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The World Heritage Convention (WHC), Buffer Zones and Sweden

Paper for ICLAFI's annual meeting November 2006 in Hiroshima, Japan

by Thomas Adlercreutz, jur. kand.

Sweden ratified the WHC as the 83rd state on 22 January 1985. At ratification it was deemed that the internal legislation would be sufficient to safeguard heritage values for properties considered for nomination.

The WHC does not mention buffer zones. As to legal protection, the following articles are of interest. Article 1 points to monuments, groups of buildings and sites of outstanding universal value from a historical, aesthetic, ethnological or anthropological point of view. By necessity, all those objects take up an area. Article 2 places an obligation on state parties to ensure identification, protection, conservation, presentation and transmission to future generations of the heritage within the scope of Article 1. Article 5 (d) defines the obligation as taking *appropriate legal, scientific, technical, administrative and financial measures*. The Convention cannot be said to spell out in great detail what the obligations are.

More detail is provided in the Operational Guidelines, of which the latest issue is from 2 February 2005.

Under the Guidelines' heading II. F *Protection and management* the following traits could be condensed to describe the objectives of protection. The outstanding universal values should be *maintained* at the time of the inscription or *enhanced* in the future (96). There must be long-term legislative, regulatory, institutional and/or traditional protection and management at the national and local levels within *adequately delineated boundaries*. How protection works must be clearly explained (97). *Development and change* must not *negatively impact* the value, integrity or authenticity of the property (98). *Boundaries* should be drawn to ensure the *full expression* of these qualities (99). Boundaries for properties nominated as cultural heritage should include all areas and attributes which are a direct *tangible expression* of the value, as well as areas which in the light of future research possibilities offer potential to contribute to and enhance such understanding (100). Boundaries may coincide with existing boundaries for national parks, reserves etc (102).

As for *buffer zones*, they are defined as areas surrounding the nominated property which has complementary legal and/or customary *restrictions* placed on its *use and development* to give an added layer of protection. This should include the *immediate setting* of the nominated property, *important views* and other *areas or attributes* that are *functionally important* as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the

size, characteristics and authorised uses of a buffer zone, as well as a *map* indicating the precise *boundaries of the property and its buffer zone*, should be provided in the nomination (104). A clear explanation of how the buffer zone protects the property should also be provided and, if no buffer zone is proposed, an explanation of why not should be given (105 - 106).

From a regulatory standpoint the need for buffer zones could be questioned. It seems clear that the requirements under paragraphs 96 – 102 cover all necessary aspects of legal protection. A boundary should be set, within which development and change must not negatively impact the value of the nominated property, including its full tangible expressions. What protection then could a buffer zone add, that could not already have been put within these boundaries? The common sense standpoint that the farther you get from the core, the less restriction may be necessary, can, of course, be expressed within the boundaries for the nominated property in itself.

It seems to me that the concept of a buffer zone – and the rule there must always be one, unless an exception is particularly argued for – may serve as an attempt at easing the decision making process. To put this point a bit too sarcastically, a buffer zone might also buffer the preservation message. To UNESCO and the heritage community the nominator may say: Look, we have an extensive buffer zone in order to control what is happening even far from the protected heritage core. To land owners, developers and other local interests the message may instead sound: Hey, this is just the buffer zone. Nothing really bad can happen to your projects here.

What is basically needed – and paragraphs 96 to 102 cover that need – is an area that is under protection. Within this area you should be able to modify various protective rules to fit the various protective needs, e.g. injunctions on buildings obstructing the view towards the protected monumental core or restrictions on the felling of trees, ground works threatening the archaeological context or other factors that might distract from the heritage value.

The fact that this author is far from convinced that buffer zones are needed, cannot cloud that there seems to be a widespread opinion that the concept is indeed useful. And it is used in the legislation with which I am most familiar.

Sweden has 14 World Heritage sites, most of them accepted on cultural criteria, a few of them shared with other states. Looking at the Advisory Body's evaluation one finds that only a few of them have formal buffer zones, and that the information as to what protective regime applies in these is rather scant (in some cases misleading). Some of the evaluations are not accompanied by maps.

The Swedish internal legislation applicable to protection of World Heritage properties consists of the following acts.

1. The *Environmental Code* (SFS 1998:808) gained legal force 1 January 1999. Thus it is a fairly modern legal instrument, working with *area protection* as a primary tool relevant

to world heritage properties. Chapter 7 bears the heading Area protection, and it contains provisions for National Parks (State owned), *nature reserves* and *culture reserves* (ownership irrelevant). Culture reserves are meant for the protection of cultural landscapes. The Code is detailed with regard to nature reserves. Restrictions can be placed on the designated area with regard to building rights, erection of fences, storage, digging and extraction of natural resources, cultivation and irrigation, planting and felling of trees, hunting, fishing and the use of pesticides. Access to the area can also be restricted. The owner could be bound to tolerate the building of roads, parking spaces, public foot paths, camping sites, bathing spaces, sanitary installations, etc. Forestry, pasturage and fencing can also be conducted. Corresponding regulatory possibilities are meant to apply to culture reserves.

Restrictions on property rights may lead to economic compensation to the injured party, if the restrictions entail a serious impediment to the current use of the property.

A nature or culture reserve does not have a buffer zone. There are, however, other provisions in the Environmental Code that serve similar purposes as buffer zones, and have been quoted frequently in the Swedish nominations. National government agencies are charged with monitoring *zones of national importance* to certain interests specified in the code. Nature and culture conservation are among the enumerated interests. The aim of this kind of very comprehensive zoning is to protect the zones from physical measures that might considerably impair the protected interest. These measures may occur in local government physical planning procedures or in their screening of building applications. These procedures may be quashed by superior authorities or by the courts on appeal. The prohibition on measures detrimental to e.g. national heritage interests, however, does not involve any clear rights of use of land within the national importance zone. It would not be protective enough for a World Heritage site just to rely on the national importance zone system. In order to implement protection in such a zone, tools have to be used which are provided in the Planning and Building Act. There is still a considerable lack in this implementation.

2. The *Planning and Building Act* (SFS 1986:10) is also a rather modern piece of legislation. It mandates the local governments to adopt their own physical planning ordinances and regulate the use of land and water areas within rather wide frames. It is possible for a local government to ban the demolition of buildings and other structures of heritage importance. Also, land that is not built-up can, to a certain extent, be regulated (parks, public spaces). Most tools necessary for the protection of World Heritage sites of an architectural nature will be found available in the Planning and Building Act. This act works with clearly defined areas, in which either *detailed development plans* or *area regulations* apply. As related before, a local government is not entirely autonomous with regard to planning in zones of national importance. It must not put a detailed development plan in force in a zone of national heritage interest, if this jeopardises the heritage property. A way to safeguard World Heritage sites is to adopt detailed development plans or area regulations with precise provisions for the preservation of heritage values. Among these provisions may be a screening of physical measures, e.g.

minor changes to buildings, which could affect heritage values, but which are normally performed without a preceding screening by the local government council.

In at least one of the Swedish sites, the Hanseatic Town of Visby, there is a clearly delimited buffer zone in which the above mentioned implementation tools of the Planning and Building Act have been adopted in order to control development.

Adverse economic effects of planning and building ordinances and decisions may result in the local government having to pay compensation to the land owner. The provisions on compensation are very complicated, but an effect of their existence is that local governments may be wary of applying regulatory measures that are burdensome on land owners and managers.

3. The special heritage protection legislation is to be found in the *Cultural Monuments Act* (SFS 1988:950). Although this act came into force 1 January 1989, it is, in fact, an amalgamation of several much older acts, and in many ways a direct continuation of these acts. Here there are buffer zones, but they are regulated differently depending on what kind of a heritage object they are aimed at safeguarding.

3.a. Monuments of primarily an archaeological interest, *ancient remains*, are legally protected *directly by the act*. The legal technique is the following. In the act, various categories of remains are listed, e.g. graves, funeral buildings and burial grounds, cemeteries, raised stones or rock with inscriptions, carvings or paintings, crosses and monuments, to mention just a few categories. Provided an object belonging to one of the categories has been humanly created and is also now permanently abandoned, it is under automatic protection. No listing or individual designation will be performed.

Protection is not the same as a prohibition on any measure affecting the remains. It means that permission has to be sought from the responsible authority, and that permission – if not refused – can be granted on condition. A standard condition is that the applicant will have to pay for monitoring or investigation by professional archaeologists.

Land owners and anyone using the land will be responsible for observing this statutory protection. To aid them there are official maps with at least all prominent remains marked out, and there is also a register – in the process of being digitalised – which contains necessary information. Neither maps nor register have been legally regulated, and theoretically their merits could be disputed in court. In reality their contents will serve as strong evidence of the existence of protected ancient remains, no matter if a land owner claims that they were not visible and that he knew nothing of them.

However, it is not just the monument in itself that is protected. Protection includes “a large enough area of ground or on the seabed to preserve the remains and to afford them adequate scope with regard to their nature and significance.” This area is almost never delimited in advance; it will be decided whenever necessary. So it is primarily up to the land user to ascertain whether a project will affect the *protected area*. Normally this is done in consultancy with the responsible authority. A difficult situation will arise if there is disagreement on the extent of the protected area. The developer may go ahead on his

own responsibility, and may then – if not later proven right – commit a crime. To avoid this he could ask for a formal delimitation of the area. This decision could be court tested on appeal.

Protection in the area around ancient remains is the same as for the monument itself, see above. Therefore it is not really relevant to call the area a buffer zone. Ambiguity, however, could arise from the fact that it not decided beforehand how large the area is within which land users will have to seek permission. It has always bewildered this author that this circumstance does not cause more than occasional disputes between land owners and the authorities. One reason is most probably that protection of ancient remains is well anchored in the public mind, and that registers and maps do get fairly well observed.

A buffer zone in the true sense of the word can be created by administrative order “in the vicinity of” a protected area, and also in places where ancient finds have been made. In this vicinity, restrictions can be placed on public access and also on land use. In the latter case the restrictions must not seriously impede current use of the land. This latter form of buffer zone protection has to my knowledge been used very sparingly, if at all. As for all practical purposes the protected area around an ancient monument is not delimited in advance, who can, with any amount of credibility, tell which area is “in the vicinity” of the protected area, without taking measures to have the area defined?

It should be added that there are no rules on damage compensation to land users whose rights might be impaired by provisions protecting ancient remains. There is, however, a (very limited) grant programme available for rescue archaeology necessitated by compelling circumstances, such as the replacement of a faulty sewage system within a protected area.

3 b. The architectural heritage does not depend on protection directly by law. A *historic building* of “outstanding interest on account of its historic value” may be protected by designation by the responsible authority. Protection here means a prohibition to perform any changes to the building in regards itemised in a protective order. Typically, the exterior must not be changed at all, and the interior cannot be changed as far as lay-out is concerned. But the protective order is individual; it could go all the way from liberal to very strict. Dispensation may be given by the responsible authority, but this happens only rarely. One reason for a rather strict view on dispensation is that there are rules on compensation for economic damage caused by the restrictions placed on the property in the protective order. Theoretically, at least, the owner has a right to get paid for the economic intrusion into his property rights. Threshold requirements make this happen very rarely. In practice, a grant system will help out with subventions for costly upkeep of the building.

A building does, of course, occupy an area, but there are other aspects of area protection involved as well. For one thing, not just the building possessing the outstanding historic qualities may be listed. Other buildings forming part of a *settlement of outstanding historic interest* may be designated as historic buildings. In addition, the rules for historic

buildings may also be applied to *parks, gardens and other amenities of historic interest*. So it is clear that a protective order may cover a rather large area, depending on the individual circumstances.

A buffer zone provision is added in the following wording: “If necessary, the protective order may also include provisions to the effect that an area surrounding the building (read buildings, park etc.) is to be kept in such a state that the appearance and character of the historic building will not be travestied”. So the protective order could cover an area of buildings etc, but might add another area – in both cases they should be delimited – in which other regulations might apply.

With regard to details of protection in the surrounding area, two schools of thought exist. According to one, this area should be provided with detailed rules as to what can or cannot be permitted to happen in the way of construction of new buildings or other changes that may detract from the value of the protected buildings. Under the other school, the protective order should not be more detailed than the legal text, quoted above. Depending on the circumstances in the individual case, it will be tried whether intended measures in the surrounding area should be allowed. The obvious weakness with this latter view is that it will be up to the owner of the area to determine whether a measure will “travesty” the historic building or not. In the event the authority does not agree with what the owner has done, it will have the rather difficult task of having him/her rectify what has gone wrong.

3 c. The Cultural Monuments Act also covers the ecclesiastical heritage, insofar as it belongs to the once established, but now independent, Church of Sweden. *Church buildings* and *church sites* must not be altered in any essential respect without permission from the responsible authority. A church site is an area surrounding a church building, connected with the function and environment of the building and not constituting a burial ground. There is no formal procedure available for setting the boundaries of a church site, and questions as to the duty to seek permission will then have to be solved in each case arising.

The Hanseatic Town of Visby in the middle ages included fifteen churches within its ramparts, of which all but one are now in ruins. As ruins, they are protected directly by law as ancient remains. The still active diocese church is, of course, protected as a church building.

A similar protection is upheld for burial grounds, but here the requisite is not ownership of the Church of Sweden but classification as a burial ground in the Burials Act (SFS 1990:1144). Almost all burial grounds in Sweden are owned and operated by the Church of Sweden on condition that they are open to secular burials and burials performed by other denominations. Protected burial grounds cannot be enlarged or otherwise essentially altered without permission. Permission is also needed for the erection of new buildings and permanent installations and for demolition and essential alteration of existing buildings and permanent installations.

There are no buffer zone provisions for church properties and burial grounds.

Sweden has one burial ground accepted as a World Heritage site: The Woodland Cemetery, in the southern part of Stockholm. It has not been nominated with a buffer zone.

Summary

The concept of buffer zones seems to reminisce of older ideas as to how heritage should be legally protected. It would be useful if this concept rested on a clear perception of the difference between what applies in a buffer zone on the one hand and what applies to the core of the World Heritage site on the other, but very often this does not seem to be the case. At least as far as Sweden is concerned, the buffer zone provisions in the heritage legislation all go back to these older concepts, and – as has hopefully been demonstrated above – are not really very helpful. They do cause some ambiguity.

11 October, 2006, revised 13 December 2006

WORLD CULTURAL HERITAGE AND THE BUFFER ZONE – CROATIAN EXPERIENCE

Legal aspect

On June 19, 1999, the House of Representatives of the Croatian National Parliament passed a new Law on the Protection and Preservation of Cultural Goods, replacing the existing 34 year-old Law on the Protection of Cultural Monuments (1964). With this act they established the most important regulation concerning the protection of the complete fund of cultural goods in the Republic of Croatia

The Law on the Protection and Preservation of Cultural Goods (hereafter: Law) is based on the terms of reference established in the Constitution of the Republic of Croatia ¹ which states that cultural goods are of interest to the Republic of Croatia and that they deserve its special attention. During the creation of the Law, the norms of international law were respected, more specifically: the Convention on the Protection of International Cultural and Natural Heritage, the Convention on the Protection of Cultural Goods in the Case of Armed Conflict, the Convention on Measures of Prohibition and Prevention of Illegal Trafficking and Transfer of Ownership of Cultural Goods, the European Convention on the Protection of Architectural Heritage, the European Convention on the Protection of Archaeological Heritage and a series of other international recommendations and resolutions.

The preparation of this Law involved reviews of the experiences of other countries (approximately 40), and included extensive consultation of legislation in the field of the protection of cultural heritage.

As opposed to the previous Law on the Protection of Cultural Monuments, the new Law contains many important and completely new solutions. In its regulations, for the first time, there are complete and systematic methods for solving matters connected with the protection and preservation of cultural goods within the context of their significance in the development of economic and societal components, and not merely cultural ones.

The Law is divided into ten sections that concern the following:

¹ Article 52, Constitution of the Republic of Croatia

1. General regulations - these regulations contain the basic foundations of the Law and establish the definitions of individual terms frequently used in the text;
2. The types of cultural goods - these regulations prescribe the possibility of protection for three types of cultural goods: immovable cultural goods, moveable cultural goods and immaterial cultural goods;
3. Establishment of protection over cultural goods - regulations from this portion of the Law prescribe methods of establishing preventative protection when it is presumed that some good may have the characteristics of a monument, followed by the procedures for the confirmation of the characteristics of these cultural goods and the recording of cultural goods in the Register of Cultural Goods, as well as the ability of local authorities to protect goods of local importance;
4. The obligations and rights of the owners of cultural goods - these regulations, along with the obligations and rights of every owner of a cultural good, prescribe the possible restrictions to the rights of ownership when it is necessary to implement measures for the protection or preservation of cultural goods;
5. Measures for protection and preservation of cultural goods - these regulations prescribe measures and methods of implementation. They relate to: research of cultural goods, documentation and monitoring of the state of cultural goods, designation of cultural goods, establishing systems of protection for cultural goods, establishing special conditions for the protection of cultural goods in the process of issuing local building permits, giving preliminary permission for works on cultural goods, giving preliminary permission for performing activities within immovable cultural goods, giving permission for the production of replicas of cultural goods and their circulation, giving permission for the transport of cultural goods out of the country, obligations for the declaration of export from or import to the Republic of Croatia of cultural goods, implementation of measures for the protection of threatened cultural goods, implementation of emergency measures for the protection and preservation of cultural goods, as well as the protection of cultural goods in cases of extraordinary circumstances;
6. Performing duties connected with the protection and preservation of cultural goods - these regulations establish the administrative, expert and inspective duties for the protection of cultural goods performed by the Ministry of Culture. Other duties connected with the preservation of cultural goods are performed by the Croatian Restoration Institute, as well as other institutions, legal entities and individuals who satisfy the prescribed conditions for the execution of duties connected with cultural goods and obtain the permission of the Ministry of Culture;
7. The Croatian Council for Cultural Goods - these regulations establish the Croatian Council for Cultural Goods as a consultative expert body to the Minister of Culture, which discusses all important questions in the field of protection and preservation of cultural goods;

8. Financing the protection and preservation of cultural goods - these regulations are divided into two groups. The first group prescribes methods of insuring resources for the protection and preservation of cultural goods by the owner, the national budget, as well as the budgets of local administrations and self-governments. The other group of regulations is related to the collection of income from the use of cultural goods for economic purposes;
9. Violation regulations - as in every Law there is a definition of violations and the monetary fines that accompany them;
10. Transitional and final regulations - these regulations prescribe the methods of adapting work and activities for all individuals responsible for the implementation of regulations in this Law.

Provisions of the Law on preventative protection and registration of cultural goods, that are quoted hereinafter, regulate the matter of buffer zone.

Preventative protection

Article 10

A temporary decision may be brought concerning preventative protection for a good that is presumed to have the characteristics of a cultural good. A decision concerning preventative protection is brought by the competent body according to the place where the good is located.

A decision for preventative protection establishes the object of preventive protection and the time period ordered.

The time period ordered for the preventative protection begins with the bringing of the decision from Article 12 of this Law, and cannot be longer than 3 years, except for archaeological and underwater archaeological finds, in which case it cannot exceed 6 years beginning from the date of the bringing of the decision.

If, during the time period prescribed in Paragraph 3 of this Article, a decision is not brought that establishes the characteristics of a cultural good, the decision concerning the preventative protection is no longer valid.

In a decision that establishes preventative protection for real estate it is obligatory to determine the physical boundary of the good to which the preventative protection relates.

An appeal from the decision on preventative protection shall not suspend the execution of the decision.

Article 11

This Law and all other regulations that relate to cultural goods shall apply to the good that is being preventatively protected.

The good from Paragraph 1 of this Article shall be entered into the List of Preventatively Protected Goods that forms a special portion of the Register of Cultural Goods of the Republic of Croatia (hereinafter: Register).

Establishment of the characteristics of cultural good

Article 12

The characteristics of cultural good are established in a decision by the Ministry of Culture, on the basis of expert evaluation.

The decision that establishes the characteristics of an immovable cultural good shall establish the physical boundary of the cultural good that is to be protected, and it shall be delivered to the competent cadastre office and court of law for recording in the land register.

The decision on the establishment of the characteristics of a cultural good that relates to underwater archaeological finds shall also be delivered to the competent port master's office.

The decision from Paragraph 1 shall establish the system of measures for the protection for cultural goods and shall obligate the recording of the cultural good in the Registry, the List of Protected Cultural Goods.

An appeal from the decision from Paragraph 1 of this Article shall not suspend the execution of the decision. The decision about the appeal is brought by the Minister of Culture

The decision on preventative protection (Article 10) or registration (Article 12) must establish the spatial boundaries of the protected site of immovable cultural goods and, when registering the good, the conservation service is bound to prescribe the system of protective measures to be applied to the protected site.

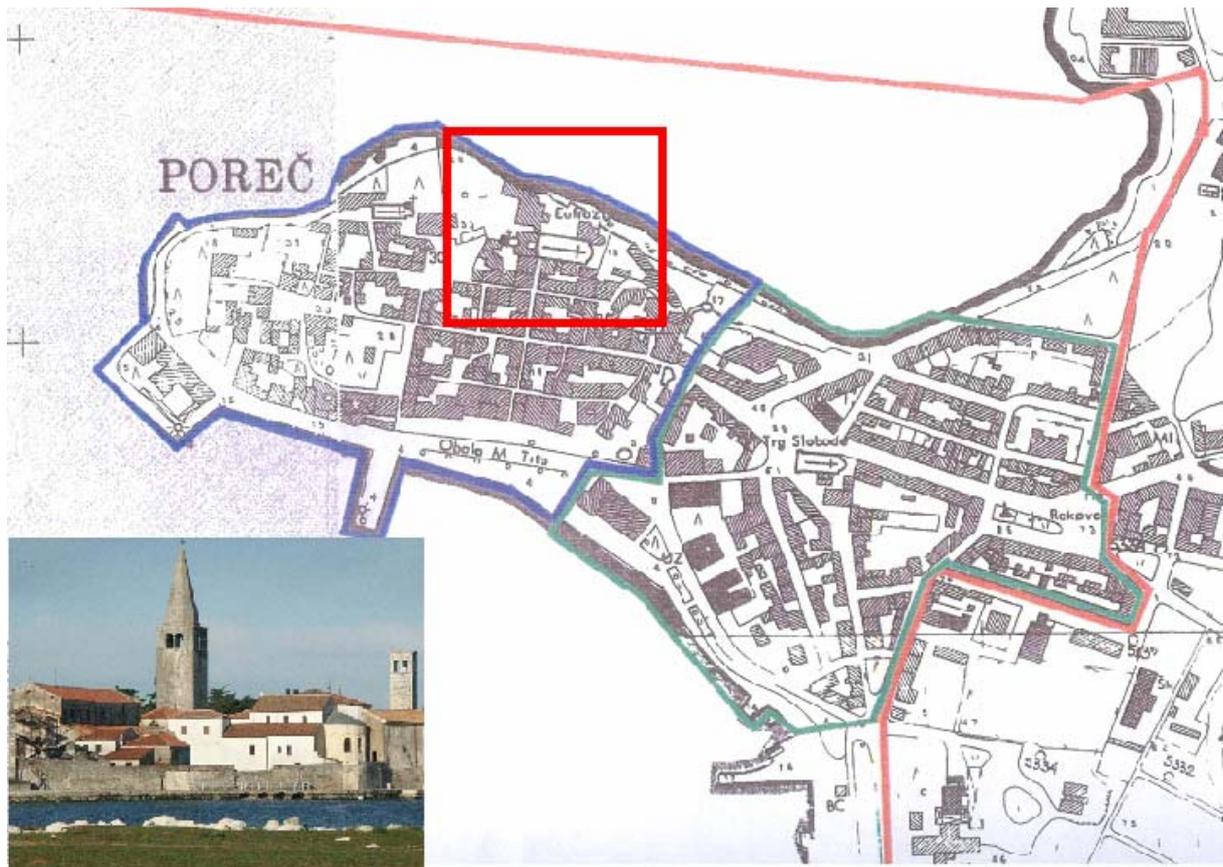
Croatian experience

In order to clarify how these legal measures are applied in practice, we will consider two examples of Croatian sites inscribed in UNESCO's World Heritage List, the Episcopal complex in Poreč and the Old city of Dubrovnik.

Example 1 - POREČ, EPISCOPAL COMPLEX OF EUPHRASIAN BASILICA

The Cathedral complex of Poreč is called the Euphrasiana after Bishop Euphrasius, under whom large-scale alterations were carried out in the cathedral and the famous mosaics were executed. During the full flowering of Justinian's reconquista, Euphrasius, Bishop of Poreč, had a cathedral built on the site of the older city basilica, harmonizing it with a series of accompanying buildings that were, together, to create one of the great architectural complexes of the time.

The group of religious monuments in Poreč, where Christianity was established as early as the 4th century, constitutes the most complete surviving complex of its type. The basilica, atrium, baptistery and episcopal palace are outstanding examples of religious architecture, while the basilica itself combines classical and Byzantine elements in an exceptional manner.



The Cathedral complex is situated within the protected monument complex of Poreč, which means that protection is implemented in its surroundings and, at the same time, a buffer zone is established. The function of the buffer zone is achieved through:

- strong conservators' surveillance together with the continuous presence of the employees of the Conservation Department in Pula, as well as with continuous cooperation with local authorities;
- detailed protective measures for the complex (Zone A) and buffer zone (Zone B);
- The Episcopal complex is situated within Zone A where the complete protection of the historical structures of the monument complex of the town of Poreč is provided for.

The system of the protective measures of the Zone A is as follows:

- Full protection and preservation of the cultural and historical values with maximum respect for the traditions and functions of space and content
- Strict control of the permission for new structures and contents
- Minimal interventions in the historic structures – the acceptable methods of recovery, conservation, restoration, conservation reconstructions and presentations

The system of the protective measures of Zone B – Buffer Zone:

- The protection of the basic elements of the historical plan matrix and characteristic building clusters
- Interventions in the way of adapting the functions and contents to contemporary needs, but without significant physical changes of the preserved elements of the historical structures
- Methods of conservation, reconstruction, interpolation, recomposition and integration in order to blend the historical and new structures

Example 2 - DUBROVNIK, OLD CITY

The 'Pearl of the Adriatic', situated on the Dalmatian coast, became an important Mediterranean sea power from the 13th century onwards. Although severely damaged by an earthquake in 1667, Dubrovnik managed to preserve its beautiful Gothic, Renaissance and Baroque churches, monasteries, palaces and fountains. Damaged again in the 1990s by armed conflict, it is now the focus of a major restoration programme coordinated by UNESCO.

Dubrovnik is a city-monument whose architectural and urban richness bear witness to the existence of a strong commercial and cultural community throughout the centuries. All the styles from the 6th to the 11th centuries are represented. Numerous works of art, situated mostly within the churches and museums, as well as in the public space, contribute to the City's identity as a monument. Church treasures, manuscripts, archives and books from all around the world, as well as visual art heritage, are testimonies to the activities of the Mediterranean world that has been developing for centuries as a cosmopolitan society. Thanks to that cultural wealth, the Dubrovnik of today is one of the most attractive cultural and tourist centres of the world.

These facts emphasise the problem of the physical survival of the City and they require considering the modern ways of preserving and reconstructing while respecting the authenticity and integrity of the monument's heritage, taking care of the:

- organisation of the historical urbanistic space
- constructions
- building materials.

Inscribed in the World Heritage List in 1979, Dubrovnik was added to the List of Endangered Sites in December of 1991, as a direct consequence of the war initiated in July 1991.



The reconstruction of the Imperial Hotel in Dubrovnik is an example of a threat which could involve the use of a buffer zone.

- During the work, a cement annex was added which, today, serves as the hotel garage and services premises. It was not planned in the project for the hotel's reconstruction.
- Afterwards, an addition to the building permit was issued, as well as a new decision regarding prior authorisation by the Conservation Department.
- The contact zone was not obeyed and the surrounding objects were physically in danger due to excessive excavation.
- The annex does not comply with the existing urbanistic matrix, attempts were made afterwards to fit in it.

Conclusion

The Croatian experience demonstrates that it is necessary to clearly set the boundaries of the protected monument complex due to the relations with the local authorities as well as owners of real estate in the protected area. It is essential that a buffer zone be a component of the protected area so as to be able to implement the protective measures established by the laws. In the Croatian practice, all other solutions led to doubts and conflicts, involving the obligation to establish zoning within the monument complex, as prescribed by delegating legislation, in order to be able to establish the necessary protective regime.

A Dutch approach to buffer zones

General introduction

Delineating the boundaries of cultural (and natural) heritage sites is rarely an easy task. And it is certainly no easier when it comes to World Heritage sites. Where does 'outstanding universal value' begin and where does it end?

The Operational Guidelines for the Implementation of the World Heritage Convention provide some useful tools for dealing with this issue. The Convention also provides guidelines for the setting up of buffer zones. But even when the boundaries have been determined to some degree of satisfaction, we still face the question of what should be permitted within *and outside* the protected area.

Although the Netherlands has no legislation under which buffer zones have been granted a special legal status, this does not mean that the six Dutch sites on the World Heritage List are not affected by influences originating beyond their boundaries. Effective protection of World Heritage sites should include complementary legal and/or customary restrictions which apply to a larger area.

The question of what developments should be permitted or encouraged has yet to be addressed. Spatial developments never stop, especially in a densely populated country like the Netherlands, which has a tradition of reshaping its landscape every generation.

The main strategy used in Dutch heritage management to deal with this can be described as 'preservation *by* development'. Make cultural heritage values a starting point for development. In my view, heritage managers often focus too much on stopping developments. As such, they face an impossible task: things will always move.

World Heritage in the Netherlands

The Dutch sites on the world Heritage List drawn up under the UNESCO convention are:

Schokland (former island, now on reclaimed land) 1995;

Stelling van Amsterdam (ring of fortifications) 1996;

Kinderdijk-Elshout (group of 18 windmills, part of a man-made landscape) 1997;
D.F. Wouda Pumping Station (operational steam pumping station), Lemmer 1998;
De Beemster Polder (17th century land reclamation)1999;
Rietveld-Schröder House (Modern Movement private house), Utrecht 2000;
And, in the Netherlands' overseas territories:
Willemstad historic centre, Curacao (Netherlands Antilles) 1997.

A further three sites are currently in the process of nomination:

Nieuwe Hollandse Waterlinie (19th century defence line consisting of fortifications and inundated land)

Grachtengordel, Amsterdam (17th century canal zone)

Van Nelle factory (Modern Movement industrial building) Rotterdam

In general, three themes are taken as a guide for the choice of monuments, groups of buildings or sites for nomination: the Dutch Republic in the 17th century, the dominance of water in the Netherlands, and the Dutch contribution to the Modern Movement in the 20th century.

Legislation for the protection of World Heritage sites and surrounding areas

Dutch legislation can be used in several ways to achieve the desired level of protection for World Heritage sites *and* the surrounding areas. The success of this depends (of course) on how the authorities use the options available to them.

As we will see, heritage protection and spatial planning in the Netherlands are based on a system of checks and balances between the different layers of government.

Monuments and Historic Buildings Act 1988

The Monuments and Historic Buildings Act 1988 defines monuments as:

'All objects constructed at least fifty years ago which are of public interest because of their beauty, scientific significance or cultural and historic value'

The Monuments and Historic Buildings Act 1988 contains national regulations concerning the protection of monuments and sites. It provides for the listing of protected monuments in an official Register, which now includes both historic buildings and archaeological sites.

Naturally, the important buildings and other features situated at the World Heritage sites have also been listed. This applies to the 19 windmills at Kinderdijk, the Rietveld-Schröder House, the Wouda pumping, several archaeological sites and buildings on (and near) the former island of Schokland, the most valuable farm buildings in the Beemster Polder, the fortifications of the *Stelling van Amsterdam* and the *Hollandse Waterlinie*, the Van Nelle factory and many houses within Amsterdam's canal zone.

Anyone who wishes to alter, demolish or move any part of a protected monument or a monument subject to a current procedure must apply for a written permit. This permit is issued either by the municipal authority or the Minister of Culture.

This affords a large degree of protection, yet it has no legal impact on the surrounding area. Sometimes one can spot monuments in excellent shape right in the middle of an urban jungle: and it's all perfectly legal.

It can help if monuments near to World Heritage sites are also listed, as in the case of houses designed by Rietveld built opposite the Rietveld-Schröder House (though unfortunately they are now on the other side of a motorway).

Alongside this kind of object-oriented protection, protected city- or townscape status can also be a very useful instrument. Its legal basis lies in the Monuments and Historic Buildings Act, though it in fact straddles two spheres of legislation, governing both heritage protection and spatial planning.

Relatively large areas can be designated as protected townscapes. The effect is that the local municipality must draw up (or adjust) its zoning plan as stipulated in the Spatial Planning Act. This allows important views to be protected. Several of the World Heritage sites, including Kinderdijk and the Amsterdam canal zone, enjoy this form of protection. However, by no means do all of them. The *Stelling van Amsterdam* and the Beemster Polder are just two notable examples.

Spatial planning

All municipalities must produce zoning plans. In general terms, a zoning plan consists of a map, which divides the territory into different zones. Each zone may include areas of agriculture, housing, industry, water, recreation, nature etc. An accompanying document describes current land use and the activities which may and may not take place within each zone. It also stipulates regulations concerning the designated use of land and outlines activities which are subject to a permit.

Permits are granted by the municipal authorities. They can only grant a permit if the activity in question is in accord with the zoning plan. Every building permit in the Netherlands must comply with the municipal zoning plan.

In turn, every zoning plan needs approval from the provincial authority. Provinces have their own policy on the approval of zoning plans, including the designation of areas of special heritage or landscape importance. This policy will generally take the form of a regional plan. In this way provincial authorities can, for example, prevent developments at places with important natural and cultural values. The government is of course very interested in the policymaking and regional plans of provincial authorities, who must ensure that their policies reflect national standards. If the provinces fail to do so, the government has the power to force them. This is however a delicate game, in which the government prefers to influence other authorities rather than force them by legal means. Of course, when world heritage is at stake there will be an even greater urge to keep the authorities under control than in most other situations.

Protecting the area surrounding the Kinderdijk-Elshout mill complex

One good example of how the legislation available has been successfully used is the protection of the windmill complex at Kinderdijk-Elshout. This complex comprises a group of buildings forming part of a man-made landscape, which has developed organically over the centuries. The boundaries of the World Heritage site encompass not only the important buildings (the windmills) but part of the landscape as well. The area has been designated a protected townscape. This means that the zoning plan only permits the area to be used in ways that reinforce the cultural value.

As I have said, there is no buffer zone surrounding the World Heritage site at Kinderdijk. But do we actually need one if the protected area is large enough?

The current planning regime surrounding the Kinderdijk site restricts any further developments.

Impact of the Cologne/Dresden buffer zone cases

The impact in the Netherlands of the Cologne/Dresden buffer zone cases (in a neighbouring country) has been relatively small. It has triggered some discussion concerning the preparations for nominating the Amsterdam canal zone. Plans are being made for the construction of some very tall office buildings (well outside the area in question). These buildings will be visible from the canal zone, thus affecting the historic view.

We were afraid that the German case might hamper the progress of the nomination, prompting some people to have second thoughts. Fortunately, this has not happened up till now.

Leonard de Wit

BUFFER ZONES IN INTERNATIONAL CONVENTIONS. A FIRST APPROACH.

1. Introduction.

Even if many international conventions, dealing with the protection of immovable heritage, do not mention the expression “buffer zone”, they do pay great attention to the safeguarding of the surroundings of protected monuments, landscapes and archaeological goods.

The purpose of this presentation is to examine the place of “buffer zones” and, more generally, of mechanisms protecting the surroundings of cultural and natural heritage in, on the one hand, the World Heritage Convention and, on the other hand, in some conventions of the Council of Europe.

By means of illustration, some references will be made to the concrete situation of World Heritage in the Flemish Region¹, where an enhanced protection was realized through urban development.

2. The World Heritage Convention.

At the time the “Convention concerning the Protection of the World Cultural and Natural Heritage” (hereafter the World Heritage Convention) was adopted, international law on the protection of heritage was quite a new item.

In 1972, heritage law was indeed considered to be a concern of national states.

The World Heritage Convention put an end to this point of view, and introduced at least two innovative ideas: the link between nature and culture for the purpose of establishing a common regime of conservation, and the existence of a category of goods having an outstanding value and therefore belonging to the “World Heritage”, the protection of which should be the subject of international efforts².

Although the idea of international protection was embodied in the World Heritage Lists and mutual international assistance, including the creation of the World Heritage Fund, the World Heritage Convention fully recognized the national sovereignty of the states on whose territory the cultural and natural heritage is situated. National states bear the first responsibility for the safeguarding, maintenance and protection of their “own” World Heritage.

This national responsibility appears clearly from the text of the articles 4 and 5 of the World Heritage Convention. Due to article 5, states parties to the convention must ensure effective and active measures for the protection, conservation and presentation of their cultural and natural heritage. As a minimal obligation they must work out a protection policy, set up services, encourage research and adopt appropriate legal, scientific, technical, administrative and financial measures.

Article 5 (a) deals with the adoption of “a general policy which aims to give the cultural and natural heritage a function in the life of the community *and to integrate the protection of that heritage into comprehensive planning programmes*”.

¹ Within the Belgian State, the three Regions have autonomous competences regarding the protection of immovable heritage.

² See e.g. World Heritage 2002, Shared Legacy, Common Responsibility, UNESCO, Paris, 2003, p.66, intervention of Mr F. Francioni.

This last sentence shows at least a general interest for the spatial context, the surroundings of heritage. This idea was taken over into the Recommendation concerning the Protection at the National Level of the Cultural and Natural Heritage, adopted together with the World Heritage Convention in 1972³: “The protection, conservation and effective presentation of the cultural and natural heritage should be considered as one of the essential aspects of regional development plans, and planning in general, at the national, regional or local level”⁴.

The idea of possible buffer zones around World Heritage was not inscribed as such in the convention text, and this would hardly have been possible at that time, when buffer zones were even not yet included in national legal frameworks.

However, the “Operational guidelines for the implementation of the World Heritage Convention”⁵, completely reviewed by the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage in 2005, mention the idea in an explicit way. Under section II.F of the text, the numbers 103-107 are dedicated to the subject and contain quite a complete set of rules⁶.

Number 103 contains the idea of providing an adequate buffer zone, wherever necessary for the proper conservation of the property.

In number 104 a description of a buffer zone is given: “An area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection”.

The delimitation of a buffer zone must be decided on a case by case approach, but details regarding the size, characteristics and authorized uses of the buffer zone, as well as a map indicating the precise boundaries of the zone, should already be mentioned in the nomination for inscription. In this same nomination, a clear explanation of the protective effect of the buffer zone on the proposed World Heritage property must be provided⁷.

The World Heritage Committee considers the delimitation of a buffer zone as a general obligation, a must: according to number 106, in cases where no buffer zone is proposed, the nomination should include a statement as to why such a zone is not required.

Finally, number 107 deals with monitoring and control on buffer zones: even if these zones are not part of the nominated property, any modifications subsequent to inscription of a property on the World Heritage List, should be approved by the World Heritage Committee.

³ For the text of this recommendation, see: www.unesco.org

⁴ Article 8 of the recommendation.

⁵ The Operational Guidelines aim to facilitate the implementation of the World Heritage Convention; they are periodically revised to reflect the decisions of the World Heritage Committee. Key users are not only the States Parties to the Convention, but also site managers, stakeholders and partners in the protection of World Heritage properties (art.1-3 of the Operational Guidelines).

⁶ In earlier versions of the Operational Guidelines the idea of establishing buffer zones and a description were inscribed, although as a possibility and not as an obligation that can eventually be waived. See e.g. in the 1999 version nr. 17.

⁷ Numbers 104 and 105 of the Operational Guidelines.

With this text, buffer zones are definitively introduced within the protection of World Heritage. No longer a possibility but an obligation, they must be proposed at the moment of the nomination, they are also part of the file that must be handed over to the World Heritage Committee. According to number 132, the identification of the property nominated for inscription can only be considered as complete if the boundaries are clearly defined, “unambiguously distinguishing between the nominated property and any buffer zone”⁸. Also, in the periodic reporting on the implementation of the World Heritage Convention, buffer zones get a place⁹.

Proposing a good of outstanding value for inscription on the World Heritage List without a buffer zone remains possible, but only with due motivation, showing that in practice the effect of the buffer zone has already been reached by other means, most of the time linked to urban development rules¹⁰.

The impact of the delimitation of the buffer zone is considerable: changes in that zone after inscription in the World Heritage List are subject to control and must be approved by the World Heritage Committee.

3. Conventions of the Council of Europe

Intergovernmental collaboration between European states for the safeguarding of heritage, within the framework of the Council of Europe, started about forty years ago. One of the results of this collaboration was the adoption of three important conventions, respectively dealing with the protection of archaeological heritage, architectural heritage and landscapes. In all of these conventions appears a concern for the immediate surroundings of protected properties.

The European Convention on the protection of the Archaeological Heritage was adopted in London on the sixth of May, 1969, and revised in Valletta on the sixteenth of November 1992¹¹.

The original version of this convention was focused mainly on archaeological excavations and extraction of information from those excavations. The revised version stands as a testimony to the evolution of archaeological practices throughout Europe and introduces new concepts¹². One of these concepts deals with integrated conservation of the archaeological heritage¹³. At the time of the adoption of the second text, large-scale construction projects and major public works had become a real threat and the need to reconcile and combine the requirements of archaeology and development plans was urgent.

The obligations to be respected by the states parties to the revised convention mainly deal with the introduction of protection strategies for archaeological heritage in planning policies, possible modifications of development plans, environmental impact assessments, regular consultations between planners and archaeologists and possibilities of conservation in situ of archaeological goods found during development

⁸ Number 132 refers to the numbers 103-107.

⁹ See e.g. Annex 7, Format for the Periodic Reporting on the application of the World Heritage Convention, II.2 Statement of outstanding universal value.

¹⁰ See further, the Flemish example, n° 4.

¹¹ ETS, n° 66 and 143.

¹² Explanatory report to the European Convention on the protection of the Archaeological Heritage (revised), p.1.

¹³ Article 5 of the revised convention.

works. Concrete measures for the surroundings of archaeological properties are not explicitly inscribed in this convention. Taking into account the specific nature of archaeological heritage and the fact that the delimitation of archaeological zones is not always clear, maybe this would have been quite difficult.

The Convention for the Protection of the Architectural Heritage of Europe, adopted in Granada on the third of October 1985 (hereafter “the Granada Convention”)¹⁴, again contains the idea of integrated conservation and became well known for that reason. Article 10 of the Granada Convention stresses the importance of including the conservation of protected properties among town and regional planning objectives, and this, both at the moment plans are being drawn up and when permits are being granted. It also emphasises the importance of establishing and maintaining links between heritage protection and planning policies. It recalls the value, in the planning processes, of conserving certain structures which are not protected as such but which can be considered as assets in their own settings.

A specific reference to the surroundings of protected monuments, within groups of building or sites¹⁵, is inscribed in article 7 of the Granada Convention. The text stipulates: “In the surroundings of monuments, within groups of buildings and within sites, each party undertakes to promote measures for the general enhancement of the environment”. This provision deals more particularly with measures to be taken with respect to public spaces: street furniture, signs, and improvements to squares and public gardens¹⁶.

Last but not least, according to article 4 of the Granada Convention, state parties engage themselves to require in their own national context the (prior) submission to a competent authority of any scheme for the demolition or alteration of monuments which are already protected or in respect of which protection proceedings have been instituted, *as well as any scheme affecting their surroundings*. This last obligation of “supervision”¹⁷ automatically leads to an enhanced protection and reminds us of the submission procedure for alterations in buffer zones inscribed in the Operational Guidelines for World Heritage.

The most recent convention of the Council of Europe is the European Landscape Convention, adopted in Florence on October 20, 2000 (hereafter the Firenze Convention)¹⁸. This convention aims to encourage public authorities to adopt policies and measures for protecting, managing and planning landscapes. It covers all kinds of landscapes, both outstanding and ordinary, that determine the quality of peoples’ living environment. The text contains a flexible approach to these landscapes of various kinds, and remains therefore quite general. Nevertheless, the Firenze Convention identifies the need to integrate landscapes into regional and town planning policies as one of the “general measures” necessary for its implementation¹⁹.

¹⁴ ETS, n° 121.

¹⁵ To be understood as combined works of man and nature, see article 1 of the Granada Convention.

¹⁶ Explanatory report on the Convention for the Protection of the Architectural Heritage of Europe, Council of Europe, Strasbourg, 1986, p.14.

¹⁷ It is up to the state party to decide which schemes and alterations are acceptable.

¹⁸ ETS, n° 176.

¹⁹ Article 5 of the Firenze Convention.

Out of this very short overview, one can conclude that the Granada Convention, dealing with the protection of architectural heritage, pays the most attention to the surroundings of protected properties. Even if the possibility of delimitating a buffer zone was not inscribed as such in the text of this convention, it is obvious that the system of previous authorisations for alterations in the immediate surroundings of protected monuments leads to an equal protection. The other two conventions also contain the idea of “integrated conservation”.

4. World Heritage and buffer zones: the Flemish experience

At this moment, the territory of the Flemish Region hosts four inscriptions on the World Heritage List: the béguinages (1998), the belfries (1999), the historic centre of Bruges (2005) and the Plantin Moretus house, workshops and museum (2005). The first two inscriptions are serial inscriptions.

