Inner Deep Bay Unauthorized Development Report

“on law enforcement, for some time, the Director of Planning has been actively enforcing the law but of course, the vigour can be increased further”

—— Secretary for Development
6 November 2013
5. Filling-in of Pond Cases

Introduction of Pond-filling cases
Case Study 1: Castle Peak Road, San Tin, Yuen Long
Case Study 2: Tun Yu Road, San Tin, Yuen Long
Case Study 3: Mai Po Lung, San Tin, Yuen Long

6. Reflection and Suggestions

Summary
Recommended Measures

Appendix

Priority Guidelines for Enforcement Action against Unauthorized Developments in the Rural New Territories

References
Summary

Inner Deep Bay acts as the overwintering site and waystation for tens of thousands of migratory water birds. It has been recognized by the Ramsar Convention as an internationally important wetland in 1995.

To protect this prime habitat, in 1998, Hong Kong government designated the Wetland Conservation Area (WCA) and Wetland Buffer Area (WBA), and created planning guidelines. Even so, unauthorized development continues to degrade or even destroy the environment. In 2016, WWF-Hong Kong looked into cases of unauthorized developments which occurred on private land within the Inner Deep Bay over the past two decades. The objective is to find out how efficient and effective has the enforcement against unauthorized developments by the Planning Department been and whether the enforcement is sufficient to deter similar illegal activities.

The study found that there are 435 incidents of unauthorized development over the past two decades, impacting 150 hectares of land. Illegal pond-filling cases account for 20 per cent (35 hectares) of the cases. Among which, two illegal pond-filling cases took more than eight years to resolve, and the authorities only called for the offenders of 37 cases to restore the degraded fish ponds to its original state. This is a worrying situation because the longer the enforcement takes, the greater the negative impact to the environment and the costlier it would be to restore the fish ponds.

Of 435 cases, only 28 were fined with an average penalty standing at HK$66,392 – to put things into perspective, the maximum penalty is HK$500,000 for first offence. It is obvious that the penalty is too lenient when compared to the commercial gains resulted from authorized developments. The shoddy enforcement and the non-deterrent fines for illegal development cause unauthorized development to continue and more ecologically important habitats to be eroded.

To effectively halt unauthorized development and the expansion of these degraded wetlands in Inner Deep Bay, the government should take a more proactive role. The best way with the mounting problems is to increase enforcement efficiency. We also urge the authorities to speed up the enforcement actions, increase the penalty and impose other measures to better protect the ecological value and integrity of Inner Deep Bay.

Unauthorized Development Cases in Inner Deep Bay

The illegally-erected concrete platform has not been reinstated two years after the reinstatement notice has been issued.

Over 30 ha of land was impacted by unauthorized development over the past 24 years.

This offence was received the highest fine in the city’s history ($174,500) which was only 35% of the maximum penalty.

The authorities took eight years before it issued an enforcement notice for this unauthorized development incident.

Over 1.5 ha of fish pond was filled in and village houses were built atop.

Over 1.5 ha of fish pond was filled in to make way for a private housing development and this illegal development was later approved by the Town Planning Board in 2015.

Deep Bay’s largest-ever tree-felling incident affected 13 ha of wetland.

2 ha of land and fish pond was formed and filled in to build storage facilities and roads.

Over 0.5 ha of fish pond within the Conservation Area was filled in.

Over 30 ha of land was impacted by unauthorized development over the past 24 years.

6 ha of fish pond was formed and filled in to build storage facilities and roads.

54
Introduction
In the 1980s, Melhado Investment Ltd. applied for a change in the land use of a plot of fallow agricultural land in So Kwun Wat, so that the company could use it to store steel bars used in construction. In 1983, the High Court held that the use of land listed in the Block Crown Lease was descriptive only. Other than a restriction to build houses, there was no limitation to the use of land on Block Crown Lease. Therefore, the Buildings and Lands Department, now the Lands Department, was not authorized to impose constraints on the land use under the Block Crown Lease. Hence, the Lands Department cannot control that agricultural lands can only be used for farming.

