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URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

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An effective system of laws and standards for conservation of the environment requires a knowledgeable judiciary and easy access for citizens to seek judicial relief. The feature article in this edition considers an example of a jurisdiction, India, which has these attributes (to some extent, at least).

The Editors

CONTENTS

	Page	
Feature: CITIZENS' SUITS RIGHTS IN ENVIRONMENTAL LITIGATION: A LESSON FROM INDIA	1	MENTAL LITIGATION: A LESSON FROM INDIA
LEGISLATION DIGEST	4	Two recent decisions in Hong Kong affecting the environment – one judicial, the other administrative – suggest that Hong Kong might be moving towards a more realistic and modern approach to environmental protection.
HONG KONG BRIEFING	5	
HONGKONG DISNEYLAND UPDATE	5	The Court of First Instance refused to overturn the extension of Town Planning Board's designation of the sensitive Sha Lo Tung valley as a conservation zone. The court concluded that a proposed housing development would significantly impact the ecology of the valley, which contains habitat for several rare species of dragonfly, butterfly and fish. It is refreshing to note that in his judgment Peter Cheung J. rejected Hong Kong's usual anthropocentric view of the issue of development versus conservation, noting that "mankind is only a part, and a very small part indeed, of nature".
ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)	7	The administrative decision was a ruling late last year by the Environmental Protection Department
TOWN PLANNING	8	
REGIONAL & INTERNATIONAL	9	
PROSECUTION STATISTICS ..	12	
CITIZENS' SUITS RIGHTS IN ENVIRON-		

refusing the issue of an Environment Permit for KCRC's Lok Ma Chau Rail project. The EPD considered that the project threatened the environment of the proposed route, including important species of birds and their habitat in Long Valley near Sheung Shui.

This article does not propose to examine the merits of these decisions. They are mentioned because they focus attention again on the question of the effectiveness of Hong Kong's regime for protecting its natural environment. The decisions also are rare examples of environmental conservation prevailing over commercial objectives in Hong Kong. A major reason this has not occurred more often is the lack of opportunities for the public to participate in our environmental protection process.

In this context it is useful to look to a close neighbour for inspiration. We refer to India, which, although it has a significant middle class and sophisticated technical and scientific capacities, is generally considered to

be a poor, developing nation.

Yet India has over the last 15 years or so put in place laws and procedures which are more enlightened and offer more realistic protection of the environment than is the case in Hong Kong. That is not to say, of course, that India's environment is now effectively protected. Unfortunately, this is not the case. Nevertheless, in the field of giving access or ordinary citizens to ask for judicial intervention in support of protecting the environment, India provides a close, shining example. Hong Kong would more quickly achieve its stated goal of sustainable development were we to learn from India that citizens' participation in formulating and enforcing laws to conserve our environment is vital.

The right of ordinary citizens to challenge decisions on the ground that the environment will be adversely affected is a cornerstone of an affective regulatory system for the protection of the environment. In many jurisdictions, including those of developed countries such as England and Australia, citizens have no such right, in broad terms, unless they are directly concerned with the decision in question (rather than being concerned by virtue of being a member of the community whose environment is threatened).

Whilst by no means perfect, the federal regulatory system for environmental protection in the United States is more advanced than those in most other countries. In respect of both prosecuting breaches of environmental standards, and the formulation of those standards, US federal laws provide liberal rights for citizens to participate. If government agencies are doing their job and policing environmental controls adequately, the private citizen has no need to interfere. However, experience in the US (and elsewhere) has shown that for reasons not readily understandable, government agencies often pander to vested interests --- particularly business and industrial interests --- at the expense of enforcing controls for the protection of the affected environment. In these circumstances, US laws allow private citizens to bring court proceedings to enforce the environmental regulations and laws, or to seek judicial review of agencies' decisions (or non-decisions) which permit private interests unreasonably to impact the environment.

Unless there is a direct interest involved, private citizens in Hong Kong generally have no *locus standi* to bring legal proceedings in order to force either the government or private parties to cease activities which significantly impact the environment. Hong Kong has adopted the more restrictive and conservative approach which has evolved from English practice and tradition and has been adopted in many other Commonwealth countries, whereby enforcement of environmental standards is left to the government.

In this context, the path taken by India is refreshingly different. India's highest court, the Supreme Court, decided in 1982 that citizens have a constitutional and fundamental right to a safe environment, meaning a healthy environment for themselves and future generations: *S.P. Gupta v Union of India*.

The court ruled that public-minded persons or organisations were entitled to *locus standi* in the courts in matters of public interest, even where the matter concerned did not directly injure their individual rights.

In *Sheela Barse v Union of India* (1988) the Supreme Court said the following on citizens' right to access courts in respect of public interest (including environmental) matters:

In public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights.

While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions.

“Unless there is a direct interest involved, private citizens in Hong Kong generally have no locus standi to bring legal proceedings in order to force either the government or private parties to cease activities which significantly impact the environment”.

India's liberal attitude to standing in public interest litigation has evolved further since those early cases. Today it is possible for any person to

bring before the courts a public interest matter by simply writing a letter to the court. Formal initiating proceedings are not required. The letter is passed on to the Chief Justice, or one of the other judges, and if he/she considers the matter referred to in the letter sufficiently important and credible, the court itself initiates the proceedings and makes directions generally as to the future conduct of the proceedings, including the persons and organisations who will be made parties to the proceedings or who are required to submit evidence.