Only in a few cases was a buffer zone proposed to the World Heritage Committee at the moment of the nomination: this legal instrument is not known as such in the Flemish heritage legislation, at least not for the built heritage²⁰. However, many béguinages and belfries, and also the Plantin Moretus House, are located in zones of cultural, historic and aesthetic interest. Such zoning, overlaid on a regional plan and forming part of urban development legislation, implies quite a strict control on every alteration that is proposed and for which previous authorisation is needed. This kind of extra protection was considered to be sufficient, even if it was not related to heritage legislation but to urban development rules.

Quite recently, new legislation on urban development for the Flemish Region was adopted²¹. It foresees new plans, having a more flexible and dynamic character. With this kind a plans, at least the same protection as the one offered by the delimitation of zones of cultural, historic and aesthetic interest can be offered. The more flexible character is supposed to lead to even more specific rules and easements in order to give heritage a better protection.

5. Some conclusions.

It is of great importance to protect the surroundings of heritage property, whether the property has been inscribed in the World Heritage List or not. Protected properties must be considered in their settings; interventions in these settings can cause real damage.

International and national legal rules must support this protection. However, the way in which the surroundings are being protected, within the legal framework of heritage legislation or by means of legislation on urban development, is less important. The most effective way must be chosen, and maybe this will be through urban development.

Prof.dr. Anne Mie Draye
ICOMOS Belgium

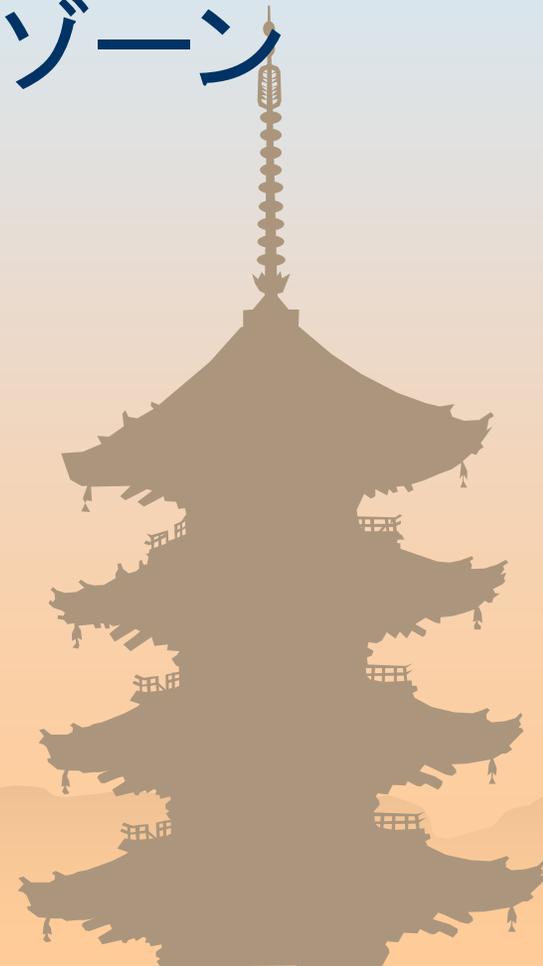
²⁰ Only the decree on the protection of natural landscapes foresees the possibility of delimitating a buffer zone around a protected landscape.

²¹ Decree of May, 18, 1999, amended already 14 times.

The World Heritage Convention and Buffer Zone

世界遺産条約とバッファゾーン

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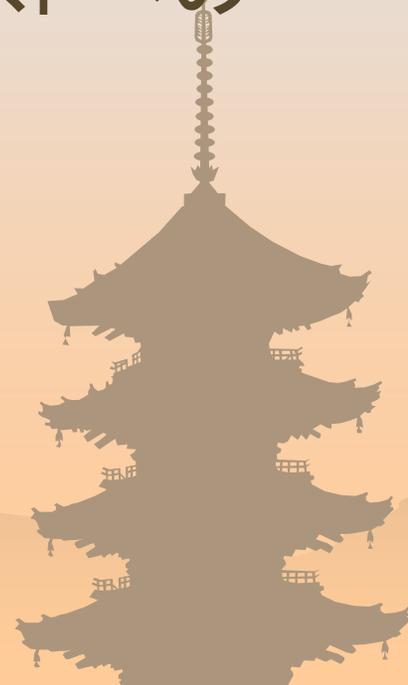


What is the Buffer Zone? バッファゾーンとは何か？

The World Heritage Convention: art. 11 (5) —
WHC defines the criteria of inscription. —
→OG

世界遺産条約11条5項 — 世界遺産リストへの
搭載基準を決める

→オペレーショナル・ガイドライン



Development of Buffer Zone: バッファゾーン概念の発展

(1) 1977年版OG:

“26. When setting the boundary of a property to be nominated to the List, the concept of a buffer zone around the property may be applied where appropriate. In such instances the nominations would include:

26条: リスト登録のために推薦されるべき遺産の境界を設定するに当たり、適当な場合には遺産周辺のバッファゾーンの考え方を用いることができる。その場合推薦書には以下のことを含まなければならない(以下略)...

(continued)

Under the 1977 OG: Kathmandu inscribed.

- inscribed as a heritage in danger
- weakness of OG on buffer zone

このOGの下で、カトマンズが世界遺産に登録される。

現在、カトマンズは危機遺産リストに登録されているが、長時間を必要とした→OGの弱さ

(2) 1980年版 OG

12: Whenever necessary for the proper conservation of a cultural or natural property nominated, an adequate “buffer zone” around a property should be foreseen and should be afforded the necessary protection.

12条: 文化遺産・自然遺産の適切な保護に必要なときは、遺産の周辺に適切な「バッファゾーン」を計画すべきであり、必要な保護を与えるべきである。



1980 年版OG (continued) (続き)

A buffer zone can be defined as an area surrounding the property which **has an essential influence on the physical state of the property and/or on the way in which the property is perceived;**

バッファゾーンとは、遺産の物理的状態および、
または遺産を理解する方法に決定的な影響
をもつ周辺地帯と定義できる。

1980年版 (continued) 続き

the area constituting the buffer zone should be determined in each case through technical studies. Details on the size and characteristics of a buffer zone, as well as a map indicating its precise boundaries, should be provided in the nomination file relating to the property in question.”

バッファゾーンとなるべき地域は技術的な調査に基づいて決定されなければならない。そのサイズ、性格、境界を示す地図は推薦書に含まれなければならない。

(3) 1988年版 OG

“17. Whenever necessary for the proper conservation of a cultural or natural property nominated, an adequate “buffer zone” around a property should be provided and should be afforded the necessary protection.

文化遺産又は自然遺産の適当な保護に必要なときは、適切なバッファゾーンが設けられなければならない、またそれに必要な保護が与えられなければならない。



1988年版 (continued) 続き

A buffer zone can be defined as an area surrounding the property which has restrictions placed on its use to give an added layer of protection;

バッファゾーンは、新たなレベルの保護を加えるために、遺産の利用に課される制約となる周辺地帯と定義できる。



Some comments on the 1988 OG

1988年版に対するコメント

A big step: buffer zone is recognized as “restriction”.

この版ではじめてバッファゾーンが「利用の制約」であることが明確化された。

How to restrict?- “legal Patchwork”

これがどのように運用されてきたか？－「法律パッチワーク」＝種々の目的の法・条例の寄せ集め－目的が文化遺産保護ではない法律であれば、バッファゾーンの保護は果たせない。

(Kono, “The Significance of the Buffer Zone under the World Heritage Convention”, Art and Antiquity Law Vol.5, issue 2 (2000) p.183)

Under this 1988 OG: Hiroshima, Nara and Kyoto inscribed.

→ Results?

この1988年版の下で広島は登録された－結果は？



(4) 2005年版 OG

104. For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary **legal** and/or **customary** restrictions placed on its use and development....

推薦された遺産の効果的な保護のため、バッファゾーンは、補充的に、遺産の利用および開発を法的および・または慣習的に制約する周辺地帯である。



2005年版(continued)続き

This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection.

バッファゾーンは、推薦された遺産の直接の背景、重要な風景、遺産とその保護を支えるの重要な機能をもつ他の地域または付属物を含まなければならない。



2005年版(continued)続き

Details on the size, characteristics and **authorized uses** of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination.

バッファゾーンの許可された利用方法・・・は推薦書に含まなければならない。



2005年版(continued)続き

105. A clear explanation of how the buffer zone protects the property should also be provided.

バッファゾーンが如何に遺産を保護するか、明快に説明しなければならない。

106. Where no buffer zone is proposed, the nomination should include a statement as to why a buffer zone is not required.

バッファゾーンが設けられない場合、推薦書には、バッファゾーンが必要でない旨の理由を付さなければならない。

107. Although buffer zones are not normally part of the nominated property, any modifications to the buffer zone subsequent to inscription of a property on the World Heritage List should be approved by the World Heritage Committee.

バッファゾーンは、通常は推薦された案件の一部ではないが、世界遺産リストへの登録後にバッファゾーンに加えた如何なる変更も世界遺産委員会の同意を得なければならない。

Some comments on the 2005 OG

2005年版に対するコメント

- Further step 大きな変化
- Very legal or normative きわめて法的・規範的
- Would 2005 OG (107) - If yes, how to evaluate the Case in Hiroshima? How should this influence the practice of monitoring?
- モニタリングが行われるときにどの版が基準になるのか？1988年版か2005年版か？



If 1988OG is applicable, it was known that the buffer zone is “restriction”. How to evaluate the fact that 5 tall buildings were built after the inscription?

1988年版が適用になる場合:「制約」であることは登録時にわかっていた→登録から10年間に5つの高層の建物が建ったことの評価如何?

If 2005 OG applicable, approval of WHC is lacking.

How to satisfy other more strict requirements?

2005年版が適用される場合、世界遺産委員会の同意なく建設が進められたことをどうみるか、新たに設けられたより厳しい要件を満たしうるか?

本会議のウェブサイト(日英)

<http://quris.law.kyushu-u.ac.jp/programs/english/hiroshima/index.htm>

Thank you!

ご静聴ありがとうございました。



Professor Wojciech Kowalski
University of Silesia
Faculty of Law

**Buffer (Protective) Zone under Polish Law with Particular Reference to
Zones at the Auschwitz-Birkenau State Museum and other Museums
Commemorating Places of World War II Genocide Crimes**

The beginnings of legally formalized protection of WW II places of extermination in Poland date back to the early post-war years. The first two legal acts devoted to that question were already adopted in 1947, just two years after the liberation of Poland from Nazi occupation. In the Polish legislative hierarchy, those were top-ranking acts – laws on “commemoration of the martyrdom of the Polish People and other Peoples” on the territory of the former Nazi death camps at Auschwitz-Birkenau and Majdanek (Journal of Laws 1947, No 52, items 264 and 265). In accordance with the unified text of article 1 of both documents, the compounds of the former Nazi concentration camps at Auschwitz-Birkenau and Majdanek “including all buildings and facilities shall be preserved for ever” as a Memorial of the Martyrdom of the Polish People and other Peoples. In order to accomplish that, the aforementioned laws established new museums and directed the Minister of Culture and Art to delineate the boundaries of the grounds assigned to them, which were then to be expropriated in favor of the State Treasury. Further documents relating to the museums themselves indicate that the museums were granted relatively extensive areas (almost 92.5 hectares in the case of Majdanek), which did not include protective zones, as we understand them today. The problem of special protection of the areas directly adjoining the museum boundaries emerged much later. It primarily concerned the Auschwitz – Birkenau complex, located within the town limits, and stemmed from an upsurge in building activity in the area in the early

Sixties. Seeking to limit or eliminate such activity in the direct vicinity of the museum, the building authorities issued in 1962 “a decision on the location of a protective zone for the State Museum (former death camp) at Auschwitz-Birkenau”. Under the decision, the zone was delineated with a red line on an attached map and conditions were elaborated for building activity in the zone. In particular, the decision stipulated that:

1/ The area in the immediate vicinity of the former death camp at Birkenau was to be preserved as it was during the camp’s existence, i.e. as farm land and meadows.

2/ In view of the progressing development of neighboring villages, measures had to be taken to prevent new buildings being erected close to the camp boundary; no new permits would be issued for buildings in the protective zone.

3/ Any construction initiated on the basis of a permit issued prior to the establishment of the zone would be allowed to continue. However, if actual construction had not begun - the building permit should be rescinded and the construction executed outside the zone.

4/ The construction or development of industrial facilities, storehouses, depots or even temporary barracks would not be permitted.

5/ a – An open view of the former death camp should be preserved from the east - that is from the bridge above the railway line and the access road,

b – Open space should be preserved to the south of the death camp. That area was always open and no buildings ever blocked the view of the Żywiec Highlands.

c – To the west - open space should be preserved as background for a memorial to the victims of Auschwitz planned in the vicinity of crematoria 2 and 3. The western-most area of the Museum was surrounded by forest, which constituted a natural backdrop to the former pyres there; a protective zone was not needed along that part of the Museum’s border.

d – Buildings on the northern side were already too close to the Museum boundary and had partly intruded onto the Museum territory in the so-called Meksyk section.

Fifteen years after that decision was issued it became apparent that its provisions were no longer sufficient in view the growing investment activity in the area – not only in the neighborhood of Auschwitz-Birkenau, but also in the vicinity of the former death camps at Stuthoff and Majdanek. In response, the Ministry of Local Economy and Environment Protection instructed the competent building authorities to address the problem. In particular, in 1977 they were directed to institute protective zones around the aforementioned camps “of no less than 500 m in width”. The zones were to be wooded and covered by a building ban. Furthermore, zoning decisions concerning the general “region of the former camps” were to be taken by the building authorities in consultation with the competent monument inspectors and “committees for the protection of struggle and martyrdom”.

That legal situation remained in force until the introduction in 1999 of a general systemic regulation relating to the issue. A law on the protection of the territories of former Nazi death camps (Journal of Laws 1999, no. 41, item 412) was adopted in May that year. Pursuant to article 1 of the law, the protection it envisages consists in the establishment of protective zones and the introduction on the territory of the Monuments of Extermination, and their zones, of special rules concerning: a) erection of buildings, temporary buildings and other facilities, b) expropriation of real estate, c) business activity, d) holding of public assemblies. As the cited regulation further elaborates, the protection of Monuments of Extermination thus defined is a public task and its implementation falls within the competences of state administration. The law applies to 8 former death camps which today are the sites of:

1. State Auschwitz-Birkenau Museum in Oświęcim,
2. Monument of Martyrdom in Majdanek,
3. Stutthof Museum in Sztutów,
4. Gross-Rosen Museum at Rogoźnica,
5. Mausoleum of Struggle and Martyrdom in Treblinka,
6. Martyrdom Museum – Camp in Chełmno on the Ner,
7. Museum of the Former Death Camp in Sobibor,
8. Former Death Camp in Belzec.

The aforementioned rules of activity within the zones are elaborated by yet other regulations. The ones connected with the delineation of the zones are as follows. Under article 3 the protective zones around the Monuments of Extermination are strips of land up to 100 meters wide, while article 4 stipulates that the areas and boundaries of the zones should be determined in a way least inconvenient for third persons, and that they should be clearly marked. The delineation of the protective zones falls within the competences of the minister responsible for public administration, who - through an ordinance – also determines the mode of marking the boundaries of the Monuments of Extermination and of the zones surrounding them. The actual marking on the ground is the responsibility of the appropriate voivode (province administration head). The related decisions have to be incorporated in the development plan for each Monument of Extermination and its protective zone, which is prepared by the local commune and cleared with the minister of public administration. Persons who sustain direct loss as a result of the plan, or whose real estate or its part is expropriated or loses value, may claim compensation from the State Treasury.

Article 10 of the law prohibits the erection of any buildings on the territory of the Monuments of Extermination and their protective zones delineated and marked in accordance with those procedures. The ban does not apply to objects

and facilities needed to protect the Monument of Extermination from destruction or damage, essential for ensuring order or cleanliness, or necessary to provide services for site visitors. The issuance of any building permits for such objects, or for initiating their construction when no building permits are needed, requires a positive decision of the voivode. The voivode is also empowered to order demolition of a building erected without the needed consent.

In order to permit practical establishment of the protective zones, the law also introduces a special expropriation procedure. This matter is also within the competences of the voivode; only plots with churches, temples, chapels and residential buildings are exempted from expropriation. All other real estate is subject to the procedure, with expropriation possible only in favor of the State Treasury.

Business activity within the Monument area and its protective zone is also subject to the special regulations. Article 8 of the law only permits activity necessary to protect the Monument from destruction or damage, to ensure order and cleanliness within its site, to provide its ongoing conservation, marking of its boundary or those of the protective zone, and provision of services for visitors. Such activity requires the consent of the voivode, who may refuse to grant it, or may rescind consent granted previously, if the activity in question transcends the permitted scope or could violate the solemnity or character of the Monument. If the consent for conducting business activity is rescinded for these reasons, the person conducting it is not entitled to compensation for any losses sustained.

As already noted, public assemblies on the territory of the Monuments of Extermination or their protective zones are also governed by special rules.

Without going into detail, let it be noted that they also require the consent of the voivode.

In conclusion, let me note that the discussed regulations constitute a kind of *lex specialis* as regards the general rules of establishing protective zones around monuments. In the past, such zones were usually established and protected on the basis of local development plans, in line with the provisions of the law on the protection of monuments and the care of monuments (Journal of Laws 2003, no 162, item 1568), and the law on space planning (Journal of Laws 2003, No 80, item 717). However, tendencies have appeared recently to enter such zones into monument registers, which reinforces their protection from the threat of buildings being erected on their territory. In such cases “the surroundings of the monument” constitute the protective zone. Under article 3 paragraph 15 of the law on the protection of monuments, the monument’s surroundings are defined as “the area around or at the monument, determined in the decision on the entry of that area into the register of monuments for the purpose of protection of the visual values of the monument or its protection from the harmful effect of external factors”. Such broad definition of the protective zone offers substantial possibilities of protecting monuments, though – predictably – it may lead to conflict with owners of the land within the zone, whose rights of ownership thus become substantially restricted. A case in point is the recent dispute between the voivodship inspector for the protection of monuments and owners of plots of land adjoining a hill topped with a medieval castle in Chęciny near Kielce in central Poland. The inspector entered the area around the hill into the monument register when he learned of plans to build a housing estate which would have blocked the magnificent view of the castle. The owners, interested in selling their land, have appealed against the inspector’s decision to the Minister of Culture and National Heritage, whose decision is pending.

Hiroshima Conference

Christoph Machat

The World Heritage List – German Conflicts related to Buffer Zones and nomination areas of wide extension: Cologne Cathedral and Dresden Elbe Valley

The Cologne Cathedral

WHL Position 292, 1996

“Begun in 1248, the construction of this Gothic masterpiece took place in several stages and was not completed until 1880. Over seven centuries, the same faith and a spirit of absolute fidelity to the original plans inspired successive builders. Apart from its exceptional intrinsic value and the artistic masterpieces it contains, Cologne Cathedral testifies to the enduring strength of European Christianity.”

The chief architect of the cathedral administration prepared the nomination file for the Cologne Cathedral without involving the municipality conservation office or the Governmental Office for Monuments Protection of the Rhineland. As no buffer zone had been defined, after inclusion on the WHL in 1996 the World Heritage Committee recommended (and requested) a buffer zone.

The municipality administrator in charge of the implementation of the “Law for the Protection and Conservation of the Historic Monuments in Nordrhein-Westfalen” (March 11, 1980), known as the “Cologne city conservator”, never worked on a buffer zone for the cathedral. The city conservator argued that “the cathedral is protecting itself...” The background behind this decision is as follows:

- in 1979 the Cologne city council adopted several “preservation areas” on the Cologne territory cf. with the “Federal Building Act”:
- the Protection Law, in force June, 1st 1980 contains in § 2, art. 3 the declaration of “protection (or conservation) areas” (Denkmalbereiche) for larger territorial units including ensembles of monuments or historically developed areas like historic city core areas, surroundings of important monuments (landmarks etc), including the protection of urban patterns, historically important view axes, etc.
- since 1980, the Cologne city conservator never used the protection areas as a protection tool, arguing that the city council would never accept “new” preservation areas beyond those from 1979, even if today the city administration has about 8800 listed historical monuments...

Nevertheless since 1996 the prestigious “Society for Monuments Conservation and Landscape Protection of the Rhineland”, founded in 1906 in cooperation with the Governmental Office, has made several attempts at defining a buffer zone for the cathedral, a proposal already being prepared by the University of Applied Sciences of Cologne in 1999 – including the area opposite the cathedral on the right shore of the Rhine, the historic quarter of Deutz (and also the historical view axes towards the Brühl (WHL) and Bensberg castles). Deutz was founded by the Romans around 300 AD upon the orders of Constantin the Great as a military fortress against the Germanic tribes and was later connected with the “Colonia” by the first masonry bridge over the Rhine

Since 1993, the Cologne city administration department for construction and town planning started public discussions and initiated feasibility studies for possible locations of high-rise buildings inside the inner city territory. As a result, proposals for locations were accepted on the right side of the river in Deutz, Deutz harbour and the northern neighbourhood of Mülheim, without including those proposals in a project for a legally binding construction development plan (Bebauungsplan);

In 1999, the city administration followed the economic expansion pressures of the “Cologne Trade Fair Society”, which is owned by the city. The Society has been located on the Deutz shore since the first years of 20th century and connected to the Deutz railway station (a listed monument). The city administration prepared a national competition for architects based on the proposals of 1993 for new trade fair buildings. In 2001, the first prize was won by a project including 5 skyscrapers (between 100 – 130 m high) in the trade fair area of Deutz opposite the cathedral. The city administration very quickly worked out two construction development plans – No. 68450/0 and 68459/02 – which were accepted by the city council (in 2003) in spite of all the serious objections coming not only from the Government Office and the Society for Monuments’ Protection, but also from ICOMOS Germany

In the meantime the “Landschaftsverband Rheinland”, the regional governmental administration of the Rhineland (which includes the Governmental Office for Monuments) started to work out a project for a skyscraper – without any consultation - located only 10 m South of the longitudinal axe from the cathedral that was intentionally followed by the “Hohenzollern bridge” built in 1859. The regional administration already started with the foundations and constructed the first five floors without any building permission...

As a consequence of a bad publicity in the newspapers, the Lord Mayor of Cologne allowed a public discussion on the skyscraper locations in spring 2003, pointing out however that “the Landschaftsverband tower however will be built”

The results:

- The Landschaftsverband tower has been built;
- In 2004 the WHC decided during the session in South Africa to put the Cologne Cathedral on the “**Red List**” (local newspapers commented: “even the Africans are deciding upon the future of our cathedral...”);
- In late 2005 the city council decided to withdraw the two construction development plans and to review the possible locations for high-rise buildings, thereby following not only the pressures of UNESCO, but also of the Ministry for Housing and Traffic of Nordrhein-Westfalen. The latter is responsible for implementing the Protection Law and constitutes the highest level of decision-making concerning historical monuments;
- In spring 2006 the city administration prepared a first project for a buffer zone, again without including the historical area of Deutz, even though since 1954 the area of Deutz is part of the inner city administration of Cologne

Even after the decision of the WHC during the session in Lithuania to withdraw the Cologne Cathedral from the “Red List”, the Cologne city administration has yet to successfully define an appropriate buffer zone for the Cathedral, including Deutz, and to give it legal force.

Dresden Elbe Valley

WHL Position 1156, 2004

“The 18th and 19th century cultural landscape of Dresden Elbe Valley extends some 18 km along the river from Übigau Palace and Ostragehege fields in the northwest to the Pillnitz Palace and the Elbe River Island in the southeast. It features low meadows, and is crowned by the Pillnitz Palace and the centre of Dresden with its numerous monuments and parks from the 16th to the 20th centuries. The landscape also features 19th and 20th century suburban villas and gardens and valuable natural features. Some terraced slopes along the river are still used for viticulture and some old villages have retained their historic structure and elements from the industrial revolution: notably the 147-m Blue Wonder steel bridge (1891-1893), the single-rail suspension cable railway (1898-1901) and the funicular (1894-1895). The passenger steamships (the oldest from 1879) and shipyard (ca 1900) are still in use.”

The conflict in the Elbe Valley, which involves the local and regional authorities of Dresden and the land of Saxony, is different from the situation in Cologne. It is not directly related to a buffer zone, but rather to the nomination of a property of wide extension and the impact of future construction projects, in this case the bridge “Waldschlösschenbrücke”

A first attempt to nominate Dresden to the WHL as a historic city was already made in 1998 and rejected (by ICOMOS), especially for reconstruction reasons.

The new World Heritage nomination document, which applied to the Dresden Elbe Valley as a “continuing landscape”, was well prepared and included all the necessary information regarding future construction projects. Even though the nomination file (page 81) underlined that “the representation of the traffic areas shows that no main traffic arteries are planned in the Elbe area, which would affect the townscape and landscape”, the text lists options for five new bridges, one of which, the “Waldschlößchenbrücke”, was the subject of a final decision and choice of location (city council decision No. V2012-44-2002 from 30th May 2002). For the Waldschlößchenbrücke, the legally binding development plan had been worked out already and was listed in the nomination file on page 85 (Bebauungsplan Dresden Altstadt II No. 10, festival ground Waldschlößchenbrücke). The bridge is to be located in the core nomination area, in the middle of the cultural landscape cutting the low meadows of the Elbe River. The nature protection people had been fighting it from the beginning, but the WHC accepted the nomination in 2004.

ICOMOS Germany and ICOMOS International since 2004 have a very clear position in rejecting any bridge construction inside the WH cultural landscape area. In 2005, a specially organized group of citizens of Dresden succeeded to in obtaining a public civil decision (Bürgerentscheid) to consider the implementation of the bridge project. the city administration did not start the construction works. Since spring 2006, a public discussion is going on to choose between either the bridge or the WH status. The district government (and not the city council) tried to urge the construction of the bridge, ordering the opening of the working site, but the administration court of Dresden stopped it (on the first level) at the end of August 2006. The Dresden Elbe Valley has been placed on the list of World Heritage in Danger since July 2006.

BUFFER ZONES IN WORLD CULTURAL HERITAGE SITES

Sri Lankan Examples in Urban and Natural Setting

WORLD HERITAGE SITE OF KANDY

WORLD HERITAGE SITE OF SIGIRIYA

Prashantha B. Mandawala

President

ICOMOS Sri Lanka

1. Introduction

Convention concerning the protection of the world cultural and natural heritage adopted by the General Conference of the United Nations Educational, Scientific and Organization at its seventeenth session held in Paris paved way to define monuments, groups of buildings and sites of outstanding universal value as cultural heritage and include them in the World Heritage List. The operational guideline prepared by the Inter Governmental Committee for the Protection of the World Cultural and Natural Heritage states that the proposed cultural properties by state parties should meet the criteria and the test of authenticity stated under section 24. The section 24 (b) (i) of the guidelines states “meet the test of authenticity in design, material, workmanship or setting” thereby it is essential that a World Cultural Heritage Site should contain an authentic setting.

Management Guidelines for World Cultural Heritage Sites states that the authenticity in setting is reflected in the relationship between the resource as maintained and its physical context. This also includes landscape and townscape values, and the relationship of man-made constructions to their environmental context. As such, it is essential to protect the environment in which the cultural

property is situated. Encroachment and intrusive commercial development are typical threats that are often seen in the environment around a cultural property. As such, *Buffer Zones* of sufficient size should be established around a cultural property to ensure the negative threats of all types are prevented or strictly controlled. Therefore, all state parties are advised to submit maps and/or plans showing boundary of the area proposed for inscription and of any buffer zone as stated in section 64.1.e of the Operational Guidelines.

In order to ascertain the importance of Buffer Zones in protecting World Cultural Heritage Sites action taken to control the activities in two major sites, one in urban setting - Kandy and other in rural setting - Sigiriya in Sri Lanka are presented below.

CASE STUDY ONE – WORLD HERITAGE CITY OF KANDY – A URBAN SITE

2. Historical Account

According to *Mahawamsa*, the great chronicle of Sri Lankan history, the hill country was known as *Malaya Desa*. Later it was known as “*Kanda Uda Pasrata*” (the five counties of the hill) or the city of *Senkadagala Siriwardhanapura*. According to the chronicles, King Wickramabahu IV of *Gangasiripura* (Gampola) desirous of founding a new city, requested his astrologers to find a suitable auspicious place. The lucky spot chosen, is the site of the present ‘*Dalada Maligawa*’ (Tooth Relic Temple of Lord Buddha) so the city was founded by the King Senasammatha Wickramabahu as a defended city in the year 1469-1511 AD. To prevent invasions from the kingdom of Kotte in the west of the country which was occupied by the Dutch, Kandy being the hill capital, was founded on a low lying ground besides a river, overlooked by nearby hills, and often hidden within a wooded surrounding that occupied a large area. (Picture 1) Ample water and high security of its location in a hilly environment, and river Michaela on its west, north and east made it a successful capital and a unique place. The natural setting confined the city’s horizontal growth and shaped it into a triangular basin. The city rises to an altitude of 600m from the mean sea level and drops to a basin surrounded with hills on one side and a river on the other. Ultimately, incorporated with a forest reserve and a man – made lake, it gained a more naturalized setting.(Picture 2)

During the reign of King Vimaladharmasooriya I, the Kandyan Kingdom reached its highest power, dominating even the low country lands. By erecting a two-storied temple, (Picture 3) which was dedicated to the Tooth Relic of Lord Buddha, (Picture 4) he manifested his faithfulness for Buddhism. The Tooth Relic of Lord Buddha was taken in procession from Delgamuwa to Kandy secretly. Thus, the kingdom proceeded from 1592-1815 surpassing all the obstructions imposed on its sovereignty by the Portuguese, and later the Dutch and finally the British who fought fiercely for its control, until the kingdom was assigned to them. In the early

part of the 19th century, during the time of the last King Sri Wickrama Rajasingha, Kandy was known as “Mahanuwara” or “Senkadagala” to the people of the hill country. As hilltops were major defensive attractions for the town builders, the Palace of Tooth Relic and its circumscribing elements were laid parallel to the hilly forest reserve taking it as a backdrop to the total complex. In keeping with cosmological notions the temple faced west; and it was so sited that there were no buildings to its east – a principle emphasized by royal edicts which designated the hillside jungle into a reserved forest where no cultivation what so ever permitted. (Picture 5) The building form of the regal city represented the hierarchical order of the prevailing society. The biggest and the most important building was the Temple of the Tooth. (Picture 6) The scale, the proportion, the architectural character or the religious perception with so-called symbolism, all have united to make that image. The palace was erected on the highest shelf as the royal astrologers reckoned it the most auspicious place. A moat separated it from the land below. The thick green Udawatta Kele forest behind the palace is a “Nilamegha”- the blue clouds of the sky was created by a cloud walls in white. Then by transferring the paddy fields into a lake, one will see the reflection of the cloud wall (Picture 7) and the palace building in water, no doubt it will appear like **a city floating in the sky**. (Picture 8) The royal architect, adhering to a strong concept of symbolism, designed the surrounding landscape including the palace and the lake. It was the last King of the capital who converted the paddy field towards the south of the palace into the present lake, in 1806. The area also consists of four temples, Natha, Vishnu, Pattini and Katharaga, dedicated for gods and the two monasteries representing the power of the Buddhist religion. The temple of Natha, right in front of the tooth relic temple, was built in the 14th century in the South Indian Vijayanagar style of architecture and may be considered as the oldest living monument in the city. (Picture 9) It reminds us of the origin of Kandy as a royal city. The ancient city centre of the regal city was known as *Deva Sanhinda*, where the social interactions were focused on was in a lower level before the moat and the Mahawasala and

encircled by the temples dedicated to the worship of gods Natha and Vishnu. The most significant cultural procession, “the Perahera” starts from the Tooth Relic Temple and proceeds along the selected routes within the city. (Picture 10 &11) It is the most significant social and religious event that highlights the importance of the Tooth Relic of Lord Buddha and heightens the sense of boundary and the bound relationship between the temple and the town. The King himself was bound to take due advice from the venerable monks in all matters concerning government and religion. Therefore, two great monasteries were established on either side of the royal palace namely the Malwatta *Mahavihara* on the south of the Royal Palace across the lake, and the Asgiriya *Mahavihara* to the north-western side of the outer city just beyond the crematory ground. From the beginning two kinds of residential buildings were erected; the chieftain’s ‘Walawwas’ (Picture 12) and Pheasant’s houses built of mud and timber with thatched roofs (Picture 13) and raised plinths harmonious to the environment. The palace, the lake, and the linear pathways, embodied with chieftain’s houses or Walawwas, were the original composition of the city, which were endowed with panoramic views of mountainous range. The phase of growth of Kandy, until the British occupation, was slow and interspersed with setbacks resulting from internal conflicts and invasions from western powers. British brought a great change to the existing majestic appearance of the hilly landscape. Expansions of administrative, commercial and other service functions, took place within this basic framework until about the time the British rule terminated in 1948. (Picture 14) Kandy with its extraordinary complexity and the beauty of its colonial and pre-colonial composition invites people to admire it. Its immediate surroundings contain a wealth of structures and spaces and compositions no less impressive than those in other parts of the world. Its streets belong to the city grid, closely packed houses, open spaces, green spaces and all other related elements gathered there to tell one story. (Picture 15) What brought it there, why, and how it came to be, may be read in all the details of its physical nature. Despite the fact that the historic centres are collection of vestiges of past, they are places

where life continues to be lived. The UNESCO declared Kandy as a world heritage site in 1987, being one of the living ancient capitals of the world today under Criteria IV and VI of the operational guidelines.

“Criteria IV - The monumental ensemble of Kandy is an outstanding example of a type of construction in which the Royal Palace and the Temple of the Tooth of Buddha are juxtaposed since the 4th century.”(Picture 16 & 17)

“Criteria VI - The Temple of the Tooth, the Palace Complex and the Sacred City of Kandy are directly and tangibly associated with the history of the spread of Buddhism. The temple of Kandy built to house the tooth of Buddha bears witness to an ever-flourishing cult.”(Picture 18 & 19)

3. Heritage Protection Efforts in Kandy

Efforts in protecting the heritage in Sri Lanka commenced during the British Period with the establishment of the Archaeological Survey of Ceylon in 1890. Although the Treasure Trove Act of 1888 and the Antiquities Ordinance of 1900 provided legal support for the efforts in protecting the valuable heritage of the country, the protection of the heritage and its surrounding was only possible after the enactment of the Antiquities Ordinance in 1940. According to the Ordinance, legal protection was provided to the monuments by declaring them as “Ancient Monuments” and “Protected Monuments” and prohibiting the archaeological excavations with out a licence from the Department of Archaeology. This ordinance also provided legal protection to the surroundings of the monuments by prohibiting or restricting activities on any land within a prescribed distance, which stands as 400 meters. In keeping with this provision several monuments, i.e. Palace, Tooth Relic Temple, Natha Devalaya, Vishnu Devalaya, Pattini Devlaya, Katharagama Devalaya,

Malwatta Monastery and Asgiriya Monastery, within the heritage city of Kandy was declared as Ancient and Protected Monuments. However, as Kandy was considered to be the second capital of the country it grew not only as a cultural centre but also as the religious, administrative, commercial and historical centre. (Picture 20) The development of Kandy as a major city took place during the British Period with the addition of beautiful colonial buildings. The beauty of the could be seen from the Dutch style half-round tiled roofs, Doric columns, timber balustrades & valance boards, and proportions of British period buildings seen with in the area. With the independence, the new wave of architectural style attracted the country restricting the use of timber and tiles in buildings, and reinforced concrete was introduced. In order to control this new architectural style affecting the heritage area of Kandy, the area around the Tooth Relic Temple was declared in 1971 as a specially protected area namely a sacred city, under the Town and Country Planning Ordinance of 1946 (Picture 21). Accordingly, the use of the land with in the area was regulated and controlled and only development of land for the preservation of places and structures of religious, historical, architectural, archaeological or artistic nature was permitted. However, this declaration could not prevent the destruction of several ancient so-called Walawwa's (Chieftain's Residences) with in the grid city, as most of them were completely demolished, and new buildings were erected. Over and above due to the scarcity of land with in the grid city, demolition of number of ancient buildings and replaced them with new buildings, which do not suit to the ancient character of the Kandy ancient city was seen. As such over the years, the streetscape of the city began to change creating a serious concern on the heritage values of the ancient city. (Picture 22 & 23)

In 1980, the Central Cultural Fund commenced its conservation activities in Palace Complex, Devala Complex, Malwatta Monastery Complex and Asgiriya Monastery Complex under the UNESCO – Sri Lanka Cultural Triangle Programme. The deterioration of the city also began in the same eara with the buildings constructed

with the building materials made available with the open economy principal adopted by the Government, which came to power in 1977. Use of glass with aluminium framework with the concrete began to fade the character of the urban centre and the urgency to conserve the left over with in the grid city was quickly realised by the authorities of the Central Cultural Fund. After assessing the situation in Kandy in 1983, Government appointed a committee under the Chairmanship of the Prime Minister to study the possible threats faced and to report the possible interventions that would control the development pressures within the area. On the recommendations made by the committee in 1984, Kandy Municipal Council area was declared as an Urban Development Area under the Urban Development Law of 1978 and designated the area around the Tooth Relic Temple as a “Sacred Area”. The main objective of the designation was;

- 1 To maintain the sanctity of the Tooth Relic temple by restricting or prohibiting all uses and developments this will not be in conformity with the principal use.
- 2 To develop facilities in the area including traffic facilities such as parking, pedestrianisation and restriction of through traffic.
- 3 To promote architectural, landscape and environmental quality of all development in the area.
- 4 To regulate all types of advertisements within the area.

After identifying the boundaries of the Sacred Area two peripheral protected areas, i.e. an area of 500m radius from the Octagon of the Tooth Relic Temple (Peripheral Protected Area 2) and Water Shed of the Kandy Lake (Peripheral Protected Area 3), were identified. (Picture 24) The development controls imposed on the three areas are:

Sacred Area:

1. No lands or buildings within the area were allowed to be used for
 - ⌚ Manufacturing or service industry
 - Warehouse or wholesale industry
 - Retail trade or boutique except those incidental to the use of the temple
 - Hotels, lodges, restaurants, night clubs and similar uses
 - Residences except those incidental to the use of the temple
 - Any other used which is likely to offend the religious nature
2. No new buildings and no alterations or additions to any existing buildings not connected with the temple
3. Existing height and character of buildings and other structures not to be altered.
4. All alterations, additions and new constructions should harmonise with the main and subsidiary buildings of the temple in respect of the facade, texture, colour, height and materials of construction.
5. Landscaping of private and public open spaces, street furniture should harmonise with the environment of the temple
6. All buildings should be regularly maintained so that they are structurally safe and the external features are maintained by colour washing, paintings, etc.

Peripheral Protected Area 2:

1. Existing height not to be changed without permission.
2. If the buildings are suitably set back from street line height may be permitted up to 3 floors
3. Roof character to be tiled only and should be related to the environment.

4. All industrial buildings and other unclean uses, advertisements, hoardings to be prohibited and design and character of sign posting should be approved.
5. Facade finishes to suit the existing character in respect of colour, texture and material
6. Vegetation/landscape to be preserved and to harmonise with surroundings.

Peripheral Protected Area 3:

1. Industrial buildings and other unclean uses will be prohibited.
2. Density of buildings will be regulated.
3. Roof character to be tiled only and should be related to the environment.
4. Height of buildings up to four floors only will be allowed subject to its conformity with the surroundings.
5. No interference with landscape, hill slopes, etc. by cuts and fills.
6. Vegetation/landscape to be preserved and to harmonise with surroundings.

The planning committee of the Kandy Municipal Council were provided with necessary instructions to adhere with the above development guidelines with the aim of providing better protection to the surroundings of the heritage area. The Project Manager of the UNESCO – Sri Lanka Kandy project was appointed as a member of the planning committee in order see whether the above development controls are been followed during planning approval procedure. Due to the efforts those were taken by authorities responsible for the protection of the heritage city of Kandy, it was declared as a World Heritage City in 1987. Although the declaration did not provided clear boundaries of the Heritage City, the sacred city area declared by under the Urban Development Authority Law was considered as the designated area. This declaration prompted the heritage managers responsible for safeguarding the authenticity of Kandy to focus their attention beyond the sacred city in order to preserve the charm of the urban centre. This effort commenced in June 1988 by carrying out an urban conservation survey to form a base for an extended future treatment of the entire grid city. The team headed by Architect Christoph Hanske

from Burlin, GDR, presented their findings in form of two maps, i.e. the age structure and the architectural valuation of existing buildings. According to the survey on age structure, four periods of probable erection have been identified.

They are:

Buildings belongs to the period before or around 1850	-	44
Buildings belongs to the period from 1850 to 1900	-	166
Buildings belongs to the period from 1900 to 1950	-	320
Buildings belongs to the period from 1950 to 1988	-	277
Total	-	807

Architectural evaluation had been carried out by applying a classification system to provide guidelines for future treatment under four categories. (Picture 25) They are:

Buildings to be conserved	-	90
Conservation recommended buildings	-	165
Alterations possible buildings	-	293
Buildings to be improved or demolished	-	259
Total	-	807

After the survey 32% of the buildings in the city was to be conserved, 36% to be developed and 32% to be improved by all means. As such the policy that should be adapted with in the city is:

- 1 To prevent further destruction of buildings identified to be conserved
- 2 To include conservation measures in cases of improvements and repair
- 3 To work out regulations for new buildings

The tasks of achieving these policies were very hard to arrive at. Although it was possible to control the developments that were taking place with in the Sacred Area, it was impossible to control the developments that were taking place with in the peripheral protected areas as well as with in the ancient grid city. The rapid economic boom in 80s' in the country also affected Kandy and created a rapid

construction with in the area for commercial, administrative and other uses. As most of these were unauthorised constructions and even the approved constructions are not been in consistent with the concept of heritage values, haphazard and uninviting buildings were created with in the city. After several discussions with the Urban Development Authority and the Kandy Municipal Council, in 1992, a “World Heritage City of Kandy Advisory Committee” was formed mainly to guide and control future developments and advice the mayor of Kandy. The task of this committee to compile a “Master Plan” –

- 1 To conserve and protect the World Heritage City
- 2 To develop the city in a proper manner establishing a balance growth between “the old and the new” in the light of contemporary needs

A team of experts – Town Planners, Architects, Archaeologists, Environmentalists, Geographers, Economists, Traffic Planners, University Professors and relevant staff officers were convened to make the “Master Plan” and to establish a city, which will survive into the future.

4. Development Plan of Kandy

4.1. Basic Information

Before the formulation of a Development Plan for the city of Kandy, series of surveys were conducted to obtain basic data required. The City of Kandy which has been designated as an Urban Development Area under the Urban Development Authority Law fall with in the preview of Kandy Municipal Council which is divided in to 23 wards. (Picture 26) The area expands over 26.45 sq. km. situated at an elevation of 400 – 600 meters above MSL with hilltops rising up to 550 – 600 meters, which has been identified as landslide hazard areas. Natural drainage pattern of the city consists of several waterways drain into the Mahaweli River. The climate of the town with its distinctive coolness makes it favourable for residential and cultural and eco-tourism. According to the surveys, the total number of Tourist Board

approved hotels is 13 in which 873 Guest Rooms are identified. There are 33 Gust Houses and 16 other hotels offering accommodation for tourists. The built environment of Kandy represents a specific architectural character belongs to Kandy as well as buildings and structures which are reminiscent of the colonial heritage of the country (Picture 27). During the public forums conducted, the citizens of Kandy have shown a keen interest in the preservation of the architectural heritage. From a survey conducted, 490 buildings have been identified as ancient buildings with in the Municipal limit of Kandy. Out of them 387 buildings were located within the Sacred and Inner city areas while 103 are located outside. The population of Kandy has grown steadily from 16,881 in 1871 to 110,049 in 2001. The annual growth of the population is about 1.2% per annum. Out of the total population 69% is Sinhalese, 14% is Tamil, 12% Moor and 5% others. According to the available data, the number of housing units has been increased by 60.7% from 1981 to 1997. According to the surveys carried out by Urban Development Authority, 125,000 to 175,000 persons come to the city daily and while average number of vehicles entering the city is 35,900. The land use survey carried out with in the city indicated that 49% of Lands are used for residential purposes, 13.1% as Forest Reservations, 7.2% for water bodies and Roads, 2.2% for commercial, 3.5% for public buildings, 1.4% for religious purposes, etc.

