

PRESERVATION LAWS AND POLICIES

Thomas F. King

National Preservation Institute, USA

Samuel E. Struelson

Arlington, Virginia, USA

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Summary

The “historic preservation” laws and policies of a nation—often called “heritage,” “culture,” or “patrimony” laws and policies—must be considered whenever a development project may affect archaeological sites, historic buildings, neighborhoods or towns, culturally valued landscapes, or places of cultural importance to an indigenous group. Environmental assessment procedures, for example those of the World Bank, provide a general structure for such consideration.

In many developing countries, however, historic preservation laws do not relate very effectively to development planning, and many are based on badly outdated colonial-era models. Sustainable development planners are well advised to use their own creativity to craft responsible approaches to the identification and management of impacts on historic places. They should give full attention to specific legal requirements but never assume that by satisfying the letter of such requirements they have truly addressed all important historic preservation issues. A recommended general approach is provided for consideration.

1. Introduction: Environmental Assessment, Sustainable Development, and Historic Preservation Laws

“When relevant,” an Environmental Assessment (EA) on a development project whose sponsors seek assistance from the World Bank must address impacts on “archaeological sites, historic monuments, and historic settlements,” as well as the “traditional land... rights” of indigenous peoples. This requirement highlights the need to plan development projects—whether sustainable or not—with an eye toward protecting culturally valued aspects of the land.

Trying to protect such land resources is consistent with the logic of sustainable development for at least four reasons.

First, a program of development cannot be sustainable if it does violence to the cultural values of the people it is supposed to serve. Archaeological sites, historic monuments and settlements, and places in the land to which indigenous people have special rights, or about which they have special beliefs, often are of tremendous importance to the cultural integrity of human communities. Integrating their protection and use into development can contribute to a program’s long-term viability. Conversely, failing to address their preservation may create community antagonism toward a project, or uncertainty about it. This in turn may cause the failure even of projects that, from outside the local culture, appear to be highly sustainable.

Second, attending to a people’s cultural heritage underscores the legitimacy of their ancestors’ ways of life, which usually featured sustainable economic and land use systems, or the study of that heritage may illustrate why past ways of life became unsustainable. Either way, a program of historic preservation can help teach the value of sustainability by linking it with the beliefs and experiences of the ancestors.

Third, even if a local community or a national government does not particularly value historic resources like archaeological sites, their scientific and humanistic study can provide historical perspectives on the feasibility of various development schemes. Such perspectives can help planners understand what has and has not worked in the past, as a guide to what may work in the future. Studies of historic properties may also reveal long-term trends and cycles in the natural and cultural environments that can be of critical importance in building sustainability. They can provide insights into what has and has not worked—what has and has not been sustainable—in the local environment.

Fourth, such resources may themselves be usable in more or less sustainable development, for example in programs of cultural tourism.

Thus, considering a project’s potential impacts on places of archaeological, historical, and indigenous (or other) cultural value would be a sensible thing for planners of sustainable development to do, even if funding agencies like the World Bank did *not* require it.

But how to decide whether it is “relevant” to consider impacts on such places in the context of a given development project? For this planners often turn to the “historic preservation” laws of the host nation. Unfortunately, these laws are not always good guides; in fact, they may mislead.

The purpose of this article is to help sustainable development planners understand how to consider culturally important land resources in planning, doing so in a manner consistent with national “historic preservation” [sic] laws without being misled by such laws into making expensive and destructive mistakes. We do not attempt to provide a complete roster of national “historic preservation” laws, nor to analyze each such law; either enterprise would go far beyond the page limits within which we are working, and would probably be out of date before it is published. Instead we will discuss the general character of historic preservation laws in developing countries and identify some common implementation problems that arise in the context of development planning. We will then offer some suggestions about what sustainable development planners can do to fulfill the spirit of the laws without being misled by the letter of particular, often outmoded, provisions. We will not discuss the legal requirements of nations by name; these requirements change often, and there is no reason to single out any one nation’s laws as better or worse than any other’s. In fact there are many commonalities among national historic preservation laws, and they present many common challenges to development planners.

2. Terminology

In the laws, regulations, and international instruments dealing with archaeological sites and other culturally valued land resources, a considerable number of overlapping terms are used. These can be sources of confusion.

The term “historic property” or “historic place” is sometimes used to embrace all land resources having cultural value—including archaeological sites, historically and architecturally important buildings, neighborhoods, and towns or villages, culturally valued rural areas, and places associated with local or national traditions. The term “historic preservation” is then used (as it is in this article) to mean the practice of managing such resources as well as managing the impacts of the modern world upon them.

To some, however, the terms “historic property” and “historic preservation” mean something much narrower, referring only to “landmark buildings” or “historical monuments.”

Other terms used to embrace all or some of the various classes of “historic property” are “heritage” or “heritage resource” (like in Australia, where the term also includes certain natural resource areas), “cultural resource” (like in the U.S., where the term is sometimes taken to include non-land resources such as community cultural values), and “patrimony” (like in most Latin American countries, where the term also usually includes some literary resources).

For purposes of this article, we use the term “historic property” to include all types of culturally important land resources—historic and “prehistoric” (that is, pre-literate) archaeological sites, historic works of architecture, historic monuments, places of spiritual importance to indigenous groups—essentially all pieces of physical space that may have some sort of cultural importance. We use the term “historic preservation” to embrace a wide range of legally defined, constrained, or required activities relating to

“historic properties”. Thus the identification of historic properties, their evaluation, their management, and even their recording and controlled destruction for our purposes, fall within the ambit of “historic preservation”.

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Biographical Sketches

Thomas F. King is an educator, writer, and consultant in the United States, affiliated with the National Preservation Institute in Washington, DC. He is an archaeologist with some thirty-five years experience in historic preservation and cultural resource management in the U.S. and the Pacific. His major publications include *Cultural Resource Laws and Practice: An Introductory Guide* (Altamira Press, 1998) and *Federal Projects and Historic Places: The Section 106 Process* (Altamira Press, 2000).

Samuel E. Struelson is a *cum laude* graduate of James Madison University in Harrisonburg, Virginia, with a degree in History and Anthropology. He has archaeological field experience in Israel, and is soon to be undertaking graduate studies in Historical Anthropology in the U.S.