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LISTING OF TANGIBLE CULTURAL PROPERTIES: EXPANDED RECOGNITION FOR HISTORIC BUILDINGS IN JAPAN

Chester H. Liebs[†]

Abstract: Since the late 19th century, Japan has enacted a series of measures to protect its cultural heritage, most importantly the 1950 Law for the Protection of Cultural Properties. With subsequent amendments, the law today provides for the protection of both individual and groups of historical structures, landscapes, traditional crafts and skills, as well as national treasures. While these laws have saved many of the nation's foremost cultural resources, a substantial number of important historic structures, especially from the Meiji Period (1868) onward, have fallen through this legal safety net. This Article summarizes the evolution of Japan's cultural properties protection legislation, and details some of the recent losses of important properties and challenges facing the current legal protection system. It then examines the 1996 amendment to the Law for the Protection of Cultural Properties, which authorized the registration of tangible cultural properties. This new initiative is intended as a fast-track means of providing recognition and limited protection to a greater number of historic structures. The Article ends by acknowledging the benefits and critiquing the weaknesses of the current state of legal protection for cultural properties in Japan, due to a lack of coordination among governmental agencies with conflicting interests.

I. INTRODUCTION

Ancient temples and shrines, tidy farm villages with thatched-roof houses, streets lined with *machiya*,¹ kimono-clad strollers, each with a colorful paper umbrella, crossing a great arching wooden bridge—in genre scenes like these, depicted in wood block prints by mid-19th-century artists like Hiroshige, images of the traditional cultural heritage of pre-industrial Japan are forever frozen in time. However, this was a world at the brink of change. With the arrival of Commodore Perry and his “black ships” in 1853, and the subsequent fall of the feudal Tokugawa Shogunate and the 1868 restoration of Emperor Meiji, who would soon be seen in prints and photos sporting Western clothes, the Japanese government undertook an intensive campaign of modernization. Late-19th-century artists were soon depicting these changes, and smoking locomotives,

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¹ Japan's wooden, tile-roofed, traditional, main-street buildings.

brick buildings, metal-truss bridges, prosperous factories and other new subjects began to appear in their prints. The traditional landscape of Japan was being altered forever.²

Some of the earliest casualties of this period of change were the nation's religious structures, especially its Buddhist temples. Shortly after taking power and with an eye toward modernization, the Meiji government cut off long-standing subsidies for the repair of these structures, which symbolized the spiritual core of traditional Japan. Many temples and some Shinto shrines fell into disrepair.³ By the century's end, however, much modernization had taken place. Also with its victory in the Sino-Japanese War in 1895, Japan was beginning to be seen as an emerging world power. As Japan gained in confidence as a modern nation, a growing number of influential Japanese and Westerners began calling for its government to demonstrate this confidence in another way—by recognizing important symbols of the country's traditional past as well as its recent accomplishments.

Finally, at the close of the century, Japan enacted the Law for the Preservation of Ancient Shrines and Temples to help maintain these important traditional structures.⁴ Over the intervening hundred years, additional legislation has been passed and amended.⁵ As a result, Japan has an extensive series of programs and designations to protect its cultural and natural legacy. By the mid 1990s, there were separate provisions for the protection of structures, designed and natural landscapes, archeological sites, traditional crafts and skills, and even living people who could be designated as living national treasures.⁶

This Article focuses on one particular aspect of Japan's efforts at heritage conservation: its continuing attempts to expand protection to a greater number of its historic structures.⁷ Section II briefly summarizes legislation and programs

² For an excellent account of the changes in imagery of this period, see JULIA MEECH-PEKARIK, *THE WORLD OF THE MEIJI PRINT* (1986).

³ Shrines suffered somewhat less for they were associated with Shinto, Japan's national religion. Some were even used to promote nationalism centered around the Emperor. Interview with Dr. Nobuko Inaba, Architecture Division, Agency for Cultural Affairs, Government of Japan (Jan. 9, 1998) [hereinafter INABA INTERVIEW].

⁴ Koshaji-hozon-ho [Law for the Preservation of Ancient Shrines and Temples] (1897).