Since then, residents in the New Territories can use agricultural land however they wish as long as they do not erect houses. This caused a drastic rise in numbers of container yards and scrapyards. Lau (1999) recorded there was a sharp increase in the use of land for open storage (from 86 hectares to 100.2 hectares) and scrapyard (from 56 hectares to 74 hectares) and container vehicle parks (from 40 hectares to 86 hectares) in north-west New Territories in 1990 and these uncontrolled changes of land use had degraded the environment, impacted transport and caused flooding. With the use of the geographical information system, Lee (1999) found that a significant 39 per cent of fish ponds and wetlands (750.5 hectares) were lost between 1985 and 1991.
Every January, Inner Deep Bay witnesses the peak arrival season for migratory water birds.
The coverage of Town Planning Ordinance was extended to encompass rural areas thus land use can be regulated by statutory plans. The Planning Authority can take enforcement actions and prosecutions against unauthorized development.

Under public and development pressure, the Town Planning Board introduced TPB Guidelines No. 12 which established Buffer Zone 1 and 2 to protect the important habitats in the Inner Deep Bay. After TPB Guidelines No. 12 was amended, it required those who applied for development to submit ecological impact assessment reports. The guideline also called for the adoption of a “precautionary approach” to conserve the ecological functions of fish ponds, maintaining the integrity of the ecological system of Inner Deep Bay.

The Central Enforcement and Prosecution Section of the Planning Department was established in July to step up statutory planning enforcement action against unauthorized development.

The Convention on Wetlands of International Importance listed the Mai Po marshes, the Inner Deep Bay and some fish ponds as Ramsar wetlands. This recognizes the ecological importance of Inner Deep Bay but lacks explicit statutory regulatory mechanism to protect the wetlands.

The Study on Ecological Value of Fish Ponds in Inner Deep Bay Area (Aspinwall & Company Hong Kong Limited, 1997) recognized the ecological function of fish ponds in the Inner Deep Bay area, stating that they serve as a main food source, roosting and feeding grounds for water birds.

Based on The Study on Ecological Value of Fish Ponds in Deep Bay Area, more amendments were made on TPB Guidelines No. 12, including forming a more comprehensive “precautionary approach”, revising the boundary of Buffer Zone 1 and 2 and replacing the names of areas with Wetland Conservation Area and Wetland Buffer Area.

The Treasury allowed the Planning Department to procure a computer system which was installed in 2000 to view three-dimensional aerial images to facilitate the assessment of unauthorized development and to increase the efficiency and effectiveness of law enforcement.

In 2004, Town Planning (Amendment) Ordinance bill was passed to address some of the deficiencies in order to enhance efficiency and effectiveness in enforcement. The Amendment Ordinance comes into force in June 2005.

In the New Nature Conservation Policy, Ramsar wetlands and Inner Deep Bay wetlands (which lie beyond the Ramsar wetlands) are identified as priority sites for enhanced conservation.

Law enforcement officers of the Planning Development were empowered with increased authority to stop unauthorized development and prosecute those disregarding the Stop Notice. The Planning Department published a pamphlet named “Enforcement of Unauthorized Developments in the Rural New Territories”, aiming at fostering the understandings of land owners, occupiers and operators about the enforcement provisions and requirements under the Town Planning Ordinance, Cap. 131, so that they would not commit an offence inadvertently.

The Town Planning Board issued the Priority Guidelines for Enforcement Action Against Unauthorized Developments in the Rural New Territories including enforcement policies with clear priority and action focus.

The Planning Authority announced its determination to stop activities that “destroy first, build later”.

• The study on ecological value of fish ponds in inner deep bay area (Aspinwall & Company Hong Kong Limited, 1997) recognized the ecological function of fish ponds in the inner deep bay area, stating that they serve as a main food source, roosting and feeding grounds for water birds.

Table 1) Policies, Convention, Statutory Plans, Planning Instructions and Law Enforcement Measurements on Protecting the Wetlands in the Inner Deep Bay

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Background

Although the Planning Development is empowered with greater power to enforce the law in rural areas, the Annual Reports of Planning Department from 2011 to 2014 has shown that there are 269 cases of fish ponds being illegal filled in which caused environmental damage in the northwestern New Territories. That can be broken down to an average of 67 cases per year. As compared to a total 158 cases from 2007 to 2010 (or an average of 40 cases per year), the cases have increased by 70 per cent4. These figures show a rising trend in the number of unauthorized pond-filling cases in the northwestern New Territories in recent years. If the upward trend continues, the ecological value of those affected privately-owned land and its vicinity will be degraded, causing irreversible damage.

