



**WWF** *for a living planet*

世界自然基金會  
香港分會

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## Subcommittee on Fly-tipping of the Legco Panel on Environmental Affairs

### WWF's Submission on Concerns of Environmental Destruction

30 April 2009

#### (A) Environmental destruction – a serious threat to our natural heritage

1. The renowned countryside of Hong Kong is not just important for wildlife, but is also beloved by millions of local citizens and visiting tourists. WWF thus views that the recent surge of illegal activities of environmental destruction must be stopped to protect this public asset of Hong Kong. Education should be enhanced to promote the importance of nature protection, while effective punishment should be meted out to discourage such selfish acts of individual citizens.
2. Many loopholes existing in the current regulatory system de facto encourage such environment-damaging activities including land / pond filling, land excavation and tree-felling. Within 2.5 years between August 2006 and March 2009, WWF recorded 41 cases of environmental destruction at locations zoned for nature conservation or places of ecological interest.

#### (B) WWF's view on EPD's proposal to enhance control on fly-tipping

3. On 20 April 2009, the Environmental Protection Department (EPD) submitted the "progress of measures to combat land filling and fly-tipping" to members of the Subcommittee on Fly-tipping.
4. WWF welcomes some of the proposed measures such as the "enhanced complaint handling procedures and inter-departmental co-ordination" and "issuing guides to stakeholders".

#### *Installation of closed-circuit television (CCTV)*

5. Apart from urban areas, **WWF considers that CCTV should also be installed at dumping black-spots in the rural areas** where there are fewer passers-by. **We also view that the government should put up signage**, indicating that an area is being actively monitored.
6. Both CCTV and signage are key measures to deter dumping at night or during public holidays.

#### *Potential dumpers need to obtain written permission from the landowner/occupier concerned AND EPD's authorisation beforehand*

7. WWF welcomes the idea of a licensing system because it can help protect ecologically

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important sites that are privately owned from the impact of dumping.

8. A well-known example of such sites is a bird hotspot at Kam Tin North commonly referred by birdwatchers as “the buffalo field”. Years of dumping construction and demolition materials have threatened this valuable habitat for birds. The proposed licensing system can allow the government to reject dumping applications on-site when ecological impact is envisaged.

### **(C) WWF’s other suggestions on fly-tipping**

#### ***Plugging the loophole of the Town Planning Ordinance***

9. Under the current planning control, Planning Department has no enforcement power against land filling or excavation within statutory outline zoning plans (OZP) which are not previously covered by Development Permission Area Plan (DPAP). Some of these current OZPs cover Tai Po, Ma On Shan, South Lantau and Lamma. Unfortunately, the loophole means that it is legal to fill up or excavate the private land zoned for conservation purposes within these areas.
10. **WWF strongly requests the Government to plug such a loophole. The loophole results in imminent threat to ecologically important areas (e.g. Mui Tsz Lam priority site, Tai Po Kau headland), important wildlife habitats (e.g. the endemic Romer’s tree frog in Lamma<sup>1</sup>) and natural scenic areas such as South Lantau Coast.**
11. It is a matter of principle that, regardless whether it is previously covered by DPAP or not, land zoned for conservation purposes should be protected from dumping / concrete paving / excavation anyway unless statutory approval is granted for such actions.
12. The EPD’s licensing system is insufficient as a measure to plug such a loophole as it is not designed to prevent small-scale dumping nor land excavation. WWF is of serious concern that developers have already taken and are likely to take further advantage of this loophole to pave way for future development by trashing sites beforehand.

#### ***Reviewing the penalty on illegal land filling and excavation***

13. As shown in the table below, the penalty imposed by the court on environmental destruction is pitifully low, compared with the maximum penalty specified in the relevant ordinances:

<b>Relevant Ordinances</b>	<b>Example(s) of environmental destruction regulated by Ordinances</b>	<b>Maximum fine level specified in the Ordinances</b>	<b>Average fine imposed by the court in 2007</b>
Waste Disposal Ordinance (WDO) Ch. 354	Depositing of wastes in any place, except with lawful authority or with permission of land owners or lawful occupiers (Source: Section 16A of WDO)	\$500 000 and imprisonment for 6 months  (Source: WDO Section 18)	\$4 028  (Source: EPD Website <sup>2</sup> )
Lands (Miscellaneous Provisions) Ordinance Ch. 28	Unlawful excavation in unleased land (Source: Section 10 of L(MP)O)	\$50 000 and imprisonment for 6 months  (Source: Section 10 of L(MP)O)	\$2 750  (Source: WWF’s record)

<sup>1</sup> See Bryon Taylor’s “Lamma residents seethe over dumping in stream” in the South China Morning Post on 12 April 2009

<sup>2</sup> [http://www.epd.gov.hk/epd/english/laws\\_regulations/enforcement/resource\\_enfor2.html](http://www.epd.gov.hk/epd/english/laws_regulations/enforcement/resource_enfor2.html)

Town Planning Ordinance Ch. 131	Unauthorised development on private land (Source: Section 21 of TPO)	\$1 000 000 (Source: PlanD website <sup>3</sup> )	About \$15 000 (Source: PlanD Annual Report 2008)
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14. **The Government should therefore consider amending the relevant legislations to increase the penalty level.** This does not necessarily mean an increase in fine. It can be:
- temporarily impounding the vehicles involved in dumping activities or the machinery involved in illegal excavation activities<sup>4</sup>; and
  - temporarily suspending the vehicle licence of the truck drivers who illegally fill up the land.

