon Development on the Kowloon side; and the Lion Pavilion at the Peak.

The need for regulatory measures to facilitate the proposals was considered by the PD, and several possible regulatory approaches for ridgeline preservation have been identified, including introduction of legislation to require new specification of various height limits, storey limits and minimal site coverage on certain sites.

An alternative is not to specify restrictions but to require developments within the statutory view corridors which exceed a certain height to depict their visual impact on ridgelines in their application to the Town Planning Board.

In mapping out a conceptual city height profile, PD suggested that high rise buildings should be allowed at selected strategic locations, such as the southern tip of the Kowloon peninsular.

For the waterfront district of Victoria Harbour, the PD proposed that waterfront areas stretching from West Kowloon Reclamation to Lei Yue Mun on Kowloon side and from Western District to Shau Kei Wan on Hong Kong side should be subject to special design consideration and approval. The Director of PD said that in order to ensure that the waterfront of Victoria Harbour continues to project the unique identity of Hong Kong, visually interesting water edges should be maintained and innovative buildings should be encouraged.

The proposals were meant to be a start of public discussion and feedback. Pending public views received, further investigation would be necessary regarding the locations and implementation details of the waterfront areas to be made subject to special design consideration.

[*Government Press Release*, 8 September 2001]

Skyscraper restriction plan aims to protect mountain views by reducing "soar points"

The Planning Department (PD) has proposed restricting the height of new buildings on both sides of the Harbour to 40 storeys on the waterfront and 60 storeys inland in order to protect Hong Kong's skyline. The building height limits were proposed to protect "viewing corridors" to preserve public views of mountain ridges, including Victoria Peak and Mount Parker on Hong Kong side and Beacon Hill, Lion Rock, Tsz Wan Shan and Kowloon Peak on the Kowloon Side.

The proposed high-rise restricted areas include Central, parts of Wan Chai and Quarry Bay on Hong Kong Island; and South-east Kowloon new town, Mongkok, Lai Chi Kok and Kwun Tong on the Kowloon side. Currently, when viewed from either side of the harbour, the ridge lines on both the Kowloon side and Island side are broken by a number of skyscrapers.

The PD said the new limit could either be enforced by law or statutory rules in outline zoning plans. However, the Hong Kong Institute of Planners warned that height controls should not block developers from projects for which they had already received approval.

[*SCMP*, 7 September 2001]

Waterfront plans under fire

In the latest Wan Chai Reclamation study, the Territory Development Department recommends creating four large commercial sites on Wan Chai and Causeway Bay waterfronts – two

by rezoning and two on reclaimed land.

The largest site involves re-zoning a 2.75 hectare site covering the Wan Chai bus terminal and indoor gymnasium into a comprehensive development area. The site, in front of Sun Hung Kai Centre, Great Eagle Centre and Harbour Centre, could provide a gross floor area of 3.45 million square feet, with a height limit of 221 metres. The other site for rezoning is a 91,000 square feet lot at the Fleet Arcade near Fenwick Pier, which could provide 1.3 million square feet of commercial space.

The two reclamation sites, for hotel and retail development, are a 75,300 square feet lot neighbouring the Police Officers Club and a 50,000 square feet lot near Citicorp Centre and Island Eastern Corridor.

The proposals have drawn objections and reservations from developers who were of the view that while existing office supply on Hong Kong Island is sufficient to meet the market demand, implementation of the plan will lead to an excess supply of commercial land. Additionally, the existing Wan Chai north transport network was insufficient to support additional huge office supply, critics argue.

[SCMP, 12 September 2001]

Guidelines for use/development within "Industrial" zone

The Town Planning Board (TPB) has announced the introduction of a new set of guidelines for use/development within the "Industrial" ("I") zone.

The guidelines, TPB PG-No. 25, widen the scope of uses permitted in the "I" zone and replace four previous sets of guidelines relating to the "I" zone for: office and showroom uses in industrial buildings; office buildings; composite industrial-office buildings; and commercial uses in industrial buildings.

The planning intention for the "I" zone, and the uses that are permitted as of right or requiring planning permission from the TPB, are explained in detail in the guidelines. The planning criteria for assessing planning applications for office buildings and commercial uses within the "I" zone are also set out.

Before all the relevant statutory plans are amended, planning applications for uses agreed to be transferred from Column 2 to Column 1 of the Notes for the "I" zone will be processed within four weeks under a fast-track approach, based on the spirit of the new guidelines.