⁵ Siseki-Meisho-Ten'nenkinenbutsu-hozon-ho [Law for the Preservation of Historic Sites, Places of Scenic Beauty and Natural Monuments] (1919), Kokuho-hozon-ho [Law For the Preservation of National Treasures] (1929 amendment to the 1897 law), Juyo-bijutsuhin-to-no-hozon-ni-kansuru-horitsu [Law for the Preservation of Important Art Objects] (1933), and most importantly Bunkazai-hogo-ho [Law for the Protection of Cultural Properties], Law No. 214 of 1950, translated by Cultural Properties Protection Department, Agency for Cultural Affairs, Government of Japan [hereinafter L. Protection of Cultural Prop.] (amended 1951-1996).

⁶ L. Protection of Cultural Prop. See also Dr. Masary Sekino, *Japanese Heritage Legislation*, 1 ICOMOS CANADA BULL. 47, 47-58 (1992).

⁷ The author recognizes that cultural heritage consists of more than historic buildings, the main focus of

from 1950 to 1996, considered to be Japan's modern era of heritage conservation. Section III examines the lingering challenges to conserving historic structures in Japan. Section IV summarizes Japan's newest legal initiative to encourage retention of historic structures—the listing of tangible cultural properties. Section V critiques this legal initiative.

II. SUMMARY OF MAJOR LEGISLATION FROM 1950 TO 1996

A. *Important Cultural Properties*

The next major impetus for new heritage legislation in Japan was prompted not by modernization but by disaster. Shocked by the destruction of its cultural heritage during World War II and by a 1949 fire that destroyed part of Nara's revered Horyu-ji temple, founded in 607 A.D.,⁸ in 1950, the nation decided to strengthen protection of its heritage in a sweeping piece of legislation, the Law for the Protection of Cultural Properties.⁹ More comprehensive and powerful than previous legislation, much of which it superseded, the law included provisions for designating and conserving archeological sites, folklife, natural areas, and even human treasures. In regard to historic structures, the legislation authorized the National Ministry of Education to designate historic places as "Important Cultural Properties."¹⁰ This system continues to the present day.

Subject to an arduous process of nomination, administered by the Cultural Properties Protection Department of the Education Ministry's Agency for Cultural Affairs, a property so designated has to be maintained at a very high standard. Subsidies for technical assistance and maintenance to this standard are provided to the owner by the national government, and such properties are usually open to the public at least for part of the year. Important Cultural Properties, considered to have the highest significance, can also be accorded the added designation of "National Treasure."¹¹ Additionally, this 1950 law extends to local and prefectural (state) governments the power to designate local buildings as local cultural properties, which can be preserved with local funds, at the local level, with national technical assistance.¹²

this article. Japan has been a trend-setter especially in conserving its intangible cultural heritage, such as traditional crafts and skills.

⁸ The oldest wooden Buddhist temple remaining in Japan.

⁹ L. Protection of Cultural Prop.

¹⁰ *Id.* ch. III, § 1.

¹¹ National Treasures have the same basic protection as other Important Cultural Properties, however the name Treasure affords them increased recognition.

¹² L. Protection of Cultural Prop., ch. VI, § 3, art. 98.