4.2. Objectives and Strategies of the Development Plan of Kandy

The mission identified in the Development Plan is to develop the Kandy City -

- 1 as a place of Cultural Heritage
- 2 as a residential centre
- 3 as a trade centre
- 4 as a higher standard service centre

- 5 by preserving scenic beauty
- 6 by promoting and regulating integrated planning and physical development
- 7 with a regard to the amenities and services to be provided to the community

The Objectives and Strategies identified in the Development Plan are;

Objectives	Strategies
1. Development of Kandy City as a historical and Cultural Centre and the protection of the solemnity of the Sacred Area	<ul style="list-style-type: none"> •1 Zoning for a sacred area •2 Enforcement of planning standards •3 Conservation of ancient monuments •4 Rehabilitation of the cultural assets •5 Relocation of incompatible activities •6 Development of alternative centres for commerce •7 Provision of facilities to ease traffic congestion
2. Making the city an attractive place for all communities	<ul style="list-style-type: none"> •8 Zoning of Land for primary and mixed residential uses of different degrees •9 Prescribing planning standards •10 Expansion and improvement of existing infrastructure and amenities •11 Improvement of low-income settlements •12 Re-development of blight areas
3. Provision of efficient functional systems to the city to promote its economy and environmental quality	<ul style="list-style-type: none"> •13 Zoning of land for mixed development and commercial development of different degrees •14 Enforcement of planning standards •15 Expansion of existing facilities
4. Protection of the natural scenic beauty of the city as far as possible	<ul style="list-style-type: none"> •16 Zoning of land for nature conservation, open areas and agriculture •17 Enforcement of planning standards to protect hilly and sloppy areas •18 Restriction of development in selected areas •19 Taking action to protect landslide area
5. Conservation of the architectural heritage to the possible maximum level with minimum constraints to the progressive development of the	<ul style="list-style-type: none"> •20 Inclusion of buildings of architectural value as listed buildings •21 Enforcement of planning standards and coordination with relevant authorities

city	
6. Reduction of hazards arising from traffic congestion, waste disposal and user conflicts	<ul style="list-style-type: none"> •22 Zoning of lands for different uses •23 Enforcement of planning standards •24 Rearrangement of traffic movement •25 Maintenance of adequate road reservations •26 Investment in relevant infrastructure
7. Maximization of the existing amenities and services in the city	<ul style="list-style-type: none"> •27 Zoning of lands for various uses •28 Enforcement of standards to protect existing amenities •29 Provision of amenities on a phased out basis
8. Promotion of investment in the city and thereby creation of employment opportunities in the services and manufacturing sectors	<ul style="list-style-type: none"> •30 Zoning of land for commercial uses of different degrees and tourism and commercial facilities •31 Encouragement of private sector investment in selected services such as medical facilities
9. Improvement of living condition of low income communities by progressive provision of housing, infrastructure and social facilities	<ul style="list-style-type: none"> •32 Zoning of land for residential purposes •33 Regulation of tenure •34 Provision of amenities •35 Application of relaxed planning standards •36 Relocation of settlements where indispensable
10. Maintenance of adequate open spaces by way of parks and play grounds and open spaces	<ul style="list-style-type: none"> •37 Zoning of land for open spaces •38 Restriction of physical development •39 Coordination of with relevant authorities •40 Enforcement of special planning standards in high elevation areas
11. Maintenance of adequate reservation for public roads and water ways	<ul style="list-style-type: none"> •41 Enforcement of reservation lines for roads and water ways

4.3. Regulations Imposed in Kandy City

As soon as above objectives and strategies were identified the committee took immediate steps to list 387 buildings identified for conservation are strictly preserved by the plan. All these buildings were given a logo as a preserved building and it was embedded to the wall in front to be seen prominently. The other 103 buildings were to be attended considering its

practicability having regard to uniqueness of the architectural character of the building and practicability of conservation of such buildings.

Apart from this, the committee also decided to extend the boundaries of the sacred area to include the commercial area closer to the heritage area. Because of this recommendation, the boundaries were extended by the Government Gazette notification published on the 08th November 2001. The gazette notification also provided the regulations to be imposed with in the sacred area. They are:

- 42 Only commercial activities consequential to and in conformity with the execution of activities pertaining to the Tooth Relic Temple and its properties will be allowed with in the area.
- 43 All innovations and refurbishments should be in conformity with the physical characteristics and architectural patterns inherent to the area
- 44 Plans, heights, frontal view, shades, topographical features, roof patterns and usage of raw materials for all new structures needing renovations should conform to the ancient architectural patterns in existence in the sacred area concerned.
- 45 All rooftops should be finished in a manner by which the height would not exceed 12 meters from ground level and their height should be identical with that of the existing structure of the area.
- 46 Size and nature of all hoardings, nature of letters and symbols, size of letters and symbols, colour combinations, lighting, venue of installing hoardings, and height should be in conformity with the Kandy Development Plan and should be in consistent with the physical properties and architectural patterns existing in the area
- 47 Designing and planning of all structure should be handled by a chartered architect adept and competent in the preservation of ancient buildings

- 48 Any development activity whatsoever in addition to the guard rooms for maintenance of security shall not be permitted within the forest reserve under the authority of this area.
- 49 All development activities not in conformity with in the sacred area, Plans inclusive of any hazardous or dangerous activities or any alterations to the usages in existence would not be permitted in the area

Apart from above regulations, the following land use zones were made to be in force from the beginning of 2002. (Picture 28)

- a) Sacred area Zone
- b) Primary Residential Zone
- c) Mixed Residential Zone -1
- d) Mixed Residential Zone -2
- e) Commercial Zone – 1
- f) Commercial Zone – 2
- g) Commercial Zone – 3
- h) Public and Semi Public Zone
- i) Open spaces, Recreational and Parks and Play Grounds Zone
- j) Natural Conservation Zone
- k) Agricultural (Paddy Fields) Zone
- l) Forest Reservation Zone
- m) Water Bodies and Water ways Zone
- n) Roads and Railway Zone

Urban Development Authority made general and special regulations for each of the above-mentioned zones and enforced them applicable to any development from 2002 to 2016. According to these regulations, all sites and premises in each of the designated zones to be used only for the purpose so designated. Every person who wants to develop a site or building has to obtain a Development Permit and no person is allowed to use any site or

building for a purpose other than the use approved in the Development Permit.

According to the Zoning Plan, the regulations imposed on Sacred Area Zone, Primary Residential Zone, Mixed Residential Zone 2, Commercial Zone 1, Forest Reservation Zone and Water Bodies and Water Ways Zone are of importance to the protection of the World Heritage Site.

Accordingly, the regulations appeared in the Gazette notice of 8th November 2001 were made enforced in the Sacred Area Zone. The permitted uses with in the Primary Residential Zone were for dwelling Houses but the development, which harmonise with the area also could be permitted. All uses identified with in the Primary Residential Zone together with the facilities required for tourists were permitted in Mixed Residential Zone 2. The regulations imposed under the Commercial Zone 1 are of primary importance for the protection of the world heritage site as most of the development pressures are focused in this area. The Zoning regulations imposed with in this area allowed the sites and buildings to be used for activities such as -

- 1 Dwelling Houses,
- 2 Hotels,
- 3 Dispensaries, and Medial Clinics,(Gross Floor Areas should not exceed 50 Sq. Meters)
- 4 Professional Offices,(Gross Floor Areas should not exceed 50 Sq. Meters)
- 5 Gust Houses,(not exceeding 05 rooms)
- 6 Restaurants, and Eating houses(Gross Floor Areas should not exceed 150 Sq. Meters)

- 7 Groceries, Tea Boutiques, and Neighbourhood Shops,(Gross Floor Areas should not exceed 25 Sq. Meters)
- 8 Primary Schools and Kindergartens, Montessori Schools,
- 9 Religious Institutions,
- 10 Shops other than liquor outlets and meat stalls,
- 11 Banking and Financial Institutions,
- 12 Service Industries, (Gross Floor Areas should not exceed 15 Sq. Meters)
- 13 Neighbourhood Parks, Children's Parks, Open Spaces, landscape Areas and Urban Forests.

The most important regulation imposed in this zone is the height of the building. Any building in this zone was not to be constructed exceeding 12 meters at the highest ridge level and the character of the roof should be tiled having a minimum slope of 22 ½ degrees. But this height could be relaxed considering the distance from the Tooth Relic Temple and the elevation from the MSL. Permitted uses in the Forest Reservation Zone were according to the Gazette notification of 8th November 2001.

Apart from the above zoning regulations, Urban Development Authority has imposed Planning and Building Regulations for the Kandy Municipal Council Area. Under these following regulations has been enforce for the Conservation of Places of Historical or Architectural Interest or Landscape Value.

1. Direct owner of any building or structure listed as conserved buildings with in the Sacred area and commercial Zone 1, not to demolish, redevelop, alter, improve or change the use of such building or structure or to direct such owner of occupant to maintain

such building to the satisfactory manner

2. Direct owner of any building other than in the Sacred area and commercial Zone 1, refrain from any development activity considering the uniqueness and extent of architectural character of such building or structure or permit any development considering the extent to which such building or structure obstructs the expansion of existing infrastructure networks, nature of development taking place in the surrounding areas, land values in the area and zoning scheme applicable in the area.

3. All new construction with in the Sacred Area Zone conforms to the following specifications.

Description	Prescribed Standard
(a) Total maximum area of voids in the facades	50%
(b) Prohibited materials in facades	i) Contrast Materials ii) Mosaic Tiles iii) Mosaic Glass iv) Glass Tiles v) Wire-cut Bricks vi) Exposed Rubble vii) Shinning Colours viii) Contrast Colours ix) Contrast Aluminium x) Cladding
(c) Specification as to ridgelines	Shall respond and continue the level of ridge lines in surrounding buildings
(d) Standards for roofing permitted slopes	
i. Calicut Tiles	22 ½ ⁰
ii. Half Round Tiles	22 ½ ⁰
iii. Traditional Kandyan Flat Tiles	30 ⁰
iv. Prohibited Roofing Materials	Asbestos, GI Sheets, Zn/Al/and Zn/Cu sheets, Tar Sheets and Fibre-Glass Sheets
v. Recommended Roof Form	Gable and Hip-roof
Any new building on existing conserved building shall blend in ridge height, eve height and roof form	

4. Any premises or area of scenic or landscape interest will be given instructions to conserve and maintenance of such premises.

4.4. Implementation of Kandy Development Plan

The Provincial Office of the Urban Development Authority situated in Kandy primarily controls the Kandy Development Area. The Provincial Director obtains guidance from the Department of Archaeology and other necessary authorities as and when necessary. All development plans are being scrutinised by the planning committee of the Kandy Municipal Council in which the Project Manager of the Kandy Project of the Central Cultural Fund is a member. The Municipal Council has set up a section in the name of World Heritage Section to provide guideline and to manage and coordinate the activities with in the Heritage area. It also has created a web page namely – www.kandycity.org, to provide information with regard to the activities of the Municipal Council. The Kandy Project of the Central Cultural Fund has set up a World Heritage Office to provide guidance for the developers who wish to submit the development proposals with in the Sacred Area Zone and the Protected Buffer Zones. The Kandy Municipal Council has created a committee to monitor the activities with in the area. (Picture 29)

An Act to create a Kandy Heritage Foundation to identify, prepare, and carry out activities with in the City has been prepared by this committee is now with the Cultural and National Heritage Ministry to be submitted to the Parliament.

CASE STUDY TWO – WORLD HERITAGE SITE OF SIGIRIYA – A RURAL SITE

5. Historical Account

According to archaeological investigations, prehistoric humans between 10,000 to 20,000 years ago had probably occupied Sigiriya and the surrounding areas, although the earliest dates available go back to 5000 BC. During the Proto-historic period from 1000 to 3000 BC, significant development involving food gathering, hunting to agriculture had been seen in the area. Millet and rice cultivation, village settlement, irrigation and the production and use of iron were prominent within this period. From 3rd to 1st century BC, early monastic settlements were evident around the rock. Period between 1st to 5th century AD, the development of large-scale iron productions is seen in the area around Sigiriya. The major construction phase at Sigiriya dates to King Kasyapa I (477-495 AD) reign based on the chronicles. Prince Kasyapa together with the army commander Migara seized the throne from his father King Dhatusena I (459-477 AD) and executed him. King Kasyapa and his master-builders established his capital in Sigiriya by shifting it from Anuradhapura and gave it its present name, “Sima-giri” or “Lion-Mountain”. (Picture 30 & 31) He built his palace on the rock summit and laid out the fortified city and the garden complex around the rock. After his half-brother Moggallana defeated him, Sigiriya reverted to a monastic centre and lasted until about 13th or 14th century. Thereafter it has disappeared from the historical records until the reign of Rajasimha I of Sitavaka (1551-1593 AD) and then as a distant outpost and military centre in the 17th and 18th centuries.

In early 19th century, antiquarians together with the scholar monk from the neighbouring temple began to take an interest in the site. Archaeological investigation, restoration and conservation work by the Archaeological Department began in 1894. Successive Commissioners of the Archaeological Department were responsible for directing research, restoration and conservation over decades. They restored the access to the palace, excavated the summit & the water garden and

mapped the entire complex. The Central Cultural Fund's UNESCO – Sri Lanka Cultural Triangle Programme began its operations in 1982 involving large scale excavations and extensive conservation and preservation action. It not only concentrated its activities within the royal complex of rock, Palace, gardens and the western fortifications but also on the entire city and its rural hinterland. Sigiriya is considered to be a well-planned royal city and a multi faceted, multi-period settlement which extends to several square kilometres. The royal complex and the city, ramparts, moats, gateways and gardens of Sigiriya is considered to be one of the best preserved examples of ancient urban planning and place and garden architecture in South Asia and is an outstanding example of the 5th century Sri Lankan Town planning. (Picture 32) The rock murals in Sigiriya has gained acceptance among scholars as the finest example of classic realism paintings, drawn in traditional Sri Lankan style. (Picture 33) A marvel of 5th century technology can be seen in the construction methods adopted for the walled gallery on the ledge of the western rock face, which contains Graffiti dating from 7th century. The use of water for the aesthetic display of the site appears to have a special feature of Sigiriya hydraulics, made possible only by using almost every aspect of hydraulic engineering theory. (Picture 34) After assessing all these outstanding values in Sigiriya, the World Heritage Committee decided to inscribe the site a World Heritage Site in 17th December 1982 under Criterion II, III and IV of the operational Guidelines.

“Criterion II - offers the best justification for the request for inscription introduced by Sri Lanka. On the one hand, the frescoes of Sigiriya inaugurated a pictorial style which endured over many centuries. On the other, the site of “Lion mountain” was visited from the 6th century A.D. by passionate admirers. The poems inscribed on the rock by certain of these admirers and known by the name “Sigiri Graffiti” are among the most ancient texts in

the Sinhalese language, and thus show the considerable influence exerted by the abundant City of Kasyapa I on both literature and thought.”(Picture 35,36&37)

“Criterion III - This cultural property is a unique witness to the civilization of Ceylon during the years of Kasyapa I.”

“Criterion IV - May be involved as well to the extent that an exceptional and significant event was the determining factor in the creation of the empirical capital.”

6. Heritage Protection Efforts in Sigiriya

After the country fell in to the hand of British rulers, the protection of Sigiriya was recommenced. After the establishment of the Archaeological Survey of Ceylon in 1890, archaeological investigations and conservation, work was began in 1894 by the Department of Archaeology. Although the Treasure Trove Act of 1888 and the Antiquities Ordinance of 1900 provided legal support for the efforts in protecting the valuable heritage of the country, the protection of the heritage and its surrounding was only possible after the enactment of the Antiquities Ordinance in 1940. Sigiriya Heritage City was declared as an archaeological reserve according to the Ordinance, there by transferring the ownership of the land to the Archaeological Department. The individual monuments with in the area was declared as “Ancient Monuments”, which provided legal protection to the surroundings of the monuments by prohibiting or restricting activities on any land within a prescribed distance, which stands as 400 meters. Since then Sigiriya slowly and steadily grew as an attractive tourist centre for both foreign and local visitors.

The commencement of the activities of the UNESCO – Sri Lanka Cultural Triangle Sigiriya Project under the Central Cultural Fund in 1982 could be identified as a new era of not only protecting the World Heritage Site of Sigiriya but also a programme that was to be focused on the protections of the environment of which Sigiriya stands. In the year 1982 the statistics showed 95,230 foreign and 320,724 local visitors has visited Sigiriya. The authorities responsible for the protection of the cultural assets in Sri Lanka quickly realised cultural asset like Sigiriya should not only protected and preserved for posterity but also develop and promote the economic potentials of Sigiriya as a cultural and tourist centre. This would not only provide income needed for preservation activities but also would be an employment generation programme, which would provide an economic growth to the area. In order to achieve this it requires that the area in an around Sigiriya be comprehensively planned to provide for its conservation as well as future growth and also to maintain its socio-cultural value and to preserve the natural environment.

7. Development Plan of Sigiriya

In keeping all these factors in mind, the Central Cultural Fund requested the Urban Development Authority to undertake the task of preparing a development plan for Sigiriya. After declaring the entire Inamaluwa Korale of Dambulla A.G.A. Division as a development area under the Urban Development Authority law, a committee consisting departments, institutions, authorities responsible for the protection of culture; fauna and flora; preparation of development plans, provision of amenities; tourism was set up to prepare the development plan and to submit it to the government of Sri Lanka to implement it.

The main goals identified for this plan are:

- 1 To provide for the preservation and conservation of archaeological, cultural and natural environment in and around Sigiriya

- 2 To develop and promote the economic potential of Sigiriya as a cultural and tourist centre, depicting its status as a World Heritage City
- 3 To conserve and protect traditional agricultural patterns of village community around Sigiriya
- 4 To improve the standard of living of the settlers in “Purana Villages”
- 5 To encourage multi-disciplinary research into socio-economic, ecological and archaeological aspects of Sigiriya and its environs

7.1. Basic Information

Sigiriya is an outstanding example of 5th century Sri Lankan town planning. It is a royal citadel consisting of a Royal Palace sited on the summit of a massive rock outcrop, which rises approximately 165 meters from the plain that surrounds the rock, fortified by a series of massive earth ramparts, wide moats and entrance gateways with masonry walls. The view from the summit is a splendid 360-degree visual sweep. The Royal Pleasure gardens located within the innermost rampart is the earliest landscaped garden in Asia. The 5th century paintings in the rock surface have gained acceptances among scholars as the finest examples of classic realism paintings drawn in traditional Sri Lankan style. Archaeological evidence indicates that almost every aspect of hydraulic engineering theory had been followed by constructing tanks and cisterns to store water; conduits, aqueducts and canals to carry water; and sluice valves to control the water. In the immediate vicinity of Sigiriya number of ancient monasteries could be seen with the evidences of prehistoric settlements. Directly south of Sigiriya the ancient tank bund of the Sigiriya Maha Weva could be identified.

At the time of the preparation of the development plan, the population of the Innamaluwa Korale in which Sigiriya Stands is 10,950 with a growth rate of 2.2%. The number of workers engaged in non-agricultural employments

constitutes nearly 27% with an agricultural workforce of 67.8% of the total employed labour force. However, the availability of ground water and water for irrigation is limited. The future development of the area was to create more job opportunities in tourism, small industries, trade and commerce, service sector and construction. According to the land use pattern of the area, 65% consists of forest cover, 18.4% agricultural, 4.1% water bodies, and less than 5% is the built environment. As the tourism is one of the most important foreign exchange earning industries in Sri Lanka, Sigiriya is considered as the most attractive cultural and natural site in Sri Lanka. At the time of the study, Sigiriya had 167 hotel rooms while the cities closer to Sigiriya had 352 rooms, which were considered adequate for a period of three years.

7.2. Objectives and Strategies of the Development Plan of Sigiriya

The objectives of the development plan are:

- 1 To formulate and implement a comprehensive development plan for to provide the preservation and regulatory development of areas and resources in an around Sigiriya
- 2 To introduce land use zoning, regulation of developments, and detail buildings and environmental standards to regulate development
- 3 To promote activities which create further attraction of tourists
- 4 To provide employment opportunities for the local population both directly and indirectly in agriculture, industries, etc. and create favourable condition to sell their products
- 5 To provide alternative employment opportunities for surplus labour force in traditional villages in the new sectors such as highland farming, domestic industries, folk arts, commerce and services
- 6 To make available basic facilities to “Purana Villages” to improve their living standards

- 7 To provide a link between the Sigiriya Cultural Complex and “Purana Villages” in a manner that will not merely bring about some economic advantages to traditional villages but to avoid undesirable social impact of tourism development
- 8 To provide planned urban centres to cater to the tourism and other development activities as well as the other public and community facilities to the urban population who depend on such activities.

The identified strategies of the development plan are grouped under three sub headings. They are:

1. Physical Strategy

- Development of a focal point adjacent to the Epicentre for agriculture, tourism and service based activities
- Improvement of a corridor connecting the focal point
- Development of a node at the intersection from the south east highway to Sigiriya for commercial and service activities
- Promotion of a development corridor linking two main centres mentioned above
- Enforcement of controls in the area designated as a archaeological zone
- Development of Purana Villages with access from the urban service centre
- Control of the forest reservation adjacent to water bodies and streams
- Development of a special area for highland farming to avoid haphazard use of land and water bodies for agriculture
- Development of scenic way roads and jeep tracks to promote tourism
- Development of the airstrip to a domestic Air Port

2. Conservation Strategy

- 1 Effective enforcement of existing laws through a zoning plan

- 2 Define the areas to be conserved
 - 3 Formulation of regulations governing conservation and development
 - 4 Establishment of a mechanism to implement the zoning plan and to administer regulations
3. Economic Strategy
- 1 To provide infrastructure and supporting facilities through public investment
 - 2 To increase the tax levy imposed on the tourist entering Sigiriya Archaeological Reserve
 - 3 To allocate lands in the area proposed for development to private developers for tourism based activities both foreign and local, commercial development , housing, etc. and to collect a market lease or rent

7.3 Development Policies and Proposals

The basis to formulate development policies under this plan is to re-orient the economic base to promote desirable development by disregarding destructive activities in the area. Conservation and preservation of archaeological monuments and artefacts, wilderness landscape and water resources was to be restructured in the area by providing alternative suitable locations for other socio-economic activities.

The major aspects considered in formulating development proposals are basically attributed to conservation and preservation character and to promote urban development character.

Conservation and preservation proposals are –

- 1 Conservation and preservation of cultural heritage
- 2 Conservation and preservation of natural heritage

Urban development proposals are –

- 1 Agricultural development
- 2 Tourism development
- 3 Alternative development, i.e. construction, small industries, trade, commerce, housing, etc.,
- 4 Administrative development

7.4 Development Guidelines and Regulations

The Guidelines and regulations was prepared to control the development in the Sigiriya heritage City area in order to conserve and preserve the archaeological, architectural, cultural and environmental character of the monuments and the surrounding vicinity in relation to the built environment.

In order to achieve these different zones were identified. They are:

1. Epicentre Zone
2. Wilderness Zone
3. Purana Villages
4. Residential Zone
5. Tourist Zone
6. Cultural Zone
7. Aviation Zone
8. Growth Corridor
9. Commercial and Services Zone
10. Agricultural Zone
11. Water Bodies
12. Major Roads, Minor Roads and Footpaths

All these zones were to be provided with development regulations and special controls to be enforced to enhance the character of the area.

7.5 Implementation of the Sigiriya Development Plan

In order to implement the Sigiriya Heritage City Development Plan it was suggested to establish management structures at the National/Policy level, National Executive Level and Local Executive Level. The committee at the national level will be a Steering committee, which will monitor the implementation. The National Executive Level committee will handle the project fund while the local committee will handle the grassroots level implementation.

As a first step on the 23rd January 1990, 126 hectares around Sigiriya was declared as a Sanctuary under the Fauna and Flora Protection Ordinance in order to protect the forestry, wild life, natural environment and the ecology together with the cultural resources. (Picture 38)

The Central Government as a policy thereafter accepted the above-mentioned development plan prepared for Sigiriya but its implementation was deferred. In the mean time the Central Cultural Fund together with the Department of Archaeology with the participation of Urban Development authority and the Department of Forest and Wildlife Conservation continued to monitor the developments in the Sigiriya Heritage City and its environment. The influx of tourists to Sigiriya showed a dramatically growth since 1990 and in 1992, 124,734 foreign and 560,061 local visitors visited the site. This growth on tourists to Sigiriya created a new pressure in the development of infrastructure required for tourism, the small township located in front of the outer moat, and the area near the existing hotels showed unauthorised constructions not suitable for the Heritage values. On the other hand, there was a request of 0.15-hectare land from the allocated 0.8-hectare area in the Hotel Development Zone to build a new tourist hotel.

In order to control the development of the Sigiriya Town, which was situated near the spill of Sigiriya tank that consists of 23 houses, 29 boutiques, a small temple and a school a proposal was made to relocate them at the head of the newly constructed approach road to the western entrance. The houses and shops which had a floor area of 19 – 33 Sq. M. build out of semi-permanent material and very poorly constructed were provided with 37 – 65 Sq. M houses and shops build with permanent materials. The temple, which has an area of 75 Sq. M, was offered with a temple of 140 Sq. M. Central Cultural Fund provided the entire expenditure of this relocation programme which was commence in 1993 finally completed and handed over to the villagers in 1995. Picture 39)

The question of requesting a plot of land to construct a hotel was a different issue. The Central Cultural Fund decided to appoint a committee not to provide approval of grating a plot of land for a construction of a hotel, but to prepare a policy guideline on hotel development around Sigiriya. After several meetings, the committee recommended to adopt followings.

1. To allocate a minimum of 0.1 hectares and a maximum of 0.15 hectares of existing land area of 0.85 hectares set apart to tourist hotel development for each developer baring in mind that only two hotels covering an area of 0.25 hectares has been utilized.
2. To allocate one hectare of additional land towards the south of the rock without disturbing forest cover and irrigable land. All buildings should be single storied type and roofline should not be higher than the light line drawn from the top of the rocks.
3. To allow tourist development along the highway leading to Sigiriya from the east west highway of Sri Lanka

4. To identify a special are in the Sigiriya new village and along the main access road mentioned above to provide facilities to local tourists such as pilgrim-rests, recreational day visitor facilities and youth hostels.
5. To follow following guidelines before any approval is given for new hotel projects.
6. carryout environmental impact assessment prior to the construction of any hotels
7. A planning committee consisting members from Department of Archaeology, Association of Group Tour Agents, Central Cultural Fund, Central Environmental Authority, Ceylon Tourist Board, District Secretary – Matale, Divisional Secretary – Dambulla, Tourist Hotels association and Urban Development Authority, should grant approval.
8. Design concept should be cluster type, roofs of public areas should be provided with foliage in between to prevent the seen from the top of the rock covered with tiles
9. Should only be single storied structures and the maximum height of the public area should not exceed 6 meters
10. The number of rooms should be 15 room per .01 hectare
11. Maximum extent for a hotel would be 0.15 hectares
12. Colour and texture should be specially approved by the Planning Committee
13. Safety regulations should be followed pertaining to fire, heavy vehicles, excessive traffic, etc
14. Natural water reservations should be protected and cared for
15. All plans and designs for infrastructure facilities should be approved in order to have them buries as far as possible

16. Noise, smells, waste water, sewage, chemical, solid waste, storm water pollutions should be brought down to conformity levels
17. Fishing, shooting, attire type of sports should be avoided
18. Rearing animals with in hotel premises should have prior approval
19. Food habits that are sensitive to the cultural and religious practices of the community should be avoided
20. All designs of fences or security barriers in terms of their materials, constructions, colour and texture should have planning approval
21. Any hoarding to be displayed should obtain planning approval
22. A minimum of 2/3 of the ground area should be left as open space
23. All garden layout plans, swimming pools, garden furniture, watch out pavilions, towers, etc should obtain planning approval
24. All designs of access roads, foot paths, interior link path ways, parking area, garages, paving details should obtain planning approval
25. Neon lighting for display and out door lighting will not be permitted
26. The overall requirement of hotel rooms in the area should not exceed 1000 rooms
27. Any change in guidelines stated in above item 5 should be referred to the main committee
28. Land falling with in the 400 meters boundary limits stipulated in the Antiquities Ordinance in the hotel development zone should only be utilized as open and green areas with proper landscaping that would be in harmony with the monuments located closely.
29. Tourist Board to process all applications for hotel development in consultation with the Planning Committee.

The government accepted these recommendations and Urban Development Authority was made responsible to monitor activities. Up to now no large scale hotel developments were approved with in the area demarcated for

hotel development. But there had been number of single storied developments taken place along the main approach road to the Sigiriya from east west highway some are in conformity with the standards laid in the development plan and some are not.

The major deviation that could be seen over the years with in the Buffer Zone was the Air Port expansion project under took by the Sri Lanka Air Force in the year 2000. (Picture 40) The project was to expand the airstrip to allow to land supersonic fighter plans and to develop the airport to an international level to be used as an international airport. All the authorities joint together with the Department of Archaeology and protested to this decision but the government decided to go ahead with the project. But a non-governmental institution challenged the decision of the government in courts stating that this expansion will run in to the 400 meter area protected by the antiquities ordinance and will cause a serious threat to the authenticity of the World Heritage Site and will also be a threat to the Sigiriya Rock it-self. The court decided to issue an injunction order to the Sri Lanka Air Force and requested a report from UNESCO to evaluate the possible threats to the World Heritage Site due to the proposed development. In keeping with the recommendations of the UNESCO report, the project was abandoned and the Government decided build a new airport in Habarana area, which is about 30 kilometres away from Sigiriya.

At present Urban Development Authority is preparing a Grater Dambulla Development Plan, which also includes the Sigiriya Heritage City and its environs, which would bring planning and building regulations for the area with an aim to provide controlled development in the Buffer Zone of the World Heritage Site of Sigiriya. It is expected that this plan would be ready by end of the year 2006.

In the mean time, the Government of Sri Lanka has established a Foundation called SIGIRIYA HERITAGE FOUNDATION to preserve and promote the Cultural and Archaeological Heritage of Sigiriya World Heritage Site and its environs. Although the act was passed in the Parliament in 1998 ground operations of this foundation is yet to be commenced.

8. Conclusion

In Sri Lanka there are seven designated World Heriatge Sites. Out of the seven six are cultural sites. They are:

1. Sacred City of Anuradhapura
2. Ancient City of Polonnaruwa
3. Ancient City of Sigiriya
4. Sacred City of Kandy
5. Golden Temple of Dambulla
6. Old Town of Galle and its Fortification

The authorities responsible in protecting these sites, mainly the Department of Archaeology and the Central Cultural Fund has realised the importance of protecting the environments of these sites in order to protect the heritage values. They joined hand with the Authorities who are responsible for the controlled development in the country, namely – Urban development Authority and the National Physical Planning Department, and has formulated development plans together with regulations in order to develop the areas around the World Heritage Sites without hindering the values of the Heritage city.

The above case studies will provide the details of actions taken in two of the World Heritage Sites – Kandy in a Urban Environment and Sigiriya in a Rural Environment – in order to present that controlling the developments of Buffer Zone are very much important in protecting the Values of the World Heritage Sites.

9. Referances

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BUFFER ZONES AS A TOOL FOR PROTECTING WORLD HERITAGE SITES: THE CASE OF THE HERITAGE ROUTES.

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A Periodic Reporting exercise is one of the processes designed to control and report the state of conservation of World Heritage Sites¹. Its goal is to provide an assessment of the application of the WH Convention by States Parties.

The last exercise of Periodic Reporting finished in 2006 with the Report for the European and North America Region. Some of the regional reports made evident both the importance of buffer zoning¹ and its problematic. **T**he Periodic Report for Latin America and the Caribbean states: *More than 34% of all site managers do not deem the borders and buffer zones of their sites adequate to ensure the protection and conservation of the property's World Heritage values. Nearly half of all properties (49.2%) that submitted reports are even object of active consideration concerning the revision of the border or buffer zone* (WHC¹, 2006a)

In the Asia-Pacific region, 75.8% of site managers declare that the extension and buffer zone areas of their sites are enough to protect them. Nevertheless, 11.5% of the same managers declare that changes in the core area or buffer zone extension are being planned or discussed for the same sites. 24.% of managers indicate that the buffer zone of their site is not sufficient to guarantee its conservation. It is equivalent to 35.5% of managers declaring that the buffer zone area for their sites are being or should be modified. (WHC 2004)

In the case of Latin America and the Caribbean region *the great majority of the sites in both groups are cultural. This indicates that cultural heritage is very dynamic. This is probably due to fast changing concepts of heritage and/or high outside pressures (e.g. development pressure). The data seem to suggest that cultural properties (perhaps especially historic monuments) will need active assistance by the World Heritage Committee in future transitions.*

There are also important comments on buffer zone in the Periodic Report for Europe. Related to the nomination process, one of the issues mentioned in the site reports *was the increasing complications encountered in the delimitation of*

¹ World Heritage Centre.

boundaries and buffer zones of properties, stemming from increasing pressures of urban development and, for natural sites, the potential threats from mining and other extraction industries.

The European report makes reference to one of the most important problems for sites already inscribed on the WHL. Many inscriptions made before 1998 were not clearly delimited. 42% of European evaluated sites have no buffer zone. Such cases are not included in the above quoted regional reports. Notwithstanding, it is clear that such cases exist. Furthermore, 23% of site managers in Europe consider their boundaries inadequate. Item number 8 of the report for Europe is related to *Requests for decisions by the World Heritage Committee*. Two very important initial comments are to be taken into account to consider how appropriate is the issue of ICLAFI's 2006 meeting: firstly, *there is a need to review current Statements of Significance, boundaries and **buffer zones***; secondly, *confusion about the role and status of statements of significance, boundaries and buffer zones is evident* (WHC, 2006b). Resources for European managers are normally greater than those available in other regions. Thus, the significance of the above quoted conclusions is evident.

It is valid to discuss the buffer zone issue for all kind of WHS². However, there are some more complex categories. Different solutions have been applied to deal with the buffer zoning process for some of them. For example the "Historic monuments of ancient Kyoto" (Japan) WHS includes seventeen historic monuments located in separate areas belonging to the administrative territories of the cities of Uji and Otsu in Kyoto. *To protect and control the surrounding environment of each core zone, two levels of buffer zones were set up for further protection of those sites. One is a set of zones which protect the immediate vicinity of each core zone, and the other is a single wider zone covering all of the seventeen sites and their immediate buffer zones in one area.* (Ishikawa, no date).

Another example of a complex situation is the one involving the *Works of Antonio Gaudi* (Spain), qualified as a *serial nomination of monuments*. Originally, three works of Gaudi were inscribed (1984). In 2004 twelve new sites in six localities were added (see

² World Heritage Site.

http://whc.unesco.org/archive/advisory_body_evaluation/320bis.pdf). The evaluation report of ICOMOS says: *The nominated core zones are generally limited to the building. Each property has its own buffer zone. In the case of properties situated in the park or having a garden, this would become the buffer zone. In the case of buildings in urban areas, the buffer zone is formed of the neighbouring lots, according to the Catalonian legal requirements. The buildings that are situated in Barcelona are also part of the urban conservation area, which forms a second more general buffer zone, guaranteeing full planning control. In the case of the Crypt of Colonia Güell, there is a conservation master plan for the entire Colonia, including the industrial plant and the residential area. Generally speaking, this can be considered sufficient.* (WHC, 2005)

THE HERITAGE ROUTES CASE.

Heritage routes category has been included in the latest version of the *Operational Guidelines for the Implementation of the World Heritage Convention*³ (2005) Annex 3. The term *heritage route* is, in principle, synonym of *cultural routes*. The last expression is used by the ICOMOS International Committee on Cultural Routes (CIIC). As the term “cultural routes” is being used with different meanings by institutions such as the European Institute of Cultural Routes, it is probably better to uniformly use the expression *heritage routes* for WH cases.

The concept of heritage routes proposed in the Draft Chapter on Cultural Routes, currently under discussion, is defined as:

Any route of communication, be it land, water, or some other type, which is physically delimited and is also characterized by having its own specific dynamic and historic functionality, which must fulfil the following conditions:

- a) *It must arise from and reflect interactive movements of people as well as multi-dimensional, continuous, and reciprocal exchanges of goods, ideas, knowledge and values between peoples, countries, regions or continents over significant periods of time;*

³ In the future “Operational Guidelines” in this paper.

- b) *It must have thereby promoted a cross-fertilization of the affected cultures in space and time, as reflected both in their tangible and intangible heritage;*
- c) *It must have integrated into a dynamic system the historic relations and cultural properties associated with its existence.*

Taking into account the above quoted concept, we can say that the core area of a heritage route is, mainly, the path itself. However, this answer is not good enough to solve the problem. Cultural routes can have very different extensions and levels of complexity. One of the biggest examples is the Silk Route, beginning in China and with branches to different points of Asia, Africa, Europe and America. It includes earth and water routes. Thus, to define the buffer zone of heritage routes can be a very difficult task. For this reason, it is necessary to take into account some basic guiding principles.

There are other factors increasing the complexity of determining core areas and consequently buffer zones for heritage routes. A route is not only constituted by its road but also by other elements that must be included in its basic definition. It includes all other material goods functionally linked to the historical use of the route itself. Examples of this are cathedrals, churches, hermitages, monasteries, convents, sacred cemeteries and places on religious routes; fortresses and other defensive constructions on military routes; and many other kinds of goods depending on the kind of route we are working on. Furthermore, the meaning and sense of a cultural route also includes intangible elements.

Routes crossing the territory of more than one country will face the problem of different legal and administrative systems. It is necessary to reach international agreements and coordinate land management.

We have prepared the next graphic to explain different elements forming a heritage or cultural route⁴:

⁴ Martorell C., Alberto. *El Qhapaq Ñan (camino principal andino) como itinerario cultural*. En *La Representatividad en la Lista del Patrimonio Mundial El patrimonio Cultural y Natural de Iberoamérica, Canadá y Estados Unidos* Santiago de Querétaro, México. Diciembre 12-16, 2003. ICOMOS & CONACULTA-INAH, Mexico. (Monuments and Sites: IX) (2004). Adapted to the Route of Santiago de Compostela in Spain for its presentation in the paper Complexity of the Route of Santiago as a World Heritage site submitted to the 9th Annual US/ICOMOS International Symposium April 19 - 23, 2006 in Newport , Rhode Island *From World Heritage to Your Heritage*.

Most of the terms used in Figure 1 are part of the general concept of heritage or cultural route. By ***material substratum***, we mean all existing material traces and functional structures of the route in our days (at least essential elements). By ***cultural substratum***, we mean the general framework where the historical interrelationship process has taken place. Finally, the ***historic substratum*** is represented by the significance of time during which the interrelationship process was or still continues to take place.

Paragraph 100 of the Operational Guidelines states that *boundaries* (of a WHS) *should be drawn to include all those areas and attributes which are direct tangible expressions of the outstanding universal value of the property*. That task is not easy when dealing with heritage routes.

Defining the boundaries of a heritage route implies identifying the material route itself and the heritage goods functionally linked to it. Furthermore, buffer zones must be defined by evaluating the elements to be protected in each section of the route. Extensions and regulations are necessary to protect the route values and they can considerably differ from one section to another of the same route. It is inadequate, at least for some of its areas, to establish a regular buffer zone for the whole extension of the route. Case studies to be presented in this paper will explain this.

We will refer to the Route of Santiago de Compostela in Spain as our main case study. Other WH routes that will be used as complementary case studies are: the Route of Santiago in France, La Quebrada de Humahuaca in Argentina, Sacred Sites and Pilgrimage Routes in the Kii Mountain Range in Japan and the Incense Route - Desert Cities in the Negev in Israel.

CASE STUDY: THE ROUTE OF SANTIAGO DE COMPOSTELA IN SPAIN.

The Route of Santiago de Compostela in Spain (Camino Frances) was the first heritage route inscribed on the WHL (1993). It is the longest and probably the most complex WHS.

Its physical definition and authenticity are based on the "Codex Calixtinus", a book dating from the 12th Century, known as the "*Liber Sancti Jacobi*" (J. Bedier, 1966). Book V of the Codex, named *Liber peregrinationis*, is considered *the first traveler's guide of the Jacobean pilgrim* (Bravo, 1989). Importantly, the

continuity of the medieval route can be recognized in the current path of the WH Route. It is difficult to affirm that the route inscribed on the WHL is exactly the same described in the *Liber peregrinationis*, but most of places originally forming part of it still serve as references for pilgrims.

The Route of Santiago in Spain fulfils each one of the theoretical requirements to be defined as a heritage route. However, at the time of its inscription on the WHL the concept was really new. The first meeting of experts was held one year after in Madrid⁵. Later on, many principles and methodological tools for the identification and management of cultural routes were created.

Different modifications to the Operational Guidelines of the WHC have included new requirements for the identification and management of WHS. Inscriptions made during the first years of the application of the Convention have some basic gaps. The case of the Route of Santiago in Spain is an example of such kind of gaps. For example, it has been determined that some of the towns formally included in the nomination dossier are not located on the historical route. On the other hand, some towns that were located on the historical path to Santiago were not included in the dossier (Martorell, 2005).

Identification of the WHS in its inscription says: *There are two access routes into Spain from France, entering at Roncesvalles (Valcarlos Pass) and Canfranc (Somport Pass) respectively; they merge west of Pamplona, just before Puente la Reina. The entire length from the French frontier to Santiago de Compostela itself has been nominated for inclusion on the World Heritage List. It passes through five Comunidades Autónomas and 166 towns and villages. In doing so it includes over 1800 buildings of historic interest, listed in an inventory attached to the nomination form. These include religious establishments of all kinds (cathedrals, parish churches, chapels, abbeys, monasteries, and hermitages), foundations designed to assist pilgrims (hospitals, inns, and hospices), administrative buildings and private houses and palaces in the towns and villages along the route, and other structures such as bridges, locks, and commemorative crosses. In date they range from the 11th century almost to the present day (Unesco, 1993).*

⁵ *Routes as Part of Our Cultural Heritage. Report On the Meeting of Experts.* MADRID 24-25 Nov. de 1994. WHC-94/CONF.003/INF.13. Available from <http://whc.unesco.org/archive/routes94.htm> (Accessed: 08-10-06)

The same document establishes that *the protection zone broadens out in places to include towns, villages and buildings protected under other Spanish legislative instruments as to their individual cultural qualities.*

What we are contending is that the new theoretical, identification and management instruments developed during the last 10 years should be used to improve both the definition of the core area and the necessary extension of the protections to guarantee the preservation of the Route of Santiago de Compostela in Spain.

Another problem has been identified by WHC Retrospective Inventory Program whose *immediate goal ... is to identify those sites that do not yet have clearly defined boundaries or maps, and to request the States Parties to provide improved maps and other necessary information, as officially indicated by F. Bandarin⁶.*

The excerpt from the Inventory Forms concerning the Route of Santiago in Spain indicates that the specific problem identified in the case of the Route is related to the 1800 *separate structures associated with the route, although not necessarily on the route or within the boundaries identified by the 1:50,000-scale maps or village plans* included in the dossier for the route itself. *The only locational information provided for these structures is the name of the municipality. It is not currently possible to know whether these separate structures are within the linear route, much less to map the properties or to know their precise size.*

The above quoted document implies that there is not a clear identification or bordering of those 1800 structures. It is really an important issue. However, there are also problems with regard to the relationship between the towns and the site itself.

The excerpt from WHC makes reference to this problem: *For example, in Hospital de Orbigo (Province of León, map 31), there are 4 structures; in the Municipio de Villares de Orbigo, 3 structures; and in the Municipio de Villarejo de Orbigo, 6 structures. While Hospital de Orbigo is located on the route, Villarejo de Orbigo is 2.4 km north of the route; and Villarejo de Orbigo is 1.6 km south of the route.*

⁶ WHC communication 30 August 2005. Ref. : WHC/74/Esp/PST. Subject: Retrospective Inventory project: Geographic Identification of World Heritage Properties in Spain.

The question is: are those 3 structures in the Municipio de Villares de Orbigo and 6 structures in the Municipio de Villarejo de Orbigo so important to the Route of Santiago as to justify including them as part of the WHS?

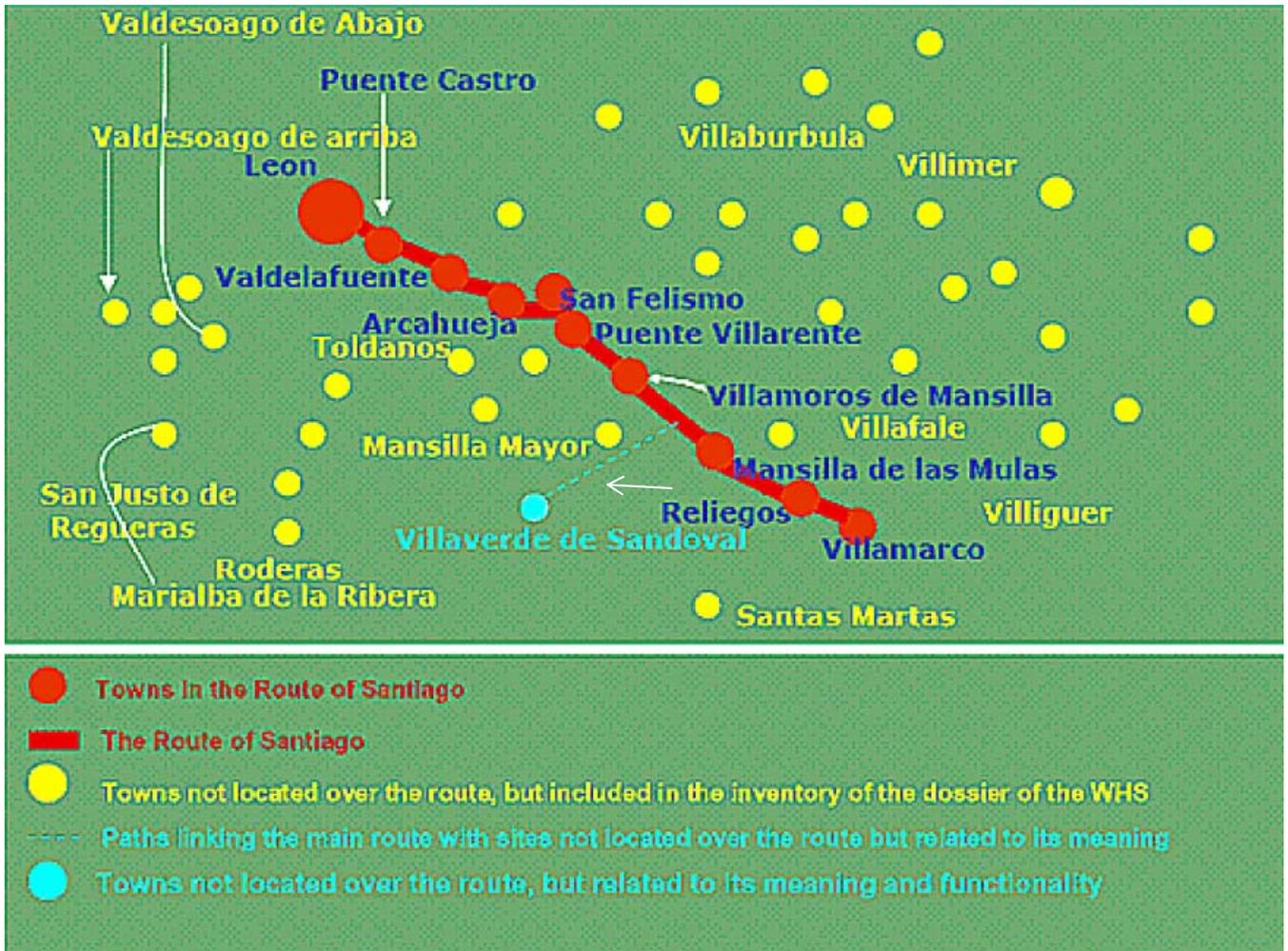
The problem is even more complex: Villares de Orbigo is a municipal jurisdiction which includes more than one village. The 3 sites included in the inventory list annexed to the WH dossier are located in different towns. Those are: the Parish church of Moral de Orbigo village, the Parish church of Santiago de Valdeiglesias village and the Church of Santiago in Villares de Orbigo itself. We are not aware of any special historical link or special symbolism between the mentioned Parish churches and the Route of Santiago. In our opinion none of the quoted churches have a *functional link* to the route of Santiago justifying their consideration as part of it. It should be necessary to study whether environmental values of the area justify including Villares de Orbigo as part of the buffer zone.