As a gate keeper, the Planning Department plays a pivotal role to enforce the law and tackle unauthorized developments in the New Territories. However, the Secretary of Development on 6 November 2007, made the following comments when he replied legislative councilor Liao Cheung-kong’s questions about the enhancement of enforcement to reduce the environmental destruction in the New Territories, “President, on law enforcement, for some time, the Director of Planning has been actively enforcing the law but of course, the vigour can be increased further.”

Analysis Focus

From the response of the Secretary of Development, the Secretary might be hinting the insufficiency of Planning Development in law enforcement. The worrying trend of unauthorized development cases of filling-in of fish ponds on privately-owned lands in northwestern the New Territories in recent years has prompted WWF to analyse the Planning Department’s efficiency and efficacy on law enforcement in inner Deep Bay’s ecological important areas and their surroundings, of which are ecologically susceptible to unauthorized development in 2016. And we also aim to investigate the reasons for the upward trend and make recommendations to the government. It is hoped that the government will stop the current worsening situation from further deterioration that would pose greater damage to the Inner Deep Bay ecological system.

Analysis Scope

The study area encompasses 2,500 hectares of wetlands between Tsim Bei Tsui to the west and Hoo Hok Wai to the east. It covers Mai Po Inner Deep Bay Ramsar Site, Wetland Conservation Area and Wetland Buffer Area (Figure 5). The cases studied stretch from 1992 when the Development Permission Area Plan came in force to March 2016. The data focused on the Planning Department’s enforcement to unauthorized development within the said period and area. We looked into the length of time to investigate the illegal fish pond-filling, the efficiency of enforcement actions, penalty, and etc. to reflect the enforcement of law and the deterrence.

Analysis Type

The analysis covers damages brought to the environment by unauthorized development including land/fish pond-filling and site formation (Figure 6). These activities will damage the functions of ecological system, destroy the habitats and food source that the wildlife depend on. Moreover, the unauthorized land use threatens the community and lowers the quality of life.
Investigation Results
Total Number of Cases

The number of cases of unauthorized development totaled 435 over past 24 years, affecting 153 hectares of land which is equivalent to the size of 214 standard soccer fields. There has been an upward trend from 2006 to 2016 (Figure 7). There are two peaks in the total cases of unauthorized development in Figure 7. The first peak, which occurred between 1996 and 1998, could be attributed to the establishment of the Central Enforcement and Prosecution Section and the enhancement of statutory planning enforcement action and prosecution against unauthorized development (Table 1). The second peak, which occurred in 2005, might be related to the amendment to the Town Planning Ordinance in 2004. The amendment addresses some deficiencies of the previous version (Table 1). For instance, it empowers law enforcers with more direct investigation power and allows them to enter or pass any land in reasonable time to verify the unauthorized development without prior notice or warrant. Afterwards, the cases of unauthorized development dropped to six in 2007 which might reflect the efficiency of the enhancement of enforcement power. The then rising trend since 2007 is estimated to be related to the introduction of the Town Planning Guidelines 13E which aims to regulate the current disordered land use by means of statutory control. In the years leading up to 2015, the annual number of cases nevertheless increased. The situation is indeed worrying.

Distribution of the Cases

Unauthorized developments were distributed along 12 areas around the Inner Deep Bay cover San Tin, Lok Ma Chau and Hoo Hok Wai to its east, Mai Po to its southeast, then encroaching into Tai San Wai, Pok Wai and Wing Kei Tsuen, Nam San Wai and San Pui. Southwest includes Tin Shui Wai and Tai Tseng. West includes Mong Tseng and Tsim Bei Tsui.
Categories of the Cases

According to the investigation, 116 cases are one-off offences. The rest (319 cases) occurred on 73 sites and are repeated offences, which means at least two cases of unauthorized development are identified at the same location, or multiple cases of unauthorized development happening on overlapping areas are found.

In terms of environmental and ecological impacts caused by unauthorized development, single offence will reduce habitat areas and damage the intrinsic ecological values, threatening the wildlife habitats. Repeated offences cause large-scale wildlife habitat destruction, and fragment the connectivity of the eco-system (Figure 10).