**Types and Designation Systems for Cultural Properties
(The Law for the Protection of Cultural Properties)**

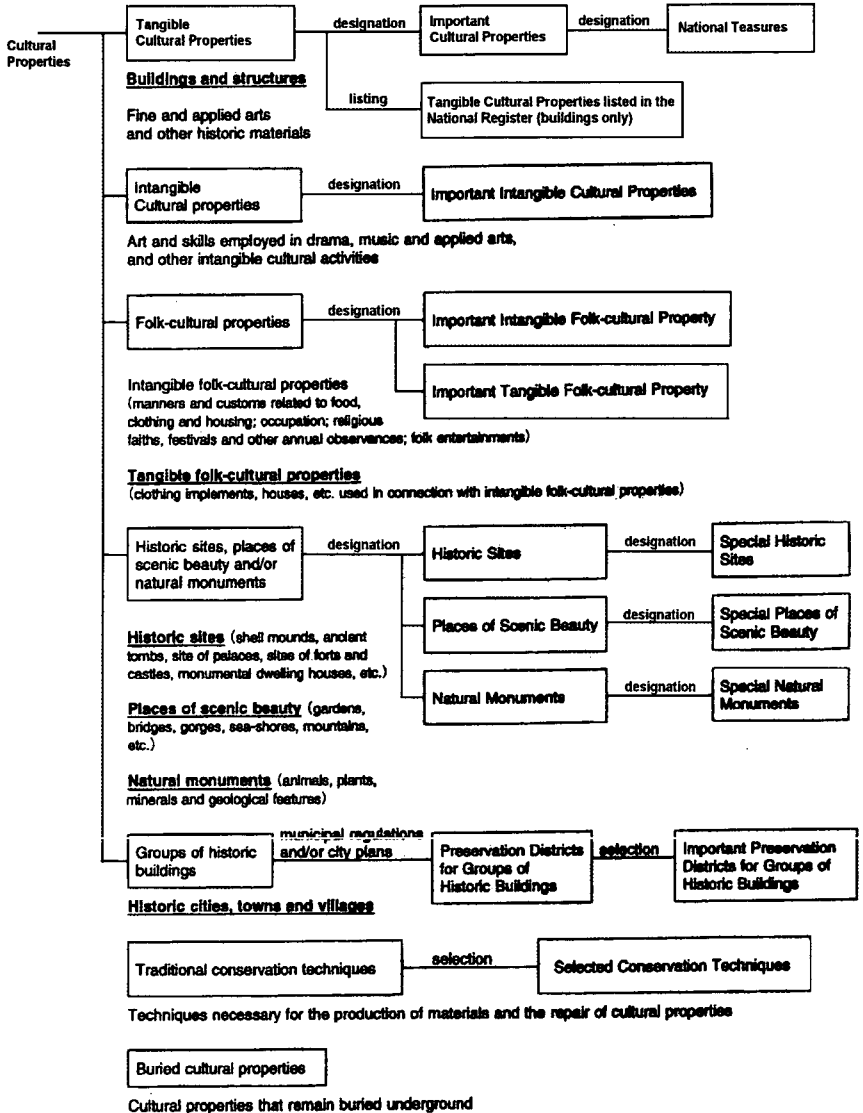


Chart courtesy of the Japan Agency for Cultural Affairs.

At first the majority of Important Cultural Property designations were given to important Shinto shrines, Buddhist temples, symbols of the power elite of Japan's feudal past (palaces, castles, and houses of *daimyo* and *samurai* (lords and soldiers)), and influential merchants. In recent years, houses of farmers, fisherman, significant industrial-heritage properties, and some Western-style buildings have also begun to be included. One of the most notable recent designations is the Myonichikan, Frank Lloyd Wright's last standing work in Tokyo, built in 1921. Slated for demolition, the structure was recently saved when its owner, after years of pressure from especially tenacious Japanese preservationists, gave permission for the "Important Cultural Property" designation and agreed to restore the building.¹³

B. *Preservation Districts for Groups of Historic Buildings*

In 1975, another expansion of Japan's historic preservation legislation occurred. An amendment to the Law for the Protection of Cultural Properties gave local municipalities authority to establish preservation districts for groups of historic buildings, and to provide technical assistance and national government subsidies for their preservation.¹⁴ The majority of these designated groupings have so far been "*Machinami*," or traditional main-street commercial districts.¹⁵ With impetus from an emerging *Machinami* movement, linking preservation to economic development, the historic fabric of these areas has often been heavily restored by peeling back cultural layers to an idealized period of time. In these areas, art galleries and souvenir shops have often replaced traditional businesses. A typical example of such a grouping is the tourist-thronged *Machinami* district of Kurashiki, a popular destination in Okayama Prefecture in Western Japan. Port towns and special areas like the Kitano, a collection of Western-influenced houses built in the Meiji era by Kobe's foreign community, have also been designated under this amendment.

¹³ An International Symposium to save the Myonichikan was held in Tokyo in 1992. In 1997 the (U.S.) Frank Lloyd Wright Conservancy gave awards to both the leader of the preservation group which spearheaded efforts to spare the structure, and its owner for consenting to the Important Cultural Property designation and agreeing to save the building.

¹⁴ L. Protection of Cultural Prop., ch. V-2.

¹⁵ *Id.*

C. *World Heritage Sites*

Another major step in the evolution of heritage conservation in Japan was the nation's admission, in 1992, into the World Heritage Convention, making it eligible to have its cultural properties and natural areas accorded World Heritage status. Japan's participation in the Convention was followed by an International Symposium on what constitutes authenticity in historic monuments, held in Nara in 1994.¹⁶ Since its inclusion in the Convention, a growing number of historic sites and two natural areas have been accepted to the list, including Himeji Castle (1608); Shirakawa, a 19th-century mountain farming district composed of *gasshozukuri* (large wooden thatched-roof farm houses); and the Hiroshima atomic bomb site. The fact that Japan's heritage comprises part of the List provides the Japanese with a great source of pride.

