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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 4 February 2004. I set out below the information requested.

- (a) **whether the absence of the option of not providing the noise barriers along Trunk Road T7 implied that the Government had to provide the noise barriers at public expense, incurring about \$40 million, irrespective of the developer's obligation to do so under the land grant condition.**

2. In April 1998, the Environmental Impact Assessment Ordinance came into operation. Audit's view that "the Government did not have the option of not providing the noise barriers along Trunk Road T7" refers to the position after the Ordinance came into operation. Under the Ordinance, the Government had to provide the noise barriers at public expense because the Ordinance required a higher standard of noise protection by direct mitigation measures (such as noise barriers) than the 72% level of protection that could be provided by the developer's proposed noise barriers within his site boundary.

- (b)(i) the basis for the Audit's observation that "there was a possibility that the Government would still be required to provide the noise barriers under the Trunk Road T7 project for the Ma On Shan site at public expense, notwithstanding the provision of noise mitigation measures by the developer under the land grant condition."**

3. Audit's observation in paragraph 4.15 of the Audit Report **refers to the position in 1995** when the land grant condition for the Ma On Shan site was being drafted. At that time, the Environmental Impact Assessment Bill was under public consultation. Therefore, there was a possibility that the Government would be required to provide the noise barriers under the Trunk Road T7 project for the Ma On Shan site at public expense, notwithstanding the provision of noise mitigation measures by the developer under the land grant condition. That is why Audit has recommended that the Administration should issue guidelines to ensure that provisions will be incorporated into a land grant such that the Government is empowered to ask the grantee to contribute to the Government's cost of provisioning environmental mitigation measures.

- (b)(ii) whether there was any reasonable prospect for the Government to recover the cost from the developer.**

4. As mentioned in paragraph 2 of my letter of 19 January 2004, 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. There was a reasonable prospect for the Government to recover the cost from the developer if action was taken at that time.** However, as pointed out by the Director of Lands in paragraph 6 of his letter of 22 December 2003 that, with the certification (in June 1998) by the Environmental Protection Department 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. **After June 1998**, in the absence of a contractual obligation on the Grantee, it would not be realistic to expect an agreement to such a contribution as a matter of goodwill.

- (b)(iii) the justifications for the concerns about the use of public funds for the noise barriers works and the absence of recovery action raised in the Audit Report.**

5. As mentioned in paragraph 4.14 of the Audit Report, as the land grant condition was made known to the developer before the land sale, it is reasonable to expect that he would have taken into account the cost of the required noise mitigation measures in determining the land premium he would pay to the Government. From the value for money point of view, there should be adequate measures to ensure that the Government could get full value from the money spent or revenue foregone in this case, i.e., either the Government would not subsequently have to build the noise barriers at public expense, or

failing which the Government could recover the relevant cost from the developer. However, it turned out that the Government still had to build the noise barriers at public expense and timely action was not taken to recover the relevant cost from the developer.

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Peter K O Wong', written over a horizontal line.

(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