

Comments on the Ecological Society’s “Green Salvation” observations of July 17, 2019
*(*Sergey Kuratov’s spelling in the text is saved and in italics and bold)*

Environmental Society Green Salvation Observations	Comments by the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan
<p>1. The statement of the environmental society says that the norms of the Aarhus Convention and national legislation are not complied with when considering the applications of the environmental society in courts. Applications were submitted in connection with violations during the design of the road to the ski resort in 2014-2015, and not during the design of the resort. All the facts mentioned in the letter of the Ministry relate to a later period.</p>	<p>The project for the construction of a road to the Kokzhailau ski resort was developed in 2014, but was not implemented due to a change in customer requirements for the concept of mountain tourism development in the city of Almaty and its suburbs. The project was developed in accordance with the national legislation of the Republic of Kazakhstan. There is a positive conclusion No. 02-0195 / 15 dated April 13, 2015 of the RSE “State Departmental Expertise of Projects” (RSE “Gosexpertiza”) of the Committee for Construction and Housing and Communal Services of the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan, which is the authorized body of the Republic of Kazakhstan in areas of construction. In accordance with the Aarhus Convention, full public access to information and participation in the decision-making process was ensured.</p>
<p>2. In the new version of the 2018 highway project, cutting down (demolition) of the Red Book plants is also planned: the Sievers apple tree (<i>Malus sieversii</i>: https://www.iucnredlist.org/species/32363/9693009) and the Common apricot (<i>Armeniaca vulgaris</i>: https://www.iucnredlist.org/species/63405/12666025). In addition, the destruction (development) of the natural habitats of these species is planned.</p>	<p>In the explanatory note to the feasibility study, it was noted that the trees were <u>presumably</u> assigned to the Red Book plants and at the subsequent design stage, in order to preserve the existing flora of the Republic of Kazakhstan, in order to avoid possible demolition of valuable species, it is necessary to conduct a selective genetic study of healthy trees and develop measures for them .</p> <p>A letter previously sent by the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan indicates that</p>

	<p>actions related to the removal of rare and endangered plant species stem from a feasibility study, are not an affirmative form of one or another decision made for the implementation of the Kokzhailau mountain resort project".</p> <p>In accordance with the conclusion of the "Institute of Botany and Phytointroduction" RSE (<i>a state institute which main activity is to preserve and increase the existing flora</i>), the implementation of the mountain resort project does not threaten populations of the Common apricot and wild apple.</p>
<p>3. In the new version of the road project in 2018, cutting down of Red Book plants is also justified by the 2014 "Materials of inventory and forest pathological examination of green spaces", which are indicated in Case No. 1 in the statement of EA PRE / ACCC / C / 2019/167 Kazakhstan /. This is confirmed by a letter of the Ministry dated July 17, 2019: "It should be noted that according to forest pathological surveys conducted in 2014, the construction site noted that the bulk of the trees - 59% were "oppressed", 29% were "weakened", 8% were "drying out" and only 1% are "healthy" (page 2, paragraph 5).</p>	<p>The feasibility study for the construction of a mountain resort, developed in 2018, is a pre-design stage. Before starting the development of the feasibility study for 2018, "the Institute of Botany and Phyto-Introductions" RSE was involved in this issue, which made a clarifying inventory of the presence of red-listed species of woody plants (apple, apricot) in the design area and issued its opinion of September 15, 2017.</p> <p>Public access to this feasibility study was ensured, public hearings were held, based on the results of public hearings, the necessary additions were made to the feasibility study, ways of further research at the subsequent design stage were outlined.</p>
<p>4. Due to the fact that the letter of the Ministry contains a significant amount of false information, we decided to give explanations to individual paragraphs of the letter.</p> <p>1. In paragraph 1 below on page 2 it says: "According to paragraph 5 of Article 32-1 of the Law of the Republic of Kazakhstan dated July 7, 2006 No.</p>	<p>In the next stages of design, if rare plants are detected, measures for them will be developed individually, taking into account the current laws and regulations of the Republic of Kazakhstan and international standards. In addition, the construction of the Kokzhailau mountain resort was postponed by the President of the Republic of Kazakhstan.</p>

175“ On Specially Protected Natural Territories ”(hereinafter - the Law on Protected Natural Areas), the removal of rare and endangered species of plants is carried out on the basis of a decision of the Government of the Republic of Kazakhstan. In case rare species of plants are identified, the withdrawal of these trees will be carried out in accordance with the procedure established by the state for selection, reproduction and scientific research. ”

The letter identifies two different legal concepts (terms) of demolition and withdrawal.

