

**For discussion  
on 14 August 2008**

**NCSC Paper 03/08**

**Advisory Council on the Environment  
Nature Conservation Subcommittee**

**Unauthorized developments in ecologically sensitive sites/rural areas-  
the Sai Kung Cases**

**PURPOSE**

The paper presents the mechanism for controlling unauthorized development or activities in the rural areas, which may involve ecologically sensitive sites.

**BACKGROUND**

2. The Advisory Council on the Environment (ACE) conducted a site visit to five sites in Sai Kung on 16 April 2008 with the assistance of the Kadoorie Farm and Botanic Garden. Unauthorized development or activities, such as land filling, vehicular access, retaining structure, tree felling, occupation of Government land, site formation were found in those areas. Some of the sites involved sites zoned as “Green Belt” (GB), “Coastal Protection Area” (CPA) or “Country Park” (CP). Details of the five cases are at the Annex.

3. In general, unauthorized developments on private lands are subject to various controls under the ambit of a number of government departments including Lands Department (LandsD), Planning Department (PlanD), Buildings Department (BD), Drainage Services Department (DSD), Environmental Protection Department (EPD), Civil Engineering and Development Department (CEDD) and Agriculture, Fisheries and Conservation Department (AFCD). In most cases, enforcement actions by LandsD (land control and management), PlanD (land use and development control) and AFCD (unauthorized tree felling on Government land and development control in country parks) are most

relevant.

### **Land use planning control**

4. The main objectives of land use planning as enshrined in the Town Planning Ordinance (TPO) (Cap. 131) is to promote the health, safety, convenience and general welfare of the community.

5. Planning control is effected through the preparation of statutory plans and the enforcement power under the TPO. The Plan D can take enforcement actions against unauthorized land use activities that fail to comply with the provisions of statutory plans. Generally speaking, for areas covered by zones such as Site of Special Scientific Interest (SSSI), CA, CPA, CP, GB, there is a general presumption against development. Land uses and developments that are not permitted under the statutory plans, or not covered by a planning approval, or not classified as existing use are unauthorized developments under the TPO and subject to enforcement actions by the Planning Authority.

### **Land lease control**

6. While the land use planning system guides the development and use of land at a broad zoning level, the use of a particular piece of private land is also governed by the terms of the relevant land lease. The LandsD is responsible for the enforcement of the lease conditions.

7. Most modern land leases contain a user clause specifying the permitted use of the land concerned. The leases also include a number of general and special conditions that the lessees need to comply with. A common special condition is “Tree Preservation” which stipulated that felling of trees on the lot or in its vicinities shall require the prior approval of the Lands Authority. Failure to comply with these conditions will lead to lease enforcement action by LandsD.

8. Private land in the New Territories is usually covered by Block Government Leases granted in the early 20<sup>th</sup> Century for agricultural use without any “Tree Preservation” condition. While land filling or

excavation on these land for agricultural purpose is permitted, any buildings or structures on these agricultural lots would be subject to lease enforcement actions.

9. Unauthorised excavation on Government land is also controlled under Land (Miscellaneous Provisions) Ordinance, Cap. 28 and there is a provision for reinstatement of land being excavated illegally.

### **Tree Felling Control**

10. The Forests and Countryside Ordinance, Cap. 96 provides for the protection of forests and countryside. Under the Ordinance, any person who fells, cuts, burns or otherwise destroy any trees on Government land without lawful authority may be guilty of an offence. AFCD is empowered under the Ordinance to take enforcement action against unauthorized felling of trees on Government land. For protection of trees inside country parks, it is enforced under the Country Parks Ordinance, Cap. 208. AFCD will investigate cases of unauthorized tree felling and take prosecution actions if there is sufficient evidence. To deter unauthorized tree felling incidents, AFCD would monitor black spots areas outside country parks and erect warning posts at appropriate locations while park wardens would patrol country parks and special areas.

### **Enforcement Difficulties**

11. Prosecution could not be started unless there is admissible, substantial and reliable evidence that an offence known to the law has been committed by an identifiable person. A case based on “circumstantial evidence” is not enough to justify a decision to prosecute. For example, forming of an unauthorized vehicular access track in rural area often involved vegetation clearance on both Government and private land, but in most cases, there is neither suspect nor witness to the incident. Since the access track is already void of vegetation, it may even be difficult to confirm that trees on Government land have been felled in the process.