As said, granting citizens easy access to the courts (often referred to as “open standing”) to obtain relief when the environment is threatened does not mean that India has solved its environmental problems. Far from it. However, its capacity to do this is very much enhanced as a result of this judicial reform.

India's most successful and influential environmental lawyer, Mr. M. C. Mehta, has successfully litigated numerous cases involving environmental matters during the last 15 years or more. The way in which he became aware of India's extensive environmental degradation (which resulted in his changing from a commercial / civil lawyer to an environmental lawyer) is dramatic. In the early

1980s he visited a section of the sacred Ganges River. Arriving on its banks he was horrified to find that the entire surface of the river for more than a kilometre was ablaze. This was due to the fact that the many nearby factories were simply discharging their flammable and toxic wastes directly into the river.

Mr. Mehta stepped in where the regulatory authorities had abdicated their responsibilities. He successfully applied for injunctions permanently preventing the factories from discharging wastes into the Ganges. Since then he has succeeded in many environmental cases. These include other proceedings in which the Supreme Court ordered the closure and removal of a large number of factories whose polluting emissions were eroding the Taj Mahal.

Another illustration of the sophisticated level of citizen and judicial involvement in environmental protection in India is a recent case decided by the Bombay High Court sitting in Goa, *Gulf Goans Hotel Ltd. (Gulf Goans) v Ministry of Environment and Forests and The Goa Foundation*.

Gulf Goans operated a hotel on Goa's popular coast. It constructed a new hotel wing and swimming pool within 200 metres of the high water mark, contrary to coastal zone management guidelines which had been issued by the central government's Ministry of Environment and Forests. These guidelines prevent construction within 200 – 500 metres (the distance varies depending on the location) from the High Tide Line (HTL). The guidelines are aimed at preserving the fragile foreshore environment of Goa, which is a state subject to heavy environmental pressures from tourism activities.

Gulf Goans refused to remove the structures and so the Ministry directed that water and power supplies to the hotel complex be cut off, exercising its powers under the federal *Environment Protection Act*, 1986. Gulf Goans brought proceedings against the Ministry. Goa Foundation, an environmental non-government organisation, joined in the proceedings by filing a cross-petition with the High

Court, seeking an order for demolition of the offending structures.

Despite the enormous influence in Goa of the tourism industry, large hotel owners/operators in particular, the court upheld the Ministry's power to issue the directions cutting off power and water, and also allowed Goa Foundation's petition. Costs were ordered against Gulf Goans.

In upholding the Ministry's right to issue the directions, the court examined the history of the guidelines in the context of the Ministry's power under the *Environment Protection Act*. The guidelines came into being as a result of a letter dated 27 November 1981 sent to the Chief Ministers of all coastal states of India by the late Prime Minister, Indira Gandhi. This letter called on the Chief Ministers to impose a ban on construction within 500 metres from the HTL.

The High Court concluded that this letter represented an expression of the then government's view that the Stockholm Declaration on sustainable development should be upheld by all Indian governments. [The Stockholm Declaration, to which India is a party, accepted as an overriding principle that all exploitation (i.e. development) of the environment should be on a sustainable basis. Sustainable development was first defined as a policy in 1972, in the *Brundtland Report*, as "development which meets the needs of the present without compromising the ability of future generations to meet their own needs."].

More relevantly here, the court held that the Stockholm Declaration could be enforced in all municipal courts in India, whether or not laws applying the Declaration existed, and that any citizen was entitled to apply to the courts for relief in respect of any activity allegedly contravening the Declaration.

The High Court based its decision largely on Indians' constitutional "right to life", which the court and other Indian courts have interpreted as meaning "a right to a healthy environment". Enforcing the guidelines was a step towards ensuring a healthy environment. The High Court also

restated Indian courts' acceptance of the principle of "inter-generational equity", namely, that the rights of the future generation must be balanced against the needs and rights of the present generation.

Another decision of the High Court of Bombay (*Pinto & Alvares v State of Goa*, August 2000) illustrates the informal nature by which proceedings concerning environmental matters can be brought before the courts. Briefly, a private citizen wrote a letter to the High Court complaining that in his region fishing fleets were indiscriminately harvesting fish stocks. His letter claimed that this would impact negatively on the future health of fish stocks, which in turn affected his "right to life" guaranteed under article 21 of India's constitution. There were also other grounds for complaint.

The High Court converted the letter into a Public Interest Litigation action, and directed the Goan government and India's premier ocean research institution, the National Institute of Oceanography (NIO), to file affidavits concerning the matter.

Various other facts transpired. But in short, the court nominated a lawyer in Goa to be Amicus Curiae. She filed a petition as a result of which the court eventually ordered the fleet of approximately 100 mechanized trawlers to be beached and their fishing licences suspended. It was also ordered that the trawlers be prohibited from using seven government jetties. These orders were made in the face of strong opposition from the government of Goa, which supported the trawler owners notwithstanding that the facts and NIO's expert evidence indicated their fishing methods were wholly unsustainable and therefore were causing irreparable damage to fish stocks within Goan waters.

No doubt the approach of Indian courts towards citizens' involvement in environmental protection would be strongly resisted by government authorities in Hong Kong. Nevertheless, the Indian model is far more likely to bring about effective environmental protection than is Hong Kong's more bureaucratic approach, notwithstanding the heartening

decisions referred to at the beginning of this article. After all, realistic and effective environmental protection, rather than merely rhetorical protection, is what we should all be aiming for.