III. LINGERING CHALLENGES TO CONSERVING HISTORIC STRUCTURES

By the mid-1990s, despite the levels of recognition and protection just outlined, Japan was still losing its traditional historic structures at an alarming rate. For example, in a 1995 study of Old Tokaido Road corridor, a number of traditional Edo-period commercial structures¹⁷ were observed being leveled in several small towns along the way, often to provide parking for the large American-scale cars and recreational vehicles, popular with the Japanese today.¹⁸ The same year in Kagoshima, despite highly visible citizen protests and a conference confirming their value by Japanese and international experts, a series of striking mid-19th-century stone-arch bridges, in excellent condition, were destroyed.¹⁹ These are not isolated instances but have been everyday occurrences in Japan.

¹⁶ See JAPAN AGENCY FOR CULTURAL AFFAIRS, NARA CONFERENCE ON AUTHENTICITY PROCEEDINGS (Knut Einar Larsen ed., 1995).

¹⁷ The Edo period extends from the early 17th century to the mid-19th century.

¹⁸ Personal observations by the author, during a survey of the entire length of the Old Tokaido Road from Tokyo to Kyoto in the Spring of 1995.

¹⁹ An International Conference to save the stone bridges was held in Kagoshima in 1995. All of the structures were subsequently destroyed.



TAKAHASHI 1970



1994



1991



1996



1992



2001

高梁の今とこれから (シミュレーションスケッチ)

Simulation, projecting the continuing replacement of traditional *machiya* in Takahashi, Okayama Prefecture, Japan, by college dormitories and other multi-story buildings. MASARU MAENO ET AL., REPORT ON THE SURVEY OF THE HISTORIC TOWNSHIP OF TAKAHASHI, JAPAN at 169 (1993).

Although they are gradually being recognized, many structures representing Japan's "modern heritage" are especially in a precarious state. In the West, the term "modern heritage" connotes buildings from the early 20th century to the 1980s, especially the works of famous Modern architects such as Courbusier. In Japan, "modern heritage" refers to structures built from the mid-19th century, when Japan began to enter the so-called modern age, up through the post-war 1950s. It comprises a vast range of structures, from farms and factories to bridges, theaters, railroad stations, and office buildings, in other words a good deal of Japan's existing architectural and engineering patrimony.

Long stigmatized as being "Western" and not really authentically Japanese, there is now realization by a growing number of scholars, officials, organizations, and citizen's groups that these buildings, while exhibiting Western influences, were built through the filter of Japanese sensibilities, traditions, materials, and craftsmanship. They are truly Japanese structures in a similar way that European-influenced American structures are American.²⁰

Most Western-influenced houses of the Meiji era, 1868 to 1912, for example, resemble traditional multi-level Japanese houses although they usually contain one Western-style room, with chairs and tables instead of *tatami* mats.²¹ Many Western-style shops and commercial offices of that era also have traditional features such as *genkans*²² and *shoji* screen room dividers. Even today, many new structures have residual traditional features, such as the convenience store with Japanese braced-timber framing beneath its fireproof sheathing, or the tall high-rise built to the narrow footprint conforming to the width of the traditional Japanese structure it replaced.²³ Taken in their entirety, Japanese "modern buildings" present a cornucopia of visual information about the transition of Japan from a feudal society to one of the greatest industrial and commercial powers on earth. They are essential touchstones in the continuum of the nation's heritage.

While there have been notable successes in the conservation of Japan's "modern heritage," such as the adaptive use of an historic stone dry-dock as a sunken garden for a new commercial complex in Yokohama, there continues to be what Japanese preservationists consider an alarming number of losses.

²⁰ Chester H. Liebs, *Heritage Conservation in Japan: An Eyewitness View*, 3 CULTURAL RESOURCES MANAGEMENT 19, 19-22 (1996).

²¹ Woven straw mats, used for flooring in traditional Japanese rooms, approximately three feet by six feet in size.

²² The entrance hall with a step where one has to remove one's shoes before walking into a building.

²³ Traditional Japanese buildings were built only a few *tatami* mats in width, the *tatami* being the approximate size of one human being at rest.

For example, in Tokyo in early 1996, despite the public pleas of Japan's foremost architectural historians and urban planners, the Mitsubishi corporation pushed ahead with plans to replace the *Marunouchi* building.²⁴ The building has since been leveled, and is now a hole in the ground pending construction of its outsized replacement.

