Proliferation of Nonconforming Land Uses in Agricultural Envelope of Urban Hong Kong

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ABSTRACT / Until the late 1960s rural Hong Kong had an attractive rustic landscape and a small but active farming population. The recent widespread agricultural decline provided opportunities for urban-oriented activities to invade, mainly as open storage and workshops unsuitable in city areas. Rapid container-port expansion and cross-border China trade generate demands for cheap and accessible land for non-conforming uses (NCU). Rural development control and land-use planning are inherently weak, and formal provision for such uses is lacking. An unfavorable landmark court judgement allows landowners to degrade the countryside. The activities have caused acute environmental problems, telescoped into a small territory, including visual blight, pollution, drainage blockage, loss of wetland habitats, and increased flooding hazard. The distinction between urban and rural has been blurred in the destruction of the valuable countryside heritage. An interim legislative amendment fails to stop unauthorized conversion of farmland. In the long term, an integrated and comprehensive rural planning strategy to conserve inherent elements, as well as accommodating selected urban spillover in properly located and serviced sites, is needed.

Despite a popular but somewhat piecemeal image of Hong Kong as overwhelmingly urbanized, a surprisingly large and varied rural envelope is present. The rugged topography, dominated by steep hills (80% of the land rises above 100 m elevation), has physically constrained urban expansion around the harbor. Hillslope terracing and reclamation from the sea with fill materials are the principal ways to produce developable land. The exceptionally high-density mode of growth generates a rather continuous cover of high-rise buildings extending from center to edge. Every effort has been made to maximize the development potentials of the land, often at the expense of environmental quality. The phenomenal congregation of population reaches an average of 5400 persons/ha, and a maximum spot density exceeding 10,000 persons/ha (Census and Statistics Department 1994a).

The dense urban morphology, while bringing undesirable environmental problems, has bequeathed a welcome by-product. Urban concentration has allowed 95% of its population (six million) to be accommodated in 14% of the land area (1075 km²), leaving the remainder in the rural realm. Thus countryside conservation has been achieved by spatially confining urbanization and its attendant impacts, tantamount to conservation by concentration. Since 1840 when the city was founded, urban growth has faithfully followed the highly compact format. Subsequent redevelopments and accretions serve to intensify and spread the prototype urban form, circumscribing the areal spread of built-up covers.

Until the late 1960s, urbanized areas were largely found around the harbor. Rural Hong Kong, except scattered market towns and traditional villages, kept much of its tranquil character. Extensive farmlands (mainly wet paddy) and fishponds presented a serene and bucolic landscape that contrasted vividly with the bustling city a short distance away. The hills and uplands, largely unsettled and uncultivated, furnished a natural backdrop to the intensively and meticulously manicured fields in the valleys and plains. Most hilly lands, comprising some 40% of the land, have been designated between 1972 and 1979 as country parks for conservation, recreation, and education (Jim 1986). They are effectively shielded from urban and other intrusions in a well-guarded protected-area system.

From the mid-1970s, an ambitious new-towns program (Lo 1992) allowed large-scale population movement into the hitherto sleepy rural lands. Infrastructure developments, particularly high-capacity roads and railways, have opened up the rural areas to direct and indirect urban influences. In two decades, the eight new towns have siphoned off over two million people from the old urban core. This massive internal migration has brought drastic changes to traditional rural roles. Rising affluence and aspiration have generated an earnest demand for suburban-style low-density housing (Lai 1979). More alarmingly, rapid container-port and industrial expansions require lands for back-up facilities that can-
not be accommodated in the congested city (Tsuen Wan Development Office 1987, Planning Department 1992). The resulting unplanned and haphazard conversion of farmlands into open storage and workshops in recent years has caused widespread degradation of rural amenities.