LEGISLATION DIGEST

WATER POLLUTION CONTROL (GENERAL) (AMENDMENT) REGULATION 2000

(Made under section 46 of the Water Pollution Control Ordinance (Cap. 358))
(L.N.303 of 2000/ L.S. No.2 TO GAZETTE NO.45 of 2000)

[This *Regulation* came into operation on 22 December 2000.]

Schedule amended

The Third Schedule to the *Water Pollution Control (General) Regulations* (Cap.358 sub. leg.) is amended as follows:-

- (a) the fee for a new licence for the discharge or deposit from industrial, institutional or commercial premises where the flow rate does not exceed 10 cubic metres per day is \$1,290;
- (b) the fee for a new licence for the discharge or deposit from industrial, institutional or commercial premises where the flow rate exceeds 10 cubic metres but does not exceed 30 cubic metres per day is \$1,470;
- (c) the fee for a new licence for the discharge or deposit from industrial, institutional or commercial premises where the flow rate exceeds 30 cubic metres per day is \$1,655;
- (d) the fee for renewal of a licence, or a new licence at the expiry of a licence granted under section 15 of the *Ordinance*, for the discharge or deposit from industrial, institutional or commercial premises where the flow rate does not exceed 10 cubic metres per day is \$735;
- (e) the fee for renewal of a licence, or a new licence at the expiry of a licence granted under section 15 of the *Ordinance*, for the discharge or deposit from industrial, institutional or

- commercial premises where the flow rate exceeds 10 cubic metres but does not exceed 30 cubic metres per day is \$810;
- (f) the fee for renewal of a licence, or a new licence at the expiry of a licence granted under section 15 of the *Ordinance*, for the discharge or deposit from industrial, institutional or commercial premises where the flow rate exceeds 30 cubic metres per day is \$810;
- (g) the fee for the discharge or deposit from industrial, institutional or commercial premises of domestic sewage only is \$110;
- (h) the fee for a new licence for the discharge or deposit from a domestic sewage treatment plant is \$3,480;
- (i) the fee for renewal of a licence, or a new licence at the expiry of a licence granted under section 15 of the *Ordinance*, for the discharge or deposit from a domestic sewage treatment plant is \$1,455;
- (j) the fee for a new licence or variation or renewal of a licence in the case of discharge or deposit from domestic premises is \$110; and
- (k) the fee for the issue of a certified copy of an entry in the register under section 42(3) of the *Ordinance* is \$60.

URBAN RENEWAL AUTHORITY ORDINANCE (Cap. 563) (ORDINANCE NO.63 OF 2000/ L.S. NO.1 TO GAZETTE NO. 27 of 2000 – FRIDAY, 7 JULY, 2000)

[This *Ordinance* will come into operation at a further date specified by the government.]

The purpose of the *Ordinance* is to establish the Urban Renewal Authority. The main provisions are as follows:-

[Section 3] Establishment of Authority

- (1) There shall be established a body corporate to be named the Urban Renewal Authority which shall have such powers and duties as are conferred and imposed on it

by, or by virtue of, this *Ordinance*.

- (2) The Authority shall have perpetual succession and a common seal and shall in its own name be capable of suing and of being sued.
- (3) The Authority shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.
- (4) Part VII of the *Interpretation and General Clauses Ordinance* (Cap.1) shall apply to the Authority and appointments to the Authority except where the context of this *Ordinance* otherwise requires.

[Section 5] Purposes of Authority

The purposes of the Authority are to-

- (1) replace the Land Development Corporation as the body corporate established by statute having the responsibility of improving the standard of housing and the built environment of Hong Kong by undertaking, encouraging, promoting and facilitating urban renewal;
- (2) improve the standard of housing and the built environment of Hong Kong and the layout of built-up areas by replacing old and dilapidated areas with new development which is properly planned and where appropriate, provided with adequate transport and other infrastructure and community facilities;
- (3) achieve better utilization of land in the dilapidated areas of the built environment of Hong Kong and to make land available to meet various development needs;
- (4) prevent the decay of the built environment of Hong Kong by promoting the maintenance and improvement of individual buildings as regards their structural stability, integrity of external finishes and fire safety, as well as the improvement of the

physical appearance and conditions of that built environment;

- (5) preserve buildings, sites and structures of historical, cultural or architectural interest; and
- (6) engage in such other activities, and to perform such other duties, as the Chief Executive may, after consultation with the Authority, permit or assign to it by order published in the Gazette.

[Section 6] General power of Authority

The Authority shall have power to do anything which is expedient for or conducive or incidental to the attainment of the purposes declared in or permitted or assigned under section 5 and shall exercise that power so as to improve the standard of housing and the built environment of Hong Kong.

[Section 36] Repeal of Land Development Corporation Ordinance

On the same date when the *Ordinance* comes into operation, the *Land Development Corporation Ordinance* (Cap.15) shall be repealed and the Land Development Corporation shall be dissolved.

HONG KONG BRIEFING

Clean up campaign

In his recent policy address, the Chief Executive emphasized the need to reduce the quantity of wastes generated by Hong Kong in the year 2001. Recycling materials is one way of helping to achieve this. But recycling of household rubbish is not common in Hong Kong, with only 10% of families involved in this process to date. As a result, the government is eager to formulate new legislation and policies in this area.