It makes no sense to think that a medieval pilgrim walked more than 3 kilometres from his principal route to visit a church with no special symbolic value.

Villarejo de Orbigo is in a similar situation: it is a municipal jurisdiction covering different towns and villages. Structures contained in the inventory of the WHS include: the Asuncion Church in Estebanez de la Calzada, the Church of St. John the Evangelist and an unidentified house in Veguellina de Orbigo; the church of St. Michael and the Monastery of St Mary in Villoria de Orbigo; and the church of St Martin.

We have designed the next figure (number 2) to explain the similar situation close to the city of Leon:

Figure 2: A graphic example of towns included in the inventory of the dossier for the inscription of the route of Santiago de Compostela in relation to the historical route.



All the towns coloured in yellow are covered in the inventory attached to the dossier of Santiago de Compostela as WHS. The situation of San Justo de Regueras, Villiguer, Villimer and other towns - not all of them identified by name in order to avoid confusion in the map - are in a situation similar to that of Villarejo de Orbigo and Villares de Orbigo.

It is necessary to redraft at least the inventory of towns and goods contained on the WHL. The basic route is that of the Calixtinus Codex. But many factors should be considered to redefine the description currently included in the WHL. In our opinion, it is necessary to differentiate a core area, a secondary area with sites that **have** a special meaning for pilgrims, even though they were not part of the route itself, and a buffer zone.

The **core area** of any heritage route is formed firstly by its physical path. There is in fact a route used by pilgrims walking to Santiago nowadays. The Route of

Santiago is, principally, well determined. Nevertheless, it is necessary to make specialized studies in some areas. For example, there are some towns located close to the original route, according to traditional narratives and their place names, but that are no longer considered as part of it. An evaluation of their importance for the history of the pilgrimage should be done to determine the necessity of recuperating those towns as part of the protected route. It would also be necessary to recuperate old traces of the route through archaeological methods. In some areas it is possible to find vestiges of old roads that could be part of the original route.

By **secondary areas** of special significance, we refer to those sacred sites not located on the route but meaningful for pilgrims. In those cases, we are of the opinion that the road that links the main route with those places, the sites themselves and some complementary service areas that allowed pilgrims to visit those places should be considered as part of the WHS. Nevertheless, authenticity of information requires us to differentiate the main route to Santiago from those additional routes historically used by some pilgrims. Among those sites, San Juan de la Peña and the Leyre Monasteries are very important examples.

The **Buffer zone**, the main issue of ICLAFI's meeting in Hiroshima (2006), is discussed in the next subtitle of this paper.

Regional governments have taken on the task of defining the path of the Route of Santiago in the territories of the Autonomous Communities⁷ that it crosses. Delimitation documents have been definitively approved in Navarre, La Rioja, Castile-Leon and Galicia. In Aragon the delimitation is still under discussion. Those documents do not necessarily contain the same route as the one included in the WH dossier. Comparative analysis and corresponding corrections should be parts of the work to be done to improve the international inscription dossier.

Buffer zone of the Route of Santiago de Compostela in Spain.

⁷ Spanish is divided in 17th Autonomous Communities. The territory of 5 of them (Aragon, Navarre, La Rioja, Castile-Leon and Galicia) is crossed by the route. Taking into account immediate administrative responsibilities, general regulation, protection and management of the Route of Santiago is responsibility of each Autonomous Government for the section of the route in its respective territory.

As was said above, the Route of Santiago WHC Nomination Documentation (UNESCO, 1993) indicates that the protected historical complex includes 30 meters to each side of the route and all the medieval areas of cities and towns crossed by it. Suarez-Inclan (2000) underlines that this protection was established with a temporal character and that the final delimitation was to be determined by planning instruments. Buffer zones should be formally indicated in a revised version of the UNESCO dossier for the Route of Santiago.

Paragraph 103 of the Operational Guidelines currently in force maintains the principle that a buffer zone should be provided if it is necessary for the proper conservation of a property.

Nowadays, in almost all cases, it is necessary to include an adequate buffer zone when submitting a candidacy to the WHL. It is very difficult to sustain that a site does not require environmental protection, particularly when dealing with an extensive site. This is the case of the Route of Santiago. Its particular configuration and the fact that it **is** a long path of communication complicates its management and effective protection. It is necessary to establish as clearly as possible a protective system that guarantees the conservation of the different sections of the route.

Paragraph 104 of the 2005 Operational Guidelines defines a buffer zone as *an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination.*

The 30 meters area of protection to both sides of the Route of Santiago cannot be considered as a buffer zone. We think that it forms part of the core protected area. In the case of areas which contain medieval buildings, they are also part of the core area. However, it should be necessary to distinguish those cases where the town was created as a consequence of the route, from other

situations. There is no doubt that in such towns the whole structure and design, from its very beginning, is part of the route. One of the better examples is Santo Domingo de la Calzada, founded by “the saint of the route of Santiago”. In other cases, where the route crossed previously existing towns, the core area should be consisted as being just of the road, constructions located on its sides and those structures functionally linked to the route. Other historical areas could be considered within the buffer zone.

The second part of Paragraph 104 of the Operational Guidelines states that the buffer zone should include not only the immediate setting, but also the **important views** and **other areas or attributes that are functionally important**. It is crucial for heritage routes to apply this criterion.

Important views are related mainly to the landscapes values of the route and should be evaluated case by case. The Route of Santiago contains different landscapes defined by the physical and geographical features of the different territories crossed by the route. A detailed evaluation of those cultural and natural landscapes should permit to establish an adequate buffer zone.

In some rural areas it is necessary to modify the core area of protection, including not only the road but also some scenic values integrated to the pilgrims’ spiritual experiences, in order to protect the spiritual factors which may be the main element of the route.

The buffer zoning process implies legal protective regulation. In the case of the Route of Santiago in Spain there are the Autonomous Government regulations that we will present in Table 1. Only in the case of La Rioja is there a special reference to a buffer zone.

Table 1.

Autonomous Community	Normative text	Protected area
Aragon	Resolution (23/09/02) <i>Process for identification and delimitation</i> Resolution (25/10/02) <i>Corrigendum</i>	Rural areas: 30 m. to each side of the route Urban areas: To be designed in delimitation plans.
Navarre	Foral Decree 290 / 1998 (28/12/88) <i>Delimitation</i>	Rural areas: 3 m to each side of the route Bridges: Including their structures. Urban areas: 3 m to each side of the route.
La Rioja	Decree 14/2001 (16/03/01) <i>Declaration as good of cultural interest.</i>	Rural areas: 30 m to each side of the route as part of the core area. 250 m to each side of the route as a buffer zone . In properly justified cases, the area of 250 m. can be modified. Urban areas: To be designed in delimitation plans.

Castile-Leon	Decree 324/1999 (28-12-99) <i>Declaration as historical complex</i>	Rural areas: 100 m to each side of the route. Urban areas: To be designed in delimitation plans.
Galicia	Law 3/1996 (10-05-96) <i>Protection of the routes of Santiago</i>	Rural areas: not less than 3 m. to each side of the route. It can be changed by planning instruments. Urban areas: To be designed in delimitation plans. Bridges: Including its structures.

La Rioja has the most complete and interesting planning system. Volume 1 of the *Plan Especial de protección, recuperación y revitalización del Camino de Santiago en La Rioja*, (1997) establishes it as an objective the protection of the integrity of the route and its environmental and landscape values in rural areas. Landscapes are protected to avoid any visual effects or activities that could damage the environment of the route. Any intervention on the surroundings of the route requires a previous environmental impact study.

To know and protect traditional paths of the Route of Santiago in urban areas is one of the main objectives of the Special Plan of La Rioja. The same criterion should be applied to all villages, towns and cities crossed by the route. It is also necessary to identify and protect the route in those areas where new urbanization is planned.

The Special Plan of La Rioja identifies three different urban areas in relation to the Route of Santiago, which are:

- a) Historical areas directly linked to the Route: Areas of linear configuration determined by the historical path. Those areas should be considered as part of the WHS. Consequently, measures should be taken so as to clearly protect their authenticity and integrity values. The protection criteria contained in the Special Plan of La Rioja should be strengthened. Buildings and urban areas surrounding the route should be entirely protected. The current plan of La Rioja limits protection in some cases only to facades, allowing partial substitution of buildings. That level of protection is not enough for preserving a WHS.
- b) Areas without a particular historical interest by themselves but related to the route: this involves protecting the urban morphology. Projects in such areas should respect environmental values. These areas should form the buffer zone.

- c) Historical complexes declared as goods of cultural interest by the Autonomous Government. Those complexes are part of the route as it was established in the WH Nomination Documentation.

One of the principal conclusions relating to the buffer zone of the Route of Santiago, and any cultural route, is that it should be adapted to the characteristics of each different section of the route. Some sections require a very extensive area to protect landscape values. In other sites, the buffer zone should be smaller, but always include all cultural goods linked to the route. In historical cities or towns, traditional path and elements corresponding to medieval times should be included in the main area. A buffer zone should be designed according to each case.

The above-explained situation indicates that the length of 30 m. to each side of the route currently inscribed on the WHL is not enough to guarantee the protection of the route and all the goods functionally linked to it. The Autonomous Governments of Aragon, Navarre, Castile-Leon and Galicia should review both the basic delimitation and the buffer zoning of the Route of Santiago. Coordination to state general principles for the zoning process must be improved. The 3 meters of protection of both sides of the route stated in the norms of Navarre and Galicia disagree with the area inscribed on the WHL. It shall be modified.

The length of 30 meters contained in the dossier for the inscription of the route is not technically designed. A punctual evaluation of each section of the route and of each of the buildings and structures integrated into it must be done. In this way, the design of the route will not be regular for all its extension. It will be determined by the relevant features of each part of the route and its relation with regard to recognized outstanding universal values.

SOME REFERENCES TO BUFFER ZONING IN OTHER WORLD HERITAGE ROUTES CASES.

- a) **Routes of Santiago de Compostela in France**, inscribed on the WHL in 1998. The Routes in France are the continuation of the Route of Santiago de Compostela in Spain. Despite this fact, the inscription does not correspond to a heritage or cultural route.

The dossier for the inscription of the site, *se fonde sur plusieurs approches de la notion de route telle qu'elle a été définie par la Comité du Patrimoine mondial*. Despite of declaration, *il était impossible de proposer l'ensemble du réseau pour des raisons évidentes : altération du tracé et de l'aspect des voies affectées à la circulation automobile dans une majorité de cas; absence de protection juridique dans le cas de voies secondaires et de petits chemins dont beaucoup appartiennent à des particuliers*.

The result is that *this is an unusual nomination, since it differs in one important particular from that of the Spanish section... The French nomination... consists of a string of individual monuments of high quality and historical significance that define the pilgrimage routes in France but do not constitute continuous routes* (WHC, 1998).

It is an interesting case study from the point of view of the definition of a heritage route. Justification for the inscription is to be found in the fact that the sites included in the inscription are part of the old pilgrimage route. But the route itself does not exist any more in an integral way. Stretches specifically included in the inscription in the area of the Le Puy route cover just 157.5 km, more or less 20% of the 762 km of length of the route in France.

Sites listed in the dossier for the inscription of the Route of Santiago in France are identified with plans, maps and clear descriptive documents. As for the category of the property, the WHC documentation states that *this is a group of buildings*. Notwithstanding, the documentation continues saying that *it may also be a linear cultural landscape...*

On the other hand, the documentation makes reference to *some 800 properties of all kinds that have associations with the pilgrimage*. From all these sites, only *69 properties* were included in the nomination. They *demonstrate the geographical reality of each of the routes by making out its course at intervals; by means of significant examples illustrate the chronological development of the pilgrimage between the 11th and 15th centuries; and illustrate certain essential functions of the architecture along the routes, namely prayer (churches and monasteries); rest and care (hostelries and hospitals), and travel (crosses and bridges)*.

The heritage routes category would not accept this kind of limited listing. As in the case of the Route of Santiago de Compostela in Spain, all those 800 buildings should have been included in the nomination.

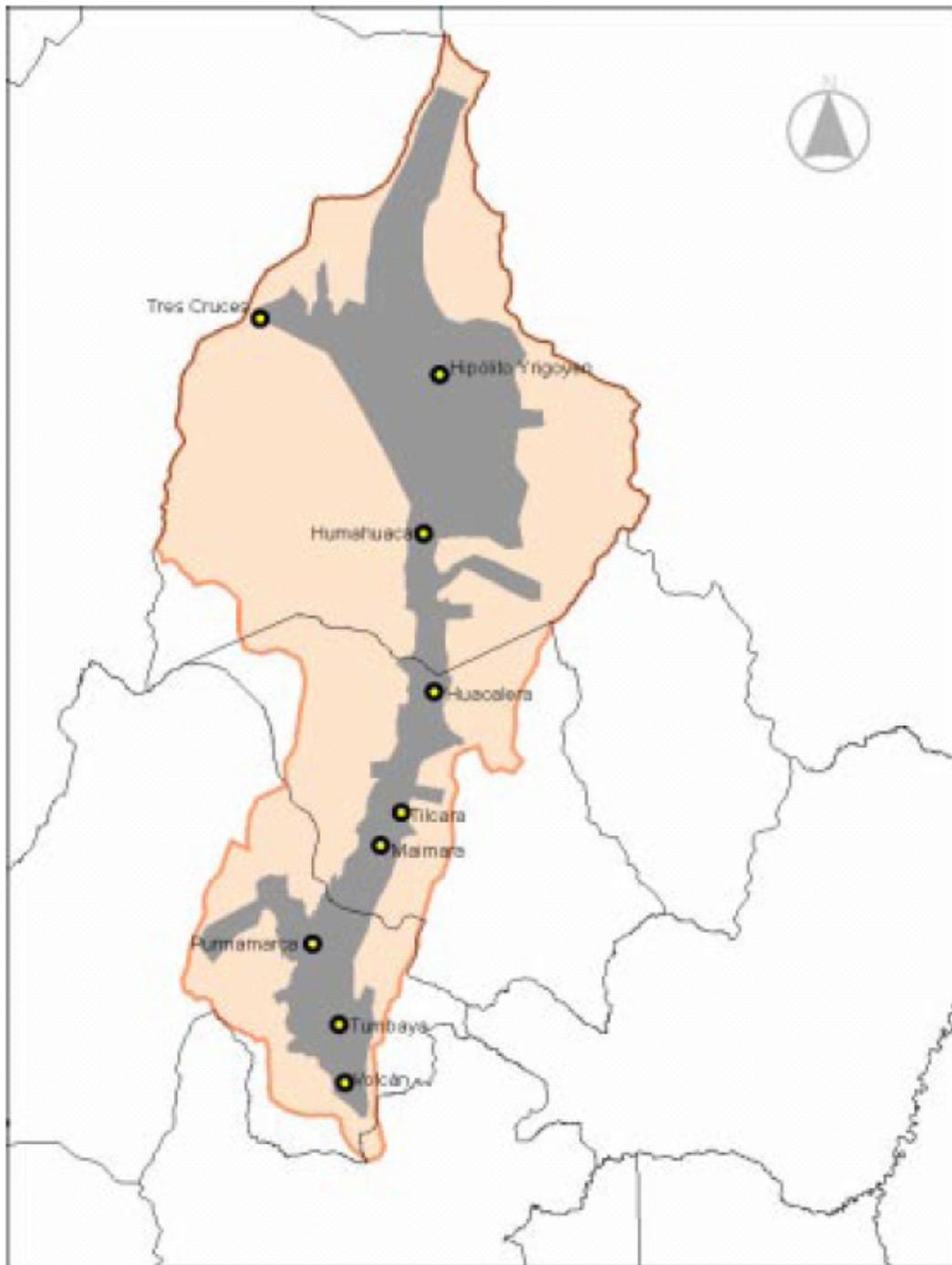
If we have a group of 69 monuments, there is no doubt that we are talking of a *serial declaration*, and not a heritage route. It is recommended to study in detail those 800 buildings and try to determine the historical path of the route. Archaeological studies can be useful to determine some more of its original stretches. If it is not possible to recuperate more sections of the route or, at least, identify its path, the unoriginal areas should be considered as **secondary sections** of the route. This would imply some degree of protection for the route as a continuous site. However, the good currently inscribed is not a heritage route. It is a group of monuments historically linked by a pilgrimage route. The identification of the monuments included in the dossier is made individually. A similar criterion is applied for the buffer zone designation.

- b) **La Quebrada de Humahuaca** in Argentina, inscribed on the World Heritage List in 2003, is a cultural route with more than 10,000 years of antiquity. It is part of both the Route of the Inca and the colonial Spanish routes.

The property follows the line of a major cultural route along the dramatic valley of the Rio Grande, from its source in the cold high desert plateau of the High Andean lands to its confluence with the Rio Leon some 150 km to the south. The valley displays substantial evidence of its use as a major trade route for people and goods over the past 10,000 years.

The core area and buffer zone are clearly explained in the next map:

Figure 3: Map of the core area and buffer zone of the Quebrada de Humahuaca WHS⁸.



■ Surface of the property proposed
■ Surface of the buffer zone

⁸ Fellner, L. (Coord). *Quebrada de Humahuaca. A Cultural Itinerary of 10.000 Years. Proposal for the Registration to the List of World Heritage of the UNESCO*. Province of Jujuy, Argentina Republic, 2002.

The dossier for the inscription of La Quebrada de Humahuaca doesn't contain more information on the criteria used to determine the buffer zone. We submit that the main criterion applied was the geographic configuration of the Quebrada, its higher mountains being a special environmental and visual feature of the area. Within Argentina's national legislation, Law N° 5.206 (2000): *Designates as Protected Landscape to the Quebrada de Humahuaca, in function of the reaches of the General Law of Environment, Section VII, Art. 122° that settles down as obligation of the State the identification of the panoramic or scenic resources that will be protected by their special characteristics, where it will be prohibited all work type or activity that could alter the same ones; to fix limits of height or to determine construction styles to preserve aesthetic, historical or cultural values and to try that the tourist activities develops preserving the natural, cultural and historical integrity of each place..* (Fellner, coord. 2002)

- c) **The Incense Route and the Desert Cities in the Negev**, in Israel, inscribed on the WHL in 2005. The site inscribed is the Israeli segment of the Incense Route that *commenced at Shabwah in Hadaramaut, the easternmost kingdom of South Arabia, and ended at Gaza, a port north of the Sinai Peninsula on the Mediterranean Sea*⁹. Thinking in terms of heritage routes, it must be said that this is only a section of a major route. Commercial activities linked to other parts of that route must be taken into account. Future possibilities of inscribing the whole extension of the Incense Route will contribute to the full conservation of it as one of the most important ancient trade routes around the world.

The route inscribed on the WHL fulfils all theoretical requirements for being considered a heritage route. The *short description* included in the materials for the nomination of the site¹⁰ makes reference to the road itself, several of whose sections were *cleared and marked by curb stones*, and other structures with functional relations to the route (defensive constructions, caravanserais, cities and towns). However, the whole extension of a heritage route should be identified and protected. In those cases where

⁹ State of Israel. *Supplementary material to the World Heritage Nomination file of the Incense Route and the Desert Cities in the Negev. Comparative Analysis*. WHC database (WHC registration N. 1107. item 13)

¹⁰ *Ibidem*, item 12

some stretches are chosen, all immaterial sources and material goods indicating the traditional path must be studied in order to identify the full route. This will guarantee the general authenticity of the route. *The nominated property is in four sections: the landscape and a 50 km section of the route from Petra to Gaza between Avdat and Moad; the town of Haluza further north along the same route; the town of Shivta, just west of this route and the town of Manshit on the route from Petra to Damascus* (WHC, 2005). In our opinion it would be necessary to carry out studies to discover all existing material vestiges of the route and/or all historical sources of information on its path so as to complete the route itself (or its historical path in areas where it is not possible) as a protected good.

The incense route and the Nabatean cities are all protected as National Parks and Nature Reserves, including their respective buffer zones. The evaluation of ICOMOS is very positive on this issue. When evaluating the risks, ICOMOS states that there are no development pressures because *the buffer zones for the nominated area are large and are within nominated national parks and nature reserves. This means development plans should have no effect on them. The only possible antipathetic activities mentioned are army training. Care would need to be taken that this training did not disturb evidence of ancient agriculture.* (WHC, 2005)

- d) Sacred Sites and Pilgrimage Routes in the Kii Mountain Range in Japan, inscribed on the WHL in 2004. The sacred pilgrimage routes of the Kii Mountain Range are the last cultural route inscribed by the WH Committee. *In all, the nominated site covers 495.3 ha. This is made up of the three main sites, which cover 44.8, 94.2, and 63.1 ha respectively, and 307.6 km of pilgrimage routes, which together cover 293.2 ha. The pilgrim routes nominated are not all contiguous as there are sections excluded where they have been influenced by modern development. All parts of the nominated site are protected by a buffer zone, which varies in extent from element to element – some of the routes only being protected by a very narrow zone. The whole buffer zone covers 11,370ha.*

The general sense and meaning of the route of pilgrimage have been preserved even though *there are sections excluded*. It would be better not to exclude those sections, but to distinguish them from original ones. The

pilgrimage routes of Kii Mountain are living routes. They continue being used by pilgrims nowadays. It is necessary to create a system to avoid stretches being changed without control because of development pressures. Even though their state of conservation is not sufficient for them to be considered as an element of a heritage route, the path itself should be protected as a secondary area or maybe by means of a special buffer zone applicable to heritage routes cases.

To define different extensions for the buffer zones as being applicable to different sections of the good is a valid criterion. Nevertheless, ICOMOS recommends the necessity of a sustainable management system from a forestry point of view... *as the "natural" elements of the site are strongly associated with the cultural values of spirituality.* The environmental frame of a spiritual pilgrimage is, in many cases, essential for the pilgrimage's sense and meaning. If not considered as part of the route itself, forestry should at least be protected within the buffer zone area.

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Buffer Zones for Protecting Heritage Properties in the United States

James K. Reap

This paper will address concept of the buffer zone as used to protect the surroundings of heritage sites, particularly those on the World Heritage List. The Operational Guidelines for the Implementation of the World Heritage Convention require¹ the identification and protection of a buffer zone whenever necessary for proper conservation of a listed property. The Guidelines go so far as to specify that when a buffer zone is not identified for a nominated property and explanation must be provided as to why one is not necessary. None of the listed World Heritage sites in the United States has an officially identified buffer zone because all US sites were inscribed in the World Heritage List prior to the development of the Operational Guidelines' requirement. The paper will examine the legal framework for heritage conservation in the United States, issues involving World Heritage, the controversy surrounding Yellowstone National Park, and some legal approaches that might be used to create a protected buffer zone not only World Heritage properties, but for other heritage properties and districts as well.

Overview of the Legal Framework for Heritage Conservation

The United States' Constitution is based on the premise that power should not be concentrated in one person or group, or in one place. Power at the federal government level is divided among three branches of government: the executive (President), legislative (Congress) and judicial (federal courts). Power is also shared among the different levels of government: federal, state, and local. The federal Constitution specifies which powers are granted to the federal government, such as defense, foreign relations, and currency regulations, for examples. However the Constitution also limits the power of the federal government and the Tenth Amendment further specifies that, "The powers not delegated to the United States (i.e., the federal government), nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Each state has its own constitution, which specifies which powers the state may exercise and which powers are delegated to local governments. The relationship between states and local governments is very complex, and differs from state to state. Local governments have no inherent power of their own – their authority comes from the state. Some states have given broad powers to local governments while others have given more limited powers.²

Among the powers traditionally reserved to the states is the so-called "police power", a concept derived from Anglo-Saxon law. This is the inherent authority of the state to regulate, protect and promote the public health, safety, morals, and general welfare. Exercising this power, states have enacted laws regulating the use of land and have delegated some of their authority to local governments. Many local governments, in turn, have enacted local planning, zoning and historic preservation laws. The U.S. Supreme Court has held that

¹ Paragraphs 103-107, <http://whc.unesco.org/en/guidelines>. Documentation of the historical development of the Guidelines may be found at <http://whc.unesco.org/en/guidelineshistorical>, accessed November 15, 2006.

² Berman, David R., "The Powers of Local Government in the United States", United States Information Service (USIS), <http://usinfo.state.gov/journals/itdhr/0499/ijde/berman.htm>, accessed November 20, 2006.

the power to protect buildings and areas with special historic, architectural, or cultural significance is a legitimate use of the police power.³

The United States and the World Heritage Convention

The United States took a leadership role in the creation of the World Heritage Convention and became the first nation to ratify it in 1973 by a vote in the Senate of 95-0. The United States has served as a member of the World Heritage Committee for much of that body's existence and in 1978 hosted the first Committee meeting that listed sites. Of the 12 sites listed at that time, two were in the United States: Mesa Verde and Yellowstone National Parks. Since that time, implementing laws and regulations— and politics – have had the practical effect of limiting U.S. participation.

As a signatory to the Convention, the United States is obligated to “ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage ... situated on its territory” and take “effective and active measures” to protect this heritage.⁴ The Convention calls on all States Parties to “recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate,” but does so while “fully respecting the sovereignty of the States on whose territory the cultural and natural heritage ... is situated, and without prejudice to property right provided by national legislation.”⁵

After the Convention entered into force, implementing legislation was established in the U.S. by the 1980 Amendments to the National Historic Preservation Act (NHPA)⁶. The 1980 amendments gave the Secretary of the Interior the responsibility of directing and coordinating U.S. activities under the Convention in coordination with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.⁷ Regulations setting forth policies and procedures used by the U.S. Department of the Interior to direct and coordinate participation were adopted in 1982 and continue in force. The regulations also

³ Penn Central Transportation Co. v. New York City, 438 U.S. 105 (1978).

⁴ Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37, 11 I.L.M. 1358, arts. 4-6.

⁵ Ibid, art 6.

⁶ The National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*, is the key federal statute in the area of historic preservation, establishing a partnership between federal, state and local governments following closely the approach set out in *With Heritage So Rich*, a report of a special committee under the auspices of the United States Conference of Mayors. The federal approach involves the establishment of national standards, designation of properties worthy of preservation (National Register of Historic Places), protection of listed properties from federally licensed and funded projects (Section 106), appropriate management of federally-owned properties, and the provision of incentives to state and local governments and private individuals. This law has served as a model for preservation laws in some other nations and represents a departure from the European model that traditionally focused on listing monuments to an approach focused on a broad range of heritage properties. It is at the local level in the United States where government has the “teeth” to protect heritage properties from damage or destruction by private owners. The regulation of land use through the police power is one of the traditional powers of state government guaranteed through the Tenth Amendment of the U.S. Constitution. State governments have, in turn authorized local governments to exercise this power by enacting historic preservation ordinances.

⁷ Public Law 96-515, December 12, 1980, 94 Stat. 3000.

address maintenance of the U.S. Indicative Inventory of Potential Future World Heritage Nominations⁸ and the nomination of sites to the World Heritage List.⁹

To date, twenty sites in the United States have been inscribed on the World Heritage List, two of which are sites jointly listed with Canada. Eight listings are cultural sites. However, no properties have been added to the list since 1995.¹⁰ With few exceptions these properties are National Parks, owned by the United States government. As stated above, none has a specifically designated buffer zone.

The relatively small number of U.S. inscriptions on the World Heritage List given the size of the country and its rich resources is due in part to the owner consent requirement included in the 1980 Amendments to the NHPA. The law prohibits any non-Federal property from being nominated unless the owner concurs in writing. The Interior Department adopted regulations requiring written concurrence not only from the owner of an individual property but from 100 percent of property owners in a multiple property nomination.¹¹

Additionally, each owner must pledge to protect the property by executing a legal agreement specified in federal regulations. For non-governmental properties, the regulations require (1) A written covenant executed by the owner(s) prohibiting, in perpetuity, any use that is not consistent with, or which threatens or damages the property's universally significant values, or other trust or legal arrangement that has that effect; and (2) The opinion of counsel on the legal status and enforcement of such a prohibition, including, but not limited to, enforceability by the Federal government or by interested third parties.¹² There is certainly a question as to the necessity of this provision in cases where local historic preservation legislation prohibits changes in the appearance of a designated property without the issuance of a certificate of appropriateness by the community's preservation commission. In fact, the National Historic Preservation Act and its implementing regulations provide a process for certifying local governments that enact and enforce protective legislation. Properties designated and protected by Certified Local Government ordinances are eligible, for example, for federal tax benefits that are otherwise limited to properties listed in the National Register of Historic Places.

If these restrictions were applied to buffer zones, implementation would be impossible in most situations where land ownership was not entirely in the hands of the nominated property owner and/or government.

In recent years, there has been additional legislation—though heretofore unsuccessful—introduced in Congress to further restrict nominations to the World Heritage List. This effort seems to be driven by fears that listing will cause a loss of U.S. control of

⁸ The United States was the first nation to prepare such a list, commonly referred to as the “tentative list”, and the current version is a slightly amended form of the document prepared in 1982. This list is intended to be an open-ended or revolving list. James Charleton, “The United States and the World Heritage Convention”, a paper presented at the annual symposium of US/ICOMOS in Indianapolis, Indiana in 2000, www.icomos.org/usicomos/Symposium/SYMP00/charleton.htm, accessed 5 January 2005.

⁹ 36 CFR 73.

¹⁰ Of these sites, two were subsequently placed on the List of World Heritage in Danger: Everglades National Park and Yellowstone National Park.

¹¹ 16 U.S.C. 470a(a)(6); 36 CFR 60.6; 36 CFR 65.5(f)(1).

¹² 23 CFR 73.13(c).

World Heritage sites, or at least affect management decisions by influencing public opinion or decisions of the governing authority¹³ Even the latter is apparently a concern to those who fear limitations on unrestricted development of federal and private land. It has been suggested that industry groups and pro-industry legislators do not want light shed on the politics and process that allows the lucrative exploitation of fragile resources by business interests.¹⁴

Yellowstone National Park

These fears seem to have been fuelled by a situation involving Yellowstone National Park. In 1995, the Interior Department notified the World Heritage Committee that the park was in danger and requested an on-site visit. After sending a special assessment team and further consultation with U.S. officials, the Committee placed Yellowstone on the List of World Heritage in Danger.¹⁵ Among the threats cited was a proposed gold mine just over a mile from the park. A number of U.S. environmental organizations were very vocal in their opposition to the mine. Much of the mining activity would have been on private land, but some federal land outside the park would have been affected. President Clinton issued orders effectively creating a buffer zone on the federal land prior to the listing. Mining and forest interests along with others opposed to environmental legislation asserted the World Heritage Convention had had a significant role in the federal decisions affecting the mine and seized the issue as justification for introducing the ALSPA.¹⁶ Opponents of the bill contended that the problem with the mine had nothing to do with Yellowstone's World Heritage listing, but rather the fact that mining would adversely affect an important national park. Yellowstone was removed from the List of World Heritage in Danger in 2003 at the request of Paul Hoffman, Deputy Assistant Interior Secretary for Fish and Wildlife and Parks.¹⁷ Although one could argue that a *de facto* buffer zone has been created in the area formerly proposed for the New World Mine, the park still has no officially designated buffer zone.

The need for buffer zones presents several problems: Neither the National Park Service Organic Act¹⁸ nor the act establishing Yellowstone National Park provides for control of or protection of lands outside of national parks by the Department of the Interior, and the Interior Department has never tried to regulate activities on adjacent land under the Organic Act. This has serious implications. In 1980, more than fifty percent of "threats" to park resources came from outside the parks. If the park were of sufficient size, it is possible that the protected resources and the buffer zone could be contained wholly within the

¹³ Machado, Matthew, "Land and Resource Management: X. Mounting Opposition to Biosphere Reserves and World Heritage Sites in the United States Sparked by Claims of Interference with National Sovereignty," 1997 COLO. J. INT'L ENVTL L.Y.B. 120.

¹⁴ Gebert, Daniel L., "Sovereignty Under the World Heritage Convention: A Questionable Basis for Limiting Federal Land Designation Pursuant to International Agreements", 7 S. Cal. Interdis. L.J. 427, Fall, 1998.

¹⁵ Statement by Department of Interior of Designation of Yellowstone National Park as a World Heritage Site in Danger, <http://www.doi.gov/news/archives/pr35m.html>, last accessed March 15, 2006.

¹⁶ In spite of the fact that the mining company had settled its claims with the government and Congress had appropriated money for that purpose.

¹⁷ <http://whc.unesco.org/archive/decree03.htm>, last accessed 15 March 2006. Mr. Hoffman asserted that "Yellowstone is no longer in danger." Former Interior Department officials and other environmentalists questioned this assessment. See, "Yellowstone Staff at Odds o Park Threats", *Los Angeles Times* (June 26, 2003).

¹⁸ 16 U.S.C.1

boundary of a park. Some writers have argued that there is potential legal authority for the United States government to protect non-federal land. Examples cited include the Property Clause and Commerce Clause of the U.S. Constitution. Several Supreme Court cases provide some basis for asserting that the Property Clause of the Constitution provides a basis for Congress to protect public lands from activities on neighbouring private property. The Commerce Clause of the Constitution, which gives Congress the authority to regulate an activity that “substantially affects” interstate commerce, might apply to a national park which is a destination of national and international tourists that have a major impact on the economy.¹⁹ In political terms, buffer zone proposals for land outside of national parks have consistently failed in the U.S. Senate and some states have expressly prohibited use of land outside of park boundaries for wilderness land.²⁰ The prospects of the National Park Service exerting this untried authority are small given the current political climate.

October 2005 marked the publication in the Federal Register of a proposal by the Department of the Interior to collect information leading to an update of the Tentative List of American properties to be considered for nomination as World Heritage sites.²¹ When completed, this update would be the first significant revision since the Tentative List was published in the Federal Register in 1982.²² Interestingly, rather than basing the revision on a professional, comprehensive study of potentially eligible sites, the proposal called for interested property owners to self-nominate their properties.²³ The proposal does not call for any changes in current requirements for nomination or listing. Nor does the application refer to the concept of a buffer zone or require any information concerning a proposed buffer zone. The application does ask a description of all protective measures affecting the property as well as provisions for the property found in governmental planning documents.²⁴

Heritage Areas Model

Given the scant authority of federal government to regulate non-federal land use in the United States, it seems appropriate to explore alternatives for creating adequate and effective buffer zones for World Heritage properties (as well as other heritage properties) other than through government ownership of all buffer land or the requirement that each property owner in the buffer zone individually consent in writing and execute a binding agreement for perpetual protection.

¹⁹ Peter Dykstra, “Defining the Mother Lode: Yellowstone National Park v. the New World Mine”, 24 Ecology L.Q. 299, 316-322 (1997).

²⁰ 69 Chi-Kent L.Rev. 911 (1994).

²¹ 70 Fed. Reg. 60849 (October 19, 2005). Inclusion in a State Party’s tentative list is a prerequisite for submission of a nomination to the World Heritage List. See also “Operational Guidelines for the Implementation of the World Heritage Convention,” UNESCO, WHC.05/2, 2 February 2005. See the description of the ongoing process at <http://www.nps.gov/oia/topics/worldheritage/tentativelist.htm>, accessed November 20, 2006. All responses from interested property owners must be returned to the National Park Service by April 1, 2007.

²² Two properties were subsequently added to the list: Haleakala National Park in Hawaii in 1983 and Taliesin West in 1990.

²³ While this would eliminate any doubt concerning the requirement of owner consent, it would not necessarily produce a list of the most important or representative eligible properties in the United States.

²⁴ <http://www.nps.gov/oia/topics/worldheritage/Application%20for%20Tentative%20List.doc>, accessed November 15, 2006.

One possible model may be a variation of the heritage area concept. Although several states and localities have created heritage areas, the focus of this discussion will be on National Heritage Areas, created by the United States Congress. Congress has designated a number of National Heritage Areas around the country.²⁵ These are areas where natural, cultural, historic, and recreational resources combine to create a distinctive and cohesive entity that represents important aspects of the nation's heritage. Although Congress creates National Heritage Areas, they depend for their success on a partnership forged in a particular geographical region by multiple political jurisdictions and many non-governmental organizations. Not only are the natural and manmade physical features important, but also the traditions of the people that created the cultural landscape. Here its setting is not only important as a visual enhancement of landmarks and monuments but has a greater significance in its own right.

The concept has proven widely popular with the American public. With the passage of The National Heritage Areas Act of 2006, the number of such areas has grown to 37. The bill authorizes the NPS to provide 15 years of technical and financial assistance to stakeholders interested in preserving and sharing the notable contributions of a particular region. The NHA designation is permanent. The legislation is based in part on a report by the National Park System Advisory Board that was motivated by increased interest in heritage areas by the public and legislators. This report recommended that criteria and standards be established for the designation and management of heritage areas to ensure integrity in the program and that the Park Service be a partner, where appropriate, but not manage an heritage area as a National Park.²⁶

“National Heritage Areas are wonderful examples of cooperative conservation,” said National Park Service (NPS) Director Mary Bomar. “These areas encourage citizens, government agencies, non-profit groups, and private partners to work together to plan and implement strategies to recognize, preserve, and celebrate many of America's defining landscapes.”²⁷

After Congress designates a heritage area, National Park Service staff work with local governments and residents to develop a cooperative agreement and management plan that identifies shared goals for heritage preservation and provides a legal basis for funding. The authority to implement the plan rests with local government that may undertake a range of regulatory and protective activities described earlier in the paper. The federal government does not regulate land use in the area, but would maintain control of any parks or federal reserves included in the heritage area. The federal government does provide funding for the heritage area, along with expertise. This is clearly in line with the overall approach of the federal government to heritage conservation: promulgating standards and best practices and providing incentives for their implementation. Activities in the heritage area often include, in addition to protection, the development of an interpretation plan, rehabilitation of historic sites, opening and operating visitors' centers, creating a network of trails, etc.²⁸

The overall goal of the heritage area is to promote the development of short and long-term solutions to conservation of the heritage resource by the local partners. In this way, not

²⁵ <http://www.cr.nps.gov/heritageareas/VST/INDEX.HTM>, accessed 8/15/05.

²⁶ <http://www.nps.gov/policy/NHAreport.htm>, accessed 11/20/2006.

²⁷ <http://home.nps.gov/applications/release/Detail.cfm?ID=709>, accessed 11/20/2006.

²⁸ <http://www.cr.nps.gov/heritageareas/FAQ/INDEX.HTM>, accessed 8/20/2005.

only will historic buildings be saved, but their context as well. The cultural landscape and the intangible aspects of heritage can preserve for future generations.

This heritage area approach could be used as a template for a comprehensive program involving governmental, nongovernmental and private partners that could protect the buffer zones of World Heritage sites in the United States. Some of the components of the comprehensive program would be listing and protection, planning, conservation areas, easement and transfer of development rights, and other techniques. This paper will discuss those particular approaches further below.

Historic Preservation Districts

The National Historic Preservation Act of 1966 established a partnership among the federal, state, and local governments. It introduced a new comprehensive program with national standards and economic incentives without pre-empting existing state and local legislation. The National Register of Historic Places is the official list of resources in the United States worthy of preservation.²⁹ Many states also main registers. However, the most important listing mechanism to protect cultural properties is found at the local level. States delegate authority to local governments to enact laws or ordinances for the protection of heritage resources. The specific scope and content of local preservation legislation varies considerably due to the differences among the states in the authority delegated to local governments, community need, and the type of resources protected. Generally, though, preservation ordinances regulate changes that would negatively affect or destroy the character that gave designated historic properties or historic districts their significance. There is a particular emphasis on mandatory control over changes in the exterior architectural features of designated buildings. Over 2,000 local governments across the United States have enacted some form of historic preservation ordinance.

A typical preservation ordinance would generally contain the following key components:³⁰

1. Statement of “purpose” and the legal authority under which the ordinance is enacted.
2. Definitions.
3. Establishment, powers, and duties of the historic preservation commission or other administrative board.
4. Criteria and procedures for designating historic landmarks and/or districts.
5. Statement of actions reviewable by the commission (*e.g.*, demolition or a material change in the exterior appearance of structure) and the legal effect of such review (*e.g.*, approval or denial, non-binding recommendation.)
6. Criteria and procedure for reviewing such actions.³¹
7. Standards and procedures for the review of “economic hardship” claims.
8. “Affirmative maintenance” requirements and procedures governing situations of “demolition-by neglect”.

²⁹ Established under the Historic Sites Act of 1935, 16 U.S.C. §§ 461 *et. seq.*, and expanded by the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470a *et. seq.*

³⁰ Miller, *supra* note 4, at 10.

³¹ Commissions generally adopt rules and procedures for conducting business as well as design standards or guidelines by which to judge the appropriateness of a proposal for demolition, alteration or new construction.

9. Procedures for appealing the final preservation commission decision to a higher authority.³²
10. Fines and penalties for violation of ordinance provisions.

These powers may be used to directly protect designated World Heritage (and other heritage) resources and might also be used to preserve the more significant and sensitive areas of a buffer zone.

Conservation Districts

Conservation districts are similar to historic districts, but are often applied in areas that do not possess a degree of significance or integrity high enough for designation as historic districts. In other cases the property owners in the area are not prepared to accept the degree of control over their properties typical of an historic district. While some type of design review is part of most conservation districts, what is reviewed varies from ordinance to ordinance based on the resources to be protected and the desired level of protection. Binding review of exterior architectural alterations is usually not part of the review provided in conservation districts. The review in conservation districts may be mandatory or advisory. Many conservation district ordinances regulate demolition or new constructions of vacant lots. Others focus on general urban design issues such as height, scale, building placement, setback, materials, or landscape features.³³ These criteria may be implemented through incentives in addition to or in lieu of legal mandates. Conservation districts do provide a vehicle for public education and encourage involvement in the local planning process. To the extent that they address overall environmental character, they may be quite appropriate for buffer zones. In fact, conservation districts have been used to provide buffer zones protecting historic landmarks and districts in the United States. In appropriate circumstances, they could be used to protect World Heritage properties.

Planning

Historic preservation efforts can often be significantly enhanced when the preservation ordinance is closely coordinated with other land use laws and regulations such as those governing comprehensive planning, zoning, and subdivision regulations as well as other government programs such as transportation and housing. Many communities throughout the United States have developed formal written preservation plans, reconciling in one document all of the policies and procedures regarding the community's historic resources.³⁴ The Georgia State plan, for example, outlines a model process for developing a local preservation plan³⁵, incorporating the *Secretary of the Interior's Standards for Preservation Planning*. While it is important to have a stand-alone local preservation plan to

³² Appeals generally go to another administrative board such as a board of zoning appeals, the local governing authority itself (mayor and city council or county commission), or directly to the courts.

³³Carole Zellie, "A Consideration of Conservation Districts and Preservation Planning: Notes from St. Paul, Minnesota," *Conservation Districts*, Cultural Resources Partnership Notes, Sue Henry Renaud, Editor, National Park Service, <http://www.cr.nps.gov/hps/pad/partnership/index.htm>, accessed 11/20/2006.

³⁴ Bradford J. White and Richard J. Roddewig, *Preparing a Historic Preservation Plan*, 4 (American Planning Association, 1994).

³⁵The Georgia Constitution, Art. 9, § 2, Par. 4, explicitly grants authority to plan and zone to local governments, but also permits the General Assembly to limit this power by generally-applicable statutes.

articulate the preservation goals and objectives of the community, it is even more important that those goals and objectives are incorporated in broader community planning. This helps ensure consideration by other programs such as land use, transportation, and development. The US/ICOMOS Preservation Charter supports this approach, declaring that the preservation of historic towns and historic districts or areas must be an integral part of every community's comprehensive planning process.³⁶

Georgia was one of the first states to adopt growth management legislation with the passage of the Georgia Planning Act of 1989.³⁷ This law requires each local government in the state to prepare a long-range comprehensive plan. The plan is intended to identify community goals and objectives as well as determine how the local government proposes to achieve them. Ideally it is to be used in government decision-making on a daily basis. Failure to have an approved plan can result in the loss of state funding for a range of activities. While the scope of growth management is much broader than historic preservation, almost all such legislation includes historic preservation as a goal and/or a required planning element.³⁸ By including preservation with other key elements, comprehensive planning fosters better coordination between preservation and other land use controls such as zoning.³⁹ The Georgia law requires that historic resources be considered along with land use, economic development, community facilities, population, housing, and natural resources.⁴⁰

Such planning approaches would be key to protecting the resources in a buffer zone. In addition to this public planning and regulatory process, states have passed legislation that employs elements of private property law to accomplish heritage conservation goals. Two of these techniques are conservation easements and transferable development rights.