In Kobe, a number of outstanding commercial structures from the late Meiji and Taisho eras (1900-1926), which survived the recent 1995 earthquake and, in the opinion of leading structural engineers, could have easily been seismically retrofitted, were hastily demolished under the guise of public safety.²⁵ Even in Kyoto, which Japan touts as its flagship historic city, historic neighborhoods are being destroyed, and new high rises built, which block views that had been enjoyed for centuries.²⁶

While ignorance of the historic value of these structures may, in part, explain this continuing destruction, many other factors work against retaining historic buildings in Japan. Inheritance taxes are high and for any given property, the land usually has the most value, not the building that sits on it. Buildings are very rapidly depreciated so that they represent little or no value to an owner and are considered to be "old" within a few years after their construction.²⁷ Financial institutions lend money for new construction with relatively low interest, but scant effort has been made to fund renovation and rehabilitation.²⁸ In addition, Japan's post-war constitution strongly reinforces private property rights, further dampening preservation efforts.

Japanese often point out another reason for favoring new over old—restoring traditional buildings requires specialized materials and skills that are expensive and in short supply.²⁹ Moreover, architects and engineers imbued

²⁴ Famed survivor of the 1923 great earthquake and cornerstone of the sophisticated composition of relatively low office buildings of uniform height across from Tokyo Station, that serves as the gateway to the Imperial Palace. The structure is to be replaced with an undistinguished high rise. The plan to destroy the Marunouchi Building was decried by leading Japanese urbanists and scholars at a May 1996 Symposium in Tokyo on saving the structure, sponsored by the Japan National Trust.

²⁵ Such views were expressed at the Kobe Earthquake Conference, sponsored by the Japan National Trust and the City of Kobe, December 1995.

²⁶ Pico Iyer, *Kyoto*, CONDE NAST TRAVELER, Nov. 1995, at 268.

²⁷ For example, the house I lived in while in Japan during the 1997-98 academic year, built only in the late 1970s, was referred to by its owners as "an old house."

²⁸ At publication time, money is harder to borrow due to fears of banks of making unrecoverable loans, due in part to recent bank failures and the post-bubble recession. See, e.g., Reuters, *Hayami Takes Over Scandal-Tainted Bank of Japan*, Mar. 20, 1998 <<http://cnn.com/WORLD/asiapcf/9803/20/RB000720.reut.html>>.

²⁹ This argument was common in the States in the 1960s and early 1970s till the demand for preservation created both an increase in the supply and decrease in price of many traditional materials, and an expansion in the number of trades people capable of working with them. Japan

with Modernist “best to clear and start over” thinking are still very influential. Young architects wishing to rehabilitate historic structures as a specialty have often complained that this elicits little respect from their older peers.³⁰ In addition, Japan, encouraged by countries like the United States that wish to reduce trade deficits, is attempting to increase domestic consumption through massive public works projects such as bridge and highway construction. As a result, Japan, a nation with some of the most extensive and reliable public transportation in the world, has begun to close down branch-line rail service while building land-intensive superhighways. Construction of the latter is causing both the outright destruction of historic buildings in the path of their rights of way, and the promise of overwhelming traditional areas with thousands of cars.³¹

Officials in the Cultural Ministry concerned with protection of cultural resources have long recognized these problems. They quickly point out that the existing legislation, such as designation of Important Cultural Properties, can sufficiently embrace all categories of endangered buildings, but property owners have often been reluctant to agree to have their properties so designated.³² Something more was needed that would more quickly recognize a greater range of endangered structures: an official national list of heritage properties that would call attention to the quantity and breadth of historic buildings in Japan and get many more owners interested in their preservation.

Probably the most important factor to galvanize public pressure to create such a list was the Great Hanshin earthquake of 1995, when dozens of historic buildings in and surrounding Kobe were destroyed by the tremor, subsequent fires, and, as already mentioned, over-zealous post-quake clearance efforts. The following year, the Japanese Diet approved—with

has a great advantage in this regard in that many of the traditional buildings skills have continued and did not have to be reestablished as they had to be in the States.

³⁰ Informal conversations between author and Japanese architects, Japan (1994-95). This was also true of America thirty years ago but generally not today. Major Schools of Architecture, from Columbia University to the University of Pennsylvania, now have historic building conservation as part of their course offerings.