Land use zones

Eighty-nine cases of unauthorized developments happened on land earmarked for conservation, including “Green Belt”, “Conservation Area”, “Coastal Protection Area” and “Site of Special Scientific Interest”. The affected conservation zone totals 30 hectare, nearly 20 per cent of the total study area. The total number of unauthorized developments occurring on “Green Belt”, “Conservation Area” zones is 85. The only one unauthorized development on “Site of Special Scientific Interest” involves the tree felling in Tsim Bei Tsui in 1992. This incident affected 1.4 hectares of wetland, the largest affected area in any single offence.

The remaining 364 cases are located amongst “Village Development” and “Other Specified Uses” zone, which both zones has a total of 284 cases while cases identified in the “Other Specified Uses” are mainly found at “Comprehensive Development Area (Wetland Enhancement Area)”. Sixty-two cases fall within the zonings of “Open Storage”, “Recreational”, “Agricultural”, “Residential (C)” and undetermined areas.

Fig 10) An unauthorized development with 3.8 hectare near San Tin Tsuen Road fragments the fish pond area which was connected before (red box)

Fig 11) A filling-in-progress unauthorized development located within the “Conservation Area” in Mai Po
Law Enforcement
Enforcement Notice

Before analyzing the enforcement efficiency and effectiveness of unauthorized developments in Inner Deep Bay, it is important to understand the law enforcement procedure of the Central Enforcement and Prosecution Section of the Planning Department. With reference to the 2 documents, that is Enforcement of Unauthorized Developments in the Rural New Territories, and “The Focus” in Planning Department’s Annual Report 2008: Restoring sites of unauthorized developments, and information from the website of Planning Department, the law enforcement officers can issue six kinds of notices during the law enforcement process including warning letter, Enforcement Notice, Stop Notice, Reinstatement Notice, Compliance Notice and Cancellation Notice (Figure 12).

The authority will issue a warning letter first if they find there is unauthorized development on private land of the rural areas. After it is confirmed the site is or was associated with unlawful development, the Planning Development will issue an Enforcement Notice or Stop Notice to offenders, demanding them to stop illegal activities immediately. A Reinstatement Notice requires offenders to reinstate the land within a deadline. The offender can appeal the result within 30 days. If the Planning Authority is satisfied that the requirements of the notice issued have been complied with, it will issue a Compliance Notice. When there is any change regarding the notice recipient/land owner of the Compliance Notice or the boundary of unauthorized development area, the Planning Authority will issue a Cancellation Notice.

Unresolved Cases

According to the law enforcement procedure in Figure 12, issuing a warning letter is the first step while issuing a compliance notice marks the end of the process. Amongst the total of 435, 340 cases (78 per cent) took the Planning Department 2 years’ time to complete the enforcement process. However, no compliance notices had been issued for 23 cases including those cases with only cancellation notices delivered over the years. According to Google Earth Street View, at least five locations are confirmed as unauthorized developments but the land were still used unlawfully as of April 2015 (See Figure 13 and 14 for two examples). In 2015, the government approved a plot of land to change its use to an outlet mall even though it was illegally developed in 2013 while no compliance notice had ever been issued by the Planning Department (Figure 16). The above unresolved cases and number reflected that the authority failed to stop unauthorized development in a reasonable time. Furthermore, no compliance notice was issued to four cases which required reinstatements and one case which should be fined. Thus the authorities failed to discontinue unauthorized development.
Fig 14) The land use of an unauthorized vehicle carpark on Lok Ma Chau Road on April 2015

Fig 15) The land use of the same location of Fig 14 on July 2016

Fig 16) The sectional view and aerial view of a proposed outlet mall in San Tin

Fig 17) The under-construction outlet mall after site formation with manholes laying in July 2016
Law Enforcement Procedure

Among the 435 cases of unauthorized developments, the Planning Department has issued a total of 385 Enforcement Notices. In 156 cases, Enforcement Notices were issued to land owners, occupiers or people responsible for unauthorized developments without first issuing warning letters. According to "Enforcement of Unauthorized Developments in the Rural New Territories", warning letters will not be issued to repeat offenders. In other words, the 156 cases, 36 per cent of total number of unauthorized developments, are repeated offences. The worrying number of repeated offences raises the concerns towards the effectiveness of law enforcement and the deterrence of penalty to stop unauthorized developments from occurring in the same locations repeatedly.

Efficiency of Law Enforcement

It is found that 62 per cent of the cases were enforced within a year while 16 per cent were enforced within two years. But 10 per cent required more than three years (Figure 18). The enforcement of the unauthorized development near Castle Peak Road in San Tin took the longest - eight years and 10 months (Figure 19).