Conservation Easements

A conservation easement is a legal agreement between a landowner and governmental agency or non-governmental organization that permanently restricts future development on a piece of land to protect its key values. These legal devices are in use in every state and currently protect millions of acres of land. Among the non-governmental agencies that commonly use this protective tool are non-profit historic preservation organizations land trusts, which hold over 17,000 conservation easements⁴¹. Local governments, too, have increasingly established easement programs.

³⁶ US/USICOMOS *A Preservation Charter for the Historic Towns and Areas of the* (1992). One of the four basic objectives for the preservation of historic towns and areas reads, in part: "Property owners and residents are central to the process of protection and must have every opportunity to become democratically and actively involved in decisions affecting each historic town and district."

³⁷ O.C.G.A. 50-8-1 et seq.

³⁸ David Listokin, "Growth Management and Historic Preservation: Best Practices for Synthesis", 29 *The Urban Lawyer* 202 (1997). Other states with comprehensive planning acts are Delaware, Florida, Hawaii, Maine, Maryland, New Hampshire, New Jersey, Oregon, Rhode Island, Vermont and Washington.

³⁹ Such coordination, while dictated by logic, is frequently absent. There are other advantages. By being part of a comprehensive community plan, preservation can blunt criticism that it is part of the NIMBY ["Not in My Back Yard"] process to stop growth. *See id.*, at 206 and 210.

⁴⁰ O.C.G.A. , § 50-8-1, et seq.

⁴¹ Elizabeth Byers, *The Conservation Handbook*, The Trust for Public Land, 2005, at 8. There are more than 1,500 land trusts in the United States.

Conservation easements are created through a legal document signed by a property owner (called a grantor) and an eligible organization (called a holder) and recorded in the official land records of the political jurisdiction where the property is located. These agreements apply to all future landowners.

Easements are appealing because their creation is a private transaction entered into voluntarily by the landowner and the easement-holding organization. The owner either donates an easement (and receives tax incentives for the donation) or sells the easement to the holding organization at a price that is less than the cost of purchasing the property outright. Since the owner retains restricted use of the land, it remains productive and on the tax rolls while preserving specific conservation values. Conservation easements can protect all kinds of conservation values including, for example, farmland, scenic vistas, historic facades, and sensitive ecological areas.

Until recently, an easement affecting an historic building typically protected the façade or other significant architectural details of the property (“façade easement”). Increasingly, however, this tool is being used in an expanded way to ensure the setting of an historic structure or area remains undeveloped or is developed in a way that is compatible with the heritage resource. During the 1930s and 1940s the National Park Service acquired scenic easements to protect views along the Blue Ridge and Natchez Trace Parkways. A number of states have also used this method of protecting scenic areas. A good example of a public/private effort involves the Olana State Historic Site in New York. The historic villa and its surroundings were made famous by the paintings Frederick Church, a nineteenth century landscape artist. To protect the setting, Scenic Hudson, Incorporated, a NGO, bought scenic easements to protect 1,060 acres of the Olana viewshed.⁴² Where planned gardens are key components of the setting of a heritage place, their conservation can also be addressed in a conservation easement. Since gardens involve active management, such an easement might require the landowner and holder to develop and implement a management plan. The Garden Conservancy has uses this technique to protect important works by noted landscape architects such as Thomas Church.⁴³ Other aspects of historic character such as barns, fences, orchards, pastures and woodlands may be the subject of an easement. Paul Edmondson, general counsel of the National Trust for historic Preservation has said, “Preservation easements increasingly protect all the character-defining elements that collectively define a historic ‘place.’ Whether the elements are old stone walls, historic outbuildings, or landscape features, preservation easements have the capacity to protect an entire site.”⁴⁴

Conservation easements are relatively recent devices created by state legislatures, but are grounded in the common law of easements in England and the United States. Historically easements were used to convey privileges or restrict uses between adjacent parcels of land. Courts were reluctant to extend this restriction on the unencumbered use of land in perpetuity to organizations and individuals that did not own appurtenant property. During the 1970s through the 1990s most states passed laws authorizing conservation easements generally

⁴² *Id* at 213.

⁴³ *Id* at 217.

⁴⁴ *Id* at 219.

following the principles established by the Uniform Conservation Easement Act, a model law developed by the National Conference of Commissioners on Uniform State Laws.⁴⁵

While the creation of easements is dependent on state legislation, conservation easements that fall within governmental guidelines are eligible for both federal and state tax incentives. The value of the easement is based on the difference between the appraised fair market value of the property prior to conveying an easement and its value with the easement restrictions in place. The more the easement restricts the property's development potential, the more valuable it is. The Internal Revenue Service guidelines suggest that an easement can be appraised at 10-15 percent of the value of the property. In most cases, the easement donor can take a one-time deduction of the value of the easement from his adjusted gross income for federal taxes.⁴⁶ Many states also have provisions that will allow individuals to similarly reduce their state income taxes.⁴⁷ In addition, since the granting of an easement reduces the value of the remaining property, the owner's annual property taxes are also reduced. Although these incentives can be powerful tools, surveys have shown that owners are often motivated by the desire to ensure that the character of resources they value are protected in the future.

Transferable Development Rights

In urban centers, the preservation of older, smaller buildings or less-intensively developed sites is made difficult when economic factors make it more profitable for the owner to demolish the building(s) and take advantage of unutilized development potential on the site. Where such buildings are designated as historic under local ordinances, the transfer of development rights (TDR) concept may prove useful in providing the owner an opportunity to realize some return on the unused development potential while preserving the historical, architectural or landscape character of the property or district.⁴⁸ This approach can help retain, for example, a low-rise neighborhood in an area where economic pressures would result in high-rise development, thus destroying the setting of the historic structures.

Traditionally, development rights have been considered a permanent part of a parcel of land. TRDs change this concept by permitting these development rights to be severed from their original site ("transferor site"), transferred by the property owner to the owner of another site ("transferee site"), and attached to the transferee site. In some cases, there is an intermediate stage after the rights are severed and before they are transferred and "banked"

⁴⁵ *Id* at 13.

⁴⁶ Federal estate taxes may also be reduced when a property subject to an easement passes by inheritance because the fair market value of the property has been reduced by the easement restrictions.

⁴⁷ National Park Service, *Historic Preservation Easements: A Historic Preservation Tool with Federal Tax Benefits* <http://www2.cr.nps.gov/TPS/tax/easement.htm>, accessed 8/15/05; see also Mark Primoli, Internal Revenue Service, *Facade Easement Contributions* <http://www2.cr.nps.gov/tps/tax/IRSFacade.htm>, accessed 8/15/05.

⁴⁸ Useful references on TDRs include: Rick Pruetz, *Saved by Development: Preserving Environmental Areas, Farmland and Historic Landmarks with Transfer of Development Rights*; "Transferable Development Rights and Alternatives after Suitum", 30 *Urban Lawyer* No. 2 (Spring 1998); "A Review of Transferable Development Rights Programs in the United States," 16 *Preservation Law Reporter* 1066-1074 (Apr.-Jun. 1977).

for future transfer.⁴⁹ The end result is that the owner of the transferee site can add the transferred development rights to those all ready attached to his site.

A feature shared by nearly all TDR programs is the designation of sending and receiving areas. Sending areas are designated where community plans call for preservation of development limitations and landowners are restricted from making the maximum economic use of their land by preservation and zoning ordinances or other regulations. Owners within these areas are permitted to sever and transfer their development rights.

Receiving areas, on the other hand, are designated where more intensive development is deemed appropriate. Owners within these areas can purchase transferred development rights and develop at a higher or greater density than would otherwise be allowed by underlying regulations.⁵⁰ In crafting successful TRD programs it is a challenge to find appropriate receiving areas in the community for higher-density development and ensuring that the development rights have a sufficient value in the receiving areas to create a market.

TDRs are considered among the most difficult preservation techniques to design and implement. Programs are complex and require a significant investment in staff to implement and maintain. They will not work in isolation, but need to be used in conjunction with other land use and preservation techniques. Other significant factors in their successful use include:

- State enabling legislation which provides clear authority and guidance while allowing localities to tailor the program to their specific circumstances;
- A participating financial institution can help to promote the program, facilitate transactions and provide information about the value of the TDRs;⁵¹
- A public education component; and
- Support from the real estate and development community.

Most important of all, these programs require leadership and commitment from local elected officials, appointed boards and professional staff.⁵²

Conclusion

This paper has discussed some of the public and private legal tools that have been employed in the United States to control and protect the setting of heritage places. These tools could be used in an effective way to protect the buffer zones of World Heritage listed properties, as well as other designated heritage properties. With the United States now revisiting its World Heritage Tentative List and preparing to participate actively again in the nomination process, it must address the buffer zone issue as required in the World Heritage

⁴⁹ J.J. Costonis, "The Redefinition of Property Rights as a Tool for Historic Preservation", in Mark J. Schuster, *Preserving the Build Heritage: Tools for Implementation* 81, at 85 (University Press of New England, 1997)

⁵⁰ "Transfer of Development rights: What is TDR?"

<http://www.co.dane.wi.us/plandev/planning/tdr/section2.htm>, Accessed 8/15/05.

⁵¹ Robert Lane, "Transfer of Development Rights for Balanced Development", *LAND LINES* (Lincoln Institute of Land Policy March, 1998).

⁵² "Managing Growth and Addressing Urban Sprawl: The Transfer of Development Rights", Research Report Number 563, 3, 9 (Michigan Agricultural Experiment Station, Michigan State University, August, 1999).

Operational Guidelines. If federal regulators choose to do so, they can take a creative approach to the buffer zone issue, utilizing some of the tools described above as well as other regulatory and planning approaches. It would not be necessary, in the opinion of this author, to rely solely on property ownership and individual execution of perpetual protection documents for buffer zones as has been the case for the designated World Heritage property itself.

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CONSERVATION OF CULTURAL HERITAGE IN BULGARIA AND BUFFER ZONE ISSUES

**Arch. Hristina Staneva,
Vice President of ICLAFI, President of ICOMOS/Bulgaria**

This paper argues that an appropriate cultural policy and a relevant legislation are productive factors for preserving and utilizing cultural heritage. I will present to you briefly the experience we had in Bulgaria – a country that underwent the turbulent transition from fully state-owned to market economy – by revealing the factors that may increase the efficiency of buffer zones as an important tool for improvement of heritage protection.

1. Background

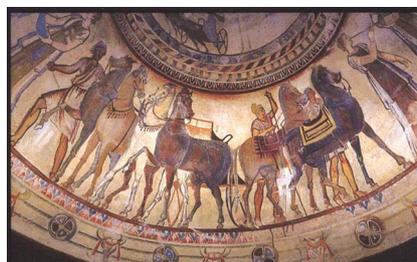
Bulgaria – country of around seven million people – has a very rich cultural heritage including around 40 000 monuments and sites. Seven of them are recognized as of international significance and 11,300 are of national importance. The sophisticated and contradicting mixture of various cultures, external influences and local traditions, characterising the Bulgarian history, caused an accumulation of a rich treasure of cultural values upon the Bulgarian territory.

Until 1989 the safeguarding, conservation and presentation of this diverse heritage was executed by the State through a centralized conservation system. The implementation of the cultural policy, which was very much concentrated on the heritage, was a channelled and smooth process

After that date the political and the socio-economic climate have completely changed in the country. The lack of agility of the old conservation system and its major sectors (legislation, administration, financing and management) was not able to respond to the new economic environment. The problems of the heritage remained out of the main priorities. The new social difficulties, as well as the strong politicisation of social life, to a certain extent alienated people from the problems of cultural heritage. At present substantial steps towards building civil society have been made, and hopefully after joining the European Union it will function much better and there will be more concern and appropriate reaction from all strata of the society.

At present due to the economic difficulties the financial participation of the state drastically decreased – over 100 times compared to 1989! The absolute domination of the state in the field of the preservation gave way to the liberalising

The Thracian tomb in Kazanlak

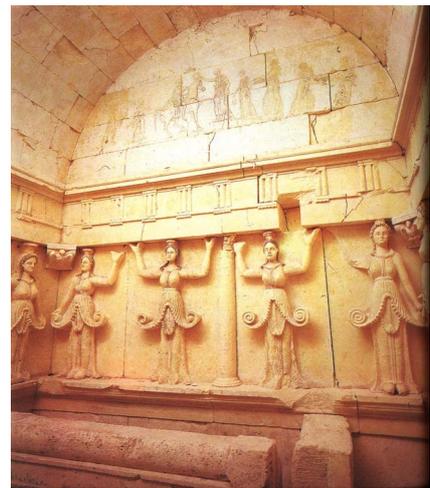


market and the activated private initiative in the field of conservation, where new actors were included in an uncontrolled way, sometimes with doubtful competence. The rapid building activity in the historical centres infringed their outlook and authenticity – as a result of the misbalance between preservation and development. Unfortunately the growing criminal activity seriously threatened the heritage with the illegal building in historical sites, illegal archaeological excavations and traffic of assets.

Today we are getting more and more aware of the necessity for a flexible, dynamic and open strategy for improvement of the state of the art of heritage conservation though development of new mechanisms and instruments, namely:

- **Stimulating legislation** is necessary, which should give enough guaranties for the social and economic activity in the field of the heritage, without neglecting the requirements for preservation of the cultural continuity. Some important steps in this trend have been already done with the adoption of the Law for protection and development of culture (1999), the Law for patronage (2006), as well as the Law for territorial development (1995, last amendment- 2005), which applied the principles for integrated conservation in the context of the European conventions for the architectural and archaeological heritage.
- Improvement of the **management of the heritage** by optimal de-concentration and decentralisation of competencies at various levels is needed, so to protects the cultural identity of the local community, and stimulate the local initiatives for the preservation and utilizing the heritage.
- It is necessary to raise the **social and economic activity** in the field of the heritage. It may have stabilising social influence, to become a source of economic activity.
- The role of the **non-profitable associations in the field of the heritage** should be rapidly raised as partner, but also as corrective of the state. That is why dialogue with new “partners” is necessary – the representatives of the education system, of the mass media, of civil communities and societies. Thus civil society will be properly built. It will be a guarantee for safeguarding of heritage, for pro-active reactions in that field.

The Thracian tomb near Sveshtari village



2. Existing interrelation between protection of cultural heritage and territorial planning

According to the Law on Monuments of Culture and Museums complexes of monuments of cultural, historical, architectural, archaeological, and ethnological importance are declared as “reserves”. They are approved by the Council of Ministers, based on a joint proposal by the Minister of Culture and the Minister of Territorial development and construction.

Master plans of territories with cultural and historical significance may be elaborated by the National Institute of the Monuments of Culture, which is a subdivision of the Ministry of Culture.

The co-ordination between protection and territory planning was regulated by the Territory Management Act for the first time in 2001. Therefore the great number of territory management plans devised prior to that date, used to generate serious problems related to the safeguarding of the “reserves” as well as of the monuments of culture. A very important specific feature of the territory management plans, as stipulated within the Territory Management Act, is that they can be devised both for the separate localities with their adjacent territory as well as for portions of them. This provides for the establishment of some important spatial, functional and semantic links between the elements of the cultural and historic heritage located at different places within the urban fabric. Together with some other areas, the areas with cultural and historic heritage are defined by the general Territory Management Plan, which also specifies the general regime for management with the respective terms and regulations. These regulations do not restrict, they rather “channel” the investment process by assisting the administration in curbing the ruthless expansion of construction – a primary factor exposing the monuments to risk and endangering the heritage, cultural and natural alike.

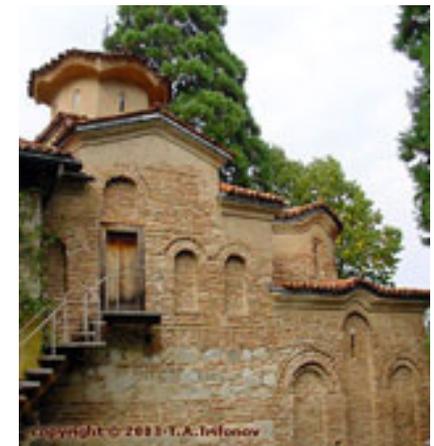
3. Cologne/Dresden cases in Bulgaria and Legislation related to buffer zones

Regarding the World heritage monuments and sites there was not similar case, but unfortunately the national heritage suffers from the Cologne/Dresden cases syndrome. Bulgarian legislation does not contain a special law or regulations with regard to buffer zones, which are so necessary for the protection of natural and cultural sites. Nevertheless, in a series of laws and according to heritage specificity, this matter is being dealt with as follows:

Madara hersemsn



Boyana church



3.1. Natural heritage

- The law on the Safeguarding of Nature and the Law for the Safeguarding of the protected areas stipulate the creation around the protected territories of buffer zones aiming to limit the anthropogenic impact on the reserves. The activities or construction works, as detailed in a decree of the Minister of the Environment and of the Water Resources within the scope of approving the reserves and their adjacent buffer zones, are being prohibited or restricted within the same buffer zones.
- In 2005 the National Assembly passed laws for the alteration and amendment of the Biological Diversity Law, in which the procedure for declaring of buffer zones around the reserves and humid areas is very precisely defined.

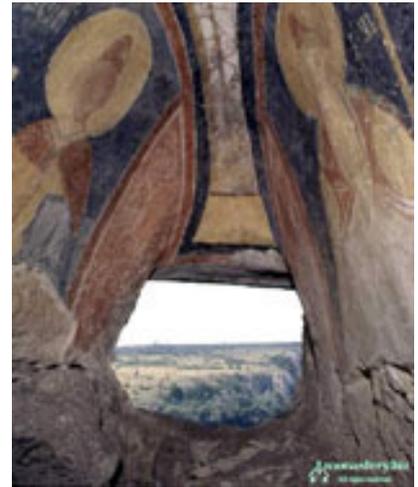
3.2. Cultural heritage

- As mentioned above the Law on Monuments of Culture and Museums stipulates the creation of protected territories – architectural and historic reserves. These territories contain with generally a clearly defined buffer zone, with clearly delimited boundaries and regimes. According to this law, all assignments for design, programmes set for competition, master plans, conservation plans, and projects for new constructions in the protected areas are compulsorily approved by the National Institute for Monuments of Culture.
- The Territory Management Act is an extremely important regulative document defining the strategy and the mechanisms for territory management, both urban and rural, and plays a key role in the preservation and revitalization of the heritage.

4. Necessary amendments to Bulgarian legislation in regards with buffer zones

To comply with the international standards, Bulgaria should ratify as soon as possible the European Landscape Convention (Florence 2000), to serve as a ground for the introduction of a policy for the protection, preservation and management of the cultural and natural landscapes. Our legislation should be adapted also to the Conventions for the Protection of the European Architectural and Archaeological Heritage, ratified by Bulgaria, which require that the policy for the heritage protection “constitutes an integral part of the policies for use

Rock Chapels at Ivanovo



Rila Monastery



of the territories, the development and planning policies”. It means that the adoption of a new Law on Cultural Heritage is needed, complying with the Conventions and stipulating in detail the requirements regarding the above mentioned specialized management schemes and heritage preservation plans. Some amendments to other laws will be also needed – in The Territory Management Act in the first place, but also in the Law for the Safeguarding of the Environment, The law on Property and Use of Agricultural Land, the Law on Local Self-Management and Local Administration etc. These amendments should create working mechanisms for co-ordinating the activities for preservation and development, should grant the necessary decentralization and de-concentration for the heritage management, as well as efficient control on the preservation of monuments of culture at all levels and at each stage of the devising and implementation of the territory management plans. They should be more comprehensive when dealing with buffer zones, namely formulation of criteria for definitional of buffer zones, functional restrictions, strict building and infrastructure regulations and request for specific rules.

The character and the intensity of the management process impose today the real association of new protection proponents – the local communities through the self-management bodies. A real and reasonable decentralization and de-concentration of the prerogatives regarding the responsibilities and the rights in this process are needed. All that mentioned above is supposed to insure better management, maintenance and monitoring of the monuments and sites.

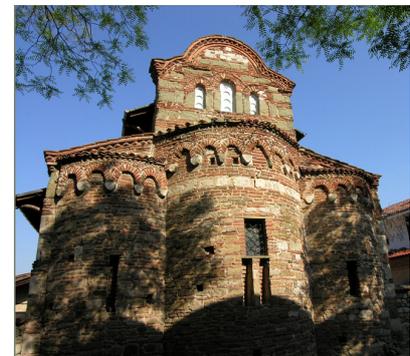
Another good possibility is to create a special law regarding any concert monument or site, inscribed in the World heritage list.

Conclusion

The importance of buffer zone, adjacent to properties with world or national significance is raising gradually due to the dynamic changes both on global and local scale. As the manner of protection of world heritage could (even should) be used as a model for applying it to heritage of national significance also, the revision of *Operational Guidelines* is becoming indispensable.

That is why more detailed importance should be given to the geo-cultural context and thus reaches the desired task- buffer zones to become an efficient and working tool for preserving our common heritage.

Ancient Nessebar



WORLD HERITAGE COMMITTEE IN 2006 AND THE BUFFER ZONE ISSUE

Arch. Hristina Staneva,

Vice President of ICLAFI, President of ICOMOS/Bulgaria

The activities and decisions, taken by World Heritage Committee in 2006 regarding buffer zones of World Heritage monuments and sites, was a step forwards while defining a balanced, representative and credible World Heritage List. That issue is of substantial importance for better preserving the World Heritage properties and their essential values of authenticity and/or integrity in relevant context – a basic objective of the World Heritage Convention.

As the World Heritage Committee is the main body in charge of the implementation of the Convention, and its main function is to identify and inscribe cultural and natural properties on the World Heritage List, it should develop a flexible and proactive policy and instrumentation in accordance with the constantly changing challenges of the dynamic social and economic environment. As good examples for that could be taken the Expert meeting on the concept of outstanding universal value (Kazan – 2005), as well as the adoption of the Declaration on the Conservation of Historic Urban Landscapes (2005), based on the Vienna Memorandum. In the line of the above mentioned, the World Heritage Committee at its Thirtieth Session in Vilnius, Lithuania (July 2006), decided to organise a meeting in Paris on Buffer zones .next year. Consequently the buffer zone issue was included in the working plan of ICOMOS for 2007.

The basic document, which deals with the issues of buffer zone, is “*Operational Guidelines for the Implementation of the World Heritage Convention*” (revised 2005). In Chapter II F (Protection and management) a clear distinction between the purpose of the boundary of a certain property and its buffer zone has been made. While the boundary includes the monument or site and the territory which should “ensure the full expression of the outstanding universal value and the integrity and/or authenticity of the property” (paragraph 99) the role of a buffer zone is different. The provision of a buffer zone, wherever necessary, is considered as a measure for proper conservation, but it is not considered as a part of the nominated property. Regarding the status, buffer zone has “complementary legal and/or customary restrictions, placed on its use and development, to give an added layer of protection to the property.

Nomination 2006 – Iran



At present collective efforts from all actors involved in the process of protection, sustainable conservation and presentation of world heritage for increasing the importance of buffer zone have been made. Considered as a tool to buffer various types of pressures and threats, the instrumentation is getting more substantial. That was demonstrated through the discussions and decisions taken by World Heritage Committee during its Thirtieth Session in Lithuania (July 2006). The buffer zone issues were exposed while examining the nominations for inscription in *World Heritage List*, as well as the State of Conservation reports regarding properties inscribed, or to be inscribed on the *List of World Heritage in Danger*.

The annual monitoring missions on properties, already inscribed on the *List of World Heritage in Danger*, revealed numerous problems regarding buffer zones. That fact is understandable, as before enlisting, they were threatened by serious factors and needed major operations for improvement of their state. The 2006 *List of World Heritage in Danger* consists of 31 properties. Nine of the properties present serious problems related to buffer zones (Attachment 1). These problems may be divided into two groups:

- a) Regarding the territory – inappropriately defined buffer zone boundaries, unclear delineation, or lack of buffer zone;
- b) Lack of proper management – illegal construction in the buffer zone, endangered visual integrity, insufficient protection.

Recommendation and requests from World Heritage Committee’s side towards State Parties have been made on proper delimitation of buffer zone and improvement of management of the concrete site. The Benchmarks for corrective measures go beyond that - improvement of national legislative and administrative system; up-dating of master plans; evaluation and actualization of property’s conservation plans, elaboration of action plans and progress reports, time-scale and a work plan, improvement of documentation.

This year the World Heritage Committee discussed and decided to add to the *List of Heritage in Danger* two properties - Dresden Elbe Valley (Germany) and Medieval Monuments in Kosovo(Serbia) The latter were enlisted in this category due to both ascertain and potential danger, and for better perspectives for receiving international support for urgent conservation and restoration work. This valuable serial of ecclesiastical buildings bears the witness of turbulent history, and currently is facing the challenges of a complicated

Nomination 2006 – Kosovo



Nomination 2006 – Malawi



political environment. The evaluation of this case, regarding buffer zone, could be a shows –case how important may be buffer zone’s delimitation, function and management. Recently the State Party, assisted by experts from UNESCO and the Council of Europe had to elaborate more comprehensive criteria for defining buffer zones for the monuments and sites in Kosovo, envisaging the political perspectives of this territory. It was suggested that buffer zone, as one of the efficient tool for heritage protection should include the following criteria:

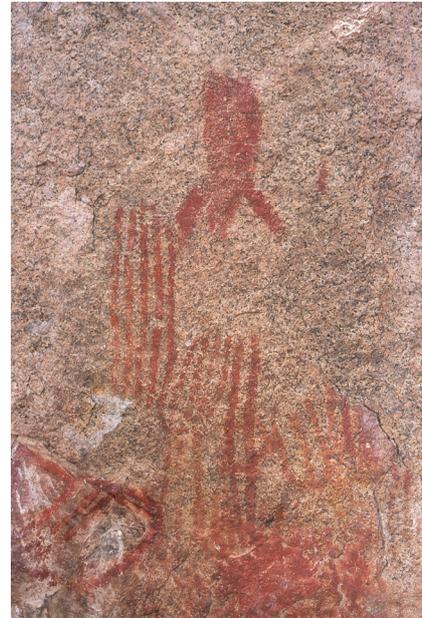
- Functionality –what is the function of the site, how it is developing, what are the connections with the local community, are there conditions for social and economic sustainability in the context of the concrete circumstances
- Visual –preserved aesthetic values of cultural landscapes and sites as part of their integrity and authenticity
- Spatial- organic link with the environment (land and settings immediately around the monument, rivers, roads, etc.), assessing the social aspect
- Vulnerability- development pressure, tourist flow, potential political or other type of intervention

Although this set of criteria is partially based on well know international documents, it has some added values, and could be considered symptomatic. Definitely buffer zone issues should be discussed more comprehensively.

The results of the Reactive monitoring on properties, inscribed on *World Heritage List* brought to substantial discussion and decisions by the World Heritage Committee. The objective of such missions is to check the State of Conservation of monuments and sites, and if needed- to alarm the authorities in concern to undertake corrective measures for avoiding eventual deletion. (*Operational guidelines, Chapter IV*). While considering the State of Conservation reports on properties, inscribed on the *World Heritage List*, document are divided in three groups:

- a) For consideration for in-Danger listing;
- b) For adoption requiring discussion by the Committee;
- c) For adoption requiring no discussion by the Committee;

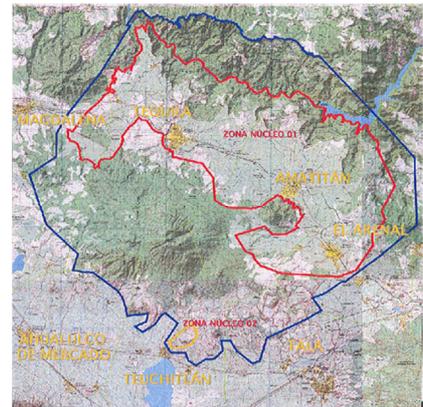
In 2006 the World Heritage Committee reviewed 99 reports on the State of Conservation. In the first group (considered for in-Danger listing) 13 properties have been discussed, including representatives only form the Natural and Cultural properties. For the second group (requiring discussion)



14 monuments and sites, representing natural, mixed and cultural heritage, needed discussions. No discussions were required for the rest of the cases (72 in number). Going through the reports it was found that there were problems with buffer zone for 23 properties (23%). That fact is another proof how vulnerable is the buffer zone fabric. The requests and recommendations from World Heritage Committee toward State parties are similar to the group, containing those from the *List of World Heritage in Danger*, but stressing on social and economic dimensions, as more of the cases are located in urban environment.

The cases discussed by the World Heritage Committee in 2006 include emblematic examples of the rich and diverse world cultural and natural wealth. Those, connected with buffer zone issue include: Lumbini, the Birthplace of the Lord Buddha (Nepal); Ancient Thebes with its Necropolis (Egypt); Historic Centre of Saint Petersburg (Russian Federation); Old Town of Ávila with its Extra-Muros Churches (Spain); Graz Historic Centre (Austria) etc. (Attachment 2). The last one is a representative example of the existence of the well known phenomenon, ephemerally named “development and economic influences”. In 2005 a monitoring mission had identified several problematic large-scale building projects in the core zone and the buffer zone. One of these was the construction project by *Zaha Hadid* at Kommod-Haus location (even grate architects and creators could be involved in conflicts between conservation and development) Later it was demolished as the existing legal framework did not appear to provide adequate protection for the property. Another construction project – that of the Department Store Kastner & Öhler caused public concern also. The project foresees a contemporary construction to replace the traditional store and enlarge its floor-space by adding one floor to the building (Vienna syndrome). That design is considered not suitable to the existing roofscape, and not in the context of the World Heritage property. At present master and management plans are under preparation, but still remains the lack of mechanisms to fully implement the legal provisions, particularly in view of the priority given to investors’ rights. There is another facet of the problem- the preparedness of decision makers to resist to the dynamic, sometimes aggressive modern occurrences. In this case it was noted that the State Party and the local authorities have been going through a learning process in the last few years, adjusting mechanisms to meet higher standards and expectations.

Nomination 2006 – Mexico



Nomination 2006 – Spain



To explore the buffer zone issues regarding the *World Heritage List* in 2006 a brief review on the newly inscribed properties should be made also. Taking into consideration ICOMOS's and IUCN's recommendations, the World Heritage Committee approved 22 properties. Sixteen out of them represented the cultural heritage, two natural properties were inscribed, and the remaining four sites were included in the category of serial nomination (Attachment 3). Requests for improvements regarding buffer zone have been given to 7 out of those 22, which makes higher percentage (31%), compared with the already reviewed tow groups. That fact may be interpreted at least in tow ways- buffer zone issues are getting more important (especially after Cologne/Dresden cases) and the requirements towards the buffer zone have been increased.

Reviewing the results from the Periodic reports, it was found that around many State Parties found necessary to redefine buffer zones of the properties, located in their territories, and/or improve legal and management system. That is a real proof that buffer zone' role is getting more important, and the instructions in the *Operational Guidelines* for inscription and maintenance of buffer zones should be more comprehensive.

Concluding, I would like just to mark several key questions:

- Do the buffer zones adjacent to World Heritage properties respond to the dynamic changes and challenges of contemporary world – threats due to global warming; social and economic development; political pressure, etc.?
- In case we accept that diversity is the intrinsic value of world heritage, should the outstanding representatives be treated in a universal way? Shouldn't we respect different approaches, in the context of the specific cultures, towards buffer zone's role as an instrument for safeguarding this diverse heritage?
- Isn't it high time to start preparing a sort of guiding instructions for protection, maintenance and presentation of world heritage properties for the different geo-cultural regions, based on their specificities?
- Isn't it necessary to increase the requests towards the legal and management frameworks and standards of world heritage protection?

I do believe that the discussions on the buffer zone topic during this respectful meeting of ICOMOS International Committee on Legal, Administrative and Financial issues, kindly supported by the hosts, will contribute to the collective efforts to find adequate solutions in the field of cultural heritage preservation.



Nomination 2006 – Tanzania



LIST OF WORLD HERITAGE IN DANGER 2006

NATURAL PROPERTIES	Recommendations regarding buffer zones	Decision s
AFRICA		
1. Manovo-Gounda St Floris National Park (Central African Republic)		retain
2. Comoé National Park (Côte d'Ivoire)		retain
3. Mount Nimba Strict Nature Reserve (Côte d'Ivoire / Guinea)		retain
4. Garamba National Park (Democratic Republic of the Congo)		retain
5 Salonga National Park (Democratic Republic of the Congo)		retain
6. Kahuzi-Biega National Park (Democratic Republic of the Congo)		retain
7. Virunga National Park (Democratic Republic of the Congo)		retain
8. Okapi Wildlife Reserve (Democratic Republic of the Congo)		retain
9. Simien National Park (Ethiopia) (N 9)	Extension	retain
10. Air and Ténéré Natural Reserves (Niger)		retain
ASIA-PACIFIC		
11. Manas Wildlife Sanctuary (India)		retain
EUROPE AND NORTH AMERICA		
12. Everglades (United States of America)		retain
13. Germany, Dresden Elbe Valley	Reconsidering bridge construction	inscription
14. Jerusalem, Old City of Jerusalem and its Walls		retain
LATIN AMERICA AND THE CARIBBEAN		
15. Río Plátano Biosphere Reserve (Honduras)	Management improvement	retain
CULTURAL PROPERTIES		
AFRICA		
16. Royal Palaces of Abomey (Benin)	Evaluation mission before removal	maintain
17. Ruins of Kilwa Kisiwani and Ruins of Songo Mnara	Delineation of	retain

(United Republic of Tanzania	boundaries	
ARAB STATES		
18. Abu Mena (Egypt)	Delineation of boundaries	retain
19. Ashur (Qal'at Sherqat) (Iraq)		retain
20. Historic Town of Zabid (Yemen)		retain
ASIA-PACIFIC		
21. Minaret and Archaeological Remains of Jam (Afghanistan)		retain
22. Cultural Landscape and Archaeological Remains of the Bamiyan Valley (Afghanistan)		retain
23. Bam and its Cultural Landscape (Islamic Republic of Iran)	Redefine boundaries	retain
24 Kathmandu Valley (Nepal)	Building regulations	retain
25. Fort and Shalamar Gardens in Lahore (Pakistan)	Extension	retain
26. Rice Terraces of the Philippine Cordilleras (Philippines)		retain
EUROPE AND NORTH AMERICA		
27. Walled City of Baku with the Shirvanshah's Palace and Maiden Tower (Azerbaijan)		retain
28. Serbia, Medieval Monuments in Kosovo	better protection	inscription
LATIN AMERICA AND THE CARIBBEAN		
29. Humberstone and Santa Laura Saltpeter Works (Chile)		retain
30. Chan Chan Archaeological Zone (Peru) (C 366)		retain
31. Coro and its Port (Venezuela) (C 658)		retain



**Properties with problematic buffer zone:
Inscribed in the World Heritage List in Danger 2006**

**REPORTS ON THE STATE OF CONSERVATION OF PROPERTIES
INSCRIBED ON THE WORLD HERITAGE LIST**

Discussions and Decisions regarding buffer zone

NATURAL PROPERTY
FOR ADOPTION <u>REQUIRING</u> DISCUSSION
<u>30. Sangay National Park (Ecuador)</u> Provision of updated management plan and in particular on issues about development of alternative economic options as a means to address conflicting activities the park's buffer zone
FOR ADOPTION REQUIRING NO DISCUSSION
<u>20. Belovezhskaya Pushcha / Białowieża Forest (Belarus / Poland)</u> Extention of the transboundary property including its buffer zones
MIXED PROPERTIES
FOR ADOPTION REQUIRING NO DISCUSSION
<u>32. Tasmanian Wilderness (Australia)</u> To submit a revised map of the World Heritage property, showing the areas of extended buffer zone and identifying other use zones directly adjacent to the boundary
CULTURAL PROPERTY
CONSIDERATION FOR <u>IN-DANGER</u> LISTING
<u>36. Timbuktu (Mali)</u> State Party to provide an updated report on SOC particularly on improvement of the architectural project foreseen for the Ahmed Baba Cultural Centre
<u>37. Island of Saint-Louis (Senegal)</u> Define the boundaries of the property and redefine the buffer zone to include the Barbarie Tongue, in accordance with the guidelines of the SEP
<u>58. Lumbini, the Birthplace of the Lord Buddha (Nepal)</u> To develop non-destructive archaeological strategies to ensure long-term conservation in the core and the buffer zone , through adequate documentation and monitoring
<u>59. Samarkand – Crossroads of Cultures (Uzbekistan)</u> To develop a management plan with a coherent urban conservation and planning policy for the management of the historic town, including the W H areas and its buffer zones
ADOPTION <u>REQUIRING</u> DISCUSSION
<u>46. Ancient Thebes with its Necropolis (Egypt)</u> Identification of the precise boundaries of the property and of its buffer zone(s);
<u>47. Medina of Essaouira (formerly Mogador) (Morocco)</u> Identification of the precise boundaries of the property and of its buffer zone(s);
<u>76. City of Graz – Historic Centre (Austria)</u> To consider negative impact of the new construction projects and buffer zones
<u>78. Historic Centre of Saint Petersburg (Russian Federation)</u> To submit a proposal for the modification of the boundaries of the property including precise definition of borders and buffer zones for all components of the property
<u>79. Old Town of Ávila with its Extra-Muros Churches (Spain)</u> To submit detailed maps presenting the boundaries of the property and its buffer zones to be reviewed

9. Aksum (Ethiopia)

To submit an up-dated map and the management plan of the property indicating clearly the boundaries of the World Heritage core and buffer zones;

41. Lamu Old Town (Kenya)

buffer zone extension

50. Islamic Cairo (Egypt)

To designate Islamic Cairo as a Special Planning District, with buffer zones,

52. Tyre (Lebanon)

The State Party to provide a detailed topographic map indicating the boundaries of the property possibly also defining a buffer zone for the protected area

53. Archaeological Site of Cyrene (Libyan Arab Jamahiriya)

To provide information regarding the set of measures proposed, and a detailed map showing the proposed boundaries for the World Heritage core and buffer zones

62. Classical Gardens of Suzhou (China)

To give high priority to integrated management plan ,would ensure a harmonized approach to new development and renovation, fully integrate the application of all existing heritage laws and regulatory for protection of the site and bufferzone

63. World Heritage properties in Beijing (China)

To advance the implementation of the management plan and to ensure the protection of the OUV of the property, as well as of the adjacent buffer and periphery zones;

80. Madriu – Perafita – Claror Valley (Andorra)

Clarification of the buffer zone protection on the western boundary of the property

81. Palace and Gardens of Schönbrunn (Austria)

To review the buffer-zone of the property so as to enlarge the protected area and to prepare a management plan that takes into account the broader urban landscape

84. Historic Centre (Old Town) of Tallinn (Estonia)

To provide management plan for the property and its buffer zone;
detailed that the project proposal

85. City of Vicenza and the Palladian Villas of the Veneto (Italy)

- To provide further clarification on how the proposed buffer zone planned would ensure the control of development processes and the integrity of the setting

The State Party to submit the revised buffer zone

86. Vilnius Historic Centre (Lithuania)

To provide detailed report on the development of an integrated management plan for, including the redefinition of the buffer zone surrounding

WORLD HERITAGE NOMINATIONS 2006

	State Party	World Heritage nomination	Requests regarding buffer zone
		NATURAL PROPERTIES	
1	China	Sichuan Giant Panda Sanctuary – Wolong, Mt. Siguniang and Jiain Mountains	
2	Colombia	Gorgona and Malpelo Islands, Coastal and Oceanic national Marine Parks of Colombia's Eastern Tropical Pacific	
3	Finland / Sweden	The Kvarken Archipelago (Extension to the 'High Coast')	
		CULTURAL PROPERTIES	
4	Andorra	Madriu-Perafita-Claror Valley	Expansion
5	Chile	Sewell Mining Town	
6	China	Yin Xu	
7	Gambia / Senegal	Senegambian Stone Circles	
8	Germany	Old town of Regensburg with Stadtamhof	
9	Ethiopia	Harar Jugol, the fortified historical town	
10	Iran	Bisotun	
11	Italy	Genoa: Le Strade Nuove and the system of the Palazzi dei Rolli	
12	Malawi	Chongoni Rock Art Area	
13	Mauritius	Aapravasi Ghat	Better management
14	Mexico	Agave Landscape and Ancient Industrial Facilities of Tequila	Definition of buffer zone
15	Nepal	Kathmandu Valley (minor modification)	
16	Oman	<i>Aflaj</i> irrigation system of Oman	
17	Poland	Centennial Hall in Wroclaw Poland	
18	Serbia	Medieval Monuments in Kosovo (Extension to "Dečani Monastery")	Stronger protection; expansion
19	Spain	Vizcaya Bridge	Improving visual integrity
20	Syrian Arab Republic	Castles of Syria	Better management
21	United Kingdom	Cornwall and West Devon Mining Landscape	create buffer zones
22	Tanzania	Kondoa Rock Art Sites	

 Properties with problematic buffer zone

Conceptualizing Buffer Zone Protection in Kyoto



The World Heritage
Convention and
the Buffer Zone

Six session

Nov.29,2006

Hiroshima, Japan

UMEZU Akiko

To-ji Temple ((Kyo-o-gokoku - ji Temple))

Outline of Kyoto, a historical city (Grid street pattern)



Foundation of Kyoto, "Heian-Kyo" in 794 Transfer of the capital to Tokyo in 1869

The beautiful natural landscape of Kyoto in four seasons



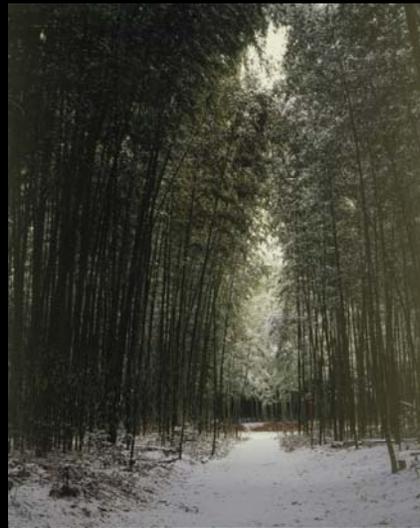
Sagano area (field)



Maruyama Park (weeping cherry tree)



Honen-in temple (autumn tints)



Sagano area
(bamboo forest)



Kamo River and northern
mountains

Historic Monuments of Ancients Kyoto (World Cultural Heritage)



Nijo castle



Kiyomizu Temple



Kinkakuji Temple



Kiyomizu Temple

Historic Monuments of Ancients Kyoto (World Heritage)



Kyouou Gokoku-ji (To-ji)



Ninna -Ji (Ninna-Temple)



Jisyo-ji (Ginkaku- Temple)



Ryoan-Ji (Ryoan- temple)

