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Jersey, 24th of May 2013

Dear Mr. Pierre Le Saux,

Thank you for meeting me a few weeks ago. As discussed in this letter, I would like to provide you with my legal environmental opinion and analysis of the application for the re-zoning of Field No. 622 in the Parish of St. Ouen in the light of the international and European environmental law relevant to this case.

From the documents provided, it is my understanding that Field 622 is currently a green zone and is considered to be re-zoned in order to build homes for the Elderly of the Parish.

The States of Jersey has adopted the Island Plan 2011¹ which defines green zones as *"areas of the countryside which have an intact character and comprise an important range of environmental features needing a high level of protection. Those areas of the Island 's countryside which are largely distinctive, historic, farmed landscapes and coastal plains are also now included in the green zone"*.²

From the reading of the Island Plan, it can be understood, that the green zones are designated for the protection of certain areas that have an environmental, historic, agricultural values for the Island.

In line with common international environmental principles the Island Plan 2011 also promotes conservation of the countryside in order to preserve it's unique biological heritage. The Chapter 2 of the Island Plan describes *"the protection of the island landscapes and biodiversity"* as the first objective to comply with.

It should also be mentioned that in addition to introducing the Island Plan 2011, Jersey has also ratified the International Convention on Biological Diversity, a legally binding treaty whose main objective is the conservation on biological diversity.

¹ Jersey Island Plan 2011, Chapter 2.

² Jersey Island Plan 2011, Chapter 2 (2.74).

"Article 8: Each contracting Party shall, as far as possible and as appropriate:

a) Establish a system of protected areas or where special measures need to be taken to conserve biological diversity.

b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity.

c) Regulate or manage biological resources important for the conservation of biological diversity whether or within or outside protected areas, with a view to ensuring their conservation and sustainable use.."

Having reviewed the documents relevant to this I have noted that an important Marsh³ is located in a close proximity to the field 622. It is further my understanding that this Marsh supports valuable species of flora and fauna.

Article 8 of the International Convention on Biological Diversity clearly calls for the Parties to protect areas in-situ⁴ with biological diversity.

Even though the affected areas of this case are located in Jersey, it is worth mentioning that in accordance with the European environmental trends, in 2006, the United Kingdom adopted the European Landscape Convention.

This treaty is based on three principles: recognition of the value and importance of the landscapes to the people of Europe; belief that it is possible to guide the process of change affecting landscapes so that variety, diversity and quality are enhanced and conviction that people must be involved in making this happen.

The aims of this Convention are to promote landscape protection, management and planning.

What seems to be particularly relevant for Jersey is that The European Landscape Convention promotes public awareness of landscape, in accordance with the principle that it is the local and affected community that should have a decisive voice in any new developments affecting landscapes.

According to an international environmental non profit organisation (IUCN) landscape is a people's issue. Everyone's quality of life is affected by the landscapes around them.."

It has to be said that neither Biological Diversity Convention nor the European Landscapes Convention prohibit developments near protected areas, as long as these

³ Marshes are defined as: *"Wetlands frequently or continually inundated with water, characterised by emergent soft-stemmed vegetation adapted to saturated soil conditions. There are many different kinds of marshes and most of them receive most of their water from surface water and some are also fed by ground water. Nutrients are plentiful and the pH is usually neutral leading to an abundance of plants and animal life."*

⁴ In-situ conservation means: *"The conservation of ecosystems and natural habitats and the maintenance and recovery of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties."* (Article 2 of the Convention on Biological Diversity).

are environmentally sustainable developments with view to furthering the protection of these areas.

Moreover, in accordance with Biological Diversity Convention new developments have to ensure that they comply with the requirements of an Environmental Impact Assessment.

Article 14: Each Contracting Party, as far as possible and as appropriate, shall:
"a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoid or minimising such effects and, where appropriate, allow public participation in such procedures."

In line with the provisions of the article above, Jersey has adopted in 2002 the Planning and Building (Jersey) Law introducing the concept of assessing Environmental Impact of proposed developments.

From the reading of the documentation concerning the development of the field 622 in the Parish of St. Ouen's, it is apparent that the proposed development may have detrimental impact on the biological diversity of the Marsh located next to the field.

We should further consider that all environmental legislations around the world including the legislation applicable to Jersey, have introduced the concept of in-situ conservation.

It is worthwhile mentioning, that the global trend is to create more and more green zones or green areas, in order to protect sensitive areas especially from development. Nowadays, zoning is considered as an essential management tool, "as it allows for the fine turning of regulations to meet the particular requirements of the various types of areas".⁵

The rezoning of a green zone covering field 622 with the view to proceed with the development without conducting a comprehensive assessment of the environmental impact of such development on Marsh located next to field 622 shall be considered against the principles of the international conventions cited in this letter.

This conclusion is in my view further supported by the fact that the first ombudsman panel analysing this matter concluded that the east boundaries of field 622 and 623, shall be declared as sensitive area due the close proximity to the Marsh

It is my belief that if the rezoning of the field 622 is to be considered with the view to allow for the development to go ahead, any decision in this regard shall be preceded by an Environmental Impact Assessment including the analysis of the following fundamental matters:

1. The importance of field 622 regarding to the Marsh.

⁵ IUCN. *Biological Diversity Conservation and the Law*.

2. The impact of additional traffic in Rue de la Croute. (Noise and Air pollution for the residents of this small lane.)
3. The drainage.
4. Water supply.
5. The biological diversity in the area.
6. The loss of agricultural land.
7. The landscape.
8. The historical interest of the stone-walled banks from Rue de la Croute.
9. The results of the consultations with the local community directly affected by the development. (Based on the Aarhus Convention).

Please do not hesitate to call me with any questions you may have.

Most Sincerely,

Claudia Martans-Radomski