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FACSIMILE TRANSMISSION

To:	Town Planning Bills Committee Legislative Council	Attn.:	Ms. Sarah Yuen
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From:	Alex S. K. Yau	Our ref.:	(3) CHK/ LAW T2(iii)/ 00
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Subject:	Town Planning Bill		

Dear Ms. Yuen,

Thank you for inviting us to attend the Bills Committee meeting yesterday morning. During the discussion, there were a number of issues raised which due to time constraints, WWF Hong Kong has not been able to respond or discuss. I am therefore writing to provide supplementary comments for the Bills Committee's further deliberation.

COMPENSATION

It has been suggested that contrast to Clause 6(4) of the Town Planning Bill, owners whose land has been zoned uses that have relatively low development potential should be duly compensated. WWF Hong Kong supports land resumption for conservation, if and when happens, should provide adequate compensation. This however should not be confused with compensation for land use zonings *per se*. There is at least one legal case we are aware of (*Auburntown Ltd. versus [Town Planning Board, April 1994]*) where the High Court ruled that there was no ground for compensation claim by the land-owner/ developer, since it was entirely within the powers vested on the Town Planning Board to impose long term land use planning control by according appropriate zonings for different areas of land. It remains to be justified why what basically is speculative land purchase should be compensated for particular land use zonings.

USE OF PLANS FOR REVIEW AND APPEAL PROCESSES

It has also been contended that the proposed Clause 10(4) is unfair since it requires the Town Planning and Appeal Boards to consider the planning applications on the basis of the OZP, and not the DPA. Rather the old provisions (Clause 20(6A)) under the existing legislation should be retained.

It should however be noted that the current provisions are a potential loophole. Section 20(6A) of the existing Ordinance provides that if a development permission area plan (DPA) is superseded by an outline zoning plan (OZP), applications for planning permission during the lifetime of the DPA shall continue to be considered under that plan and not under the OZP. This was the ground for appeal to the Privy Council in 1997 for the Nam Sang Wai development near Mai Po Nature Reserve – and the application was granted based on the “Unspecified Use” zoning on the DPA (where in fact was zoned “Conservation Area” in the subject OZP).

Further, the misperception has perhaps overlooked the new provisions under Clause 35(4) which provides that the Town Planning Board should not grant an application which is on a site subject to unresolved adverse representation. WWF Hong Kong welcomes this provision so as not to pre-empt the final decision. As such, applications would then be considered based on the most update decisions on land use zonings. The use of OZP, which represented the latest land use planning intentions, in review and appeal processes should therefore not be unfair.

In addition, Clause 10(4) provides the consideration of the application based on the OZP if and only if the application’s review and appeal rights (with the use of the DPA) have all been “exhausted, abandoned or expired.” There should not be unfairness.

WWF Hong Kong supports the expedient enactment of this Bill, and respectfully request Members of the Bills Committee to consider the above and previous comments in their deliberation.

Thank you for your kind attention.

Yours sincerely,

Alex S. K. Yau (Miss)
Senior Conservation Officer
WWF Hong Kong