For temporary purposes, the government plans to lease land to recycling companies on favourable terms. In addition, waste disposal areas will be established in order to

encourage the development of the recycling industry and to provide jobs for the unemployed.

Another focus of the policy address was the battle to control air pollution, especially emissions from private cars. Mr. Tung reflected that in the future the problem of road air pollution can be improved by developing public transport. For example, the current total length of railway in Hong Kong is 143 km. The government plans to increase this to 200km within the next 5 years.

At the end of this year, the government will commence a new “Keep Hong Kong Clean” Campaign with HK\$188,000,000.00 funding and employing 1,600 staff. The Campaign will include, but will not be limited to: improving methods used for regularly cleaning streets and public places; removal of coastal waste, and the planting of trees and flowers in urban areas.

The government will adopt the slogan: “creating a safe and healthy living environment”. Mr. Tung revealed that the government will improve the condition of about 6,500 buildings aged 20 to 40 years and will abolish about 12,000 illegal structures. These measures will be completed within the next 7 years. In addition, within the coming 20 years the government will finish up to 200 urban renewal projects and will reconstruct 1,400 old buildings.

The policy address has been criticized by Mr. Liu Hung Tao of Green Peace. He said that he was disappointed because the policy address does not help to improve the immediate situation. Mr. Tao suggested that the Chief Executive’s ideas of leasing land to recycling companies and the establishment of recycling areas are not practical, as these steps will only lead to competition between different corporations aiming to gain more profits.

(Ming Pao, 12 October, 2000)

Consumption of natural resources in Hong Kong

The World Wildlife Fund (WWF) has published *World Report 2000*, showing

that Hong Kong people rank 13th in terms of their consumption of natural resources. Hong Kong’s highest ranking was in the consumption of forest products, in which we are ranked 6th, which indicates that Hong Kong people have a high demand for wood and paper. On average, each Hong Kong person consumed 0.57 hectares of trees a year, which is 3.6 times the world average.

The *Report* contains a warning that the store of natural resources on earth is decreasing at a quick pace. For example, Mr. Yau Suk Kou, Environmental Protection Manager for WWF, reports that between 1996 and 1997 Hong Kong lost 700 hectares of delta, leaving only 1,400 hectares remaining. He urged the government to set out comprehensive policies for natural resources protection; otherwise our valuable ecological systems will be destroyed in the near future.

According to statistics released by the Fisheries Department, Hong Kong people: consume 1,100 tons of vegetables per day but produce only 130 tons; consume 170,000 kg of fish per day but produce only 3,400 kg; and consume 6,200 pigs but produce only 1,100. This illustrates that Hong Kong people’s demand for food resources is far greater than our local food production. As such, the level of domestic supply and demand is out of balance.

(Ming Pao, 21 October, 2000)

HONG KONG DISNEYLAND UPDATE

Dredging fears not our responsibility: Disney Corporation

The Disney Corporation (Disney) has announced that it is monitoring reclamation work being carried out in preparation for the construction of Disneyland on Lantau. Meanwhile, fishermen continue to insist that the reclamation work is killing many fish in the area. They allege that dredging has killed \$30 million worth of fish raised at Ma Wan.

Disney President, Robert Igar, said environmental protection had always been a concern but that reclamation was the government's responsibility. The company had demonstrated its environmental awareness by starting recycling programmes in its parks elsewhere, he said.

The Director of the Department of Civil Engineering (DCE), Lau Ching-kwong, said monitoring stations around the site showed no significant increase in suspended solids in the water. Tests had also shown no relationship between dying fish and the reclamation project. Mr. Lau said daily monitoring of suspended solid produced results of 30 mg a litre, an increase of 5 per cent on average readings before the reclamation started in May and below the legal maximum level of 50mg a litre. On the other hand, tests carried out by Friends of the Earth showed suspended solids off Ma Wan at 65.2 mg a litre, whilst tests by the Agriculture, Fisheries and Conservation Department showed a reading of 75 mg a litre.

A heavy concentration of suspended solids in water reduces oxygen supplies to fish. However, DCE said the dead fish resulted from a build-up of bacteria and parasites in fish-farming zones.

The Chairman of the Ma Wan Fishery Rights Association, Lai Tak-tsuen, said: "It is illogical for the Civil Engineering Department to deny the relationship between their dredging works and the fish killings. Independent tests have proved the surge in the level of suspended solids in the water."

Mr. Lai's group wants dredging to be suspended for a year to allow fishermen to sell their stock. DCE has ruled out this option. It has only promised to stop dumping dredged mud at the North Lantau mud disposal ground at Yam O, 2 km from Ma Wan, for two months.

(SCMP, 17 November, 2000)

Pollution at Disney project doubles

Pollutants in water close to dredging operations for the Disneyland project have reached double the levels predicted, official tests show. The

higher-than-expected levels have led to a threefold rise in the number of fish dying in the area, fishermen said. Officials from the Works Bureau confirmed that levels of suspended solids in the area were 72 milligrams per litre – almost double the worst-case scenario predicted in an environmental impact study before reclamation started in July. However, environmental consultants engaged by the government and the contractor say preliminary tests found insufficient evidence to prove dredging or dumping caused the fish deaths. A Works Bureau spokesman confirmed more tests would be conducted.