Types of Unauthorized Development and Enforcement Efficiency

Amongst the 269 cases which were enforced within a year, 153 cases (57 per cent) have violated the change of land use, which is not directly associated with environmental degradation, while the rest (43 per cent) cause environmental damage. Similar distribution is found in the cases enforced within two years (Figure 20). But most of the cases (27 out of 42) that took more than three years to process have an environmental impact. Of which, two pond filling cases took eight years or longer to complete the whole law enforcement procedure.

To conclude, unauthorized developments related to environmental damage required longer time to enforce.
Conviction and Penalty

Under Section 21 and 23 of the Town Planning Ordinance, first time offenders of unauthorized development or those who do not follow the requirement of enforcement notices can be fined up to $500,000. In addition, if the offender does not comply with the requirement after the expiry date of the notice, he/she can be fined $50,000 every day until the requirement is met. For subsequent convictions, the person will be liable to a penalty of $1,000,000, and a daily penalty of $100,000 if the requirement is not adhered to after the deadline.

Types of Unauthorized Development and Penalty

According to this study, only six per cent of the unauthorized development cases (28) were fined. The total amount of penalty handed down is $1,858,980 with an average of $66,392 per convicted case, which is only 13 per cent of the highest possible penalty $500,000 for the first offence. Therefore, the actual amount of penalty handed down is lenient.

According to Figure 22, the penalty imposed for cases with direct environmental consequences is less than $60,000. When comparing the difference in penalty between cases related to environmental destruction and cases related to the change in land use, we discovered that the highest penalty for cases of environmental destruction is $174,500, while that of change in land use is $190,500. Despite the difference in nature for the two types of cases, making them difficult to be compared, land/pond-filling usually is the first step of changing land use for unauthorized development. After the land is leveled, various unauthorized developments will follow (Figure 23). In this investigation, 23 repeated offences started from pond-filling.

![Fig 21] A Planning Department notice posted at a site where unauthorized development took place

![Fig 22] Unauthorized Development and Penalty

![Fig 23] The change in the landscape of a repeated offence starting from pond-filling on Deep Bay Road over 10 years
Filling-In of Pond cases
Introduction of pond-filling cases

A total of 87 cases of pond-filling cases are found in this investigation, accounting for 20 per cent of the total amount of unauthorized developments, and 85 hectares of wetlands (or 55 per cent of the total study area) are affected. The cases are distributed over 50 locations and include 22 single offences and 28 repeated offences. It took the authorities more than two months to issue an enforcement notice for 25 cases, amounting to 28 per cent of the total pond-filling case. In fact, it only takes two months to fill in a hectare-large pond. Moreover, only 37 cases (42 per cent) were closed within 1 year. The rest (35 cases) required more than 1 year to enforce, and that includes two cases that took at least 8 years to complete the whole enforcement process. Until March in 2016, 12 cases either did not receive a Compliance Notice or were not updated (Figure 24). Reinstatement Notices are issued to 37 cases (42 per cent) so far. Of 23 repeated offences that stemmed from pond-filling, only two are required to be reinstated. Only 12 pond-filling cases (14 per cent) were fined. The average penalty is $61,308 which is lenient as compared with the highest possible penalty of $500,000 for first convictions. It is believed that accessibility contributes to the rampant unauthorized development in San Tin, Mai Po Tsuen, and Tai Sang Wai which are all along the Castle Peak Road (Figure 25).

The following pond-filling cases took place around San Tin. The required enforcement time, affect area and penalty are unique to each case.

![Processing Time on Handling Unauthorized Pond-filling Cases](Fig 24)

![Fig 25) Relationship between unauthorized development and transport network](San Tin Tsuen Road)

![Figure 26) Before the Development Permission Area Plans were in force, land/pond-filling and site formation have started north of Castle Peak Road](October 1987)

![Figure 27) Many fish ponds north to Castle Peak Road were filled-in before 2000](July 2016)
Pond-filling cases

**Case Study 1: Castle Peak Road, San Tin, Yuen Long (The Castle Peak Road Case)**

A total of 9 cases of unauthorized use of land have been discovered since 1992. The first offence was pond-filling and another two were land excavation. The affected area increased from 1 hectare to 4 hectares (Figure 28). Only the first pond-filling case was convicted and fined $174,500 which is the second highest penalty recorded, but it did not deter future unauthorized development at the same place. Reinstatement notices are not imposed to any cases. In the most recent case, which happened in 2015, compliance notice was not sent out, instead a cancellation notice was issued, representing that there may be a change in the land owner or unauthorized development area. But the authorized development might continue. On the other hand, documents showed that the cases involved an illegally developed open storage (including container storage), but according to street view in Google Earth in April 2015, the site was used for vehicle dealership (Figure 29). The change in land use was not noted.