### **Concerted Efforts**

12. The Administration shares the public concern's about unauthorized development or activities causing environmental damage in the rural areas, particularly the ecologically sensitive sites. Various bureaux and departments often work closely in joint effort deterring such malpractice. In all five sites in Sai Kung visited by members, departments concerned have tried all available means to stop the unauthorized activities, discourage further impact on the environment, prosecute the culprits, reinstate the landscape and monitor the situation. The enforcement actions are set out in the **Annex**.

13. There is also increasing public concern over the depositing of inert construction and demolition (C&D) materials on private land in general. On that front, a database is being developed by EPD in collaboration with other Government departments. The database will be readily accessed by the concerned Government departments so as to facilitate sharing of information and enforcement actions to be taken by individual departments in accordance with the legislation under their jurisdictions. Concerned departments will also meet regularly to review and ensure effective and coordinated actions are taken. At the same time, the Government is considering possible options to regulate such activities so as to help protect the environment of ecologically sensitive private lands.

### **Advice sought**

14. Members are invited to note and comment on the mechanism for controlling unauthorized development or activities and the work done by various departments.

***Agriculture, Fisheries and Conservation Department  
Environmental Protection Department  
August 2008***

## Unauthorized development/activities in Sai Kung

Location and photos of the sites are shown in the **Appendix**.

### **Sites 1 and 2: Land filling at Tam Wat and She Tau**

<b>Background</b>	<ul style="list-style-type: none"> <li>• Large scale land filling activities and excavation for access road were found in two locations. The first site is located to the south of Tam Wat village, and the second site is in the vicinity of She Tau Village.</li> <li>• The two areas concerned fall mainly on private land within “Village Development Type” (V) and GB zones on the Outline Zoning Plan.</li> </ul>
<b>Actions Taken by AFCD</b>	<ul style="list-style-type: none"> <li>• Upon receiving the referral from Plan D in November 2006, AFCD has taken up the investigation on unauthorized tree felling under the Forests and Countryside Ordinance, Cap. 96. However, no suspect and witness in respect of unauthorized tree felling were identified so far.</li> <li>• AFCD erected warning signs against tree felling in the areas.</li> <li>• Since then, the sites have been kept under close monitoring.</li> <li>• As the subject site is in the vicinity of Sai Kung West Country Park, AFCD’s park wardens have also stepped up patrolling to ensure that the unauthorized development will not encroach upon the country park.</li> </ul>
<b>Actions Taken by various</b>	<ul style="list-style-type: none"> <li>• Various departments including PlanD, LandsD, EPD, AFCD, District Office (DO), CEDD, BD, DSD are involved. Several joint site visits had been</li> </ul>

<b>departments</b>	<p>conducted to discuss possible control and remedial measures.</p> <ul style="list-style-type: none"> <li>• LandsD has erected bollards at the entrances to the illegal access roads in order to contain the problems, fenced off the areas with unauthorized retaining structures on slope and erected government warning notices against the illegal occupation of government land.</li> <li>• PlanD had issued Enforcement Notice and Reinstatement Notice to the landowners concerned under Town Planning Ordinance at She Tau Village.</li> </ul>
<b>Present Site Conditions (as at late July 2008)</b>	<ul style="list-style-type: none"> <li>• No further illegal tree felling, land filling and excavation were observed.</li> <li>• Hydroseed was found on part of the areas.</li> <li>• Fruit trees were planted on the land-filled area.</li> <li>• Part of the excavated area has been recovered by natural vegetation.</li> </ul>

### **Site 3: Landfilling/ Tree Cutting at Wong Mo Ying**

<b>Background</b>	<ul style="list-style-type: none"> <li>• The subject lot is included in the Sai Kung West Country Park covering an area of approximate 20 x 25m. According to land record, it is an Old Schedule Agricultural Lot held under Block Government Lease.</li> <li>• Survey marking of lot boundary was found in October 2007 at the captioned lot.</li> </ul>
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	<ul style="list-style-type: none"> <li>● On 25 Oct 2007, a local resident at Wong Mo Ying reported a case of suspected illegal tree felling at the subject lot. Police and AFCD staff were called on site for investigation.</li> <li>● Vegetation was cleared by end of 2007. Between mid-January and mid-March 2008, a soil platform was eventually formed at the subject lot. Height of the soil platform on the down slope side exceeded 2m.</li> <li>● No activity since mid-March.</li> <li>● No notification of any land use application received from LandsD as of 30.7.2008.</li> </ul>
<b>Actions Taken by AFCD</b>	<ul style="list-style-type: none"> <li>● Personal particulars of the tree fellers were taken on 25.10.2007. No prosecution under section 8(1) of Country Parks Regulations (Cap 208A) can be done as that provision does not apply to leased lot.</li> <li>● The land filling involve issues on land use, the case was referred to LandsD for possible actions. LandsD was requested to issue advisory letter to the land owner and demand information on intended works / land use.</li> <li>● The site has been kept under close monitoring. Sign was erected on site to warn against further works without prior consent from AFCD.</li> </ul>
<b>Actions Taken by various departments</b>	<ul style="list-style-type: none"> <li>■ LandsD: No lease enforcement action against tree felling could be taken as there is no tree clause in the lease. Reviewing if land filling breaches any lease conditions.</li> <li>■ EPD: No evidence of flytipping. Reviewing if the soil platform requires an environmental permit. Liaising with LandsD to get information of intended</li> </ul>