### ***Review the staffing and resources deployed in enforcement***

15. **WWF considers that the Development Bureau and Environment Bureau should explain whether the current staffing and resources deployed in enforcement arrangements are adequate to deal with the rising number of environmental destruction cases.** If not, the Government should significantly increase the staff and resources deployed in enforcement.
16. It is of common sense that a limited number of staff can only handle a limited number of environmental destruction cases every year. Searching for evidence, taking statements from witnesses, joint-department actions and legal proceeding are all very time-consuming and can take months or sometimes even years to process. It is impossible for enforcement staff to follow each case closely on the current trend of surging cases.

### ***Spotter scheme for rural areas***

17. The Government should consider co-organising “spotter scheme” with District Councils and environmental concern groups (e.g. hiking groups) to equip voluntary members of the public with the relevant knowledge required in monitoring unauthorised land filling at the black spots in the New Territories, as an effort to utilize community power to curb such unauthorized activities on a local and focused basis.

## **(D) WWF’s views on tree-felling**

### ***Tree-felling on private land zoned for conservation purposes***

18. **It is also WWF’s view that trees on private land zoned for conservation purposes (e.g. Country Parks, Conservation Area zoning) should be protected from felling. Trees on some private land zoned for conservation purposes are currently NOT protected from felling.** From our correspondence with the government, we know that this is due to the lack of tree-felling restriction clause in the old government land lease.

<sup>3</sup> [http://www.pland.gov.hk/info\\_serv/cep/enforcement/enforce\\_e.htm#g14](http://www.pland.gov.hk/info_serv/cep/enforcement/enforce_e.htm#g14)

<sup>4</sup> UK’s penalty against fly-tipping is even heavier. Under the UK’s Environmental Protection Act 1990, it is stated that *‘the court may also make an order to deprive the offender of his rights to a vehicle (and its contents) if the court is satisfied that the vehicle was used to commit an offence’*

Source: ENCAMS. *“Flytipping and the law – a guide for the public”*. Pg 4

19. Under the Town Planning system, the intentions of conservation zonings such as “Conservation Area” (“CA”) and “Coastal Protection Area” (“CPA”) are respectively to *“protect and retain the existing natural landscape, ecological or topographical features for conservation, education and research purposes ...”*<sup>5</sup> and *“conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value ...”*<sup>6</sup>.
20. However, we seriously question the effectiveness of the existing regulatory mechanism: how can the Government conserve the ecological or natural features on those private land zoned as “CA” or “CPA” if felling trees on such areas without prior government’s approval is not illegal !
21. The government stated that the *“Town Planning Board (TPB) would take into account all relevant factors, including possible environmental degradation, in considering planning applications”*<sup>7</sup>. WWF agrees with TPB’s view towards development applications with prior environmental degradation. However, such an approach is too passive and TPB’s power to reject an application only serves to discourage future applications but plays no role in preventing destruction activities. Since the cost of damaging and the risk of getting caught are both low, the person committing such acts are not deterred in any way. Public money would be required to reinstate the damaged sites, if discovered. It may take years or even decades for the natural habitat to grow back into its original state provided that reinstatement is feasible.
22. **Unfortunately, at the moment, there is no legislation to empower the Government to undertake investigation and enforcement actions against tree-felling on private land zoned as “Green Belt”, “CA” or “CPA”, even though such activities are not in line with the zonings’ planning intentions.**
23. **We urge legislators and the Government to plug this loophole by considering amendment to the current legislations.**

### ***Raising the awareness of villagers***

24. WWF understands that many villagers hold the view that they can do whatever they want with the land within their own village. Many of them also hold the primitive view that if trees are felled in advance, they will have a higher chance of getting their small house applications approved.
25. We urge the Government to undertake extensive and effective public education work, to inform villagers that their applications for small houses would not gain sympathetic considerations from the Town Planning Board if tree-felling is undertaken in advance.

### ***Tree-felling on private land within Country Parks***

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<sup>5</sup> Reference is made to the Town Planning Board - Master Schedule of Notes  
[http://www.info.gov.hk/tpb/en/forms/Schedule\\_Notes/msn\\_ca\\_e.pdf](http://www.info.gov.hk/tpb/en/forms/Schedule_Notes/msn_ca_e.pdf)

<sup>6</sup> Reference is made to the Town Planning Board - Master Schedule of Notes  
[http://www.info.gov.hk/tpb/en/forms/Schedule\\_Notes/msn\\_cpa\\_e.pdf](http://www.info.gov.hk/tpb/en/forms/Schedule_Notes/msn_cpa_e.pdf)

<sup>7</sup> Paragraph 17 of the minutes of the meeting of Panel on Environmental Affairs on 30 June 2008

26. Similarly, private land within Country Parks is also threatened by tree-felling activities<sup>8</sup> that are hardly in line with the intention of the Country Park “*to protect the vegetation and wildlife*”<sup>9</sup>. We urge the Government to consider amending the Country Parks Ordinance to address this loophole.

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<sup>8</sup> LCQ7: Regulation of developments in country parks and marine parks on 25 February 2009  
<http://www.info.gov.hk/gia/general/200902/25/P200902250224.htm>

<sup>9</sup> According to Section 4 of the Country Parks Ordinance, the Country Parks Authority (“essentially referring to the Director of Agriculture, Fisheries and Conservation) has the duty to “*protect the vegetation and wild life inside country parks and special areas*”