In the meantime, reclamation work might have to stop if dredging was confirmed to have caused the rise in the level of suspended solids affecting the ability of fish to breathe.

Chairman of Ma Wan Fishery Rights Association, Lai Tak-chuen, said "Between 20-30 per cent more fish were killed after the reclamation works commenced. Other than the reclamation work there are no other major construction projects nearby." Mr. Lai said the number of fish found dead every day since reclamation began had jumped from two or three to ten.

The Environmental Impact Assessment Report on Northshore Lantau Development predicted in a worse-case scenario that the Ma Wan Fish culture zone would see suspended solids elevations of 39.9 mg per litre. Mr. Lai said officials last week told him that test results showed more than 50 mg per litre.

(SCMP, 28 September, 2000)

Disneyland inquiry disappoints greens

An inquiry into the Disneyland project has cleared officials of misleading the public and legislators into backing the plan by hiding the environmental risks involved.

A report by the Ombudsman into a complaint by green group Friends of the Earth (FOE) has backed the way the government disclosed the potential costs and benefits involved in building the theme park on Lantau. FOE last

night described the outcome as "disappointing and totally unacceptable", saying legal advice was being sought on a possible application to the courts for judicial review of the investigation.

The complaint – taken up by the Ombudsman in March 2000 - alleged that an estimate of the clean-up costs of the shipyard next to the Penny's Bay site earmarked for Disneyland had not been included in the cost-benefit study presented to lawmakers before they endorsed funding of \$26.4 billion. Legislators were told only that the project could generate a net economic benefit of \$148 billion over 40 years.

But the green group said the clean-up costs for the 19 hectare shipyard could be astronomical, citing the example of Puget Sound naval shipyard in the US, which cost US\$55.8 million (HK\$431 million) to decontaminate.

At the time that funding was approved by Legco, the government had been unable to enter the Choy Lee Shipyard to test the land for heavy metals and other pollutants because talks on compensation were still under way with the yard's operator. Officials said last week that tests would begin within weeks and would take two to three months to complete.

The Ombudsman's report draws parallels between the Disneyland theme park and the Convention and Exhibition Centre extension on the Wan Chai waterfront, describing them both as major infrastructure projects warranting special consideration.

FOE considered this part of the report particularly galling and objected to what it sees as the implication that failing to go ahead with Disneyland would have a serious negative impact on Hong Kong.

The government expects Disneyland to create more than 18,000 jobs by the time it opens in 2005, rising to almost 36,000 by 2020. It predicts the theme park will attract an extra 2.9 million overseas visitors a year to Hong Kong.

(SCMP, 24 September, 2000)

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Proposed Implementation of Fisheries Resources Management Measures and Artificial Reef Deployment Programme (ACE Paper 30/2000)

In view of the need to preserve fisheries resources, consultancy studies have been done on fisheries resources and fishing operations in Hong Kong waters and on artificial reef deployment. Recommendations have been made following the studies, and public opinion has been monitored.

Of those who have expressed their views on the issue, most have supported the implementation of the Artificial Reef Deployment Programme (ARDP) and other management measures to restore fisheries resources. The studies recommended that priority should be given to establishing a fishing licence system, limiting participants, setting up nursery and spawning ground protection areas, habitat enhancement, habitat restoration and restocking programmes. Some respondents have expressed concern over the possible impact which the implementation of the ARDP and other management measures might have on the livelihood of fishermen, and how the government should help them in that event.

As deployment of artificial reefs is just one of several measures which could be adopted to achieve habitat enhancement/restoration, it is proposed that the fisheries resources management measures and the ARDP ought to be implemented concurrently.

It has been suggested that two fisheries protection areas should be established near Port Shelter and Tolo Harbour. Fishing activities in the protected areas should be controlled by a licence system in order to achieve the aims of the ARDP.

In order to alleviate the concern of fishermen over the impact of the ARDP on their operations and livelihood, it has been proposed that the protected areas will be taken forward gradually, and fishermen's views will be taken into account as far as possible.

Although it will take time for the results to emerge, the government is confident that these measures will help conserve fisheries resources in our waters and will promote sustainable development of the fishing industry.

Hong Kong Trade in Live Reef Fish for Food—Measures Taken by Government (ACE Paper 31/2000)

A report on the trade in live reef fish was published by TRAFFIC East Asia and the World Wide Fund for Nature (WWF) Hong Kong in June 1999. The report concluded that the current live reef fish trade is unsustainable, and proposed a number of recommendations to keep the live reef fish trade sustainable, including:

1. Amending the licensing and classification system for locally registered fishing vessels and fish transportation vessels which bring in live marine fish, so as to enable recording of all live reef fish imports into Hong Kong.
2. Taking initiatives to work with members of Asia Pacific Economic Co-operation (APEC) towards establishing a comprehensive and standardized system for monitoring the live reef fish trade.
3. Preparing an identification manual to assist government officers to recognise fish species and to assist traders in making consistent declarations.
4. Establishing effective channels of communications among stakeholders in the live reef fish trade in Hong Kong.
5. Conducting research to ascertain the most effective means of involving the public in the protection of reef fish and habitats.