	land use.
<b>Present Site Conditions (as at late July 2008)</b>	<ul style="list-style-type: none"> <li>• No further activity since mid-March was observed.</li> <li>• Part of the excavated area has been recovered by natural vegetation.</li> </ul>

**Site 4: Illegal Accesses for small houses development at Tai Mong Tsai**

<b>Background</b>	<ul style="list-style-type: none"> <li>• Various illegal accesses leading to an approved small house construction site were reported since December 2005.</li> <li>• The small house site is private land within a “V” zone but surrounded by GB zone on three sides. The site is surrounded by dense vegetation with no direct vehicular access.</li> <li>• Complaint on opening of an illegal access leading to the site was first received from a member of the public in December 2005. The access falls mainly on Government land.</li> <li>• Another illegal access with a temporary stream crossing was found in December 2007 leading to the same site. The access is close to the Tai Mong Tsai Lowland Pumping Station and within WSD’s water catchment area. The access falls mostly on Government land.</li> <li>• A third access was reported in February 2008. The access falls mainly on private land.</li> </ul>
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<b>Actions Taken by AFCD</b>	<ul style="list-style-type: none"> <li>• AFCD has started the investigation on unauthorized tree felling under the Forests and Countryside Ordinance, Cap. 96. However, no suspect and witness in respect of unauthorized tree felling could be identified so far.</li> <li>• Since the incidents also involved misuse of Government land and zoning issues, the findings were referred to LandsD and PlanD for actions.</li> <li>• AFCD has erected warning signs against tree felling in the area.</li> <li>• Since then, the sites have been kept under close monitoring</li> </ul>
<b>Actions Taken by various departments</b>	<ul style="list-style-type: none"> <li>• Joint site visit (AFCD, LandsD, DO, WSD and Police) had been conducted to discuss possible control and remedial measures. CEDD, BD and EPD have been alerted and kept the site under close monitoring.</li> <li>• LandsD has erected bollards at the entrances to the first and third illegal access to contain the problems.</li> <li>• A chain-link fence and metal gate were installed by WSD near the Pumping Station for blocking the second access.</li> <li>• For the third access, PlanD is considering enforcement action under the Town Planning Ordinance.</li> </ul>
<b>Present Site Conditions (as at late July 2008)</b>	<ul style="list-style-type: none"> <li>• No further illegal tree felling and excavation were observed at the first and second accesses.</li> <li>• The third access which falls on private land has been fenced off with hoarding.</li> </ul>