³¹ At the same time that Shirakawa was being placed on the World Heritage list, for example, highway planners had staked out land for an interchange, on a hillside just above Ogimachi, the most prominent historic village in the district, which, when completed in the year 2003, will provide easy access to thousands of motorists from presently-remote Tokyo. In other rural areas the opposite is true. Instead, they face steady depopulation and the withering away of their cultural heritage. Japan National Trust's Countryside Conservation Conference, Tokyo (March 1995).

³² INABA INTERVIEW, *supra* note 3.

widespread support from the nation's leading architectural institutes, associations of historians, and property owners—an amendment to the nation's cultural protection legislation proposed by the Agency for Cultural Affairs.³³

IV. CULTURAL PROPERTIES REGISTER SYSTEM (*TOROKU BUNKAZAI SEIDO*)

Japan's newest cultural heritage legislation, the 1996 amendment to the Law for the Protection of Cultural Properties, authorizes the registration of "tangible cultural properties." The following is a summary of the amendment.³⁴

Section 2: Law for the Protection of Cultural Properties (Registration of Tangible Cultural Property)

Article 56-2: Registration

Tangible cultural properties that are not already listed as "Important Cultural Properties" or designated as local cultural properties by prefectural or local governments may, after an opinion has been sought from the local governments in which they are located, be listed in the Cultural Property Official Register.³⁵

Article 56-2-2: Notification and Certificate of Registration

"Registration shall be announced in the Official Gazette and by notifying the owner of the cultural property."³⁶ Once the property appears in the Gazette, it is on the register, and registration is in effect for owners once they receive notification. Owners will also receive an official Certificate of Registration.³⁷

Article 56-2-3: Annulment of Registration

Annulment can occur if the Registered Tangible Cultural Property is accorded a higher designation (important national or local tangible cultural

³³ Interview with Dr. Kenfusa Masuda, Architecture Division, Agency for Cultural Affairs, Government of Japan (Sept. 12, 1997) [hereinafter MASUDA INTERVIEW].

³⁴ L. Protection of Cultural Prop. ch. III, § 2.

³⁵ *Id.* The Cultural Property Official Register is the official register kept by Architecture Division of the Agency for Cultural Affairs.

³⁶ *Id.* ch. III, § 2, art. 56-2-2.

³⁷ *Id.*

property), or if the reasons for listing the property are no longer valid. The annulment will be announced in the Official Gazette, as well as to the owner, who will then have thirty days to return the Certificate of Registration to the Minister of Education.³⁸

Article 56-2-4: Custody of Tangible Cultural Property

The owner of a Registered Tangible Cultural Property, or the owner's designated "custodian," shall have custody of the property. In special instances, where the owner cannot be found or the custody is inadequate, the Commissioner of Cultural Affairs may appoint "a local public body" or "juridical person" as "the custodial body" to look after the preservation of the property.³⁹

Article 56-2-5: Destruction or Damage to a Registered Tangible Cultural Property

The owner, custodian, or custodial body shall notify the Commissioner of the Agency for Cultural Affairs in writing, within ten days, when all or part of a Registered Tangible Cultural Property has been damaged or destroyed.⁴⁰

Article 56-2-6: Repair of Registered Tangible Cultural Property

The owner, custodian, or custodial body shall carry out repairs. When a custodial body undertakes the repairs, the owner should not interfere with the preservation actions of that body. The custodial body will pay for the repairs and seek out the owner's opinions (if the owner is known) prior to the repairs.⁴¹

Article 56-2-7: Notifications on Alterations to the Existing State of A Registered Tangible Cultural Property

Except in cases of maintenance and emergency repairs, anyone intending to alter a Registered Tangible Cultural Property must notify the Commissioner of the Agency for Cultural Affairs at least thirty days prior to

³⁸ *Id.* art. 56-2-3.

³⁹ *Id.* art. 56-2-4.

⁴⁰ *Id.* art. 56-2-5.

⁴¹ *Id.* art. 56-2-6.

commencement of the alteration. The Commissioner may then give any remonstrations or advice concerning the proposed alteration.⁴²

Article 56-2-8: Technical Guidance

The owner or custodian or custodial body may ask for technical assistance from the Commissioner of the Agency for Cultural Affairs.⁴³

Article 56-2-9: Public Opening of Registered Tangible Cultural Property

Opening of a Registered Tangible Cultural Property shall be undertaken by its owner or custodial body (or the cultural body's designate) and the Commissioner of the Agency for Cultural Affairs may give advice to the owner or custodial body regarding opening to the public.⁴⁴