Such nonconforming uses (NCU) (Hart 1976), incongruous with the rural character and harmful to the environment of the countryside, which lacks suitable infrastructure to receive them, have caused many irreparable environmental problems (Hong Kong Government 1989, Planning, Environment and Lands Branch 1991a). The community regards such intrusions as unbridled degradation of a valuable rustic resource that should be regulated. The relatively small countryside versus the large and nearby urban population increases the importance of preserving the rural landscape as an escape from sequestered city existence. The damages do not conform to the social and environmental aspiration of the society, yet prevailing pragmatic instinct calls for accommodating some of them in a sensible way.

The infiltration of urban-oriented land uses has caused pervasive despoliation, especially along the roads. Meanwhile, agricultural decline, in terms of actively cultivated acreage, farming population, and value of products, has left extensive tracts of farmland abandoned (Figure 1). Leaving a valuable rural land resource idle creates opportunities for usurpation by urban intrusions. In a way, large tracts of ribbonlike rural lands with good accessibility have been incorporated if not occluded into the city's fringe, resulting in an increasingly blurred distinction between urban and rural.

Whereas the government and the community at large want to control aggressive activities (Planning, Environment and Lands Branch 1991a,b), the vested rural interests, represented mainly by indigenous landowners and industry, resist strongly. The lack of statutory development control until recently, and the ineffective administrative measures, have in practice created a legal vacuum for unscrupulous exploitation despite public outcry. More drastic legislative and enforcement procedures that depart boldly from previous patterns are necessary to salvage the rural landscape from further ruination (Planning Department 1990). This paper evaluates the planning and control of land use in rural Hong Kong as a basis to understand the recent diffusion and proliferation of nonconforming activities, their landscape and environmental impacts, and the recently instituted control measures.

Ineffective Control of Rural Land Use

Land issues are particularly complicated in rural Hong Kong due to historical and political legacies. Farmlands are found in the New Territories (NT), which constitutes the bulk of the land area. NT was leased by Britain from China via the Convention of Peking in 1898 for 99 years (Endacott 1973). A nonexpropriation clause was included in the convention to allay the fear of the indigenous villagers and landowners concerning the lease. It stated that "there would be no expropriation or expulsion of the inhabitants of the district . . . and that if land is required for public offices, fortifications, or the like official purposes, it shall be bought at a fair price." A proclamation of the British Government further assured that in NT "... the inherited manners and customs of the people will not be interfered with, that vested interest in land will be respected" (Wesley-Smith 1980).

Official policies on legal and administrative aspects of NT land have been formulated with due regard to local Chinese customs and laws applicable at the time of British take-over (Evans 1971). Although the government has the prerogative to change such laws, they are, as far as possible, preserved and respected, particularly pertaining to land and property matters. The New Territories Ordinance (Hong Kong Government 1964) explicitly enshrines this principle by allowing a court of law to recognize and enforce customs or customary rights affecting land in NT. There is thus a conscious effort by the administration to honor its pledge of maintaining the status quo.

Soon after sovereignty change, a detailed land survey was conducted to ascertain lot demarcations and determine ownership claims. A land tribunal set up in 1900 heard and judged claims. By 1905, the completed survey registered 354,277 lots covering 16,493 ha of confirmed agricultural-land titles (Hadland 1978). As most entitlements were small and fragmented lots and numerous lots were involved, it was cumbersome to issue separate title documents. Instead, terms and conditions of holdings in a given district were grouped together in a schedule, and an ad hoc device for each block of holdings, known as Block Crown Lease (BCL), was instituted. Landowners were given leases according to existing uses, namely agriculture or building, specifying that a license is needed to convert agricultural land into building land. In Hong Kong, land is "sold" or granted on a leasehold rather than a freehold tenure system (Bristow 1984) after an initial period of uncertainty (Evans 1975). Any land not legitimately claimed by 1905 became the property of the government, that is Crown Land. The lots leased or granted from 1906 onwards in NT, mainly for nonagricultural uses with individual title documents, are generally known as the New Grant Lots (NGL). As both BCL and NGL lots can be traded freely, they are, for all intents and purposes, referred to as private lands. Once released by the original owner, however, a BCL