

Remarks of the Ecological Society Green Salvation regarding the comments of the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan dated July 17, 2019

In the comments of the Kazakhstan Party (Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan - hereinafter referred to as the Ministry) submitted to you, there is no consideration of the arguments presented in the statement of the Ecological Society Green Salvation (hereinafter referred to as ES).

1. The statement of the ES talks about the failure to comply with the norms of the Aarhus Convention and national legislation when reviewing statements of the ES in courts. The statements were submitted in relation to the violations allowed during designing of an auto road to a mountain ski resort in 2014-2015, and not during designing of the resort. All facts mentioned in the letter of the Ministry are related to a later period of time.

2. In the new version of the 2018 draft design of the auto road, it is also proposed to cut down (felling) red list plants: Sivers apple trees (*Malus sieversii*: <https://www.iucnredlist.org/species/32363/9693009>) and apricot trees (*Armeniaca vulgaris*: <https://www.iucnredlist.org/species/63405/12666025>). Besides, it is planned to destroy (construction development) the natural habitats of these species.

3. The new version of the 2018 draft design of the auto road also justifies the cutting down of the red list plants by the 2014 "Materials of inventory and forest pathology examination of the vegetation" which were indicated in the Case No.1 in the ES statement PRE/ACCC/C/2019/167 Kazakhstan/. This is also confirmed by the letter of the Ministry dated July 17, 2019: "It should be noted that according to the conducted in 2014 forest pathology examination of the construction site, it was noted that the majority of the trees – 59% are "depressed", 29% are "weak", 8% are "drying out", and only 1% are "healthy" (page 2, paragraph 5).

Due to the fact that the letter of the Ministry contains a significant amount of inaccurate information, we decided to give explanations to individual paragraphs of the letter.

1. In paragraph 1, at the bottom of the page 2, it is said:

"According to paragraph 5 of Article 32-1 of the Law of the Republic of Kazakhstan dated July 7, 2006 No. 175 "On Specially Protected Natural Territories" (hereinafter - the Law on SPNTs), removal of rare and threatened plant species is carried out on a basis of a decision of the Government of the Republic of Kazakhstan. In the case if the rare plant species are found, the removal of these trees will be carried out in accordance with the procedure established by the state for selection, reproduction and scientific research."

The letter equates two different legal concepts (terms): cutting down and removal.

Paragraph 5 of Article 32-1 of the Law on SPNTs states: "Removal of rare and threatened plant species, their parts or derivatives is carried out on the basis of a decision of the Government of the Republic of Kazakhstan for:

- 1) reproduction in specially created conditions;
- 2) scientific research;
- 3) selection."

The Law on SPNTs does not have a term "cutting down". The letter of the Ministry constantly switches between the terms: sometimes it says cutting down – "trees to be cut down" – (paragraph 4 at the bottom of the page 2), in other times it says "removal". Cutting down means destruction, liquidation, and does not include the objectives indicated in the law.

The law on SPNTs clearly states the reasons for removal, and **construction is not among them**. In other words, removal is not allowed for the purposes of construction!

Besides, subparagraph 10 of Article 12 of the Forest Code of the Republic of Kazakhstan indicates that the government "makes a decision about removal of rare and threatened species of plants, their parts or derivatives, and approves volumes of their removal", i.e. determines the number

of the plants to be removed! But it **does not withdraw the lands** where these plants grow (https://online.zakon.kz/Document/?doc_id=1041486#pos=4;-123).

Preamble of the Convention on Biological Diversity states that "the fundamental requirement for the conservation of biological diversity **is the in-situ conservation of ecosystems and natural habitats** and the maintenance and recovery of viable populations of species in their natural surroundings."

Article 8, paragraph d) indicates that each Contracting Party shall, as far as possible and as appropriate:

"(d) Promote the protection of ecosystems, **natural habitats and the maintenance of viable populations of species in natural surroundings.**"

According to Article 339 of the Criminal Code of the Republic of Kazakhstan, "...destruction of rare and threatened species of plants... their parts or derivatives, as well as **destruction of their habitats**" is a criminal offense (<http://adilet.zan.kz/rus/docs/K1400000226>). In other words, destruction of habitats of rare and threatened species is prohibited whether or not they are located on a territory of national parks.

2. Paragraph 1, page 3 indicates:

"In case if a genetic testing does not confirm the value of the trees to be cut down, since the part of the Ile-Alatau Natural Park within the construction site is located on the territory of the city of Almaty, the "Standard Rules for maintenance and protection of vegetation, Rules of improvement of territories of cities and populated areas" approved by the Decree of the Minister of National Economy of the Republic of Kazakhstan dated March 20, 2015 No.235 are to be used."

Paragraph 6, Article 108 of the Land Code of the Republic of Kazakhstan (https://online.zakon.kz/Document/?doc_id=1040583) indicates: "Inclusion of land plots into boundaries of a city, town, or village **does not cease the rights of property ownership or rights of land use over these lots.**" In other words, governmental authorities of the city of Almaty **do not have a right to interfere** into the core activity of the national park.

Paragraph 1 of the "Standard Rules for maintenance and protection of vegetation" indicate: "The Rules **do not apply** to the territories of existing individual residential homes, citizens' dachas (summer cottages), and territories of the state **forest fund and specially protected natural territories of the state level.**" (https://online.zakon.kz/document/?doc_id=33778393#pos=27;-55).

According to subparagraph 7, paragraph 2, Article 7 of the Law of the Republic of Kazakhstan "On Legal Acts" (https://online.zakon.kz/Document/?doc_id=37312788#pos=3;-161). "Standard Rules for maintenance and protection of vegetation" **is not a regulatory legal act**, and therefore, cannot be applied directly. The Standard Rules are used for a standardized approach when local authorities develop regulatory legal acts for specific regions of the country.

Paragraph 1 of the "Rules for maintenance and protection of vegetation of the city of Almaty" approved by the Decision of the XXXIII session of the Maslikhat of the city of Almaty of the VI convocation dated September 14, 2018 No. 260, it is indicated: "The Rules do not apply to the territories of existing individual residential homes, citizens' dachas (summer cottages), and territories of the state **forest fund and specially protected natural territories of the state and local level**" (<https://egov.kz/cms/ru/law/list/V18R0001504>).

Moreover, the term "genetic testing does not confirm the value of the trees to be cut down" does not appear in the indicated legislative acts.

Sergey Kuratov, on behalf of the
Ecological Society Green Salvation.
August 27, 2019.