Article 56-2-10: Report on the Existing State of a Registered Tangible Cultural Property

The Commissioner of the Agency for Cultural Affairs may, when deemed necessary, ask the owner or custodial body to report on the state of the property.⁴⁵

Article 56-2-11: Transfer of Certificate of Registration Accompanying Changes in Ownership

When ownership of a Registered Tangible Cultural Property changes, the old owner shall deliver the Certificate of Registration to the new owner.⁴⁶

Along with the enabling statute, and in order to put this amendment into action, the Agency for Cultural Affairs has published a number of administrative guidelines and criteria in the form of attractive brochures aimed at potential Registered Tangible Cultural Property owners and the

⁴² *Id.* art. 56-2-7.

⁴³ *Id.* art. 56-2-8.

⁴⁴ *Id.* art. 56-2-9.

⁴⁵ *Id.* art. 56-2-10.

⁴⁶ *Id.* art. 56-2-11.

general public. One of these, a guide to the national register system, fleshes out implementation procedures in layman's terms.⁴⁷ Key points are:

A. *Registration Process*

Anyone can suggest a structure for registration—residents, academic associations, or academicians. Also, candidates are gleaned by Agency for Cultural Affairs staff from published studies and reports, and recommendations contained in local and national surveys.⁴⁸ The staff then conducts a preliminary evaluation.⁴⁹ If a property is recommended, its owner is asked for permission to list the property.⁵⁰ If the owner grants permission, then the Agency for Cultural Affairs staff prepares a final evaluation of the property.⁵¹ The property is then submitted for approval by the Council for Protection of Cultural Property and the Minister of Education.⁵² If the property is approved, a Certificate of Registration is then sent to its owner.⁵³

B. *Permission for Changes*

No notification is needed for emergency repairs from natural disasters or normal maintenance.⁵⁴ The Minister of the Agency for Cultural Affairs

⁴⁷ JAPAN AGENCY FOR CULTURAL AFFAIRS, TATEMONO WO IKASHI BUNKA WO IKASU [roughly "Let's Reuse Older Buildings to Enrich Our Contemporary Culture"] 6 (1996).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ In comparison, the enabling act for the United States' National Register of Historic Places, the Historic Preservation Act of 1966, did not originally require owner consent for listing. See, Historic Preservation Act of 1966, Pub. L. No. 89-665 (1966). In 1980, the Act was amended to require owner consent for listing of individual properties, and in the case of a historic district, the consent of a majority of owners. Historic Preservation Act, Pub. L. No. 96-515 (1980). If the owner does not consent, the Secretary of the Interior may declare it eligible for the Register. While this does not officially include it in the Register, it does provide the property some protection under Section 106 of the Act. Thus, this solution addresses owners' concerns while still recognizing that an historic property has *a priori* significance irrespective of the current owner's views. See 36 C.F.R. § 60.6 (1998). In Japan, the 1996 Amendment for the Law for the Protection of Cultural Properties does not require owner consent for listing, but the Ministry for Cultural Affairs has made it a policy to do so. If the owner declines, a property is not listed. There are currently no provisions for "eligible only" properties. See L. Protection of Cultural Prop.; INABA INTERVIEW, *supra* note 3; Chester H. Liebs, Brief Comparison of Basic Features: Japan and United States National Registers, Presentation Before the International Council on Monuments and Sites Meeting, Japan Committee (Dec. 12, 1997) (In commenting on Japan's approach to owner consent, some Japanese experts at this meeting maintained that requiring owner approval for historic building designations is a sound policy, assuring that the majority of buildings listed will be preserved.)

⁵¹ JAPAN AGENCY FOR CULTURAL AFFAIRS, *supra* note 47.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

must be notified if the building is destroyed or damaged by natural disaster or fire, if a change in appearance is proposed, or if there is a change in ownership.⁵⁵

C. Penalties

A 50,000 yen (about US \$400) fine will be imposed if the owner: does not make required notification of any changes; makes an untrue statement about changes; fails to give the Certificate of Registration to a new owner or fails to notify the Minister of the Agency for Cultural Affairs of an ownership change; does not surrender the Certificate of Registration to the Minister if registration is withdrawn.⁵⁶ A 100,000 yen (about US \$800) fine will be imposed if the Minister asks for a report on the status of the property and the owner fails to respond or makes untrue statements.⁵⁷