A community and traditional culture in Kyoto



Gion festival



Daimonji bonfire



Gion festival

Kyo-machiya, traditional townhouses and historical cityscape



Façade of Kyo-machiya



Spot garden



Vaulted ceiling over inner passage way

Gradual destruction of historical cityscape



Historical cityscape with Kyo-machiya façade

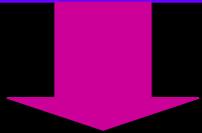


Middle and high-rise buildings among Kyo-machiya in a row

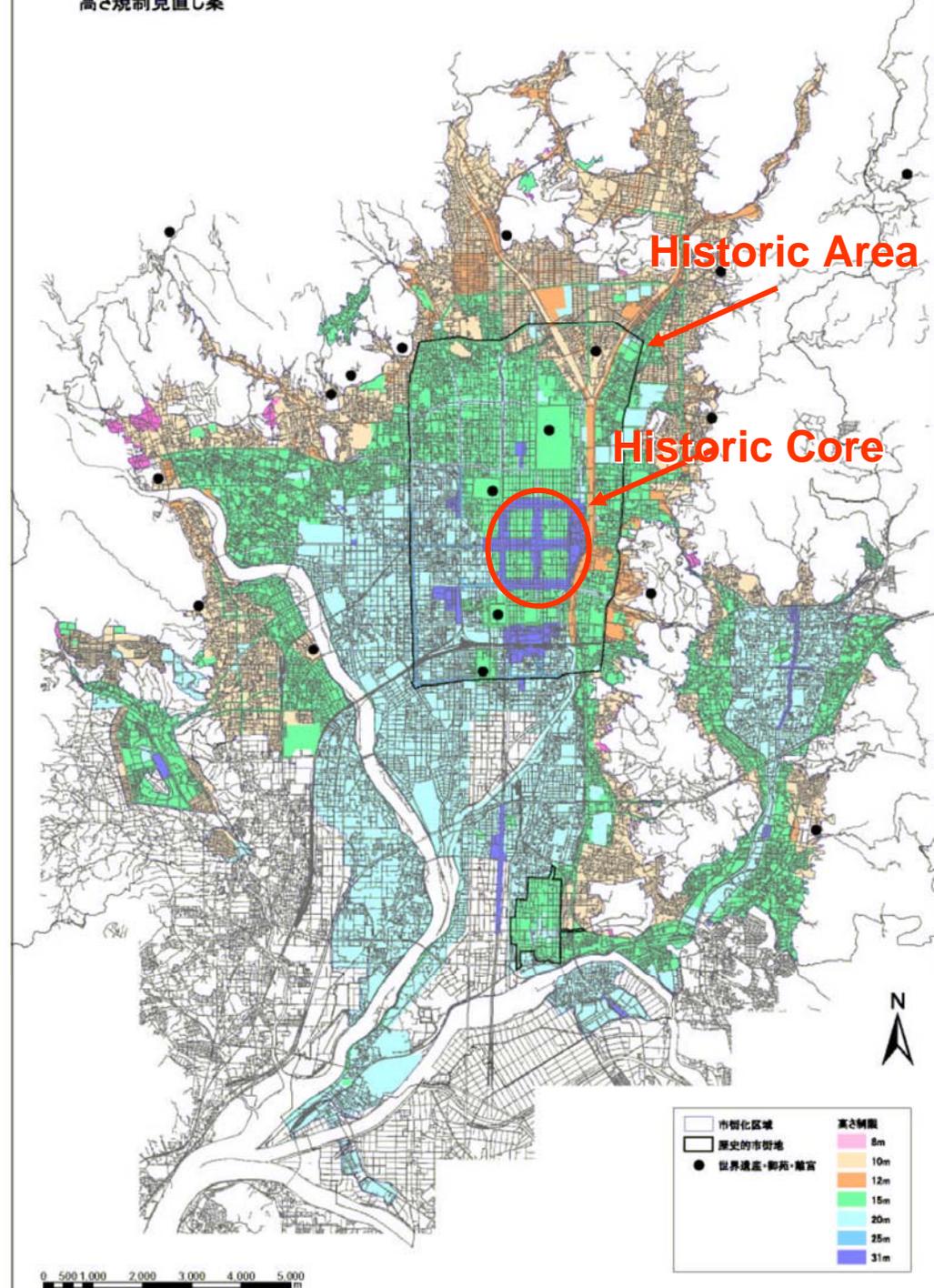
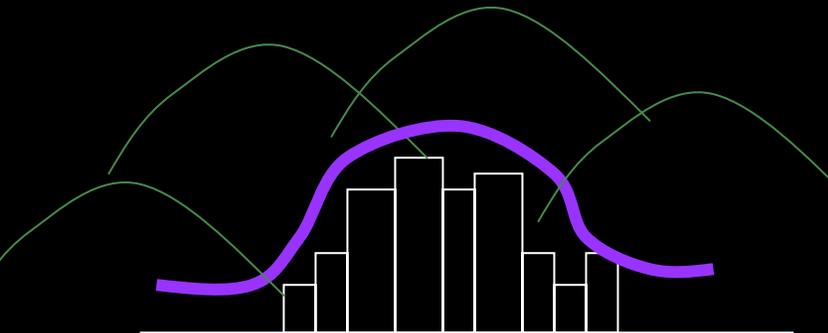
Height limitation Plan

Concepts

- 1 .The nearer approaching mountains foot, the lower height limitation is
- 2 The much strict regulation is imposed in the buffer zone



Design the Townscape Of Kyoto



Lowering building height limitation in the central city

- City blocks along main roads : 45m → 31m
- City blocks not facing main roads : 31m → 15m

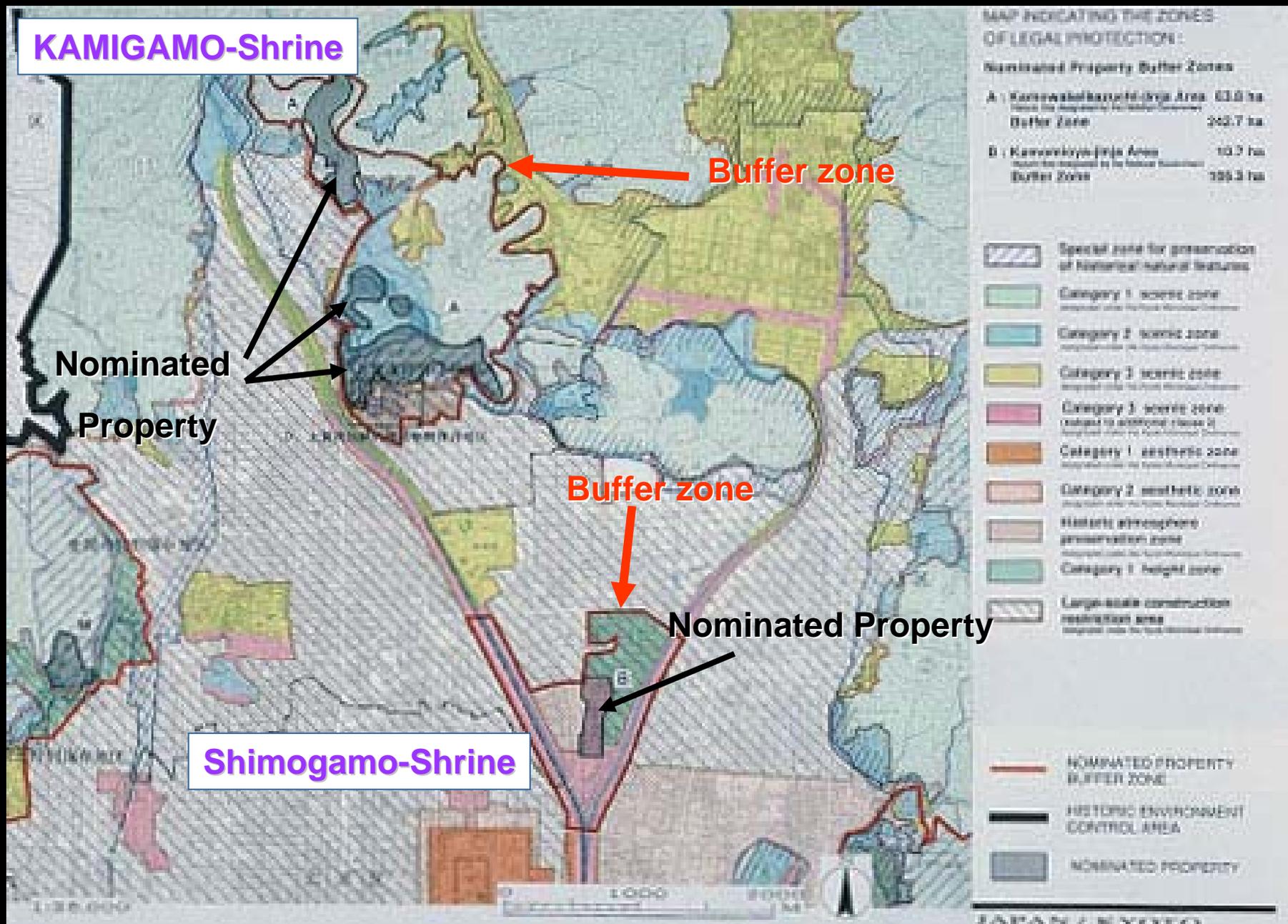


City blocks along main roads
(present height limitation:45m)

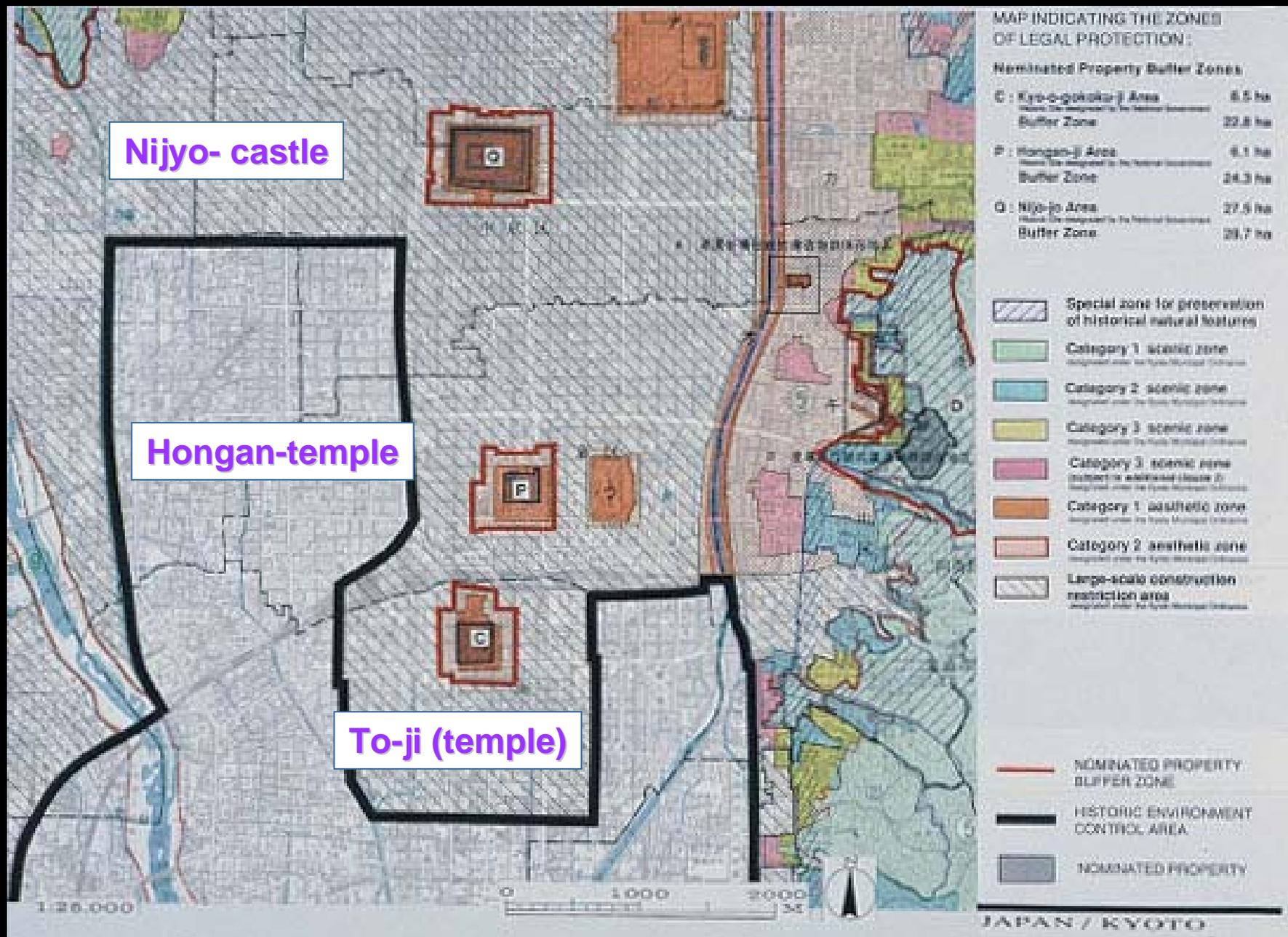


City blocks not facing main roads
(present height limitation:31m)

Historic Monuments of Ancients Kyoto (World Heritage)



Historic Monuments of Ancients Kyoto (World Heritage)



Kamowakeikazuchi-jinja (Kamigamo Shrine)

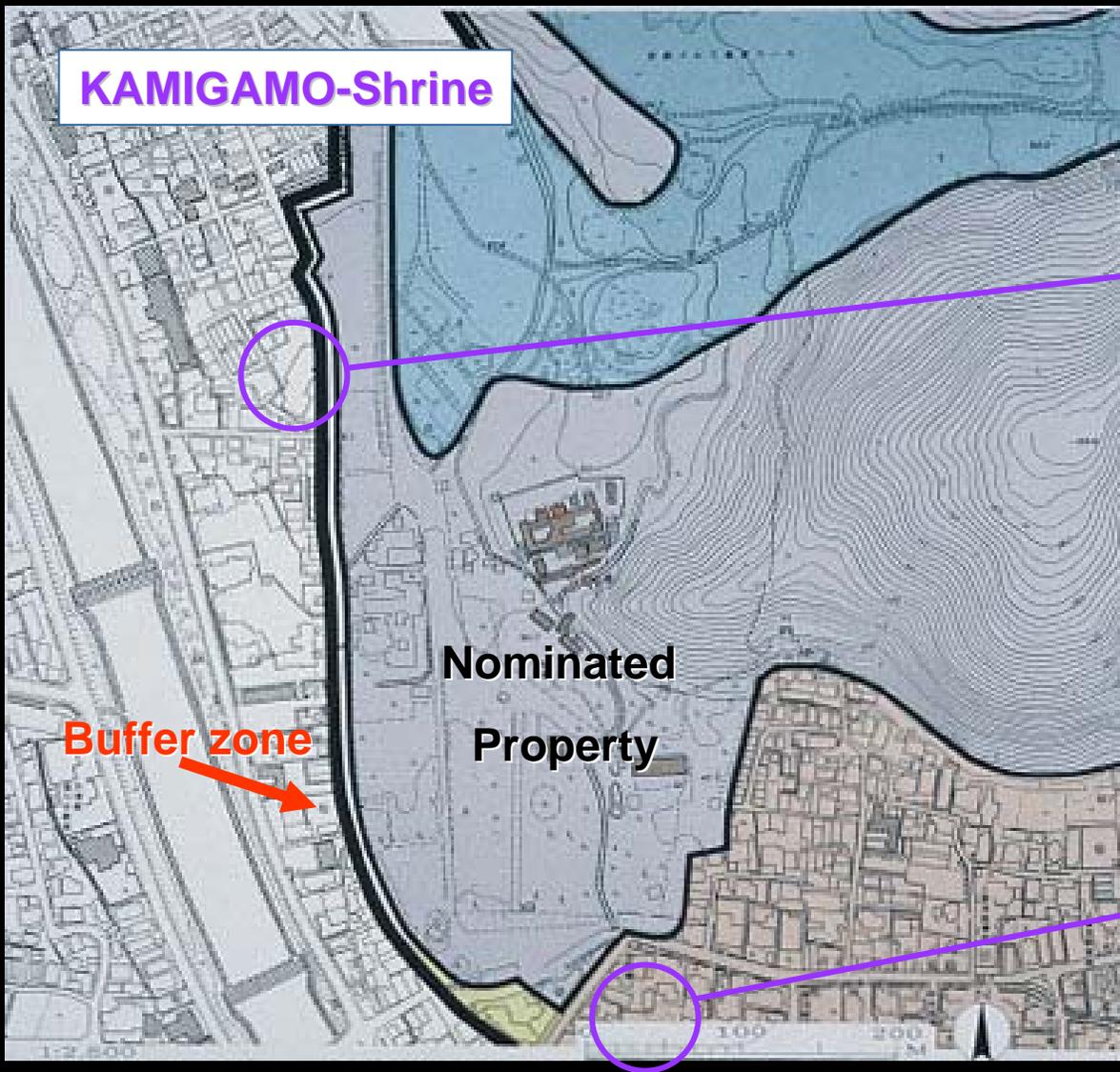


Inside photo of the site



In front of Shirine
The houses for the oracle

Kamowakeikazuchi-jinja (The Kamigamo Shrine)



Map of the area of nominated property and its buffer zone

Nijyo-jo (The Nijyo-castle)



View to the Syoin

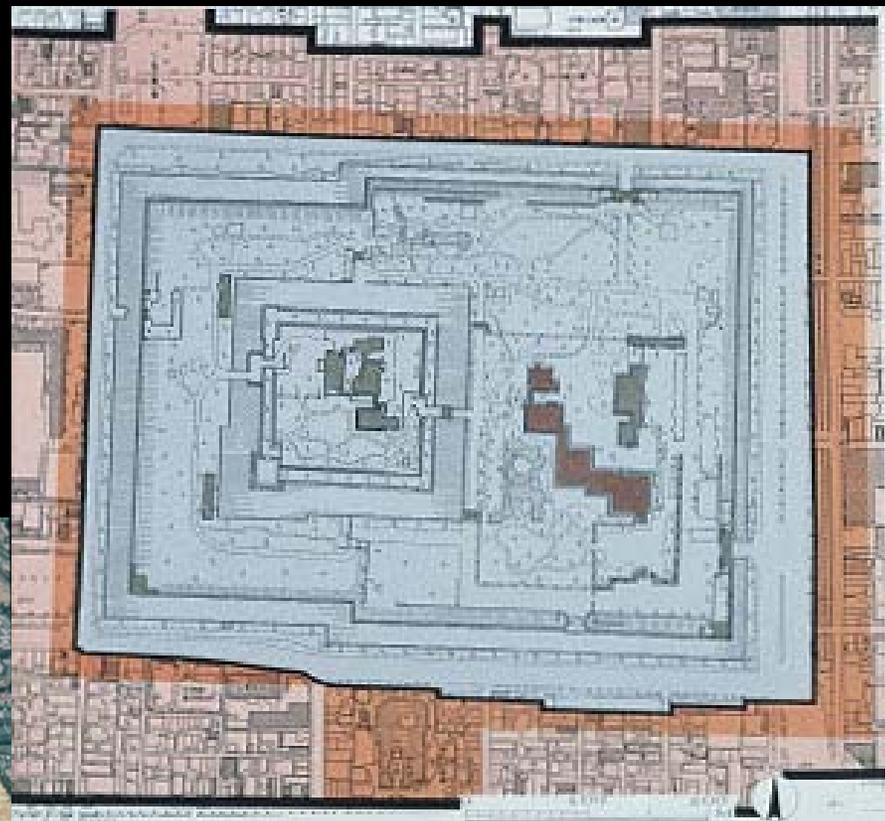


View from the donjon remains

Nijyo-jo (Nijyo-castle)



Air Photo of Nijyo-jo

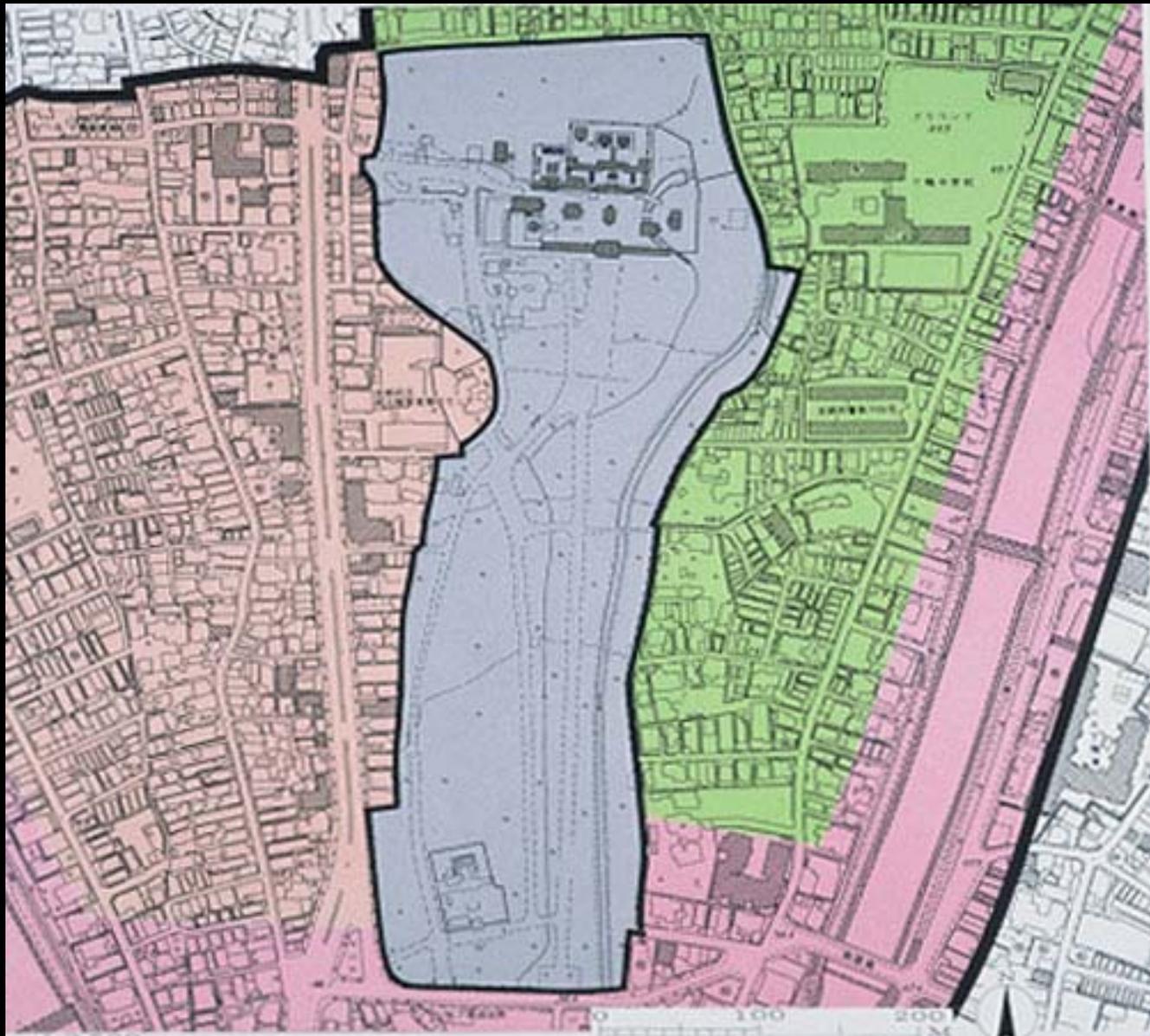


Listed Area and Buffer zone for Nijyo-jo

Nijyo-jo (Nijyo-castle)



Kamomioya-jinja (The Shimogamo Shrine)



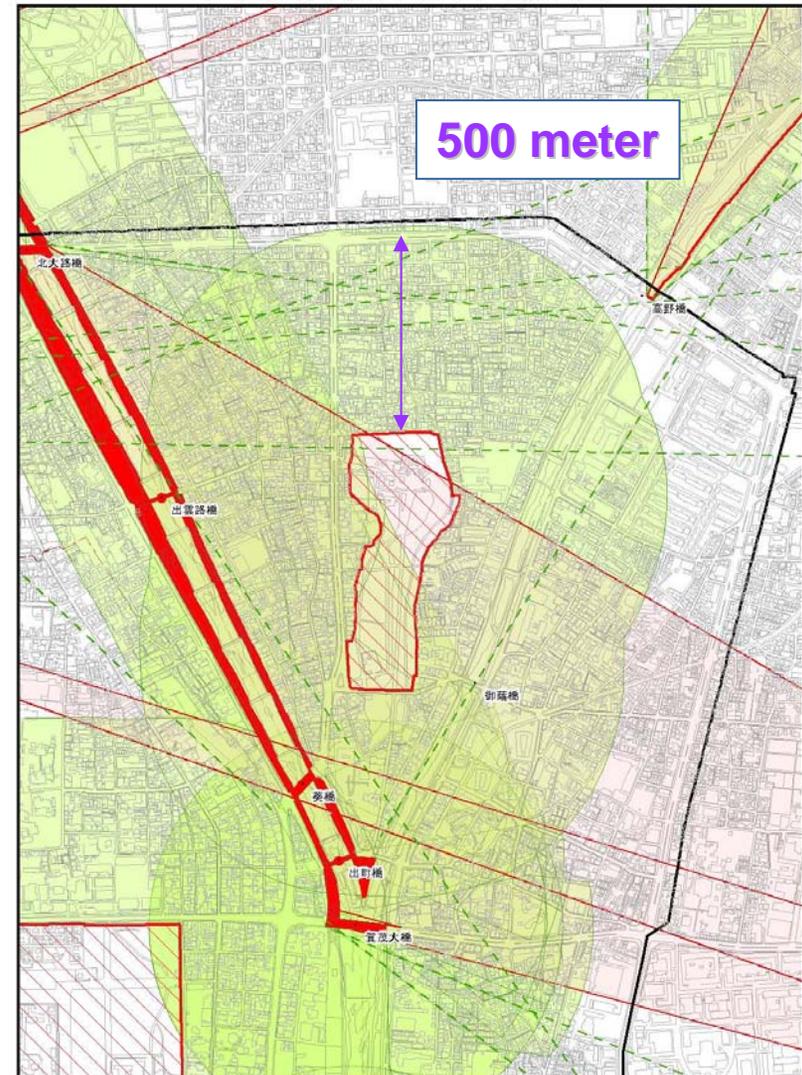
Map indicate the extent of Shimogamo Shrine

Kamomioya-jinja (Shimogamo Shrine)



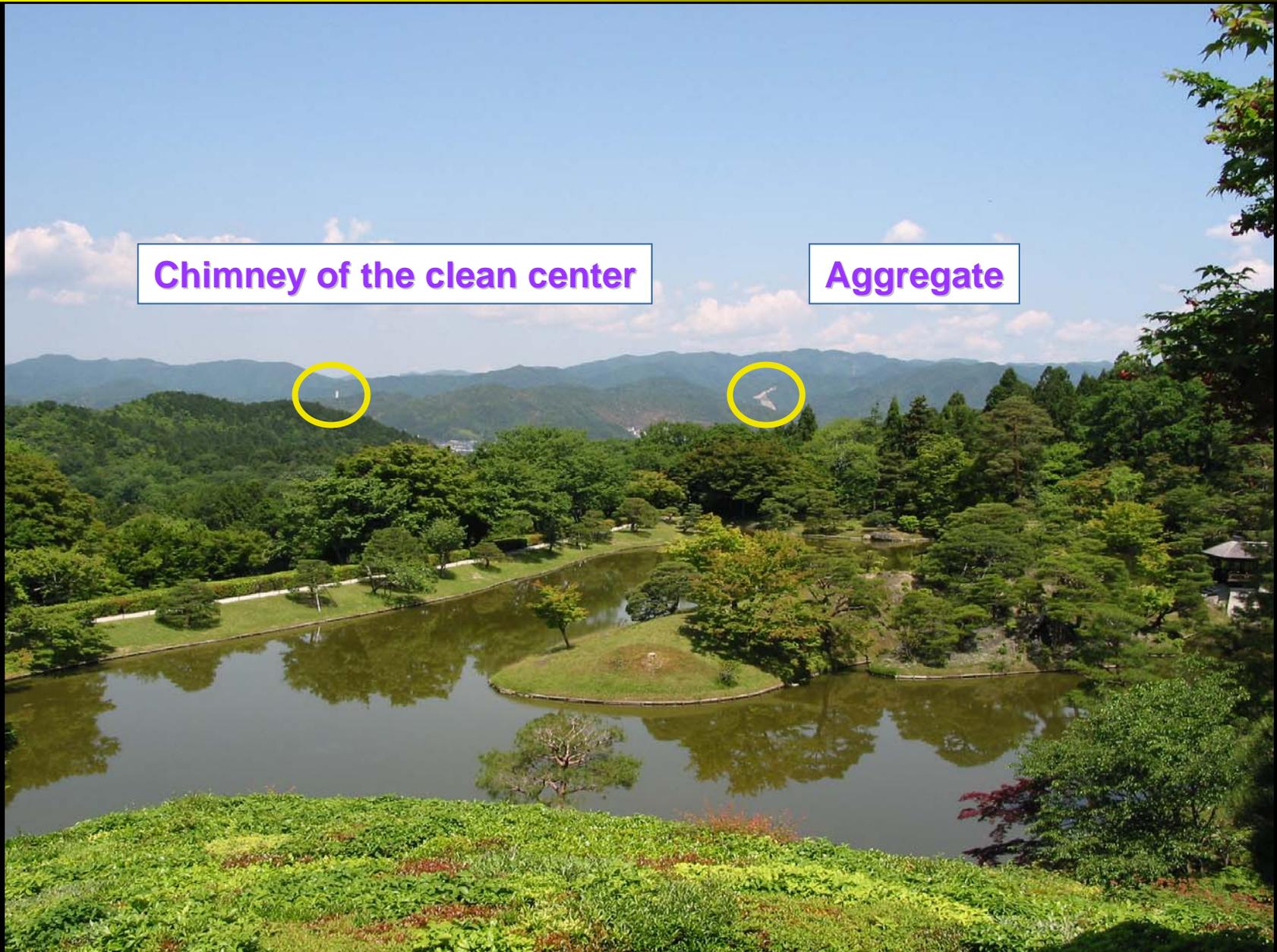
Surrounding Forest, Tadasuno-mori

2) 賀茂御祖神社(下鴨神社)



Map , Tadasuno-mori

Syugakuin rikyu (Syugakuin –Imperial villas)



Chimney of the clean center

Aggregate

View from Rinuntei (the spot to look down Iwakura area, and mountains)

A sustainable historical city looking 50 & 100 years into the future



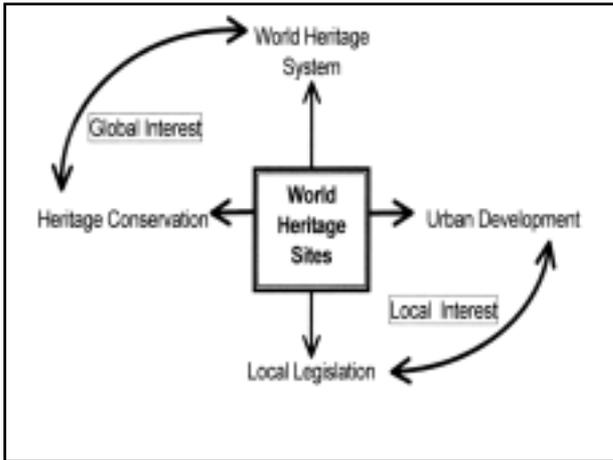


“Conserving” Japan: Challenges on the World Heritage Sites in Hiroshima

Yushi Utaka

Associate Professor,
School of Human Science & Environment,
University of Hyogo









Case study of two WH sites in Hiroshima

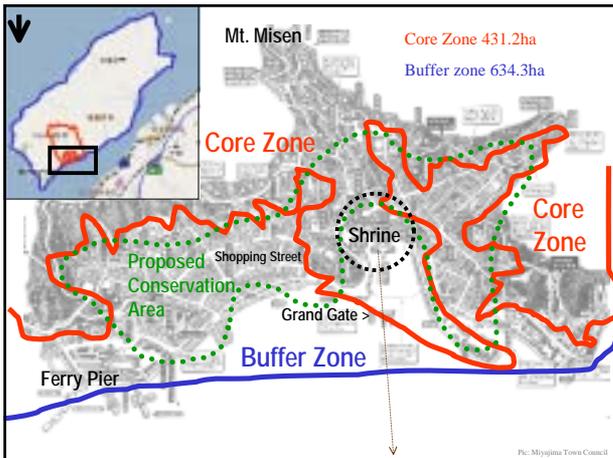
Itsukushima Shrine

Inscribed :1996 Criteria: C (i) (ii) (iv) (vi)

Brief description:

The island of Itsukushima, in the Seto inland sea, has been a holy place of Shintoism since the earliest times. The first shrine buildings here were probably erected in the 6th century. The present shrine dates from the 13th century and the harmoniously arranged buildings reveal great artistic and technical skill. The shrine plays on the contrasts in colour and form between mountains and sea and illustrates the Japanese concept of scenic beauty, which combines nature and human creativity.





From Shrine to Grand Gate: NGOs - Fragmented holy axis





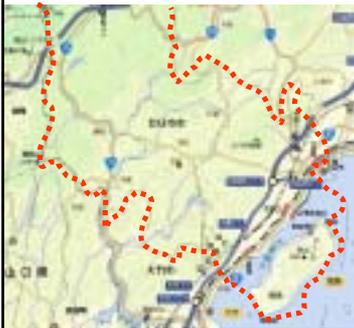
Urban Puzzle; Stakeholders, Control, Planning and Politics

Established Industrial Area: Hope of Japanese Economy



Hiroshima's Regional Economy - More Serious Recession and Slower Recovery

Administrative Change and New Policies in Miyajima



PIC <http://www.mapion.co.jp/tem/mip/web/adm/34.html>

Future Itukushima Shrine: Tourism or Holy Place?

This is a place where we are praying every morning. This is our place; it is not for visitors : A lady living in Miyajima town



Miyajima will soon be upgraded as an international tourist destination :
Tourism Promotion Board



Hiroshima Atomic Bomb Dome

Inscribed :1996 Criteria: C (vi)

Brief description:

The Hiroshima Peace Memorial (Genbaku Dome) was the only structure left standing in the area where the first atomic bomb exploded on 6 August 1945. Through the efforts of many people, including those of the city of Hiroshima, it has been preserved in the same state as immediately after the bombing. Not only is it a stark and powerful symbol of the most destructive force ever created by humankind; it also expresses the hope for world peace and the ultimate elimination of all nuclear weapons.



Nomination process & history: Hiroshima Atomic Bomb Dome From negative heritage to symbol of global peace

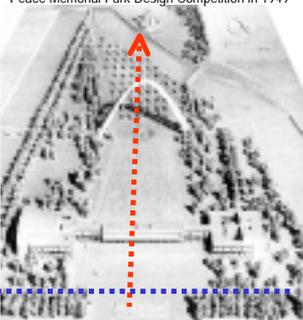
- 1915 Construction of ABD building - former Commercial Exhibition Hall
- 1945 August 6 – **Damaged by Atomic Bomb**
- 1949 Peace Memorial Park Design Competition – 1st Prize: Kenzo Tange
- 1953 Ownership is transferred from Prefecture to City
- 1950s Many organizations (NGOs) request the preservation of the ABD
- 1962 enclosing the compound and prohibiting entry to it

- 1965 First major inventory & **preservation project**. **Fund-raising** campaign started
- 1989 2nd major **preservation projects**
- 1995 Japanese government designate ABD as a **national monument**

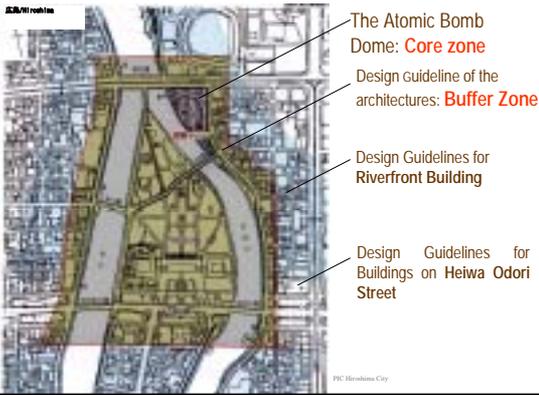
- 1996 Listed as a **World Heritage Site**

Peace Memorial Park Design Competition : Won by architect Kenzo Tange Modernist Approach and 'Negative' Heritage

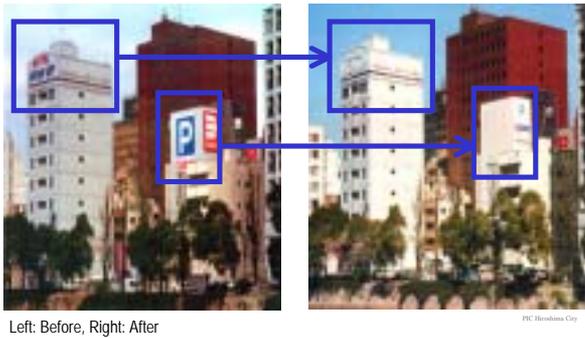
Peace Memorial Park Design Competition in 1949



Landscape control at WH site & Buffer zone



Changing the Sign Board : Negotiation and Voluntary



Arguments about planning legislation and control: Contrast or Obstacle?

We should demolish several buildings that are located near the ABD. All of them are obstacles to peace for peace : An expert



We, the people of Hiroshima, have worked hard. See, there are a lots of new shiny building surrounding the ABD : An old gentlemen working in a local car park



Do's and Don'ts in Hiroshima Peace Memorial Park

Q: Music Allowed in the Peace Memorial Park?

- Chorus by small group →
- Guitar Concert →
- Brass band → ×



"To keep the suitable condition as a Holy Place"
Municipal Ordinance for Use of Hiroshima Peace Memorial Park

Do's and Don'ts Chugjoku Newspaper 2004.04.21

Challenges to Maintain the Urban Park and the "Holy Place"



8 August 1984: Free Access



Present: Allowed Only on the 8.6 Memorial Day

It is too much protective to keep and maintain the "holy place" by Hiroshima City government. It should be more natural with daily activity for the people: a local Prof.

Yok. Chugjoku Newspaper 2004.04.28 / P.c. Chugjoku Newspaper 2004.04.21

The War Against Vandalism: Burned Paper Crane



2003 Feb >>>



Monitored >>>>



Again:2006 Jan

Pics: Left: <http://www.ncc.net.com/album/home66/cranesalbum.htm>
Center: Chugoku Newspaper 2004.04.21
Right: Chugoku Newspaper 2006.01.12

Hiroshima ABD: Symbol the Peace Movement & Recovery

- ✓ August 6 Memorial
- ✓ Aging: People, Site, Artifacts and Agendas.
- ✓ 'Former' popular Destination for School Excursion

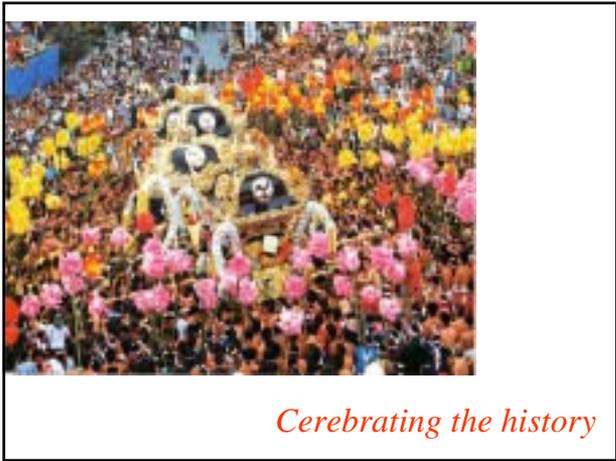


PH: Hiroshima City

Challenge

Challenges on the World Heritage Sites in Japan







Non Profit Organization: Thousand Crane Projects for a Hopeful Future



Pics: <http://www.miral.npo.jp/>

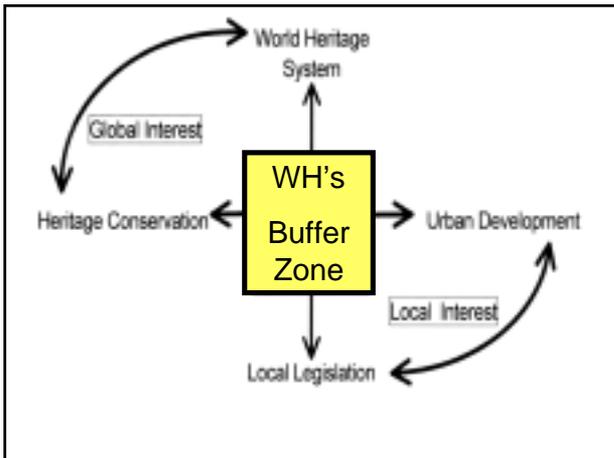
Movement and Linkage

Series on the Management and Conservation of World Heritage Sites
Training Workshop on World Heritage Sites Management - their Tangible and Intangible Aspects

12-17 March 2006, Hiroshima



Exchange and Training





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THE BUFFER ZONE AND THE PRESERVATION OF CULTURAL HERITAGE: THE SPANISH CASE

Dr. Luis Anguita Villanueva

I.- INTRODUCTION: A HISTORICAL OVERVIEW

The use of buffer zones in Spanish legislation regarding the protection of the patrimony originates in the protection standards that were established at the beginning of the twentieth century for monuments and historical areas. Article 21 of the Real Decreto-Ley of August 9, 1926, about protection and conservation of artistic richness declared that in cities and towns which are totally or partially declared as, or that are included in, artistic national treasures, there will be protection by way of the city plans. Circles were to be drawn around those places where development was limited, with different colors for artistic or historic buildings, places, streets, squares, picturesque locations and central plazas. No development could take place without the authorization of the central authorities or the provincial authorities. Later on, the Law of 13th of May 1933, article 33, and the Decreto of 16 of April 1936 confirmed complete protection of immovable cultural goods through “protection areas”, Spain’s first regulation of buffer zones.

II.- CULTURAL GOODS WITHIN LAW 16/1985

Law 16/1985, dated 25 June, regarding the Spanish Historical Heritage (Official State Bulletin of 29 June 1985) is the standard for the protection of cultural goods at the federal level. In this law, we find written in the Preamble that Spanish Historical Heritage has been the main witness to the historical contributions made by Spaniards to universal civilization and to its contemporary creative capacity. The protection and enrichment of the property forming this heritage are fundamental obligations that are binding for all public authorities, in compliance with the mandate addressed to them by article 46 of the Spanish Constitution.

This general principle regarding Spanish Cultural Heritage is further explained in the text of the law, which creates different levels of protection for cultural goods.

- 1.-Cultural Interest Goods.
- 2.-Cultural Goods included in the General Inventory.
- 3.-Other Cultural Goods.

Only for those goods within the first level does Law 16/1985 offer the possibility of having a buffer zone or area of protection, given their importance within the Spanish Historical Patrimony. This first level is made up of natural immovable goods. The second level includes natural movable goods. The third level is left as a residual category that refers to certain goods and general obligations of conservation and protection that Law 16/1985 imposes.

Within natural immovable cultural interest goods, Law 16/1985 defines the following:

1. Monuments comprising architectural or engineering works, as well as colossal sculptures, shall be monuments provided they are of historical, artistic, scientific or social interest.
2. A Historical Garden is a delimited area resulting from the organisation of natural elements by man, sometimes complemented by constructions, and considered of interest because of its origin or historical past, or because of its aesthetic, sensory or botanical value.
3. A Historical Area is a group of immovable properties forming a continuous or dispersed unit of settlement, within a physical structure representing the development of a human community in that it testifies to its culture or has value for public use and enjoyment. A historical unit is also any individualized group of properties included in a larger population unit that have the same characteristics and that can be clearly delimited.
4. A Historical Site is a place or natural landscape linked to events or memories of the past or to popular tradition, as well as cultural or natural creations and man-made works having historical, ethnological, paleontological or anthropological value.
5. An Archaeological Area is a place or natural landscape where there are movable or immovable properties that can be studied using archaeological methodology, whether or not they have been excavated and regardless of whether they are to be found on the surface, underground or below Spanish territorial waters.

III.- CULTURAL INTEREST GOODS AND BUFFER ZONES

Proceedings declaring Cultural Interest Goods must define them clearly. In the case of immovable properties, it is necessary to delimit a buffer zone affected by a designation and, where appropriate, to define and list the component parts, as well as any belongings and accessories included in the declaration.

The proceedings declaring Cultural Interest Goods determine the complete legal rules to define a cultural property that is an immovable cultural good. See the Annexes for examples of how the rules are joined a topographical map.

What is a buffer zone in the Spanish legal system? It is a physical space that surrounds the Cultural Interest Good without having its own cultural value. Its mission is to provide suitable space for the conservation, protection and contemplation of a Cultural Interest Good.

The legal rules governing buffer zones are spread around Law 16/1985 regarding the Spanish Historical Heritage. We can describe the most important guidelines within the law:

a) Both Cultural Interest Goods and Buffer Zones are one unit: An immovable property declared to be of cultural interest is inseparable from its surroundings. It cannot be displaced or moved unless this is essential for reasons of force majeure or social interest.

b) Under all circumstances, authorisation must be obtained from the Administration for any activity on Buffer Zones: With Cultural Interest Goods, no internal or external building work may be carried out that will directly affect the building or any of its parts or belongings without express authorisation from the Administration responsible for enforcement of Law 16/1985. The same authorisation is necessary for placing any type of sign or symbol on facades or roofs and for carrying out any work in the surrounding area covered by the declaration.

c) Urban and Rural Planning can fulfil the role of Buffer Zones: the Plan for the protection of a historical unit may allow urban remodelling but only when this implies an improved relationship with the territorial or urban surroundings or avoids any use that is damaging for the unit.

d) Benefits are also for the Buffer Zones: The budget for any public works that are financed completely or partially by the State shall devote at least 1% of the funds provided by the State to financing work on the preservation or enrichment of the Spanish Historical Heritage or for promoting artistic creativity, preferably on the actual site of the work or in its immediate surroundings.

IV.- SOME EXAMPLES OF BUFFER ZONES IN WORLD HERITAGE MONUMENTS

a) Buffer zones in urban area: Works of Antonio Gaudi in Barcelona.

ANNEXE 1

b) Buffer zones in rural area: San Millan, Yuso and Suso Monasteries

ANNEXE 2

c) Problems with the buffer zones and World Heritage Goods: the special case of The Route to Santiago.

ANNEXE 3

18685 *RESOLUCIÓN CLT/2527/2006, de 19 de junio, por la que se da publicidad al Acuerdo del Gobierno de la Generalidad, de 6 de junio de 2006, de delimitación del entorno de protección de la Casa Batlló y la Casa Amatller, en Barcelona.*

De acuerdo con lo que establece el artículo 12 de la Ley 9/1993, de 30 de septiembre, del patrimonio cultural catalán,
Resuelvo:

1. Publicar íntegramente en el DOGC y en el BOE el Acuerdo del Gobierno de la Generalidad de 6 de junio de 2006, de delimitación del entorno de protección de la Casa Batlló y la Casa Amatller, en Barcelona.

2. Contra este Acuerdo, que agota la vía administrativa, puede interponerse recurso potestativo de reposición ante el Gobierno en el plazo de un mes, o bien recurso contencioso administrativo ante el Tribunal Superior de Justicia de Cataluña en el plazo de dos meses, a contar, en ambos casos, desde la notificación o publicación en el DOGC.

Barcelona, 19 de junio de 2006.-El Consejero de Cultura, Ferran Mascarell i Canalda.