In view of the recommendations, the government has implemented a number of measures to pursue international co-operation and to monitor the live reef fish trade, such as :

- (a) Active participation at APEC forums to promote sustainable fisheries. A workshop with the collaboration of China and Taiwan was held in Hong Kong in 1997 to promote regional co-operation in addressing issues of the live fish trade. Hong Kong has been participating since then in the Asia Pacific Conference on the Live Reef Fish Trade.
- (b) Agriculture, Fisheries and Conservation Department (AFCD) and WWF have jointly published an identification manual to assist in the recognition of fish species.
- (c) AFCD holds regular meetings with the Hong Kong Chamber of Seafood Merchants Ltd., which represents the majority of live reef fish traders in Hong Kong, to discuss and to seek their co-operation on issues related to the live reef fish trade.
- (d) AFCD will continue to explore the application of new techniques in mariculture to reduce pressure on native fisheries. Research on grouper fry culture is being undertaken by AFCD and the University of Hong Kong, with a view to transferring successful techniques to fish farmers.

Proposed Air Pollution Control (Dry-cleaning Machines) (Vapour Recovery) Regulation (ACE Paper 36/2000)

The proposed Air Pollution Control (Dry-cleaning Machines) (Vapour Recovery) Regulations have been revised as a result of further comments from the trade and relevant government departments or bureaux.

New dry-cleaning machines

To facilitate dry-cleaning operators to purchase machines meeting the

standard of 300 ppmv in the drum, the EPD will type-approve a list of machines which have been certified by machine manufacturers to meet the specified standards. The approved model list will be put on a register for public inspection.

Existing dry-cleaning machines

Non-vented substandard machines will have a longer grace period of 7 years instead of 5 years for the substandard machines to be replaced or modified to comply with the new standards.

Revision of Fees and Charges : Air Pollution Control Ordinance (Cap. 311); Waste Disposal Ordinance (Cap. 354); Water Pollution Control Ordinance (Cap. 358); Noise Control Ordinance (Cap. 400); Ozone Layer Protection Ordinance (Cap. 403); Environmental Impact Assessment Ordinance (Cap. 499); Dredging at Sea Ordinance (Cap. 466) (ACE Paper 36/2000)

Most government fees and charges imposed by these ordinances have been frozen since February 1998 as an exceptional measure to ease the burden on the community at a time of economic setback.

In view of the current state of economic recovery and the policy of the government that fees should be set at levels sufficient to recover the full cost of providing the services, ACE proposed to revise administrative fees for various environmental services along the following lines :-

- a) achieve full-cost recovery within seven years for fees with an existing cost recovery rates of less than 40%;
- b) achieve full-cost recovery within three to seven years for fees with an existing cost recovery rates of between 40% and 70%;
- c) achieve full-cost recovery within one to three years for fees with an existing cost recovery rates of over 70%;
- d) reduce fees with existing cost recovery rate of over 100% to their full-cost levels.

TOWN PLANNING

Safe and healthy built environment and attractive city outlook

The government has published a booklet, *Developing Hong Kong*, in which its main policies for land management are set out.

On 18th October 2000, the Secretary for Planning and Lands, Mr. Gordon Siu, explained the policies by focussing on three points: land use and land supply strategy, urban renewal and "greener" buildings.

Land use and land supply strategy

Mr. Siu said that several factors have to be taken into account in planning this strategy, such as future population growth and people's desire for a better environment and improved living standards. He made it clear that the principle of sustainable development must be adopted when designing the next generation of new towns. This principle is supported by various studies conducted by the government, such as the Western District Development, Metro Plan, the Strategy for Southeast New Territories and Southwest New Territories, West Kowloon Reclamation Development and the Aberdeen Harbour Focus studies and reports.

Urban renewal

The Urban Renewal Authority will be established in early 2001 to implement a 20-year urban renewal programme.

Mr. Siu said that there are 200 priority renewal projects under the programme, which include the redevelopment of 1,400 dilapidated buildings, re-housing of 1,600 households and providing 50,000 square meters of open space and 70,000 square meters of community facilities.

The government will try to rehabilitate buildings and will also renovate and redevelop buildings in disrepair so as to minimize the number of households to

be removed. Buildings with historical, cultural and architectural interest will be preserved.

When a building is redeveloped, the government will take a people-oriented approach by which it will pay fair and reasonable compensation to property owners and make proper re-housing arrangements for tenants, and improve local community facilities. For existing buildings, the government will apply the basic principle that owners are responsible for the maintenance of their buildings. However, Mr. Siu also said that the government is prepared to assist owners with maintenance. In the meantime, the Buildings Department will continue to pursue actions against unauthorised building works.

Greener buildings

The government considers that environmentally friendly buildings (i.e. buildings which create better air flow, have energy efficiencies and provide more green space) are necessary. In order to encourage more environmentally responsible buildings, the government will remove various restrictions and improve rules and regulations.

(<http://www.plb.gov.hk/pres>)

Seven places nominated for the new container ports

The government announced that it had nominated seven places in the New Territories and islands as potential new container ports. They are Tuen Mun West, Tsing Yi, Tseung Kwan O, Northwest Lantau Island, East Lantau Island and West Lamma Island. No.10 and 11 container ports (each of which has 4 berthes) will be constructed in one of the above places. The government has already informed local authorities in those nominated places. In its consultation paper, the government seeks the views of the public and the container yard industry and will choose a place to construct the ports based on these views.