**Case 2: Tun Yu Road, San Tin, Yuen Long (The Tun Yu Road Case)**

The affected area of this case is the most severe of all, involving 22 hectares and 14 cases of illegal development. The first case can be traced back to 1999. Ten of the cases involved pond filling. Although it is located in the Wetland Conservation Area which stipulates that development can only be conducted under the no-net-loss of wetland principle, the filled ponds in the first three cases were not required to be reinstated or were not fined, instead compliance notices have been issued and the case files were closed. Fish ponds affected in two other cases were reinstated, five other cases are being followed up, while ponds affected in the last case have not been reinstated before the deadline. In the last five cases, only four cases, affecting 8 hectares of land, were convicted and fined a total of $300,000. However, the monthly rent of land in the area was $3.0/sq. ft. (Footnote 7). Thus the monthly income derived from this eight-hectare-large and can be $2,600,000, meaning the offender can recover the money lost in just four days.

*According to the information at www.28hse.com in June 2016*

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Fig 28) The landscape change of land use from fish ponds to storage in San Tin from 1987 to 2015 on the Castle Peak Road case

Fig 29) The land use for vehicle show room in April 2015 in the Castle Peak Road case

Fig 30) The materials and asphalt used to fill in a pond in the Tun Yu Road case was not removed two months after the Reinstatement Notice expired (photo taken in April 2016)

Fig 31) The scene of one of the cases of unauthorized development in the Tun Yu Road case in April 2016. Emerged structure such as the stacked containers on the left may violate the restrictions on land use stated in the Outline Zoning Plan
Case Study 3: Mai Po Lung, San Tin, Yuen Long (Mai Po Lung Case)

Three cases of unauthorized development, with 0.35 hectares affected, were found in this area. The area involved in the three cases is overlapping, but the offences are different. The first case occurred in 1991 and an Enforcement Notice and Compliance Notice was not issued until March 2000. The whole case took eight years and 10 months to enforce, making it the lengthiest enforcement period in this study.

However, the issuance of a Compliance Notice does not mean the case is closed. In the third case, the Planning Department issued a Reinstatement Notice on 20 August 2007, requiring offender to remove the pavements and to revegetate at the subject site. Yet, a Compliance Notice was issued on the same day which was an unusual practice. According to an aerial photo taken in December 2007 (Fig 32), the area was still covered by stone or cement without any greenery. In a photo taken in April 2015, the site was still paved by cement, and vehicles, empty containers, and fuel tank storage can be seen illegally placed on the site (Figure 33). During site visit in April 2016, we discovered that all structures were removed (Figure 34 and 35). At the same time, a website showed that the land is available for rent for $4/sq. ft. per month. The monthly rental price can reach $120,000 (Figure 36), revealing the profitability.
Discussion and Recommendations
Summary

The report revealed that the Planning Department, as a gatekeeper, should ensure land is used appropriately, prevent and penalize unauthorized development. However, weak enforcement abetted the increase in the number of single and repeated offences in unauthorized development. This threatened the ecosystem of Inner Deep Bay wetland. The impacts brought by inadequate law enforcement include:

1. Planning Development lacks rigor and efficiency during enforcement. The longer law enforcement drags out, the greater the negative impact on the environment, and the costlier it is to restore the habitat to its original state.

2. The grace period given to offenders to fulfill requirements of Enforcement Notice, Stop Notice and Reinstatement Notice, which is now up to three months, is too long and fails to act as a deterrent.

3. There are no clear guidelines and standards on how the offender should restore destroyed ponds. Amongst the total 435 cases, only one case was given clear instructions and standards while others are just required to remove the materials used to fill in the pond, and the Planning Department judges the compliance case by case.