Permitted uses include: general industrial use; office related to industrial use; information technology (IT) and telecommunications industries; and research, design and development centres related to industrial, IT and telecommunications uses.

For "office related to industrial use", there is no requirement for the related industrial operation to be located within the same premises or general industrial area. However, because of fire safety considerations, any activities involving direct provision of customer services, retail services or goods will not be permitted without planning permission.

To direct heavy and obnoxious industrial uses to specially designated sites, such uses (e.g. cement manufacturing, chemical and biochemical plants, electric power stations and gas works) which were previously under Column 2 of the "I" zones are deleted from the "I" zone. Existing operations, however, will not be affected.

[Government Press Release 27 July 2001]

REGIONAL & INTERNATIONAL

USA

The US House Ways and Means Committee recently approved tax concessions for both energy conservation and production. The panel voted 24-17, along party lines, for the bill that will provide a long list of tax incentives to encourage energy conservation and greater use of alternative energy sources, including solar energy. The bill also expands tax concessions for small energy

producers and will allow faster depreciation of natural gas pipelines and oil refineries. The concessions are estimated to cost \$33.5 billion over ten years, which will be provided from projected budget surpluses.

The panel, in a largely party-line vote, rejected an amendment that would have made the tax cuts contingent on sufficient non-Social Security and Medicare surpluses to cover them. The panel also rejected a Democratic amendment that would have covered the cost of the energy tax concessions by scaling back a planned reduction in the top income tax rate which was part of the \$1.35 trillion 10-year tax reduction President Bush signed into law in June 2001.

The energy tax bill will probably pass the Republican-controlled House. But the Democrat-led Senate is likely to insist that any energy tax concessions be offset by raising other revenues or cutting spending.

[Reuters News Service, 20 July 2001]

Republican senators have now proposed an alternative to the Kyoto Protocol. They have proposed a bill to spend \$2 billion over 10 years on new technology to reduce greenhouse gas emissions. The bill also earmarks \$1 billion to sell the technology to developing nations, such as China and India, and would create a national registry to track private companies' voluntary actions to reduce emissions.

Reporters were told that the results would bring greater gains in reducing the overall impact of global gases than if USA had implemented Kyoto, which calls for industrialized states to reduce emission of greenhouse gases to an average of 5.2 percent below 1990 levels by 2012. President Bush rejected the Kyoto Protocol in March this year, saying it would be too costly and harmful to the U.S. economy.

The United States, by far, emits the largest volume of greenhouse gases, such as carbon dioxide, which have been blamed by virtually all climate scientists (including NASA) for the earth's gradual temperature increases. However, the effects of rising

temperatures remain the subject of disagreement among scientists. Whilst many agree the warming threatens to melt polar ice caps and inundate island nations, there is some disagreement over whether warmer temperatures cause radical weather changes.

Republicans have sought to develop an alternative to the Kyoto Protocol, conscious of public opinion surveys showing many Americans are uneasy with the Bush administration's anti-conservation environmental policies. The bill, however, faces an uphill battle in the Senate. Democrats have sharply criticised President Bush's decision to drop out of the Kyoto Protocol. They maintain that the United States is taking a backward step by excusing itself from Kyoto's greenhouse gases reduction commitments.

A bipartisan bill to promote carbon sequestration, the process of absorbing carbon dioxide through forest and agriculture-based efforts, is also to be debated by Congress.

[Reuters News Service, 2 August 2001]

Indonesia

Mining giant PT Freeport Indonesia said it would appeal an Indonesian court ruling that it gave false information to Parliament concerning a fatal accident at a mining site last year.

Freeport, a unit of U.S.-based Freeport McMoRan Copper & Gold Inc, operates one of the world's largest copper mines in the jungle-clad eastern Indonesian province of Irian Jaya. The South Jakarta court upheld a claim by an environmental NGO, Walhi, which accused Freeport of telling legislators a landslide at its mine did not cause any fatalities and was not due to negligence. Four workers were killed by the landslide in May 2000 at the Wanagon Lake waste dump in remote Irian Jaya.

Freeport's spokesman rejected claims that Freeport did not care about the environment and that its warning system, designed to alert workers of landslides, was not working.

Walhi's lawyers provided evidence during the trial that the system in fact

sounded 30 minutes after the waste hit a village near the site. Walhi hailed the court ruling, which included an order that Freeport improve its toxic waste management.