ACUERDO DE 6 DE JUNIO DE 2006, DEL GOBIERNO DE LA GENERALIDAD DE CATALUÑA, DE DELIMITACIÓN DEL ENTORNO DE PROTECCIÓN DE LA CASA BATLLÓ Y LA CASA AMATLLER, EN BARCELONA

La Casa Batlló está declarada monumento histórico-artístico en virtud del Decreto de 24 de julio de 1969 (BOE de 20-8-1969).

La Casa Amatller está declarada monumento histórico-artístico en virtud del Decreto de 9 de enero de 1976 (BOE de 17-2-1976).

Por la Resolución CLT/2854/2005, de 25 de agosto (DOGC núm. 4486, de 10-10-2005), se incoó expediente de delimitación de un entorno de protección de la Casa Batlló y de la Casa Amatller, en Barcelona.

Se han cumplido todos los trámites preceptivos en la instrucción de este expediente, de acuerdo con lo que establecen los artículos 8 y siguientes de la Ley 9/1993, de 30 de septiembre, del patrimonio cultural catalán.

Vistos los informes favorables del Consejo Asesor del Patrimonio Cultural Catalán y del Instituto de Estudios Catalanes;

Visto que durante la tramitación de este expediente no se ha presentado ninguna alegación;

A propuesta del consejero de Cultura, el Gobierno de la Generalidad de Cataluña acuerda:

Delimitar el entorno de protección de la Casa Batlló y la Casa Amatller, en Barcelona (Barcelonès), cuya justificación se incluye en el anexo y que está representado en el plano que se publica junto a este Acuerdo.

ANEXO

Justificación del entorno delimitado

La proximidad física de las casas Batlló y Amatller y el hecho de que ambos edificios estén declarados bien cultural de interés nacional y no dispongan de entornos de protección específicamente delimitados, aconseja la definición conjunta de esta figura sobre aquellos elementos como el mejor instrumento para garantizar la pervivencia de sus múltiples valores culturales en las mejores condiciones posibles.

Esta figura legal considera e incorpora, des de su propia definición, las interacciones de los monumentos con cada uno de los elementos urbanos y naturales de su entorno, así como la relación entre ellos. Es, pues, un instrumento de protección global, valorativo de la realidad, con la intención de conservar en las mejores condiciones posibles el legado patrimonial inherente a los monumentos.

Se pretende conseguir el equilibrio entre la necesidad de crear un área de protección alrededor de los monumentos que garantice suficientemente el control sobre su entorno y la voluntad de no afectar más espacios de los estrictamente indispensables para su correcta percepción.

El criterio para definir el entorno se basa en la especificidad de la trama urbana donde se encuentran, dentro de una manzana del Ensanche Cerdà y dando frente al Paseo de Gracia, uno de los principales ejes urbanos de Barcelona. Esta fachada de la manzana, donde se ubican otras edificaciones de reconocida cualidad, forma un conjunto urbano unitario perfectamente consolidado y conocido popularmente como «la manzana de la discordia», cosa que obliga a considerarlo globalmente para garantizar su coherencia actual.

Por el lado norte, el entorno engloba también las dos fincas adyacentes a la Casa Batlló y que dan frente a la calle Aragón, núm. 272 y 274-276, con la intención de controlar las visuales del conjunto en sentido descendente del Paseo de Gracia, y así mismo, la visual de la fachada posterior de la Casa Batlló des de la calle Aragón. Esta visual que se produce a través del pasaje existente al lado del edificio del «Servei Estació» está condicionada por las fachadas de los dos edificios existentes, de manera que cualquier intervención en ellas afecta a su observación.

Por otro lado no se considera necesaria la delimitación de un entorno de protección más amplia por el hecho de que estos elementos están incluidos en el Plan Especial de Protección del Patrimonio Arquitectónico (PEPPA) y Catálogo del distrito 2 (Eixample) del Ayuntamiento de Barcelona, aprobado y vigente desde el mes de mayo del 2000, con los números 164 y 165 y nivel de protección A, el máximo posible. El Plan General Metropolitano (PGM) también califica estos elementos con categoría 13a (p). La volumetría de los dos monumentos queda regulada por el documento de «Criterios de regulación volumétrica de las dos últimas plantas de los edificios del Paseo de Gracia» del Ayuntamiento de Barcelona, aprobado por la Comisión de Mantenimiento y Mejora del Eixample el 17 de diciembre de 1996.

Esta concurrencia de figuras de planeamiento urbanístico de carácter proteccionista se yuxtaponen y complementan con esta delimitación, de forma que queda garantizada la conservación de estos monumentos desde los diferentes ámbitos de competencia de las administraciones implicadas.

18686 *RESOLUCIÓN CLT/2512/2006, de 4 de julio, por la que se da publicidad al Acuerdo del Gobierno de la Generalidad, de 20 de junio de 2006, de delimitación del entorno de protección de la Casa Vicens, en Barcelona.*

De acuerdo con lo que establece el artículo 12 de la Ley 9/1993, de 30 de septiembre, del patrimonio cultural catalán,
Resuelvo:

1. Publicar íntegramente en el DOGC y en el BOE el Acuerdo del Gobierno de la Generalidad de 20 de junio de 2006, de delimitación del entorno de protección de la Casa Vicens, en Barcelona.
2. Contra este Acuerdo, que agota la vía administrativa, puede interponerse recurso potestativo de reposición ante el Gobierno en el plazo de un mes, o bien recurso contencioso administrativo ante el Tribunal Superior de Justicia de Cataluña en el plazo de dos meses, a contar, en ambos casos, desde la notificación o publicación en el DOGC.

Barcelona, 4 de julio de 2006.-El Consejero de Cultura, Ferran Mascarell i Canalda.

ACUERDO DE 20 DE JUNIO DE 2006, DEL GOBIERNO DE LA GENERALIDAD DE CATALUÑA, DE DELIMITACIÓN DEL ENTORNO DE PROTECCIÓN DE LA CASA VICENS, EN BARCELONA

La Casa Vicens está declarada monumento histórico-artístico en virtud del Decreto de 24 de julio de 1969 (BOE de 20-8-1969).

Por la Resolución CLT/219/2006, de 3 de enero (DOGC núm. 4571, de 13-2-2006) se incoó expediente de delimitación de un entorno de protección de la Casa Vicens, en Barcelona.

Se han cumplido todos los trámites preceptivos en la instrucción de este expediente, de acuerdo con lo que establecen los artículos 8 y siguientes de la Ley 9/1993, de 30 de septiembre, del patrimonio cultural catalán.

Vistos los informes favorables del Consejo Asesor del Patrimonio Cultural Catalán y del Instituto de Estudios Catalanes;

Visto que durante la tramitación del expediente no se ha presentado ninguna alegación;

A propuesta del consejero de Cultura, el Gobierno de la Generalidad de Cataluña, acuerda:

Delimitar el entorno de protección de la Casa Vicens, en Barcelona (Barcelonés), la justificación del cual se incluye en el anexo y que está representado en el plano que se publica junto a este Acuerdo.

ANEXO

Justificación del entorno delimitado

La singularidad de la Casa Vicens, edificio declarado monumento y hasta ahora sin entorno de protección específicamente delimitado, aconseja la definición de esta figura como el mejor instrumento para garantizar la pervivencia de sus múltiples valores culturales en las mejores condiciones posibles.

Esta figura legal considera e incorpora, desde su propia definición, las interacciones del monumento con cada uno de los elementos urbanos de su entorno, así como la relación entre ellos. Es, pues, un instrumento de protección global, valorativo de la realidad, con la clara intención de conservar en las mejores condiciones posibles el legado patrimonial inherente al monumento.

Se pretende conseguir el equilibrio entre la necesidad de crear un área de protección alrededor del monumento que garantice suficientemente el control sobre el entorno y la voluntad de no afectar más espacios que los estrictamente indispensables para su correcta percepción.

El criterio general para su delimitación, de acuerdo con estos principios, es incluir las fincas adyacentes física y visualmente al monumento, las que dan al frente y aquellas de la calle de Aulestià i Pijoan que se consideran necesarias para la conservación de la perspectiva del edificio, situado sobre el eje de esta calle. El resultado es un perímetro de forma irregular que se justifica a continuación.

La situación del monumento genera dos ejes visuales importantes para su contemplación: la calle de las Carolines y la calle de Aulestià i Pijoan, situada sobre el eje del edificio. Las visuales desde estos ejes explican las afectaciones sobre los elementos urbanos que se incluyen en el entorno.

De acuerdo con estos principios generales, se justifican a continuación cada una de las fincas incluidas en el entorno:

Calle de las Carolines:

Finca núm. 12-16: La situación adyacente al monumento hace que cualquier intervención tenga un efecto directo sobre él, tanto por lo que hace a la fachada principal como a la fachada posterior. La anchura de la calle hace que las visuales de la fachada del monumento tengan una perspectiva limitada a ciertos ángulos de observación desde la acera sur de la calle por lo que esta finca juega un papel fundamental.

Finca núm. 17: Edificio esquina con la calle Aulestià i Pijoan, 34. Situada delante del monumento, su fachada tiene una incidencia visual directa en relación con la fachada del mismo desde cualquiera de los puntos de vista del conjunto, tanto desde la calle de las Carolinas como desde la calle Aulestià i Pijoan.

Finca núm. 19-21: Edificio esquina con la calle Aulestià i Pijoan 29, simétrica a la finca anterior, le son de aplicación los mismos argumentos.

Finca núm. 26: Parcela con fachada a la Avenida del Príncipe d'Astúries, 32. La anchura de la calle de las Carolinas hace que las visuales de la fachada del monumento tengan una perspectiva limitada a ciertos ángulos de observación desde la acera sur de la calle y también desde la avenida Príncipe d'Astúries. Este hecho y la relativamente pequeña fachada de la parcela núm. 26 bis, adyacente al monumento, hace necesario incluir esta finca para establecer un marco suficientemente amplio dentro del cual se garantice la correcta visualización del monumento.

Finca núm. 26 bis: La situación adyacente al monumento hace que cualquier intervención tenga un efecto directo sobre el mismo, especialmente por el hecho de tener la pared medianera sobre su jardín. Constituye el entorno más inmediato del monumento.

Calle de Aulestià i Pijoan:

Fincas núm. 25, 27, 28, 29, 30, 32 y 34: La directriz de la calle de Aulestià i Pijoan, sobre el eje de la fachada principal del monumento, hace que la visión del mismo se realice en una perspectiva central a los lados de la cual, enmarcándolo, se encuentran estas parcelas. Esta situación obliga a incorporarlas al entorno en una medida suficiente para garantizar el control sobre esta visual. Se incluyen los números citados porque estas parcelas tienen fachadas reducidas y su adición garantiza el margen suficiente para enmarcar la visual de la Casa Vicens en un ángulo de visión normal y desde un punto de observación cercano al edificio.

A las fincas núm. 29 i 34, que tienen fachada a la calle de las Carolines, se añaden a los motivos anteriores, los citados en el apartado de esta calle.

Avenida del Príncipe d'Astúries:

Finca núm. 32: Se trata de la misma finca contemplada anteriormente como calle de las Carolinas, 26.

Fincas núm. 34, 36 y 38: Este conjunto de parcelas forman el telón de fondo de la Casa Vicens cuando se observa este edificio desde puntos de vista frontal y en dirección oeste de la calle de las Carolinas. Por su altura dominan el espacio abierto que rodea el monumento y el propio edificio, por lo cual cualquier intervención en las fincas afecta directamente estas visuales.

Por otro lado no se considera necesaria la delimitación de un entorno de protección más amplio por el hecho de que este elemento está incluido en el Plan Especial de Protección del Patrimonio Arquitectónico (PEPPA) y Catálogo del distrito 6 (Gràcia) del Ayuntamiento de Barcelona, aprobado y vigente desde el mes de mayo de 2000, donde consta con el número de elemento 17 y nivel de protección A, el máximo posible. Así mismo, y a un nivel superior, el Plan General Metropolitano (PGM), considera el elemento con la clave 7a (p) (equipamientos comunitarios y dotaciones actuales). Esta concurrencia de figuras de planeamiento urbanístico de carácter proteccionista se yuxtaponen y complementan con esta delimitación, de manera que queda garantizada la conservación del elemento desde los diferentes ámbitos de competencia de las administraciones implicadas.



GENERALITAT DE CATALUNYA

DEPARTAMENT DE CULTURA

DIRECCIÓ GENERAL DEL PATRIMONI CULTURAL

ÀREA DE PLANIFICACIÓ, ACCIÓ TERRITORIAL, SECCIÓ DE PROTECCIÓ DE PATRIMONI CULTURAL IMMOBLE

CASA VICENS

EXPEDIENT DE DELIMITACIÓ D'ENTORN DE PROTECCIÓ

municipi: BARCELONA
ciutat: BARCELONES

emplaçament:

0

libre d'edificació:

DELIMITACIÓ DE L'ENTORN DE PROTECCIÓ

escala: 1/1000

elaborat: Base Aurbanament i Atribució d'Espais Públics

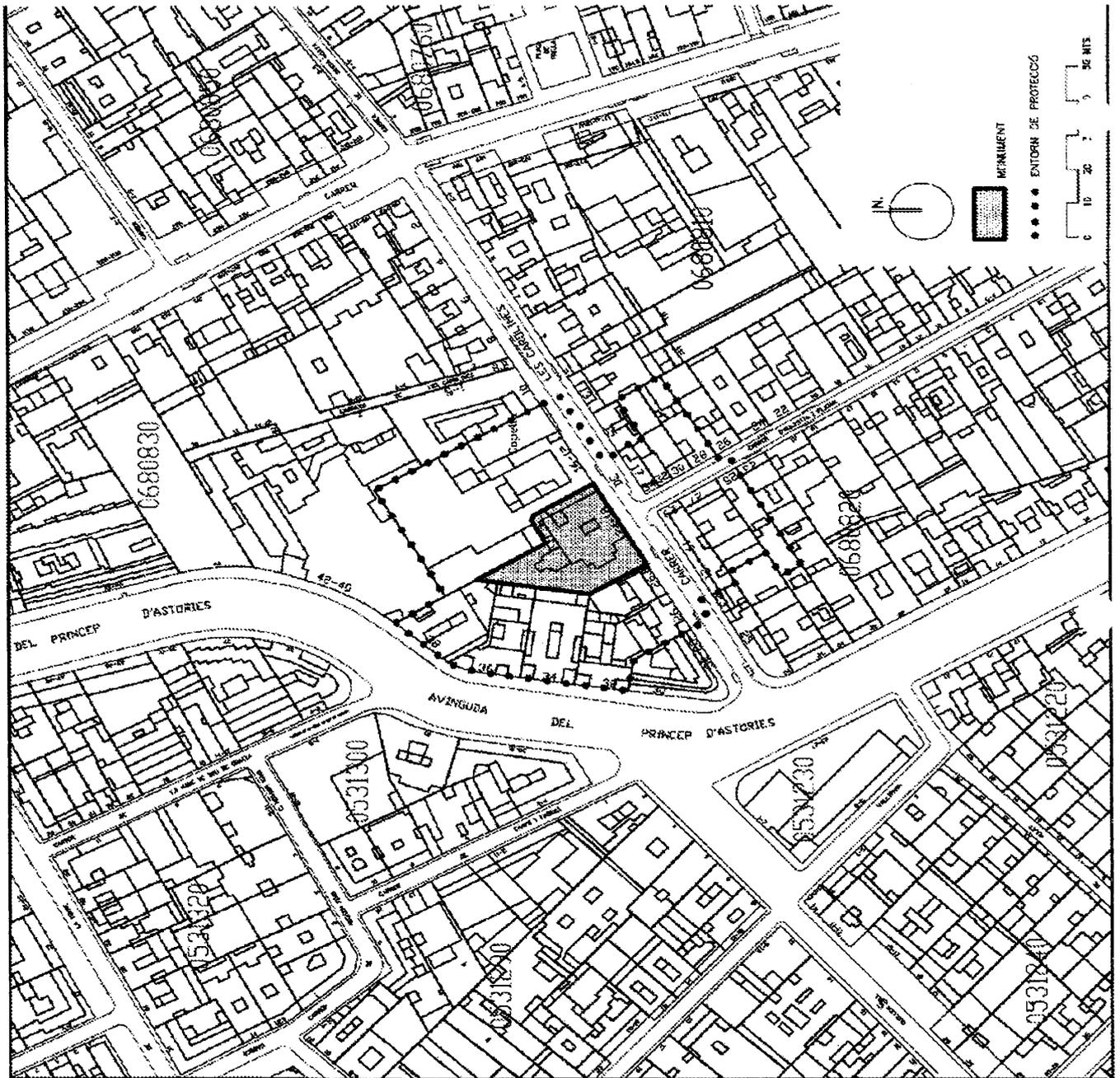
data: NOVENBRE 2005

autoritat: MARIONA ABELELL OLSA

col·laborador: JCS-CRIPAGAL - ICS

revisat:

MARIONA ABELELL OLSA
Cap d'Àrea de Planificació i Patrimoni Cultural
JANINE FREQUET I FOCH
Cap d'Àrea de Planificació i Patrimoni Cultural



3 de la Confederación: Comisario de Aguas, Director Técnico y el Jefe de la Oficina de Planificación Hidrológica (con voz pero sin voto); 17 vocales más, por los usuarios; 6 por Abastecimiento, 8 por regadíos, 2 por usos energéticos y 1 por usos industriales. El Secretario es el de la Confederación.

Estructura organizativa

La estructura orgánica está definida en el Real Decreto 984/1989, constando de cuatro unidades, dos con nivel de Subdirección General y dos con nivel de Servicios, con dependencia directa de la Presidencia. Las unidades son:

Presidente: Don Francisco Tapia Granados.
Comisaría de Aguas: Don Javier Serrano Aguilar.
Dirección Técnica: Don Juan Francisco Saura Martínez.
Oficina de Planificación Hidrológica: Don Agustín Argüelles Martín.
Secretaría General: Don Pedro J. Gómez Galán.

Organización contable

Dada su condición de Organismo Autónomo, a la Confederación Hidrográfica del Guadalquivir le es de aplicación la Orden del Ministerio de Economía y Hacienda de 1 de febrero de 1996, por la que se aprueba la Instrucción de Contabilidad para la Administración Institucional del Estado, formando y rindiendo sus cuentas de acuerdo con los principios y normas de contabilidad recogidos en el Plan General de Contabilidad Pública. La Confederación constituye, pues, una entidad contable a los efectos previstos en la Instrucción citada, que aplica el modelo contable centralizado, tal y como se define en la regla 12 de la Instrucción, de modo que se centraliza en el Servicio de Presupuestos y Contabilidad, integrada en el Área Económica de la Secretaría General, cuyo Jefe es el funcionario don Ignacio Bernal Martínez, el registro de todas las operaciones, con independencia del lugar físico donde se genere o capture la información. Las cuentas anuales tienen, en consecuencia, carácter unitario y muestran la situación patrimonial y financiera de la entidad contable en su conjunto.

De acuerdo con la Instrucción de 1 de febrero de 1996, corresponde al Presidente de la Confederación:

a) Organizar la contabilidad de conformidad con la Instrucción y demás normas dictadas por el Ministerio de Economía y Hacienda y las instrucciones recibidas de la Intervención General de la Administración del Estado.

b) Establecer las normas de funcionamiento interno que regulan los procedimientos administrativos a través de los cuales se desarrolla la gestión contable. Los métodos y procedimientos que se han establecido garantizan el registro en el Sistema de Información Contable de todos los hechos contables, en el oportuno orden cronológico, y con la menor demora posible desde que se producen.

c) Organizar un adecuado sistema de archivo y conservación de toda la documentación e información contable, que además de garantizar su integridad física, permita poner a disposición del Tribunal de Cuentas y de los demás órganos de control los justificantes, documentos, cuentas o registros del Sistema de Información Contable por ellos solicitados en los plazos requeridos.

En este marco organizativo, el soporte informático facilitado por la Intervención General de la Administración del Estado (SIC) garantiza la coherencia, exactitud y automatismo de las anotaciones que, para cada una de las anotaciones contables, se deban producir en los diferentes registros a los que la operación afecte.

Todo hecho que deba dar lugar a anotaciones en el Sistema de Información Contable habrá de estar debidamente acreditado con el correspondiente justificante que ponga de manifiesto su realización. El registro de las operaciones se realiza mediante la captura en el sistema de los datos que figuran reflejados en el oportuno documento contable o de captura de datos. Los documentos contables, según los casos, pueden ser individuales de forma que recojan una sola operación, o bien, en su caso, podrán ser relaciones que agrupen los datos correspondientes a varias operaciones de un mismo tipo. Para que los datos puedan ser incorporados al sistema, será necesario que los documentos vengan debidamente autorizados por quien tenga atribuidas facultades para ello según las normas de procedimiento que sean aplicables en cada caso. En todo documento que haya producido anotaciones en contabilidad deberá figurar una diligencia de toma de razón acreditativa, como mínimo, de la fecha, el número de asiento y el importe con que dicho documento hubiese quedado registrado.

BANCO DE ESPAÑA

18683

RESOLUCIÓN de 25 de octubre de 2006, del Banco de España, por la que se hacen públicos los cambios del euro correspondientes al día 25 de octubre de 2006, publicados por el Banco Central Europeo, que tendrán la consideración de cambios oficiales, de acuerdo con lo dispuesto en el artículo 36 de la Ley 46/1998, de 17 de diciembre, sobre la Introducción del Euro.

CAMBIOS

1 euro =	1,2580	dólares USA.
1 euro =	149,93	yenes japoneses.
1 euro =	0,5766	libras chipriotas.
1 euro =	28,383	coronas checas.
1 euro =	7,4551	coronas danesas.
1 euro =	15,6466	coronas estonias.
1 euro =	0,67020	libras esterlinas.
1 euro =	262,87	forints húngaros.
1 euro =	3,4528	litas lituanas.
1 euro =	0,6961	lats letones.
1 euro =	0,4293	liras maltesas.
1 euro =	3,8855	zlotys polacos.
1 euro =	9,2125	coronas suecas.
1 euro =	239,60	tolares eslovenos.
1 euro =	36,576	coronas eslovacas.
1 euro =	1,5916	francos suizos.
1 euro =	85,71	coronas islandesas.
1 euro =	8,3380	coronas noruegas.
1 euro =	1,9558	levs búlgaros.
1 euro =	7,3850	kunas croatas.
1 euro =	3,5179	nuevos leus rumanos.
1 euro =	33,8300	rublos rusos.
1 euro =	1,8475	nuevas liras turcas.
1 euro =	1,6561	dólares australianos.
1 euro =	1,4191	dólares canadienses.
1 euro =	9,9407	yuanes renminbi chinos.
1 euro =	9,7905	dólares de Hong-Kong.
1 euro =	11.485,54	rupias indonesias.
1 euro =	1.202,46	wons surcoreanos.
1 euro =	4,6250	ringgits malasio.
1 euro =	1,9038	dólares neozelandeses.
1 euro =	62,837	pesos filipinos.
1 euro =	1,9784	dólares de Singapur.
1 euro =	46,691	bahts tailandeses.
1 euro =	9,6349	rands sudafricanos.

Madrid, 25 de octubre de 2006.-El Director general, Javier Alonso Ruiz-Ojeda.

COMUNIDAD AUTÓNOMA DE CATALUÑA

18684

RESOLUCIÓN CLT/2525/2006, de 16 de junio, por la que se da publicidad al Acuerdo del Gobierno de la Generalidad, de 23 de mayo de 2006, de delimitación del entorno de protección del Parque Güell, en Barcelona.

De acuerdo con lo que establece el artículo 12 de la Ley 9/1993, de 30 de septiembre, del patrimonio cultural catalán, Resuelvo:

1. Publicar íntegramente en el DOGC y en el BOE el Acuerdo del Gobierno de la Generalidad de 23 de mayo de 2006, de delimitación del entorno de protección del Parque Güell, en Barcelona.

2. Contra este Acuerdo, que agota la vía administrativa, puede interponerse recurso potestativo de reposición ante el Gobierno en el plazo de un mes, o bien recurso contencioso administrativo ante el Tribunal Supe-

rior de Justicia de Cataluña en el plazo de dos meses, a contar, en ambos casos, desde la notificación o publicación en el DOGC.

Barcelona, 16 de junio de 2006.-El Consejero de Cultura, Ferran Mascarell i Canalda.

ACUERDO DE 23 DE MAYO DE 2006, DEL GOBIERNO DE LA GENERALIDAD DE CATALUÑA, DE DELIMITACIÓN DEL ENTORNO DE PROTECCIÓN DEL PARQUE GÜELL, EN BARCELONA

El Parque Güell fue declarado monumento histórico-artístico en virtud del Decreto de 24 de julio de 1969 (BOE de 20-8-1969).

Por la Resolución CLT/2853/2005, de 24 de agosto (DOGC núm. 4486, de 10-10-2005), se incoó expediente de delimitación de un entorno de protección del Parque Güell, en Barcelona.

Se han cumplido todos los trámites preceptivos en la instrucción de este expediente, de acuerdo con lo que establecen los artículos 8 y siguientes de la Ley 9/1993, de 30 de septiembre, del patrimonio cultural catalán.

Vistos los informes favorables del Consejo Asesor del Patrimonio Cultural Catalán y del Instituto de Estudios Catalanes;

Visto que durante la tramitación del expediente se han presentado alegaciones que han sido analizadas y contestadas por la Dirección General del Patrimonio Cultural;

A propuesta del consejero de Cultura, el Gobierno acuerda:

Delimitar el entorno de protección del Parque Güell, en Barcelona (Barcelonès), cuya justificación se incluye en el anexo y que está representado en el plano que se publica junto a este Acuerdo.

ANEXO

Justificación del entorno delimitado

El hecho de que el Parque Güell esté declarado bien cultural de interés nacional y no disponga de entorno de protección específicamente delimitado, aconseja la definición de esta figura sobre este elemento como el mejor instrumento para garantizar la pervivencia de sus múltiples valores culturales en las mejores condiciones posibles.

Esta figura legal considera e incorpora, desde su propia definición, las interacciones del monumento con cada uno de los elementos urbanos y naturales de su entorno, así como la relación entre ellos. Es, pues, un instrumento de protección global, valorativa de la realidad, con la clara intención de conservar en las mejores condiciones posibles el legado patrimonial inherente al monumento.

La materialización de estas intenciones quiere conseguir el equilibrio entre la necesidad de crear un área de protección alrededor del monumento que garantice suficientemente el control sobre su entorno y la voluntad de no afectar más espacios de los estrictamente indispensables para su correcta percepción.

Este elemento tiene unas características especiales por su medida, situación urbana, topográfica y de contenido que lo singularizan con respecto al tratamiento que necesita en la definición de su entorno. La gran dimensión del Parque hace que presente zonas diferenciadas en su interior. Su parte monumental (Pabellones de entrada, escalinata, Sala Hipóstila, etc.) situada al sur del conjunto, es la más divulgada. A partir de ella se desarrollan recorridos formalizados por viaductos, escaleras, barandas y elementos auxiliares que recorren el Parque en todas direcciones. En esta zona la arquitectura se pone al servicio del paisaje y se transforma en urbanismo, produciendo una transición hacia las zonas forestales más vírgenes del Parque, situadas al norte, donde se llega a la naturaleza en estado puro. Esta estructura del Parque, coherente con sus objetivos originarios de crear una urbanización selecta para vivir en contacto con la

naturaleza, hace que el tratamiento del entorno sea diferente en función de cada zona.

Por otro lado todo el conjunto del Parque se encarama a la montaña del Carmel, situándose en una posición topográfica elevada con respecto a su entorno. Este hecho, junto con su dimensión, genera importantes visuales desde su interior hacia el exterior, del exterior sobre el Parque y visiones cruzadas de las diferentes partes desde su interior. Con el entorno se pretende también preservar esta riqueza de perspectivas, que es intrínseca al Parque.

Asimismo, es necesario señalar las diferencias en la trama urbana que rodea al monumento. La ubicación del Parque y su dimensión le otorga un peso específico dentro de este sector de la ciudad y hace que actúe como un elemento de sutura y transición entre las diferentes tramas urbanas que lo rodean, al mismo tiempo que articula los espacios libres del sector, formados básicamente por sus partes forestales y el Parque del Carmel.

La configuración del espacio urbano cercano al monumento y la propia del Parque justifica el criterio general seguido para su delimitación, que se basa en la inclusión de las fincas urbanas y forestales adyacentes y/o confrontantes al Parque, excluyendo, por su propia naturaleza, los grandes equipamientos sociales situados en el lado este. A continuación se razona su inclusión en función de cada una de las áreas afectadas.

Sector sur: se incluyen en este sector las fincas de las calles de Olot, Marianao, Mercedes, Larrard y la avenida del Santuario de Sant Josep de la Muntanya. Estas fincas forman un conjunto relativamente homogéneo en relación al Parque. Se sitúan ante su entrada monumental, constituyen el final de la trama urbana que nace a partir de la Travessera de Dalt y son la principal vía de llegada al Parque desde el resto de la ciudad. Estas fincas se encuentran ubicadas en una cota inferior a la del Parque y se han incluido las que tienen contacto con sus límites o tienen la fachada principal frente a la del Parque. Cualquier intervención en ellas tiene repercusión sobre la imagen del monumento, tanto desde las calles mencionadas como desde el interior del Parque hacia el exterior.

Sector sudoeste: se incluyen en este sector las fincas de Rambla de Mercedes y de la avenida del Coll del Portell hasta encontrar la parcela del propio Parque. Adyacentes al perímetro del Parque y con una posición topográfica inferior, las visuales desde el camino peatonal que sigue el límite del Parque en este sector, se abocan sobre estas fincas, de manera que quedan en primer plano desde estas perspectivas. Asimismo, la perspectiva desde la avenida del Coll del Portell está condicionada por los usos y edificaciones que se den a estas parcelas. No debe olvidarse tampoco que existe un acceso secundario al Parque en la finca número 78, por el que acceden numerosos visitantes que llegan al Parque por la Pujada de la Glòria.

Sector noroeste: este sector comienza en la parcela del propio Parque que da frente a la avenida del Coll del Portell (finca núm. 102-130) y se corresponde con su parte forestal. Se incluye la parte norte de la parcela del Parque Güell delimitada por la continuación de esta avenida, prevista en el Plan General y que sigue la traza de los caminos existentes que atraviesan actualmente el bosque, y la parcela número 44 de la calle de Pau Ferran. El límite de esta inclusión pasa por el eje de la avenida del Coll del Portell hasta el punto donde está asfaltada actualmente. A partir de este punto el entorno sigue la previsión de planeamiento por su línea inferior, de manera que el vial queda excluido del mismo. Al encontrar la calle de Pau Ferran, el límite continúa siguiendo el eje de la calle. Con esta delimitación y dado el carácter boscoso de la zona, se protege suficientemente el Parque que no tiene elementos arquitectónicos en este sector.

Sector nordeste: este sector incluye las escaleras que suben por el Camino de Can Móra hasta la calle de Pau Ferran, siguiendo la valla de piedra que sirve de límite al Parque Güell. A partir de la entrada situada en la carretera del Carmel, 21-23, la delimitación del entorno sigue el límite de la propia parcela del Parque. La valla perimetral del Parque, el desnivel existente al lado de las escaleras en dirección norte y la existencia de equipamientos de interés social y cultural hace que las posibles intervenciones en su interior o en su perímetro queden suficientemente controladas, y sus valores culturales y patrimoniales garantizados.

Tipo de envase/embalaje: 4G.
 Tipo de transporte: ADR/RID/TPF/IMO/IMDG/IATA/OACI.
 Marcado: UN/4G/Y20/S/**/E/**/DAPSA.
 Grupo envase/embalaje: II y III (Y).

Materias a transportar: Materias peligrosas cuya densidad es igual o inferior a 1,3 g/cm³.

ADR/RID/TPF:

Clase 3. Líquidos inflamables: Las materias clasificadas en b) y c) de los distintos apartados del marginal 2301 del ADR, excepto la propilenimía del apartado 12.º, el isocianato de etilo del 13.º

Clase 6.1. Materias tóxicas y nocivas: Las materias clasificadas en b) y c) de los distintos apartados del marginal 2601 del ADR, excepto el cianuro de hidrógeno estabilizado del apartado 1.º, las soluciones de ácido cianhídrico del apartado 2.º, el ferropentacarbonilo y el níquel-tetracarbonilo del apartado 3.º, la etilenimía estabilizada del apartado 4.º, el isocianato de metilo del apartado 5.º

Clase 8. Corrosivos: Las materias clasificadas en b) y c) de los distintos apartados del marginal 2801 del ADR, excepto el ácido fluorhídrico y las disoluciones de ácido fluorhídrico anhidro con una concentración de más del 85 por 100 de ácido fluorhídrico del apartado 6.º, el bromo y el bromo en solución del apartado 14.º

Clase 9: Materias peligrosas para el medio ambiente, del apartado 11 marginal 2901.

IMO/IMDG («Boletín Oficial del Estado», suplemento del número 92, de 16 de abril de 1996):

Clase 3: Líquidos inflamables de las materias clasificadas en 3.1, 3.2, 3.3 de las páginas 3101 hasta 3395, permitidas en este tipo de embalaje.

Clase 6.1: Líquidos tóxicos de las páginas 6015 hasta la 6299, permitidas en este tipo de embalaje.

Clase 8: Líquidos corrosivos de las páginas 8010 hasta la 8999, permitidas en este tipo de embalaje.

Clase 9: Líquidos peligrosos varios de las páginas 9021 hasta la 9037, permitidas en este tipo de embalaje.

IATA/OACI: «Boletín Oficial del Estado», suplemento del número 222, de 16 de septiembre de 1997.

Clase 3: Los números de ONU siguientes: 1111, 1228, 1277, 1278, 1717, 2347, 2402, 2493.

Clase 6.1: Líquidos tóxicos que respondan a las instrucciones números: 607, 611, 613, y los números de ONU siguientes: 1593, 1710, 1897, 2831, 1638, 1702, 1750, 1846, 1888, 1935, 2024, 3071, 1751, 3146.

Clase 8: Líquidos corrosivos que respondan a las instrucciones números: 811, 812, 813, 814, 815, 818, 819, 822.

Clase 9: Líquidos peligrosos varios que respondan a las instrucciones números: Y911.

de inmuebles, a proceder a la delimitación de su entorno afectado, extendiendo al mismo el régimen de protección previsto para esos bienes.

Esta actuación especial no fue realizada en la resolución del expediente que procedió a la declaración de ambos monasterios como monumentos en 1931, y ello conlleva la necesidad de proceder a la definición exacta de qué es lo que se debe entender incluido en cada uno de los monasterios declarados monumentos y de cada una de las zonas afectadas por la declaración, tal y como disponen los artículos 11 de la Ley 16/1985 y 12 del Real Decreto 111/1986 de desarrollo parcial de aquélla.

La propuesta de delimitación de los entornos de los monasterios de Suso y Yuso fue informada favorablemente por la Comisión de Patrimonio Histórico-Artístico de la Comunidad Autónoma de La Rioja en su reunión de fecha 21 de noviembre de 1996.

Por Resolución del excelentísimo señor Consejero de Educación, Cultura, Juventud y Deportes, de fecha 30 de diciembre de 1996, se procedió a incoar expediente para la definición de los bienes que se consideraron integrados en la declaración como monumentos o bienes de interés cultural de los monasterios de San Millán de Suso y Yuso, en San Millán de la Cogolla, así como para la delimitación de la zona afectada en sus respectivos entornos por la declaración. La resolución citada abrió un período de información pública para que todas aquellas personas o entidades interesadas formularan las alegaciones que estimasen oportunas, y concedió audiencia al Ayuntamiento interesado en la delimitación (Ayuntamiento de San Millán de la Cogolla). En cumplimiento de la normativa actuada en materia de Patrimonio Histórico Español, se ha recabado informe de institución consultiva, y cumplido con el resto de requisitos impuestos por la Ley 16/1985 en la tramitación de los expedientes de declaración de bienes de interés cultural.

En su reunión de 15 de octubre de 1998, la Comisión de Patrimonio Histórico-Artístico informó sobre las alegaciones presentadas al expediente administrativo de referencia, notificándose a los alegantes la correspondiente copia del certificado de la Comisión.

De conformidad con lo dispuesto en el Estatuto de Autonomía de La Rioja, y de acuerdo con la Sentencia del Tribunal Constitucional número 17/1991, de 31 de enero, corresponde a esta Comunidad Autónoma la competencia para la declaración de bien de interés cultural.

Como consecuencia, y de acuerdo con lo establecido en los artículos 8.14 del Estatuto de Autonomía de La Rioja, 9.2 y 14.2 de la Ley 16/1985 y 15 del Real Decreto 111/1986, de desarrollo parcial de aquélla, el Gobierno, a propuesta del Consejero de Educación, Cultura, Juventud y Deportes, y previa deliberación de sus miembros, en su reunión celebrada el día 9 de abril de 1999, acuerda aprobar el siguiente Decreto:

Artículo 1.

Se declara Bien de Interés Cultural, con la categoría de monumento, a los monasterios de San Millán de Suso y Yuso, en San Millán de la Cogolla (La Rioja), al efecto de complementar la declaración de monumento histórico-artístico de dichos bienes, por Decreto de 3 de junio de 1931. La declaración define exactamente los bienes de interés cultural sobre los monasterios de Suso y Yuso, y la delimitación del entorno afectado por la misma.

Artículo 2.

La definición exacta de qué es lo que se debe entender incluido en cada uno de los monasterios declarados monumentos, y de cada una de las zonas afectadas, aparece recogido en los anexos I y II que acompañan a este Decreto.

Disposición adicional única.

Comuníquese el presente Decreto al Ministerio de Educación y Cultura, a efectos de su anotación definitiva en el Registro General de Bienes de Interés Cultural.

Disposición final única.

El presente Decreto entrará en vigor al día siguiente de su publicación en el «Boletín Oficial de La Rioja».

Logroño, 9 de abril de 1999.—El Presidente, Pedro Sanz Alonso.—El Consejero de Educación, Cultura, Juventud y Deportes, Luis Ángel Alegre Galilea.

COMUNIDAD AUTÓNOMA DE LA RIOJA

12691 *DECRETO 12/1999, de 9 de abril, para la definición de los bienes de interés cultural sobre los monasterios de San Millán de Suso y Yuso, en San Millán de la Cogolla, y la delimitación del entorno afectado por la misma.*

Por Decreto de 3 de junio de 1931, publicado en la «Gaceta de Madrid», el 4 de junio del mismo año, se declararon monumentos histórico-artísticos los monasterios de San Millán de Suso y Yuso, en San Millán de la Cogolla (La Rioja).

La Ley 16/1985, de 25 de junio, de Patrimonio Histórico Español, en su disposición adicional primera, establece que los bienes que con anterioridad hayan sido declarados histórico-artísticos pasan a tener la consideración y denominación de Bienes de Interés Cultural, quedando sometidos al régimen jurídico que para estos bienes establece dicha Ley.

La mencionada norma jurídica, y su Reglamento de desarrollo parcial, obligan en las declaraciones de bienes de interés cultural, en los supuestos

ANEXO I

DESCRIPCIÓN DEL BIEN Y DELIMITACIÓN DEL ENTORNO DE PROTECCIÓN DEL MONASTERIO DE SAN MILLÁN DE SUSO, EN SAN MILLÁN DE LA COGOLLA

I. Descripción del bien y límites exactos

Descripción

Iglesia con pórtico adosada a la Cueva de San Millán construida entre los siglos VI y XI, cuevas para eremitas en el interior, de la época de San Millán y Santa Oria. La Iglesia del siglo X es de dos naves y cinco tramos de traza mozárabe y cabecera del siglo XI sobre espacios arquitectónicos visigóticos del siglo VI.

En el pórtico adosado a la fachada sur se encuentran los sepulcros de los Siete Infantes de Lara, su Ayo Nuño Salido, Tello González y tres Reinas de Navarra: Doña Toda Aznárez (esposa de Sancho Garcés I), doña Jimena (esposa de García Sánchez «El Tembloroso») y doña Elvira (esposa de Sancho «El Mayor»). En el interior diversos sepulcros visigóticos en las cuevas, así como el impresionante cenotafio de San Millán, siglo XI, en piedra basáltica. La Iglesia cuenta con importantes capiteles mozárabes de traza omeya y modillones mozárabes y visigóticos.

En sus fachadas este y oeste se encuentran yacimientos arqueológicos compuestos por enterramientos antropomórficos, cuevas y otros elementos de los siglos VI y XI que forman una unidad histórica con la iglesia y sus cuevas interiores.

Límites exactos

El bien que se propone declarar abarca el núcleo de la iglesia mozárabe de San Millán de Suso y los yacimientos arqueológicos adyacentes; el espacio queda delimitado por la línea que parte desde el camino que discurre por el lado sur del monasterio hasta la curva de la carretera (a 43 metros de la fachada este o de acceso), y se extiende por el lado norte hasta enlazar con la tapia que cerca el monasterio por la ladera y continúa hacia el oeste hasta el camino definido al inicio de este recorrido (a una distancia de 30 metros desde la fachada posterior).

II. Delimitación del entorno de protección del monasterio de San Millán de Suso, en San Millán de la Cogolla

Punto de partida

Referencia número 1: En el punto 2 de altitud 772 metros de coordenadas UTM (x = 511.543, y = 4686.782) lugar de encuentro de la carretera de circunvalación de San Millán de la Cogolla LR-205 con una senda de servidumbre, paralela al barranco del Ojo, parte la delimitación siguiendo la senda hasta el encuentro con el camino de los Viejos en el punto 3 de altitud 783 metros de coordenadas UTM (x = 511.341, y = 4686.735). Girando hacia el noroeste y por el límite de la parcela 454 con las parcelas 453 y 451 del polígono 4 (referencias catastrales de la última concentración parcelaria), sube la delimitación hasta el camino de la Cruz del Monte, produciéndose el encuentro con éste y el cortafuegos en el punto 4 de altitud 835 metros de coordenadas UTM (x = 511.052, y = 4686.878), donde se coloca la referencia número 2.

Referencia número 2: Partiendo del punto 4 se sube en dirección oeste por el cortafuegos hasta el punto 5 de altitud 975,7 y coordenadas UTM (x = 510.430, y = 4686.852). Siguiendo por el cortafuegos, se llega al punto 6 de altitud 1.035 metros y coordenadas UTM (x = 510.032, y = 4686.678) donde se encuentra con el cortafuegos que baja del alto de la Mangilla; aquí se coloca la referencia número 3.

Referencia número 3: Girando hacia la dirección sureste, se baja por el cortafuegos hasta el punto 7 de altitud 984,7 metros y coordenadas UTM (x = 510.302, y = 4686.287) donde se bifurca el cortafuegos. Siguiendo el cortafuegos de la derecha, se baja hasta la majada de Ordeñacabras, punto 8 de altitud 803 metros y coordenadas UTM (x = 510.457, y = 4685.593). Desde aquí se baja en dirección sureste hasta el encuentro con la carretera de Lugar del Río, que se realiza en el punto 9 de altitud 760 metros y coordenadas UTM (x = 510.527, y = 4685.423), donde se coloca la referencia número 4.

Referencia número 4: Girando en dirección noreste, se sigue por la carretera de Lugar del Río hacia San Millán de la Cogolla hasta el monasterio de Yuso, allí se coge la carretera de circunvalación hasta llegar al punto 2 de partida.

ANEXO II**DESCRIPCIÓN DEL BIEN Y DELIMITACIÓN DEL ENTORNO DE PROTECCIÓN DEL MONASTERIO DE SAN MILLÁN DE YUSO, EN SAN MILLÁN DE LA COGOLLA****I. Descripción del bien y límites exactos***Descripción*

El monasterio de Yuso se encuentra junto al río Cárdenas en la periferia de San Millán de la Cogolla.

Fue construido en el siglo XI y reconstruido en los siglos XVI, XVII y XVIII. Consta de dos claustros: El de Canónigos o Patio de la Luna, y el Claustro Mayor de San Millán, de dos plantas, en torno al cual se ordenan los siguientes elementos:

Planta baja: Salón de Reyes, escalera, iglesia gótica de gran tamaño y tres naves, coro alto, Sacristía alhajada con cajonerías y pinturas, sala capitular, refectorio y otras dependencias.

Planta alta: Biblioteca y archivo con importantes tesoros bibliográficos y documentales, museo de pintura con importantes arquetas mozárabes de marfil del siglo X y pintura de los siglos XV al XVIII.

En torno al Patio de la Luna: Antiguas cocinas, portería y zona monástica actual.

Adosadas a estas estructuras se encuentran la cámara abacial y la mayordomía que acoge la entrada principal y que fue entrada de carruajes.

La zona de huertas monásticas se encuentra dentro del perímetro de tapiales históricos, siglos XV-XVIII. Consta de 17,2608 hectáreas dedicadas a huerta, y conserva 2.300 metros de tapiales consolidados y 74 metros de vano de tapiales desaparecidos pero perfectamente señalizados e identificados.

Históricamente todos los terrenos fueron huertas del monasterio hasta la desamortización de bienes eclesiásticos en 1835. Su uso actual es su uso histórico de huertas y explotación agropecuaria. Existen pequeñas edificaciones de uso rural integradas con las huertas entre las que se cuenta una edificación al oeste del monasterio habilitada como instalación menor de servicios (cafetería).

Delimitación

El monasterio con todas sus dependencias incluidas las huertas dentro de sus tapiales históricos, según plano y documentación gráfica que se

adjunta. En total es un perímetro de 2.374 metros, que abarca un espacio de 18,9076 hectáreas de las que el monasterio ocupa 1,6468 hectáreas y el resto se corresponde a las huertas.