Container ports No.1-8 are in operation. The number of containers dealt with by those ports is the highest in the world. The quantity is increasing and, according to the consultation paper, it is estimated that the number of

containers to be dealt with in Hong Kong will increase 5% in each year in the next 10 years (i.e. 2000-2009) and 3% in each year in the further 10 years (i.e. 2010-2019). For this reason, No.9 port is being constructed and construction plans for No.10 and 11 were formalised in 1996.

Initially it was decided to construct these ports in Northwest Lantau Island. However, as it was decided in 1999 to construct Disneyland in the vicinity, the original decision was cancelled in order to maintain the scenic ambience there.

(*Ming Pao Daily News*, 13 November, 2000)

Construction of a railway for freight cars (KCRC)

KCRC is considering a plan to construct a freight transportation centre at Pinghu in Shenzhen which is situated 15km north of Lo Wu, as well as a railway for freight cars from Tai Wai to Kwai Chung Container Terminal. If this plan goes ahead, the number of containers to be carried by KCRC per year (currently 10,000 containers) will increase to 1.5m containers. When China joins the World Trade Organization (“WTO”) and the western district of China is developed by the Chinese Government, it is expected that the southwestern district of China will become a new market for Hong Kong’s transportation industry.

KCRC is currently operating 24 passenger trains per hour during busy times and 12 passenger trains per hour at other times. It is therefore possible for KCRC to make use of non-busy times for freight cars, and to expand its freight transportation business accordingly.

Pinghu is a convenient and ideal place to expand the freight transportation component because there are several railway lines passing through the centre, such as lines connecting Yantingang in Shenzhen to Shekou, and Beijing to Hong Kong. KCRC intends to construct the freight transportation centre within a joint venture with Guangzhou Railway Corporation. After the completion of construction, KCRC will increase its

volume of freight transportation in Hong Kong.

The Transportation Department will spend HK\$ 50-90 billion to support this project.

(*Hong Kong Economic Journal*, 13 November, 2000)

REGIONAL & INTERNATIONAL

China

The National People’s Congress (NPC) plans to enact four new laws dealing with the evaluation of environmental changes, clean production, the prevention of sandstorms and desertification, and the control of pollution from radioactive substances.

The NPC will also formulate laws on the comprehensive and responsible utilization of natural resources. The NPC *Environment and Resources Protection Committee* and legislators believe such laws will compel enterprises and individuals to adopt environmentally-friendly work and life styles, and to use resources rationally.

Drafting of the resources - use laws might be put on the NPC agenda soon, and they are expected to be promulgated within the next few years.

(*China Daily*, 20 November, 2000)

USA

In Arizona lawmakers voted to refund 30% of the price of a new car or truck to anyone who agreed to convert the vehicle to run on propane or natural gas. In addition, the state promised to pay for every conversion. The state government’s alternative-fuels program may cost Arizona USD680 million, or 11% of the entire state budget. The budget allocated this year is only USD 3 to 10 million. The staggering cost overrun has forced the resignation of house speaker Jeff Grosco and prompted a criminal probe by the state’s attorney general.

(*Time Magazine*, 11 December, 2000)

International

At the climate conference in The Hague in November 2000, the two principal parties, the European Union (EU) and the United States (US), failed to reach an agreement on how to implement the emissions reductions, especially of carbon dioxide (CO₂), agreed by developed countries in Kyoto, Japan, in 1997.

Norway offered to host a meeting between the EU and a US-led “umbrella group”, which includes Canada, Japan and Australia, to allow the two sides to resolve differences that sank United Nations talks on cutting “greenhouse gases”. The US, however, rejected an invitation to reopen climate talks with the EU, killing the effort to forge an international strategy on global warming. Norway’s Environment Ministry confirmed the meeting would not be held as both sides “need more time”.

The main reason for the impasse between the EU and the US remains the imposition of restrictions on emissions trading. The US wants to count carbon stored in its forests and farmlands against its Kyoto emissions reduction obligations. The US also proposes that developed countries, which have reduction targets, should be allowed to pay developing countries, which have no such targets, for the use of their forests as “carbon sinks”. The EU, on the other hand, insists on limiting the use of “flexible mechanisms” such as buying emissions credits from other countries, on the ground that this represents a step back from previous US agreement to the EU’s position of not using developing countries’ forests for such purpose.

No further formal talks have been scheduled following the failure of the conference in The Hague. The chairman of negotiations in The Hague, Dutch Environment Minister Jan Pronk, said that he would aim to bring all parties together to get a final agreement in the first half of 2001.

All parties accept that finding a global strategy is crucial to combating increasing world temperatures, rising sea levels and frequent floods and drought.

(www.reuters.com, 18 December, 2000)

Canada

The North American Commission for Environmental Cooperation (NACEC), an international organization established under the North American Free Trade Agreement and based in Montreal, has released a report that identifies 14 regions, including Castle Wilderness (the Castle), which are the most biologically significant and most threatened in North America.

The Castle is located immediately adjacent to Waterton Lakes and Glacier National Parks and the US/Canada boundary, and is a critically important part of the broader Yellowstone to Yukon region. The Castle has the greatest species diversity in Alberta and has been recognized for its importance in maintaining the ecological integrity of nearby national parks and protecting threatened and endangered trans-boundary species, such as grizzly bears. The Castle, however, is under serious threat from burgeoning oil and natural gas developments, extensive forest harvesting and recreational activities, particularly the use of off-road vehicles.