Clause 5 of Article 32-1 of the Law on Protected Areas states: “The withdrawal of rare and endangered species of plants, 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. ”

There is no term demolition in the law on protected areas. The Ministry’s letter constantly uses either the term “demolition trees” - (paragraph 4 below on page 2) or the term “withdrawal”. Demolition means destruction, liquidation, and not the purpose specified by law.

The law on protected areas clearly defines the reasons for the exemption, among which construction is not mentioned. That is, withdrawal for construction is not allowed!

<p>5. In addition, subparagraph 10 of Article 12 of the Forest Code of the Republic of Kazakhstan states that the Government “makes a decision on the seizure of rare and endangered species of plants, their parts or derivatives and approves the volumes of their seizure”, i.e. determines the amount of seized plants. But it does not seize the lands on which these plants grow (https://online.zakon.kz/Document/?doc_id=1041486#pos=4;-123).</p> <p>The Preamble of the Convention on Biological Diversity states “that the main condition for the conservation of biological diversity is the conservation of in-situ ecosystems and natural habitats, the maintenance and restoration of viable populations of species in their natural conditions”.</p> <p>Article 8 in paragraph d) states that each contracting party, as far as possible and appropriate: “(D) Contributes to the protection of ecosystems, natural habitats and the conservation of viable populations of species in natural conditions.”</p>	<p>The land plot designated by the feasibility study for occupying the road is located on the lands of the Medeu and Bostandyk districts of the city of Almaty, partly on the lands belonging to the Republican state institution “Ile-Alatau State National Natural Park” (RSU IAGNPP) and partially on the lands located in private ownership on the territory of the Bostandyk district of the city of Almaty (plots of individual housing construction and subsidiary farms engaged in gardening).</p> <p>In accordance with the Rules for the implementation of tourist and recreational activities in state national natural parks and the issuance of permits for the use of construction sites of state national natural parks provided for use in tourism and recreational activities, approved by the Government of the Republic of Kazakhstan dated November 7, 2006 No. 1063 , RSU "Ile-Alatau State National Natural Park" survey of land and with a list of forest stands and quarters and the necessary infrastructure for the construction of the Kokzhaylau resort and its external infrastructure, a tender (tender) was held to obtain permits for long-term use (lease) of sections of the national park and the construction of tourist and recreational facilities in the restricted economic area of the RSU "Ile -Alatau State National Natural Park. "</p>
<p>6. According to Article 339 of the Criminal Code of the Republic of Kazakhstan, a criminal offense is considered to be: “... the destruction of rare and endangered species of plants ... their parts or derivatives, as well as the destruction of their habitats” (http://adilet.zan.kz/rus/docs/ K1400000226). That is, the destruction of habitats of rare and endangered plant species is prohibited, regardless of whether they are in</p>	<p>The offense is “... the destruction of rare and endangered plant species”. Due to the fact that the unequivocal confirmation of specialists and authorized bodies that the trees designated by the feasibility study for demolition are rare, and given that any construction and demolition without approved projects in the Republic of Kazakhstan, a mining project is also prohibited the resort was not developed and not initiated, pre-design studies are suspended, then there is no perfect offense.</p>

