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19 January 2004

Mr Colin Chui
Clerk, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Chui

**The Director of Audit's Report on the
results of value for money audits (Report No. 41)**

Chapter 5: Provision of noise barriers for mitigating road traffic noise

Thank you for your letter of 14 January 2004 inviting my comments on the reasons provided by the Director of Territory Development in his letter of 31 December 2003 for the following matters:

- (a) provision of noise barriers along Trunk Road T7 for a private residential development in Ma On Shan at public expense and, in particular, whether the Government had the option of not providing the noise barriers at public expense; and
- (b) absence of negotiations with the developer on his contribution to the cost incurred by the Government in providing the noise barriers.

Provision of the noise barriers at public expense

2. According to the Technical Memorandum of the Environmental Impact Assessment Ordinance, a road project proponent is required to provide direct noise mitigation measures such as noise barriers as far as practicable (para. 1.7 of the Audit Report). Given that the noise barriers proposed by the developer and accepted by the Environmental Protection Department (EPD) in December 1997 could only protect 72% of the residential units (para. 4.5 of the Audit Report), the Territory Development Department (TDD) as the road project proponent of Trunk Road T7 was required to

provide the noise barriers at public expense in order to meet the requirements of the Environmental Impact Assessment Ordinance (para. 4.16 of the Audit Report). While the Government did not have the option of not providing the noise barriers at public expense, it should be noted that the land grant condition required the developer to implement at his own expense the approved noise mitigation measures (para. 4.3 of the Audit Report). The noise barriers proposed by the developer's consultant were accepted by the EPD in December 1997. Therefore, it was reasonable to negotiate with the developer for his agreement to contribute to the Government's cost of providing the noise barriers as a quid pro quo for relieving his obligation of implementing the approved noise mitigation measures under the land grant condition when he submitted such a proposal in April 1998 (para. 4.7 of the Audit Report).

Absence of negotiation with the developer

3. In paragraph 6 of the Director of Lands' letter of 22 December 2003 referred to by the TDD, it was stated that "With the certification by EPD that the Grantee's mitigation measures (without the noise barrier) were in order, and the implementation of those measures, the Grantee was deemed to have fulfilled his obligations under the land grant In the absence of a contractual obligation on the Grantee, we could not realistically expect an agreement to such a contribution as a matter of goodwill." The Director of Lands' remark highlighted the importance of negotiating with the developer before the EPD's certification of the revised mitigation measures in June 1998 (see para 4.7 of the Audit Report). However, based on the information provided by the TDD and the Lands Department, there was no written record to show that there had been discussion between the two departments about the land premium implication, let alone any action to negotiate with the developer before 2003.

4. A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,



(Peter K O WONG)
for Director of Audit

c.c. Secretary for the Environment, Transport and Works
Director of Environmental Protection
Director of Territory Development
Director of Lands