4. The unauthorized land uses stated in Enforcement Notice differ with the current land uses. Also, the authorities fail to check whether reinstatement notice has been adhered to. This loophole led to rampant illegal development.

5. The penalty handed down to cases of unauthorized development is too lenient and jail terms are never imposed. On the other hand, the current financial reward brought by illegal land developments in Inner Deep Bay, outweighs the fines, thus failing to provide deterrent effect to offenders, and encouraging the offenders to continue the unauthorised development.

Recommended Measures

To suppress the exacerbation of unauthorized development on private land in rural areas efficiently and stop the environmental degradation, the government should impose the following measures:

1. Impose remedial measures proactively and ensure there are sufficient resources to increase the efficiency and effectiveness of enforcement to prevent the expansion of unauthorized development to neighbouring areas and stopping environmental degradation.

2. Increase penalty, especially for repeated offenders, to deter future unauthorized development. The Prosecution Section should ask the court to review cases with a low fine depending on the nature of each case

3. Strengthen regular inspection on the known unauthorized development black spots by increasing the frequency of inspection as well as renewing and enlarging the inspection routes.

4. Frontline enforcement officers should enforce the regulation strictly and take immediate actions when there is suspected unauthorized development.

5. Reinstatement Notice must be issued to all unauthorized pond-filling cases. The reinstatement standards should refer to that stated in E/YL-ST/339. All filling-in materials should be removed to restore the water area and habitat. An appropriate mechanism should be established to monitor the handling of the removed materials, preventing them from being moved to other places and destroying the environment again.

6. Establish a database of baseline ecological information of rural areas to ensure the environment and ecology of the destroyed areas are restored satisfactorily to their original state.

7. Make the unauthorized development database (similar to the Environmental Protection Department’s list of Land Filling Sites of Public Concern) available to the public so the public can monitor the law enforcement progress of each case, particularly unauthorized development in rural areas.

8. The Planning Department should mainstream the objectives of BSAP, especially the law enforcement teams, to ensure the frontline staff are aware that their work is closely related to nature conservation.

9. Based on above-mentioned recommendations, the government should review the CAP 131 Town Planning Ordinance and articles related to unauthorized development in rural area including Section 21 to 24 and consider the need of amendments to increase the efficiency and effectiveness of enforcement and prosecution.

We count on law enforcers to combat environmental destruction. This report revealed the ineffective enforcement and prosecution of the Planning Department in handling the unauthorized development on rural private land and protecting the ecosystem in Inner Deep Bay. Unauthorized development not only reduces and degrades wildlife habitat, it also pollutes the environment and increases the risk of flooding. If unauthorized development is left unchecked, the situation would become difficult to tackle. The government should impose the above measures to efficiently and effectively stop unauthorized development on the rural private land in the Inner Deep Bay from further exacerbating.
Appendix 1

Priority Guidelines for Enforcement Action against Unauthorized Developments in the Rural New Territories

The Planning Authority pledges to take expeditious enforcement action against the unauthorized developments causing serious nuisances to the public or impacts to the environment. High priority will be given to the following types of unauthorized developments:

- those within or in the proximity of ecologically sensitive and important areas and conservation zones, such as "Site of Special Scientific Interest", "Coastal Protection Area", "Conservation Area", "Green Belt", etc.;
- those involving filling of land/pond within "Agriculture" zone;
- those within areas generally not affected by proliferation of unauthorized developments;
- those causing adverse environmental nuisances to nearby residential clusters of substantial size;
- those arising from revoked and lapsed planning approvals;
- those involving uses not in line with those approved by the Town Planning Board;
- those falling within Categories 3 and 4 areas under the TPB Guidelines for Application for Open Storage and Port Back-up Uses (TPB Guidelines No. 13E);
- those involving previous enforcement action cases, of the same or different use nature, within the same site or a majority portion of the site;
- those causing health/safety hazards to the public; and
- those involving great public interest.

For those unauthorized developments not falling within the above high priority categories, enforcement actions would be taken subject to resources availability.

References


Number of Unauthorized Development Cases...

8 years
One of the unauthorized development cases spent 8 years to issue the Enforcement Notice

30+ hectares
Over 30 hectares of unauthorized development has been continually happening for 24 years

13 hectares
The ever massive tree felling incident happened in a wetland of 13 hectares

2 years
An unauthorized concrete platform is remain unmoved even the Reinstatement Notice has been issued for 2 years