The region where the Castle is situated was identified by the Alberta Government as a potential candidate-site for protection in the early 1980s. In 1993, Alberta's quasi-judicial Natural Resources Conservation Board decided that the region should be protected, but this decision was rejected by a government pandering to the resource extractive industries which were exploiting the Castle. The federal Panel for Ecological integrity also recognised the importance of the area this year.

Having been recognised for its biological importance, the Castle is now also designated as a "Special Place" by the government. However, this designation allows the continuation of oil and gas development, forest harvesting, grazing and recreational developments.

(www.cwc.ab.ca, 19 December, 2000)

Europe

The European Union is committed by the 1997 Kyoto accord to reduce greenhouse gas emissions by 8% from 1990 levels between 2008 and 2012.

Western Europe's energy future now looks increasingly non-nuclear. The German government will cease its subsidies for the European Pressurized Water Reactor (EPR), which was to be the next generation of nuclear power facilities that Germany's Siemens AG is jointly developing with France's Framatome. Britain currently relies on nuclear energy for about 28% of its electricity, but most of its reactors will have ceased functioning by 2020 and there is no plan to build new ones. Italy voted to abandon nuclear energy in 1987.

To meet energy needs once the nuclear reactors are shut down, and the goal of emissions reductions, Germany plans a three-pronged strategy of: energy conservation, more use of renewable sources and the replacement of coal-burning plants with modern gas-powered facilities that produce less than half as much CO₂.

Natural gas is widely considered the best alternative to nuclear power because it is twice as efficient and half as polluting as other fossil fuels. However, there is a downside to gas dependency. Two of the three main producers, Russia and Algeria, are politically unstable. That means supplies could be interrupted and prices could soar.

Other alternatives are renewable resources, but opinions differ on how much of the future energy burden they can bear. Some experts see their role limited to 5% to 10%, whereas Royal Dutch Shell Co. Ltd. predicts that this could increase to 50% by mid-century, and Italy's Environment Minister hopes for close to 100% clean energy by 2100.

The problems of using renewable sources are that they are dependent on geographic and environmental factors

which vary widely from place to place, and they are presently comparatively costly. Despite these problems, responsible people and governments are committed to moving into a new era of sun, wind and waves.

(*Time Magazine (Europe)*, 18 September, 2000)

Australia

Botanists in Queensland have developed an investigative method that explains why individual plant species are so rare. Using physiological profiling, Queensland researchers have compared plants which occur in rare tropical rainforests with more common varieties of similar plants. They discovered different reasons for the rarity of different species.

"Physiological profiling" involves measuring the physical environment, including light and soil characteristics, together with intrinsic plant functions, such as resource use and stress tolerance. Researchers believe that this technique will play a significant role in ensuring the survival of rare plants of the lowland tropical forests of Queensland's northern rainforest region, which is one of the most species-rich areas of the world.

The advantages of the physiological profiling method of vegetation assessment is that it provides more information about plants' survival needs than do more traditional methods, such as genetic, reproductive or ecological assessment. Physiological profiling is an integrated approach, rather than the more singular focus of the traditional methods of assessment.

The researchers believe that physiological profiling allows a better understanding of the interaction between the environment and vegetation of an area, particularly in the context of urban development. The method indicates stress levels which should allow for more responsible location of man-made development projects in order to reduce their damaging effect on the natural environment.

(*The Australian*, 13 December, 2000)

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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URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

Comparative Table of Environmental Convictions:
Oct. – Dec. 2000

	Number	1 st Offence	2 nd Offence	3rd + Offence	Highest Fine
APCO	54	18	6	30	20,000
	31	9	7	15	40,000
	22	10	3	9	20,000
WPCO	29	16	6	7	40,000
	32	21	6	5	80,000
	13	7	2	4	100,000
NCO	40	9	7	24	75,000
	31	10	3	18	100,000
	24	9	5	10	60,000
OLPO	-	-	-	-	-
	-	-	-	-	-
	-	-	-	-	-
DASO	-	-	-	-	-
	-	-	-	-	-
	-	-	-	-	-
WDO	38	27	5	6	15,000
	34	20	6	8	15,000
	20	14	3	3	15,000
Total	161	70	24	67	
	128	60	22	46	
	79	40	13	26	

October figures appear on the first line, November figures on the second and December figures on the third of each item. Source: EPD, Anti-Pollution Prosecution Figures.

ABBREVIATIONS

AFD	Agriculture & Fisheries Department
APCO	Air Pollution Control Ordinance
CFCs	Chlorofluorocarbons
DASO	Dumping At Sea Ordinance
EC	European Community
EE	Estern Express
EPCOM	Environmental Pollution Advisory Committee
EPD	Environmental Protection Department
EXCO	Executive Council
FEER	Far Eastern Economic Review
HKS	Hong Kong Standard
HKU	University of Hong Kong
JLG	Joint Liaise Group
LDC	Land Development Corporation
LEGCO	Legislative Council
LS	Legal Supplement
NCO	Noise Control Ordinance
NT	New Territories
OLPO	Ozone Layer Pollution Ordinance
PAA	Provisional Airport Authority
PADS	Port and Airport Development Strategy
SCMP	South China Morning Post
SMP	Sunday Morning Post
WDO	Waste Disposal Ordinance
WPCO	Water Pollution Control Ordinance

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