II. Delimitación del entorno de protección del monasterio de San Millán de Yuso, en San Millán de la Cogolla*Punto de partida*

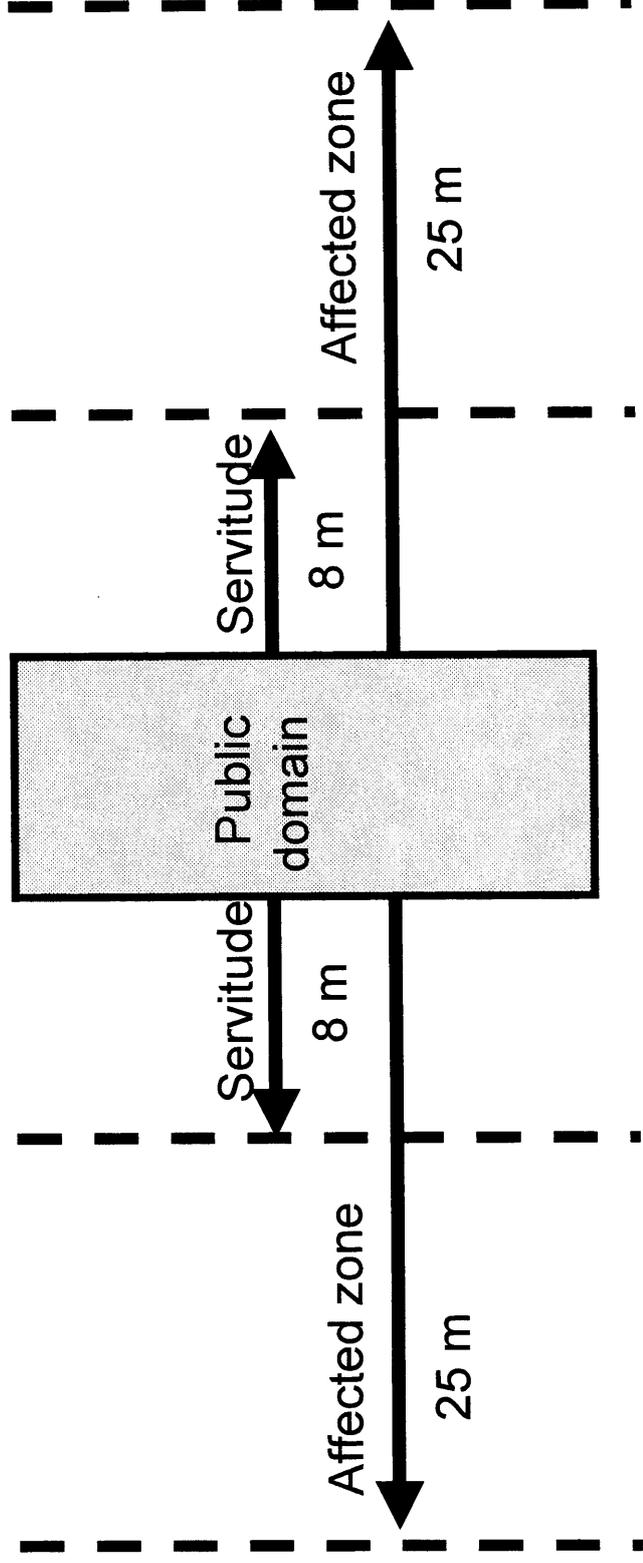
Referencia número 1: En el lugar de donde parte la circunvalación de la carretera LR-205 a su entrada en San Millán de la Cogolla, punto 1 de altitud 735 metros de coordenadas UTM (x = 511.813, y = 4687.012) parte la delimitación hacia el sur, pasa por el lindero de las parcelas 516 con la 509, la 515 con la 510, la 513 con la 512 del polígono 4, cruza el río Cárdenas, sigue por la linde de las parcelas 626 y 621 con la 627 del polígono 5 (referencias catastrales de la última concentración parcelaria) y se encuentra con la divisoria del término municipal de San Millán de la Cogolla con Estollo en el punto 15 de coordenadas UTM (x = 512.053, y = 4686.824) y 704 metros de altitud. Desde allí, y con dirección sureste, sigue la divisoria de los dos términos municipales, se encuentra con la carretera de Estollo en el punto 14 de altitud 731 metros y coordenadas UTM (x = 512.023, y = 4686.587), sigue por la divisoria, cruza el camino de los Encinares y sube hasta el punto 13 de altitud 973,5 metros, y coordenadas UTM (x = 511.971, y = 4685.563) donde se coloca la referencia número 2.

Referencia número 2: Girando en dirección suroeste, y siguiendo por la divisoria de los dos términos municipales, se va cumbreado el monte hasta llegar al alto de Pieza Estollo, punto del plano número 12 de altitud 1.056,8 metros y coordenadas UTM (x = 511.327, y = 4684.933), donde se coloca la referencia número 3.

Referencia número 3: En este punto se gira en dirección noroeste y se baja por una divisoria de aguas hasta el punto del plano número 11, de altitud 975 metros y coordenadas UTM (x = 511.177, y = 4685.305). Aquí y con dirección oeste se baja por la divisoria de aguas hasta el cuenca del río Cárdenas, punto 10 de altitud 748 metros y coordenadas UTM (x = 510.574, y = 4685.247). Desde aquí y girando en dirección noroeste se pasa el río hasta el cruce con la carretera de Lugar del Río en el punto 9 de altitud 760 metros y coordenada UTM (x = 510.527, y = 4685.423), donde se coloca la referencia número 4.

Referencia número 4: Girando en dirección noreste, se sigue por la carretera de Lugar del Río hacia San Millán de la Cogolla hasta el monasterio de Yuso, allí se coge la carretera de circunvalación hasta llegar al punto 1 de partida.

Legal protection Route of Santiago.



Satu-Kaarina Virtala
Finland

WORLD HERITAGE SITES AND BUFFER ZONES; THE CASE OF OLD RAUMA AND A NEW LOCAL DETAILED PLAN

Background

Finland's third oldest town, Rauma was founded in 1442 by King Kristoffer, who had just been elected king of the Kalmar Union. Rauma was the commercial and ecclesiastical centre of the region. The town was built around a Franciscan monastery whose church still exists. Because of the sea and its natural harbour Rauma became a trading centre and its townsmen sailed their ships to Stockholm, Germany, the Baltic countries and even to the North Sea. The town developed gradually in the late Middle Ages.

Raumas's buildings were constructed in wood and, as with many wooden towns, it was ravaged by fire several times. The last major fire was in the late seventeenth century. After the fires, a new wooden town was built. Three monuments of note in Rauma are the old Franciscan church and the ruins of the fifteenth century church, both of which survived the fires, as well as the Town Hall, built in the eighteenth century. Despite some changes made in the nineteenth century, Rauma has preserved its historical core while the modern city grew up around. The old part of the town is the largest preserved coherent medieval wooden area in the Nordic Region. It was included on World Heritage List in 1991 on the basis of Criteria V and IV. (According to the criteria, Rauma is an outstanding example of an old Nordic city constructed in wood, a veritable conservatory of traditional settlements in this part of Europe. Consequently, this city is typical of the architecture and urbanism of old North-European cities and is one of the most beautiful and extensive of all those preserved thus far.)

People still live, work, spend their leisure time and do business in Old Rauma. The area has over 600 inhabitants, approximately 600 buildings and nearly 200 shops. The Middle Ages is reflected in the narrow winding streets and alleyways and the irregularly shaped lots.

Legislation

Finland has no special legislation for only the World Heritage Sites. Instead, the Land Use and Building Act and the Act on Protection of Buildings are applied. In principle this system works. According to the Land Use and Building Act, the Government may approve national land use guidelines. These guidelines are meant to support and promote the implementation of the general goals laid down in the Act. The basic goals are sustainable development and a good living environment. Another aim of the guidelines is to promote the implementation of international conventions and commitments.

The national land use guidelines are part of our land use planning system, which also includes regional land use plans, local master plans and local detailed plans. The local master plans and the local detailed plans present the land uses authorised by the local authorities. These plans do not have to be submitted to a higher (that is state) authority for approval. As there is no subsequent scrutiny after the plans have been passed, prior guidelines and advisory services play an important role in the planning process. For the land use planning system to function properly and lead to favourable results, there has to be nationwide agreement on the national land use guidelines that guide land use and its planning. The main idea of the national land use guidelines is to ensure that issues of national interest are taken into account regionally and

locally by all government authorities. The guidelines indicate, in advance, how land use planning should be made, especially in areas of national significance.

But the guidelines do not provide direct answers. They only indicate the Government's view on important national land use issues. It is only in regional and local land use planning and in the activities of the government authorities that solutions become concrete and properly delineated. In other words, it is in the context of these plans and activities that it is possible to take into account particular regional and local features, as well as their integration with other goals.

The Land Use and Building Act is in force whether land use plans are of national interest or not, because the Act also includes requirements for the contents of a local plan. One requirement is that the built and natural environment must be preserved and their special values must not be destroyed. When an area requires protection due to its landscape, natural values, built environment, cultural and historical values or other special environmental values, or when a historical building requires protection, the necessary regulations for this purpose may be issued in the local detailed plan. In addition, according to the Act, the protection regulations must treat landowners reasonably.

A general precondition for building activities is protecting architecture and the townscape. When construction work, repairs or alterations are carried out on buildings, or when a building or part of it is demolished, care must be taken to ensure that the buildings or the townscape of historic or architectural value is not marred.

Amendment of a local plan in the city of Rauma

The local plan for the area of Old Rauma is sufficient in its regulations concerning preserving and protecting the area. The local detailed plan for the buffer zone around Old Rauma required that plans concerning building and business activities take into account the area's architectural and historical value. Old Rauma is also, of course, considered one of our important national land use issues.

In 2004, the local council approved an amendment to the local detailed plan. The amendment allowed for a large retail unit to be located in two blocks that were approved for commercial buildings, 30 000 square metres of gross floor area in all. In one of the blocks, a 9 000 square metres gross floor area commercial building was already in existence. The main purpose of the regulations issued in this plan was to find a solution for commercial activities in the town centre which would support its balanced development, Old Rauma being the town's core.

In the amended detailed plan, large retail units are located less than 500 metres from the centre of Old Rauma and a bit more than 300 metres from the Franciscan church.

The local council's decision was appealed by several parties, including the National Board of Antiquities and the Society of Old Rauma. The National Board claimed that the amendment does not promote the national land use guidelines and does not fulfil the required contents of a detailed plan. Furthermore, the Board's opinion was that buildings and activities which change Old Rauma's town structure should not be allowed in the buffer zone area. The Board also stated that the building rights granted to large retail units were too extensive, that the scale of the units, with parking areas, was too big and that, for the townscape in general, the decision was unfit for the buffer zone of a World Heritage Site. The architectural significance of Old Rauma is based on interconnected life in historical town centres where housing, services and businesses form a many-sided town community. Too large retail units around Old Rauma would change the nature of the business premises in the old town centre and force out those

businesses that provide daily living necessities, with the consequence that this area would be turned into a bedroom town, which would be fatal for its existence.

Additionally, some of the other parties that appealed the decision were of the opinion that architectural and historical values were not sufficiently addressed. The large retail area would cause the commercial centre to shift away from Old Rauma. If business premises are vacated it is possible that building maintenance would be neglected or business premises would change to housing premises. The parties in their appeal also claimed that massive retail units and parking areas are not fit for the buffer zone.

The city of Rauma claimed in its plea that the detailed plan was expressly made on community structural grounds. The main considerations were the attraction of the old town centre and attainability of services. The solution was seen as integrating the town structure and bringing retail units offering perishable goods close to the people living in the centre. The detailed plan gives specific regulations on the quality and size of the units. In addition the allotted space is regulated so that it competes as little as possible with the shops in Old Rauma.

The Supreme Administrative Court dismissed all appeals against the local detailed plan. In its reasoning the Court stated that regardless of the amendments in the local plan, economic changes in Rauma, as well as elsewhere, have resulted and probably will also result in the future in the concentration of commercial supplies in larger retail units. The Court did recognise that the location of these units may lessen the attraction of the shops in Old Rauma but, then again, it noted that the commercial emphasis in the town centre may support the preservation of Old Rauma as an active town community.

Conclusions

It will be interesting to see in which direction Old Rauma will develop. The parties who appealed the decision expressed concern that the town would be turned into a bedroom community and that business premises would change to housing premises. The more general fear in Finland as well as in other countries, however, is that the diversity will be lessened by boutiques and pedestrian streets. It is also more common that housing premises are changed into business premises than vice versa.

World Heritage Wartburg - A buffer zone dispute

1. History of the Wartburg

The Wartburg was founded around 1067. It plays an important role in German and European history. Saint Elizabeth of Thuringia lived on the Wartburg (1211 – 1228) and Martin Luther translated the New Testament into German here during his protective custody (1521). Alterations and reconstructions of the castle took place in 1317 after a big fire, in the 19th century and in the 1950s.

2. World Heritage Wartburg

The Wartburg was placed on the UNESCO World Heritage List as the first German castle in 1999. In its justification of the listing the World Heritage Committee pointed out that:

The castle of Wartburg is an outstanding monument of the feudal period in Central Europe (Criterion (iii) no. 77 of the Guidelines).

The castle of Wartburg is rich in cultural associations, most notably its role as the place of exile for Martin Luther, who wrote his German translation of the New Testament there. It is also a powerful symbol of German integration and unity (Criterion (vi) no. 77 of the Guidelines).

Neither a buffer zone nor a management plan was explicitly laid down, because at that time it was not a condition of listing. It was sufficient to note that the Wartburg is managed by the Wartburg Foundation, a legal entity funded by the Free State of Thuringia, one of the 16 German states, and that the protected area of the Wartburg falls within the “blue line” of the planning zone of the city of Eisenach, which restricts all forms of development around the monument.

3. Installation of wind energy plants

In 2005 the GEWI-Planungs- und Vertriebs GmbH & Co.KG (GEWI Planning and Distribution Ltd) applied for a building permit for the construction of two wind energy plants with the hub being 100 metres high and the rotor 82 metres in diameter. These wind-wheels were to be built on a piece of land belonging to a farmer’s cooperative on hills called the Milmesberg (Milmes mountain), 435 metres and 461 metres above sea level in the community of Marksuhl. The linear distance from this location to the Wartburg is 7.5 kilometres. The district granted the building permit.

The Milmesberg was set out in 1999 as an area suitable for wind energy plants in the regional plan of the planning region of South Thuringia. When the plan was drawn up public interests of nature conservation, heritage protection and protecting the appearance of the landscape were taken into account. The heritage protection authorities at the time saw no impairment of the Wartburg because of the distance to the castle, because the wind-wheels were to be erected far outside the “blue line” and due to the fact that six years ago wind energy plants already in use were much smaller.

Regional planning lies within the competence of the German states, which all have their proper regional planning laws (Landesplanungsgesetz) drawn up within the frame of a federal law (Raumordnungsgesetz). Each state lays out a regional plan for its whole territory from which more detailed plans are derived for different smaller regions within the state. As to the content of these plans, they mainly determine the aims for the development of communities and cities, the location of industry and infrastructure, such as roads and railways, but also take into account the conservation of nature and landscapes. All authorities have to take into consideration the stipulations of the regional plan when making decisions that have an impact on the aims of a regional plan, such as deciding on a building permit. However, the authorities are not so strictly bound by the regional plan that they will not allow deviating decisions even when these are motivated by reasons more valuable than the aims set out in the regional plan or, in other words, if the plan does not anticipate such decisions.

Regional plans are regularly revised. Within the next revision of the plan for South Thuringia the competent body decided in November 2005 to examine the areas suitable for wind energy plants.

In the meantime, however, the community of Marksuhl has filed a protest against the building permit and applied to the administrative court in Meiningen asking it to suspend the permit until a final court ruling.

The case attracted public interest. It found extensive coverage in the regional press.

4. Possible collision of the wind energy plants with the World Heritage status of the Wartburg

Milmesberg is about 50 metres higher than the hill on which the Wartburg is situated. When, as planned, the two windmills, which are about 150 metres high, are placed on top of Milmesberg there is a danger that both the still almost unspoilt view of the Wartburg praised by Goethe and later by the Romanticists, as well as the unique landscape, will be severely disturbed.

However, the view of the Wartburg will probably not be impaired as the wind wheels are not in one's field of vision together with the Wartburg if one looks at the castle from different angles. Disturbed will be the view from the Wartburg into the countryside, which until now is a romantic hilly forest landscape. "It blends superbly into its forest surroundings" as the brief UNESCO description states.

5. Decision of the Administrative Court in Meiningen

The administrative court in Meiningen has ordered to restore the suspending effect of the protest against the building permit. This means that at present the permit cannot be used.

In its statement of reasons the administrative court has argued that the erection of the wind energy plants could impair the interests of monument protection. As the Wartburg is a protected monument according to paragraph 2 of the Thuringian Law on the Protection of Monuments, the court has dealt with the question of the surrounding of this monument, which by law is also protected against disfigurement. As the castle is built on a hill the court attributes to the Wartburg a long-range effect which consequently leads to long range protected environs. The court also sees in the World Heritage status of the Wartburg a special additional need for protection. As the court does not exclude that the view towards the

Wartburg could be influenced negatively by the building project it sees the danger of the monument quality of the Wartburg being impaired which could lead to the loss of the World Heritage status.

6. Further procedure

The building owners have lodged a complaint against this decision of the administrative court with the higher administrative court in Weimar. In a first hearing the court stated that on first view it does not see an impairment of the surroundings of the castle by the planned wind energy plants, as they will be situated 7.5 kilometres away – a distance too long to fall into the surrounding of the monument.

However the court also pointed out that the wind wheels could disfigure the characteristics, the “picture”, of the landscape, a factor which under the building laws could also lead to the invalidation of the building permit.

Under these circumstances the complainants have taken back their complaint so that at present the wind wheels cannot be built. Reportedly the building owners and the land owner are looking for another location to place the wind energy plants.

7. Legal assessment

The Thuringian Law for the Protection of Monuments and Sites protects the surrounding of a monument as do the more or less similar protection laws of the other German states. The law does not contain a definition of how far the surroundings of a monument are worthy of protection. Decisive is the sphere of impression of a monument which, especially with castles or churches, can reach very far.

It is primarily important if alterations in the surroundings of a monument impair the nature, the traditional appearance or the artistic impact of a monument. According to the higher administrative Court in Mannheim, this is usually the case when the aura of a monument depends essentially on the form and state of its surroundings.

Since the Thuringian Law for the Protection of Monuments and Sites – just like the comparable laws of the other German states – protects the surrounding of monuments effectively, as this case has shown, no necessity is seen to change this law or introduce additional legislation for World Heritage – especially if you take into account, as this case also shows, that judges are conscious of the importance of the World Heritage status of a monument.

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World Heritage Sites and Buffer Zones: an Australian perspective

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The legal environment relating to heritage in Australia is complex, and this complexity is reflected in the provision for buffer zones around its World Heritage Properties. There is heritage legislation at each level of government in the Australian Federation, and, just as there is no one comprehensive piece of legislation relating to heritage places in Australia, there is also no general and comprehensive piece of legislation relating to buffer zones. The relevant provisions, though, are an interesting mix of different approaches that would repay further research.

Heritage in Australia

The complexity of Australia's heritage laws results from a number of factors, two of which are worth highlighting in this discussion. Most important is the federal nature of the Australian jurisdiction. The Australian constitution, which purports to allocate responsibility for areas of legislative and administrative competence within the federation, does not do so effectively. Even if it were possible to delineate administrative and political matters definitively, the Australian constitution does not do so.

It started as a compromise between the six original relatively independent colonies and the British Imperial government in the late nineteenth century; the future national government was not represented. The Australian Constitution is also a document of its time. Pressing modern issues, such as responsibility for environmental matters and for the protection of heritage, being largely twentieth century concepts, were not on the agenda. The constitution is very difficult to amend and most modern governments do not try.

The result is that legislative and administrative responsibility for heritage is divided between nine Parliaments in the two tiers of government. The national entity is called the Commonwealth of Australia. The second tier is occupied by the six original colonies, now the States of Queensland, New South Wales, South Australia, Tasmania, Western Australia and Victoria. Joining them are two largely self-governing federal Territories, the Australian Capital Territory, seat of the national capital, and the very large Northern Territory.

Governments of the two tiers meet together as the Council of Australian Governments (COAG). COAG in 1997 reached a consensus on the division of responsibility for heritage matters, under which the parties:

“6. *Agree* to the rationalisation of the existing Commonwealth/State arrangements for the identification, protection, and management of places of heritage significance through the development, within twelve months, of a co-operative national heritage strategy which will:

- (i) set out the roles and responsibilities of the Commonwealth and the States;
- (ii) identify criteria, standards and guidelines, as appropriate, for the protection of heritage by each level of government;
- (iii) provide for the establishment of a list of places of national heritage significance; and
- (iv) maximise Commonwealth compliance with State heritage and planning laws.”¹

In this terminology, World Heritage sites are matters of national heritage significance.

Constitutional bases

The Commonwealth has taken its part in giving effect to this agreement through amendments to its comprehensive environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999*, which deals with both environment and heritage matters. This legislation relies on a number of different constitutional powers, none of which, of course, were ever envisaged in this role. The Act is primarily based on the Commonwealth’s constitutional powers to make laws with respect to:

- external affairs – the power to give effect to international treaties, particularly the World Heritage Convention;
- corporations – the power to regulate the activities of corporations in these areas;
- trade and commerce across borders; and
- special laws for people of any race – used particularly to protect areas significant to Australia’s indigenous peoples.

The development of this way of reading the constitution has been highly contentious. Administrative responsibility for World Heritage properties in Australia nominated by the national Commonwealth government, but located within the borders of one of the States, have been the focus of important litigation between the Commonwealth and the States in the High Court of Australia.² The result, that the Commonwealth could regulate land use in the areas of the States for the purposes of the World Heritage Convention, lead to the agreement referred to above.

¹ Heads of Agreement on Commonwealth/State Roles and responsibilities for the Environment, Nov 1997, Article 6, downloaded from <http://www.deh.gov.au>.

² Beginning with *Commonwealth v Tasmania* (1983) 158 CLR 1: see, Boer, B. and G. Wiffen, **Heritage Laws in Australia** (OUP: 2006), Chapter 3, The World Heritage Convention in Australia.

Australian World Heritage Sites

There are 16 World Heritage properties in Australia nominated by the Commonwealth government and protected under its Environment Protection and Biodiversity Conservation Act.

World Heritage properties – year of inscription

1981	Great Barrier Reef Kakadu National Park (Stage 2, 1987; Stage 3, 1992) Willandra Lakes Region
1982	Tasmanian Wilderness (Extended 1989) Lord Howe Island Group
1986	Central Eastern Rainforest Reserves (Australia) (extended in 1994)
1987	Uluru-Kata Tjuta National Park (extended in 1994)
1988	Wet Tropics of Queensland
1991	Shark Bay, Western Australia
1992	Fraser Island
1994	Australian Fossil Mammal Sites (Riversleigh/Naracoorte)
1997	Heard and McDonald Islands Macquarie Island
2000	The Greater Blue Mountains
2003	Purnululu National Park
2004	Royal Exhibition Building and Carlton Gardens

This paper will focus on World Heritage properties and look at three properties, one from each category, and then at an additional place for which there is popular enthusiasm for nomination to protect its cultural values.

World Heritage properties - natural values

Australia's World Heritage properties listed for their natural values tend to be very large areas remote from zones of intensive population settlements. Australia's population is 20,000,000 over an area as large as Western Europe or the continental United States. This population tends to collect along the fertile East coast. The World Heritage properties are in the sparsely populated inland and the far North of the

country. Two will be looked at: Kakadu National Park and Uluru – Kata Tjuta National Park.

Kakadu

Kakadu National Park is an area of 19,804 km² in the Northern Territory of Australia, part of its boundaries being the Arafura Sea that separates Australia from Indonesia and Papua New Guinea. It is 253 kms from the nearest city, Darwin, and 4050 Kms from Sydney.

While listed for its natural values, Kakadu National Park also has significant cultural landscapes.

The diversity of landscapes, habitats and species of Kakadu National Park, combined with its vast size, are attributes of significant conservation value and provide an excellent environment for the continuation of ecological processes. This great diversity and size enhance the ability of the ecosystems and species within the Park to respond to and recover from natural disturbances and catastrophic event.

Kakadu national park is a landscape of cultural, religious and social significance to local Aboriginal people. Special places in the landscape include ceremonial places, sites of religious significance, archaeological and rock art sites and other areas that have special meaning to Aboriginal people. These sites both reflect the long history of Aboriginal occupation of the landscape and remain central to Aboriginal culture in the region.³

Although not inscribed on the World Heritage list as a cultural landscape, the current Plan of Management identifies Kakadu National Park as a cultural landscape, shaped by many generations of Traditional Owners.⁴

There seems to be no formal buffer zone.

The northern boundary is coastline: the eastern boundary is Arnhem land, which is Aboriginal land. To the South the Mary River forms a readily identifiable natural boundary, and Nitmiluk (Katherine Gorge) is nearby.⁵

Uluru – Kata Tjuta

Uluru – Kata Tjuta National Park is the second large World Heritage site in the Northern Territory. It is located in the South of the Territory, popularly known as Central Australia, and was nominated and inscribed on the World Heritage list for

³ Australian National Periodic Report, Section II (2002) Report on the Conservation of Kakadu National Park, p4 [www.deh.gov.au/heritage/world heritage/](http://www.deh.gov.au/heritage/world%20heritage/) consulted on 29th October, 2006.

⁴ Ibid p 9.

⁵ Ibid p12 citing the Nomination document (1992).

natural values in 1987 and as a cultural landscape in 1994.⁶ It covers an area of 132,566 hectares.⁷

Uluru itself is a huge, rounded, red sandstone monolith 9.4 kilometres in circumference rising to a height of over 340 metres above the plain.⁸

Uluru – Kata Tjuta National Park is a Biosphere reserve under the UNESCO Man and the Biosphere Program. Formal zoning, as specified in the Biosphere Reserve Action Plan has not been instituted. The land reserved as the Uluru – Kata Tjuta National Park has become the basis of the core area. While zonation within the core protected area occurred in 1991, the surrounding areas, defined as buffer and transition zones, have not been officially designated. The park is bounded by the relatively undeveloped Petermann and Katiti Aboriginal Land trusts, and the intensively developed Yulara Tourist resort which is not situated on Aboriginal land.

The Uluru (Ayers Rock – Mount Olga) National Park Plan of Management (1991) was the first management plan to divide the Park into Management zones, setting out the conditions under which each zone would be managed. Factors taken into account in defining zones included the distribution of flora, fauna and land systems, sensitivity to soil erosion, potential for various types of recreation and land use, evidence of damage or disturbance by visitor use zones and significance of cultural sites. Three zones were identified: intensive management zone; intermediate management zone; and minimum management zone.⁹

Size and isolation

The protection of the huge Kakadu and Uluru – Kata Tjuta National Parks is primarily achieved by isolation and size. In Australia, mainly for historical reasons, national parks are State based. Kakadu and Uluru – Kata Tjuta are, however, within the large Commonwealth controlled Northern Territory and could benefit from, for Australia, the rare concentration of both first and second tier legislative power in the one government. The Commonwealth government nominated areas already protected as national parks for inscription on the World Heritage list. They are further protected by being surrounded by natural boundaries, other national parks, and Aboriginal Trust lands.

Sites in or close to cities

By contrast more recent attention has been given to heritage sites close to urban areas.

Greater Blue Mountains

⁶ Australian National Periodic Report Section II (2002) Report on the Conservation of Uluru – Kata Tjuta National Park, p2. [www.deh.gov.au/heritage/world heritage/](http://www.deh.gov.au/heritage/world%20heritage/) consulted on 29th October, 2006

⁷ Ibid, p3.

⁸ Ibid.

⁹ Ibid p8.

The Greater Blue Mountains were inscribed on the World Heritage list in 2000. While nominated for both natural and cultural values, the inscription is on the basis of natural values. As with the Kakadu and Uluru – Kata Tjuta National Parks in Australia’s Northern Territory, the nomination was of land already protected as national parks: seven State controlled national parks and one karst conservation reserve under the national parks legislation.¹⁰

All land within the greater Blue Mountains nominated area is public land, vested in the State of New South Wales (NSW). With the exception of the Jenolan Caves Reserve, the area is entirely reserved as national parks under the care, control and management of the Director-General of the National Parks and Wildlife Service. The Jenolan Caves are dedicated as a karst conservation reserve under the care, control and management of the Jenolan Caves Reserve Trust. Both the National Parks and Wildlife Service and the Trust report to the (State) Minister for the Environment.¹¹

The Greater Blue Mountains World Heritage area differs from the big Northern Territory World Heritage sites, however, because it is not isolated.

Worldwide, Sydney is exceptional as a large city, as it is surrounded by a belt of wilderness-quality national parks and reserves. Part of this outstanding heritage contains the water catchments, which supply the city’s drinking water.

Reservation of the catchment enabled the then Water Board to acquire property in the 1950s, preventing land clearing and controlling bushwalking activities. The completion of the Warragamba Dam in 1960 led to the closure of the catchment to private vehicles. ... The zoning of the Warragamba Special Area parallels that of the zoning of the parks found within it.¹²

At the time of the nomination “(t)he NSW National Parks Service ha(d) prepared plans of management for all national parks in the Greater Blue Mountains nominated area, except for the recent Gardens of Stone National Park”.¹³

This orderly picture of comprehensive management by reservation as national parks and plans of management under national parks legislation is complicated by the fact the Greater Blue Mountains area is bisected by a ribbon of residential development, based on small mountains villages that developed along the Great Western Highway. The Blue Mountains are part of a low mountain range that stretches from the south to the north of the continent. The Great Western Highway is Sydney’s main highway to the West, from the city across the mountains to agricultural areas in the Western plains. Finding a way across these mountains is an epic story of colonial history. These villages have developed into dormitory suburbs for Sydney.

¹⁰ *National Parks and Wildlife Act 1974 (NSW)*

¹¹ *The Greater Blue Mountains Area World Heritage Nomination* p227.

[www.deh.gov.au/heritage/world heritage/](http://www.deh.gov.au/heritage/world%20heritage/) consulted on 29th October, 2006

¹² *Ibid* p229

¹³ *Ibid*.

The threatened impact of urban development, and thus the provision of a buffer, is dealt with under New South Wales planning legislation.

The *Environment Planning and Assessment Act 1979* is a comprehensive statute enabling the orderly planning of land use and the assessment of the environmental impacts of developments...

The Act controls development on private and public lands adjoining the Greater Blue Mountains area to minimise the impact of adjoining uses on its values. Extensive areas of adjoining bushland, in the Blue Mountains City area, are zoned *Environmental Protection*, to prohibit subdivision of land, clearing of vegetation, construction of houses and industrial development.¹⁴

World Heritage properties - cultural values

Australia has two relevant inner urban sites: the Royal Melbourne Exhibition Building and Carlton Gardens, in Melbourne the capital of the southern State, Victoria, and a proposed listing, the Sydney Opera House.

Royal Melbourne Exhibition Building and Carlton Gardens

The Royal Melbourne Exhibition Building is Australia's most recent listing on the World Heritage list, and its only listing solely for cultural values.

The website of the World Heritage Committee describes the building.

Australia - **Royal Exhibition Building and Carlton Gardens**. The Royal Exhibition Building and its surrounding Carlton Gardens were designed for the great international exhibitions of 1880 and 1888 in Melbourne. The building and grounds were designed by Joseph Reed. The building is constructed of brick and timber, steel and slate. It combines elements from the Byzantine, Romanesque, Lombardic and Italian Renaissance styles. The property is typical of the international exhibition movement which saw over 50 exhibitions staged between 1851 and 1915 in venues including Paris, New York, Vienna, Calcutta, Kingston (Jamaica) and Santiago (Chile). All shared a common theme and aims: to chart material and moral progress through displays of industry from all nations.¹⁵

The Australian government agency adds a more political note:

These global events were staged around the world to demonstrate the confidence and achievements of the industrial age. By bringing people and ideas together on such a grand scale, the movement supported the development of the global economy and enterprise culture that underpins modern democratic society.¹⁶

The question of a buffer zone was addressed in the nomination documents.

¹⁴ Ibid p231.

¹⁵ <http://whc.unesco.org/en/news> consulted on 29th October, 2006.

¹⁶ www.deh.gov.au/heritage/world_heritage/ consulted on 29th October, 2006.

No buffer zone is proposed. The network of planning controls that exist is considered sufficient for the purpose.¹⁷

The Gardens are also 23ha in area and might themselves be considered as providing a buffer zone.

Sydney Opera House

The Sydney Opera House in Sydney, the capital of the State of New South Wales, is a proposed nomination for listing on the World Heritage list. It will be proposed for its cultural values, criteria (a) (b) (e) (f) (g) and (h).

The nomination documents¹⁸ list the legislation that will protect the Sydney Opera House:

National

Environment Protection and Biodiversity Conservation Act 1999

New South Wales

Environmental Planning and Assessment Act 1979

Planning policies made under that Act

State Environmental Planning Policy (Major Projects) 2005

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour REP)

Sydney Opera House Trust Act 1961

Heritage Act 1977

Buffer Zone

In the event that the Sydney Opera House is inscribed on the World Heritage List, a buffer zone will come into force by an amendment to the *Harbour REP* (Regional Environment Plan). The buffer zone will be subject to additional planning rules and provisions aimed at further protecting the World Heritage values of the property. The Minister for Planning will be required to ensure that any development within the buffer zone satisfies certain criteria for consideration before granting consent under the Harbour REP.

To be approved any development will need to preserve the World Heritage values of the Sydney Opera House; to preserve views and vistas between the property and other public places within the buffer zone; and to avoid

¹⁷ Nomination for the Royal Exhibition Building and Carlton, Melbourne, by the Government of Australia for inscription on the World Heritage List. Environment Australia, 2002, p5. [www.deh.gov.au/heritage/world heritage](http://www.deh.gov.au/heritage/world%20heritage).

¹⁸ Sydney Opera House Nomination by the Government of Australia for inscription on the World Heritage List. Australian Government Department of Environment and Heritage, Canberra, 2006. www.deh.gov.au/heritage.

any diminution of the Sydney Opera House when viewed from other public places within the zone. Any proposed development within the buffer zone would need to address these matters in its application.¹⁹

Bilateral Agreement

Nomination of the Sydney Opera House will be supported by other inter-governmental provisions. The governments of the Commonwealth and the State of New South Wales have entered into an agreement under various sections of the national legislation, the Environment Protection and Biodiversity Conservation Act. The agreement supports the continued management of the property by the State government. It stipulates what actions by the State will not require approval by the Commonwealth, assessment of potential impacts by the State, monitoring of the site and dispute resolution.²⁰

Legal position

By settled case law and by inter-governmental agreement, World heritage sites in Australia are the responsibility of the national Commonwealth government, which nominates the sites and is then responsible for their care, control and management. Its legislation, the Environment Protection and Biodiversity Conservation Act (EPBC Act) is based in part on its constitutional power to make laws with respect to external affairs, supplemented by other powers referred to above. Thus, constitutionally, the national government is viewed as having made laws to give effect in Australia to an international treaty, namely the World Heritage Convention.

Firstly, the significance of including national laws for the protection of heritage places, including World Heritage properties, within national environmental legislation should be considered.

“The EPBC Act is a member of a global family of laws based upon the United States National Environment Policy Act of 1969, triggering environmental impact assessment for projects that ‘are likely to have a significant impact on the environment’.”²¹

The EPBC Act has a standard form of enforcement provision. The relevant provision, in relation to World Heritage, states:

s15A Offences in relation to declared World heritage Properties

(1) A person is guilty of an offence if:

¹⁹ Ibid, Part 5, Protection and Management of the Property, p69.

²⁰ Agreement between the Australian Government and the State of New South Wales under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* relating to actions approved and taken in accordance with the bilaterally accredited management plan for the Sydney Opera House.

[www.deh.gov.au/heritage/world heritage](http://www.deh.gov.au/heritage/world%20heritage)

²¹ McGrath, C, *Swirls in the stream of Australian environmental law: Debate on the EPBC Act*, (2006) 23 EPLJ 165 p 182 citing Wood, C. *Environmental Impact Assessment: A Comparative Review* (Prentice Hall) 1995) Ch 9.

- (a) the person takes an action; and
- (b) the action results or will result in a significant impact on the World Heritage values of a declared World Heritage property.

(3) An offence against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

The defences to an action under s 15A are broadly that the possibly objectionable action has been considered and approved by the relevant government Minister, the Minister for the Environment. Approval can be with respect to the particular case, or more broadly. It is a defence that an approved system has been followed for assessing the risks that the action might threaten, and an approval has been given within that system.

Provision for buffer zones for World heritage sites has been made in the cases of the sites described above. The EPBC Act also provides an interesting Australian variation on the need to legislate for buffer zones. The purpose of a buffer zone is to protect a heritage area from actions that emanate from outside the heritage area. The national heritage legislation that covers World Heritage properties applies an environmental impact assessment model, which may not depend for its effectiveness on the prior delineation of a buffer zone. Recent case law suggests that the legislation can be used in other ways to prevent or react to impacts from outside a World heritage property.

Two interesting cases are the *Flying Foxes case* relating to the Wet Tropics World Heritage Area and the *Nathan Dam* case relating to the Great Barrier Reef World Heritage Area. They relate to the protection of World heritage properties listed for their natural values but could be used to illuminate the question of how the legislation could solve problems where other jurisdictions may rely exclusively on buffer zones.

*Flying Foxes case*²²

The facts of this case are that a farmer had erected 14 aerial electric fences, in a grid pattern, to electrocute flying foxes attacking the farmer's lychee orchard. The orchard was 60 ha in area and the grids were 6.4 km in length. The orchard was adjacent to the Wet Tropics World Heritage Area in the State of Queensland. Deaths of flying foxes in the 2000-2001 season from electrocution from impact with the Grid were estimated at 9,900 to 10,880. The total Australian population of the Spectacled Flying Fox was estimated at less than 100,000. The farmer's actions could halve that population within 5 years and make the species endangered. The Court was satisfied that the action of installing and operating the Grid, taken outside the World Heritage area, was likely to have a significant impact on the world heritage values of the Wet Tropics World Heritage Area. The animal is "part of the record of the mixing of faunas of the Australian and Asian continental plates following their connection". Also, the species "contributes to the character of the Wet Tropics World Heritage Area as 'one of the most significant regional ecosystems in the world' and as an

²² *Booth v Bosworth* (2001) 114 FCR 39, discussed in McGrath note 1. This is a case in the Federal Court of Australia available from www.austlii.edu.au, downloaded 26th October, 2006.

important and significant natural habitat for in-situ conservation”²³. The Court granted an injunction restraining the operation of the grid.

Subsequently, the farmer sought administrative approval for the Grid, which was refused. The Queensland State Government announced that it would no longer approve the use of grids.

Note the action was brought by a member of the public, raising issues of public interest litigation and rules as to standing to approach the courts.

Since the farmer’s orchard was adjacent to the World Heritage area, the situation in the Flying Foxes case could also have been dealt with by the provision of a buffer zone. A more challenging situation arose in the Nathan Dam case.

*Nathan Dam case*²⁴

Also in Queensland, a major dam was proposed in the centre of the State to supply water for an expansion of agriculture in the area. There was a likelihood that chemicals from the agricultural development, particularly cotton farming, which the dam would facilitate, would have a significant impact on the Great Barrier Reef World Heritage Area. The Great Barrier Reef World Heritage Area was 500 km downstream and the relevant Minister in the national Government refused to consider the dam building as an activity to which he should have regard under the EPBC Act. The relevant Minister is the Minister for the Environment who is responsible for the administration of the EPBC Act. Justice Branson in the Federal Court decided that that decision was incorrect and that the potential impacts should be considered.

The summary of the case provided by the Court continues:

The Environment Minister considered that the relevant statutory provisions requires him only to consider the effects of the operation of the dam by the entity proposing it and did not extend to consequences which might follow other persons’ decisions to use chemicals. The Court has held that the enquiry is a wider one and the Environment Minister is therefore obliged to reconsider the matter.²⁵

The challenged actions in this case were to occur 500 km from the World Heritage Area. It is unlikely that the strategy of creating a buffer zone would have been sufficient to deal with the danger.

Final thoughts

Buffer zones for World Heritage properties are an interesting topic for Australian lawyers.

²³ Ibid *Booth V Bosworth* SUMMARY, p1.

²⁴ *Minister for Environment and Heritage v Queensland Conservation Council* (2004) 139 FCR 24 discussed in McGrath note 1. This is a case in the Federal Court of Australia available from www.austlii.edu.au, downloaded 26th October, 2006.

²⁵ Ibid p1

Looking at the legislation, a study of Australia's World Heritage properties and the proposal to nominate the Sydney Opera House shows a pattern of relying on:

- nationally – the Environment Protection and Biodiversity Conservation Act, using the model of environmental impact assessment; and
- State and Territory – national parks legislation, augmented when a site is within, or impacted on by, urban development, land use planning legislation.

Initial cases in the Federal Court of Australia interpreting the national legislation, the Environment Protection and Biodiversity Conservation Act, have highlighted how powerful it can be in dealing with matters that otherwise might be addressed through buffer zones. The Act was enacted in 1999, but heritage was added to its subject matter by amendments in 2003. These cases, therefore, are the first to apply this environmental impact assessment model of the Act to heritage. The result in the Nathan Dam case is particularly noteworthy in including in the purview of the protectors of a World Heritage property, actions that might occur 500 kilometres away. It is unlikely that any buffer zone could be as effective and wide-ranging in its impact.

The use of the Environment Protection and Biodiversity Conservation Act has been augmented by the use of State national parks legislation. Constitutionally, State Parliaments are not as circumscribed as the national Parliament by issues of legislative competence. This means that a reserved area in the State or Territory national park can be bigger than the area inscribed on the World Heritage list. Thus the most important areas required to buffer a World Heritage site can be included in the protected area reserved within a national park. The use of State national park legislation to create parks around world heritage properties is likely to be a highly effective way of protecting a property's values.

The next strategy common in protecting Australia's World Heritage properties is the use of planning legislation. These are relied on when the property is near a centre of population. Planning laws are very flexible and, as in the case of the Sydney Opera House, can be very useful in controlling development that might impact on a World Heritage property.

Planning laws are also problematic in raising the issue of discretionary, administrative laws.

Discretionary laws

In the summary of the *Nathan Dams Case*, quoted from above, the judge after stating that:

The Court has held that the enquiry is a wider one and the Environment Minister is therefore obliged to reconsider the matter.

continued:

It has not been part of the Court's function to determine what impacts will follow upon construction of the dam nor whether they will be both

significant in the impact upon the reef and likely to occur. These matters are to be determined by the Environment Minister.²⁶

This is a basic point in Anglo-Australian jurisprudence, that the judge saw his role as determining the full extent of the questions that the Minister for the Environment, the decision maker under the legislation, should ask (in this case) himself. It was not the role of the Court in this situation to decide what the answer should be. The Minister may yet re-address the question and decide that even in a wider inquiry the proper decision is the same: the dam may still be built.

Planning laws in Australia, and probably elsewhere, are also very discretionary, and generally empowers an elected decision maker, often a local government council, to make choices between competing land uses. The role of the court there too is often to decide on whether questions have been correctly formulated, not what the answer should be.

The New South Wales legislation, listed above as relevant to any listing for the Sydney Opera House, was the Environmental Planning and Assessment Act and planning policies made under it:

- State Environmental Planning Policy (Major Projects) 2005
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour REP).

Provisions of this kind set out considerations that must be taken into account in making various land use decisions. Under the Harbour REP, decision making powers are shared between the local authority, in this case the Council of the City of Sydney, and the relevant Minister in the State government. (Sydney, as noted above, is an important city and the seat of the government of the State – always an uneasy mix.) .

The State Environmental Planning Policy (Major Projects) 2005 is a controversial law that allows the State Minister to “call in” what the Minister decides is a major project for study in the Minister’s Department, and the Minister’s decision.

Heritage protection in Australia is becoming more contentious in a time when economic questions are both more prominent and more uncertain. Thus what appears to be an evolving pattern in Australia’s heritage laws of the discretionary nature of buffer zone type questions becomes problematical.

The organizers of this conference ask a number of pertinent questions in suggesting a topic for this paper.

Importance of the buffer zone

Buffer zones do not appear to have been contentious in Australia’s World Heritage properties to date. The properties have been protected by their isolation from

²⁶ Ibid.

population pressures and by being placed within larger national parks. This is changing in two obvious respects.

Firstly, as shown in the Nathan dam case, we are developing a more comprehensive awareness of the impact of environmental factors over very long distances. Secondly, Australia, increasingly valuing its cultural as well as natural sites, is looking at places within or near urban areas.

What should buffer zone legislation look like?

Legislation dealing with buffer zone issues in Australia is a so far successful mix of national legislation based on the model of environmental impact assessment and State legislation for national parks and land use planning. Further thought needs to be given to important aspects of this legislation that provide for discretionary decision making by elected officials. While this can be democratic and transparent, it may not achieve good heritage outcomes in times where economic outcomes are an increasingly dominant preoccupation of governments.

Potential roles for UNESCO, ICOMOS, and ICLAFI?

If the questions raised in this paper are seen as pertinent, an important role for UNESCO, ICOMOS, and ICLAFI would be comparative study, so that governments and heritage professionals may be presented with a full range of current legislative and administrative alternatives.

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