<p>the territory of national parks or not.</p>	
<p>7. In paragraph 1, page 3 says: “If the genetic expertise does not confirm the value of the demolished trees, since the Ile-Alatau Natural Park within the boundaries of the construction is located in the city of Almaty, use the Model Rules for the maintenance and protection of green spaces, the rules for landscaping cities and towns”, approved by order of the Minister of National Economy of the Republic Kazakhstan dated March 20, 2015 No. 235. ” Clause 6 of Article 108 of the Land Code of the Republic of Kazakhstan (https://online.zakon.kz/Document/?doc_id=1040583) states: “The inclusion of land in the city, town, village does not entail the termination of ownership or land use rights to these sites “. That is, the state bodies of the city of Almaty do not have the right to interfere in the main activity of the national park. Paragraph 1 of the "Model Rules for the maintenance and protection of green spaces" states: "The Rules do not apply to the territory of an existing individual residential building, summer cottages of citizens and the state forest fund and specially protected natural territories of republican significance" (https://online.zakon.kz / document /? doc_id = 33778393 # pos = 27; -55). According to subparagraph 7 of paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan “On Legal Acts”</p>	<p>According to the procedure for determining the scope of work and the cost of construction of the planned facilities, including demolition and compensation, at the feasibility study stage, the scope of work is determined enlarged using previously developed projects of analogues and consolidated norms. Accordingly, to determine the necessary cost of compensation for green spaces, the “Model rules for the maintenance and protection of green spaces” were taken which determine the number of compensated trees, namely, five times the size of plantings instead of demolished ones. At the subsequent design stage, in accordance with the Rules for the Organization of Construction and the passage of licensing procedures in the field of construction, approved master plans for the development and technical conditions will be received from owners of the reconstructed objects, including the Ile-Alatau State National Natural Park, which will determine in accordance with the master plan of the national park, the amount of compensatory landings and the types of green spaces that will correspond to this ecosystem and the places where they must be planted. Concerning the fact that the <i>"Model Rules for the Maintenance and Protection of Green Plants"</i> are not a normative legal act and, therefore, cannot be directly applied we inform that this comment is not true for the following reasons. The standard rules for the maintenance and protection of green spaces, the rules for landscaping cities and towns, were approved by order of the Minister of National Economy of the Republic of Kazakhstan dated March 20, 2015 No. 235 (registered with the Ministry of Justice of the Republic of Kazakhstan on April 29, 2015 No. 10886).</p>

<p>(https://online.zakon.kz/Document/?doc_id=37312788#pos=3;-161). “Model rules for the maintenance and protection of green spaces” are not a normative legal act and, therefore, cannot be directly applied. Model rules are used to ensure uniformity in the development by local authorities of regulatory legal acts for individual regions of the country.</p> <p>Paragraph 1 of the "Rules for the maintenance and protection of green spaces of the city of Almaty", approved by the Decision of the XXXIII session of the maslikhat of the city of Almaty VI convocation dated September 14, 2018 No. 260, states: "The Rules do not apply to the territory of an existing individual residential building, summer cottages of citizens and state forest fund and specially protected natural territories of republican and local significance”(https://egov.kz/cms/ru/law/list/V18R0001504).</p>	<p>According to subparagraph 7, paragraph 2 and paragraph 3 of Art. 7 of the Law of the Republic of Kazakhstan "On legal acts", the main types of regulatory legal acts include: regulatory legal orders of ministers of the Republic of Kazakhstan and other heads of central government bodies. Derived types of regulatory legal acts include rules. From this it follows that the Model Rules relate to a normative legal act.</p> <p>In addition, paragraph 1 of Art. 11 of the Law of the Republic of Kazakhstan "On Legal Acts" provides that all regulatory legal acts have direct effect, unless otherwise specified in the regulatory legal acts themselves or acts on their entry into force.</p>
<p>8. Moreover, the term “genetic examination of the values of demolished trees” does not appear in the mentioned legislative acts.</p>	<p>In addition to the legislative framework in the Republic of Kazakhstan, there are standards, departmental norms, instructions, guidelines, manuals and recommendations for each of the specialties, including botany and phytointroduction. The laboratory of plant genetics around the world conducts fundamental research in the field of genetic theory of plant breeding.</p>