[Reuters News Service, 31 August 2001]

Canada

In addressing the plight of Canada's increasingly vulnerable and endangered species, the federal Minister of Environment recently commented:

"The proposed *Species at Risk Act* will guarantee that all species in Canada, wherever they live, are protected. As Environment Minister I am deeply concerned at the current vacuum that exists for species protection.

There are still groups in Canada opposed to endangered species legislation. When I introduced the *Species at Risk Act* this spring, Alliance MPs rose in the House of Commons claiming that we "do not need legislation" and called my bill "draconian" and "dictatorial". I reject this extreme position and I am committed to passing legislation that will prevent the disappearance of Canada's wildlife.

Some are calling for stronger legislation. But stronger legislation doesn't always mean better. In the US, for example, the *Endangered Species Act* is touted as a strong piece of legislation. But its legalistic and confrontational nature has ground species protection to a halt. Because lawsuits are consuming its US\$6.4 million budget, there has been a nation-wide moratorium since last November on listing species for protection. Its command and control approach has caused terrible conflicts between landowners and government, as witnessed this summer in Oregon's Klamath Basin. We don't want this kind of confrontation in Canada, neither in the courts and especially not on the ground. In the end, this kind of confrontation only hurts our endangered species.

We want to put species protection in the hands of those who live closest to the species: farmers, ranchers, fishermen, landowners and land users. [Editors' note: the Minister left out hunters.] The worst result is for species to disappear by becoming pawns in protracted political disputes or costly court battles."

The Green Lane, Canada, 10 September 2001.

China

The Minister of Land and Resources is urging local officials to regulate more efficiently the exploitation of mining resources.

The Minister's comments came at an emergency national conference in which participants agreed to shut down those mines operating without proper certificates. They also agreed to set up a system in which mining companies must prove to the Ministry that they are not exploiting their workers. Otherwise, the companies will be shut down. "This is a harsh problem that has never been effectively corrected," the Minister told senior local resource officials. "It has to be treated seriously now. If not, many innocent people will be in grave danger."

China has suffered many fatal mining accidents this year. The recent Nandan accident in South China's Guangxi Zhuang Autonomous Region alone killed more than 80 miners. The Minister blamed many of the deaths on the lack of proper mining licences and unapproved mining practices. He cited a cave-in accident earlier this year in a quarry in Leping, Jiangxi Province in which 40 of the 43 mining units were working without mining licences. Backward facilities and poor techniques have resulted in many enterprises wasting valuable mining resources and destroying the environment.

"To improve this situation, we should ask those unqualified in equipment operation and technique to stop," the Minister said. "We should also oversee them, as well as the qualified ones, to make sure they do not harm

the environment. In that way the land can be used for afforestation and crop cultivation.”

[China Daily, 13 September 2001]

This Quarterly Report does not constitute legal advice given on any particular matter. Whilst all effort has been made to ensure completeness and accuracy at the time of publication, no responsibility is accepted for errors and omissions. Further information and enquiries in respect of this quarterly should be directed to Fred Kan & Co. or any of our following associate firms:

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Convictions under environmental legislation: July – September 2001

The EPD's summary of conviction recorded and fines imposed during the period July to September 2001 is as follows:

July 2001

A total of 106 convictions were recorded in July for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 32 were convictions made under the Noise Control Ordinance, 27 under the Waste Disposal Ordinance, 25 under the Water Pollution Control Ordinance and 22 under the Air Pollution Control Ordinance.

The heaviest fine in July was \$100,000.

A company was fined \$100,000 for using powered mechanical equipment not in accordance with the condition of a construction noise permit.

August 2001

A total of 75 convictions were recorded in August for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 26 were convictions made under the Noise Control Ordinance, 24 under the Air Pollution Control Ordinance, 16 under the Water Pollution Control Ordinance, eight under the Waste Disposal Ordinance and one under the Ozone Layer Protection Ordinance.

The heaviest fine in August was \$120,000.

A company was fined \$120,000 for using powered mechanical equipment not in accordance with the condition of a construction noise permit.

September 2001

A total of 83 convictions were recorded in September for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 27 under the Air Pollution Control Ordinance, 25 were convictions made under the Noise Control Ordinance, 16 under the Waste Disposal Ordinance, 10 under the Water Pollution Control Ordinance, three under the Ozone Layer Protection Ordinance, and two under the Dumping At Sea Ordinance.

The heaviest fine in September was \$300,000.

A company was fined \$300,000 for importing/exporting ozone depleting substances without a licence.

Note: The above changed format reflects the EPD's new style of publishing environmental offences data. Details of all offences are available from EPD's Media Relations Unit.

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