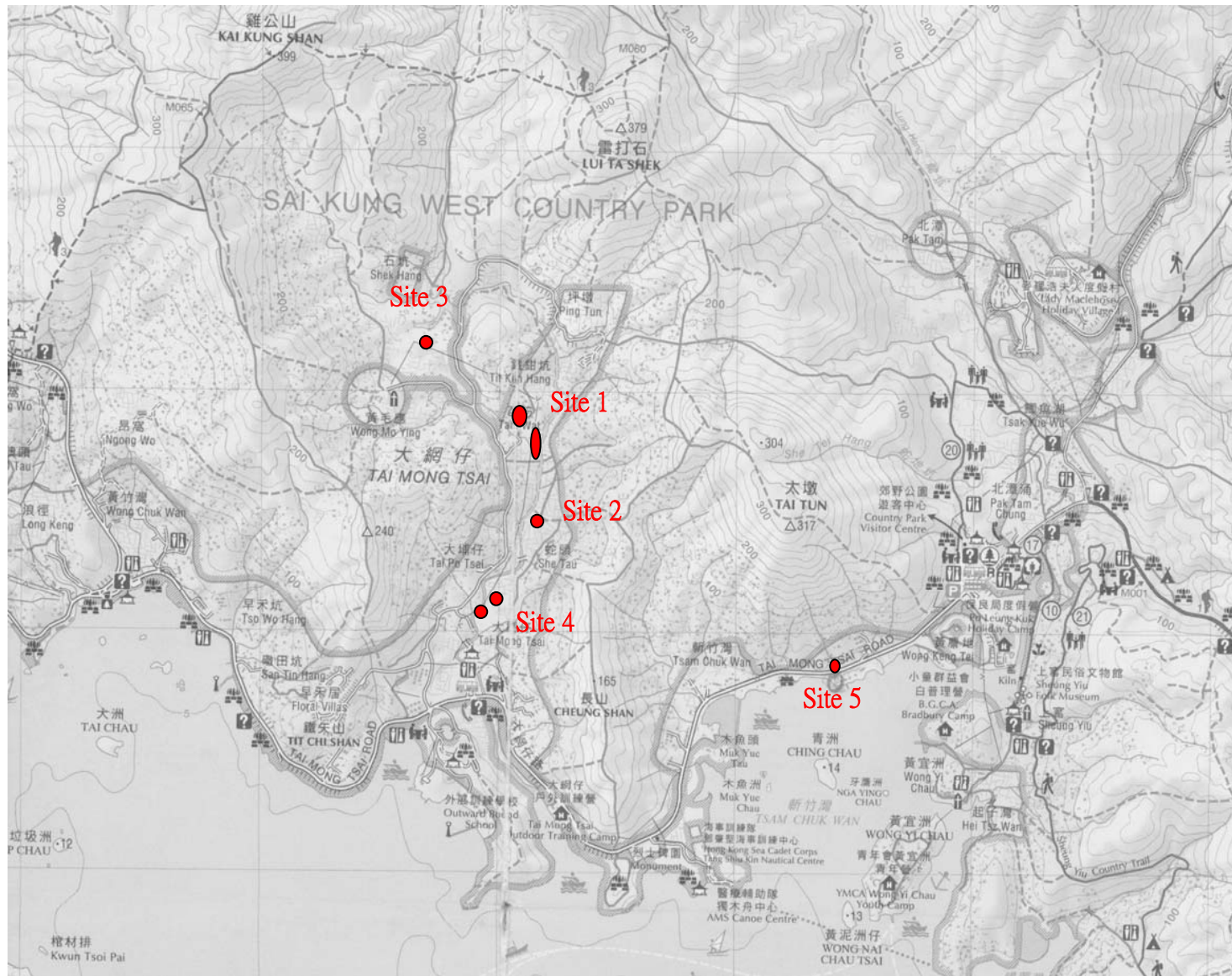
### **Site 5: Mangrove/ Tree Cutting at Wong Keng Tei**

<b>Background</b>	<ul style="list-style-type: none"><li>● An email was received from a member of the public on 26.2.2007 expressing his concerns about a possible development on a piece of private land at Wong Keng Tei, Sai Kung which might lead to the destruction of mangroves at the waterfront nearby.</li><li>● An area of about 10m x 17m of mangroves was cleared and about 50 nos of tree stumps were found. Both Government land and private land within "CPA" zone were involved.</li><li>● The site was found to be paved later on.</li></ul>
<b>Actions Taken by AFCD</b>	<ul style="list-style-type: none"><li>● Upon receiving the report, AFCD inspected the site on 28.2.2007. Apart from felling of mangroves, the incident also involved land use and zoning issues, thus the case was referred to LandsD and PlanD for actions.</li><li>● The site has been kept under close monitoring.</li><li>● On unauthorized tree felling, prosecution was initiated against unauthorized felling of mangroves and trees. The culprit was convicted and fined for HK\$12,000 in July 2007.</li></ul>
<b>Actions Taken by various departments</b>	<ul style="list-style-type: none"><li>● LandsD has erected bollards to stop vehicular access to the site.</li><li>● PlanD had issued Enforcement Notice and Reinstatement Notice to the landowner concerned under Town Planning Ordinance for the unauthorised land use.</li></ul>

<p><b>Present Site Conditions</b> (as at late July 2008)</p>	<ul style="list-style-type: none"> <li>• No further mangrove / tree felling was observed.</li> <li>• Most of the concrete paving were removed.</li> <li>• Three banana trees and a few shrubs were planted on site, natural vegetation has recolonised the site.</li> </ul>
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## Appendix

### Map and photos showing sites of unauthorised development/activities in Sai Kung



Site 1: Tam Wat



Site 2: She Tau





Site 3: Wong Mo Ying



Site 4: Tai Mong Tsai  
contruction site:



## Illegal Accesses





Site 5: Wong Keng Tei