D. Assistance

The Agency for Cultural Affairs will offer technical assistance upon owner request or when the owner notifies the Agency of a proposed alteration that will be detrimental to the qualities that qualified it for registration. The Agency will also advise the owner on how to make the structure more visible to the public.⁵⁸

E. Incentives to Owners

Up to fifty percent reductions to fixed-asset taxes collected locally on buildings, for Registered Tangible Cultural Properties, are possible.⁵⁹ Land-value taxes (collected by the National Government) may be reduced up to 50 percent.⁶⁰ Low interest loans are available from three cooperating banks for company- (not individual- or church-) owned properties.⁶¹ Each owner will

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ The part of the building registered is what must be visible to the public from a public right of way, or the public must be allowed to enter a property to view it. In case an interior is registered, the public must be able to make arrangements to see it. Buildings unavailable for public viewing will not be registered. *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

receive a plaque, to be affixed to the Registered Tangible Cultural Property, which reads, "This building is a precious national asset."⁶² Fifty percent of the fees for plans and specifications by a conservation architect may be subsidized.⁶³

F. *Documentation and Criteria for the Cultural Property Official Register*

The Cultural Property Official Register, the master list of registered properties, consists of a series of evaluation forms giving a structure's name, address and date, and under which of the following criteria it was listed.⁶⁴

1. Important features of the historical landscape of Japan, including structures that are familiar symbols and are well-known, such as those that have appeared in paintings and novels.⁶⁵
2. The quality of design or style including: good design (e.g., a classic-style church or bank); works by famous designers, architects, builders or engineers; important prototypes that have influenced broad trends (e.g., Taisho and Showa Art-Deco buildings); buildings with representative characteristics of an era (e.g., farmhouses with thatched roofs or a Western-Style house with horizontal clapboards).⁶⁶
3. Structures that would be difficult to rebuild or reproduce (e.g., excellent technique or engineering was used, such as in a house with special plaster joints between the tiles or rooms with exquisite features).⁶⁷
4. In principle, properties must be at least fifty years old to be listed.⁶⁸

Following the assignment of criteria used, each Cultural Property Official Register evaluation form includes a brief description of the distinguishing features which qualified a property for registration, a list of the

⁶² *Id.*

⁶³ Does not cover construction costs. *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

sources used for documenting the significance of the structure, such as local surveys, and a map locating the structure.⁶⁹

Since the Register is restricted to buildings and structures (such as bridges) but not building sites, gardens, surroundings, or landscapes, each structure is nominated separately and has its own separate evaluation form in the Cultural Property Official Register. For example, each of nine historic structures on the Koikai Farm in Iwate Prefecture, from a silo and a spring house, both dating from the turn of the century, to a 1916 barn, is independently registered on nine sequential but separate evaluation forms. Since only structures can be Registered Tangible Cultural Properties, the farmland and natural setting are not recorded. In another instance, each separate building of the Mukaki, an inn in Fukushima Prefecture, is listed on a separate form, and in the instance of one structure, only its *genkan*, or entrance, is deemed worthy of nomination.⁷⁰

G. *Properties Registered in the First Year*

In addition to farms and inns, a wide variety of buildings and structures from all over Japan, including clock towers, railroad stations, office buildings, rock crushers, banks, churches, schools, and a water distribution tower, has already been listed in the Register. Major landmarks of the modern era, such as the early twentieth century Neoclassical Mitsukoshi Department Store in Tokyo's Nihombashi district, and the Wako building at Ginza crossing⁷¹ are also being considered for registration.

As of September 19, 1997, after less than a year in existence, the Cultural Property Official Register already contained 441 buildings and structures. By comparison, there have been approximately 3600 Important Cultural Properties designated since 1897, 7000 local and prefectural designations since 1950, and forty-four groups of buildings or historic districts comprising 7700 buildings since 1975, for a total of approximately 18,000 structures in 100 years.⁷² At an estimated listing rate of 500 buildings per year, the Register would equal this amount of

⁶⁹ From evaluation forms of the Cultural Properties Official Register, Architecture Division, Agency for Cultural Affairs.

⁷⁰ *Id.* The United States National Register of Historic Places lists all historically significant portions of a site as a single nomination. See 36 C.F.R. § 60.3 (1980). While a similar, holistic approach is routine with other Japanese cultural property designations, the Register is restricted to just structures, not the landscape surrounding them. INABA INTERVIEW, *supra* note 3.

⁷¹ A venerable 1932 landmark that, among other things, served as the PX for U.S. troops during the post-WW II occupation.

⁷² Statistics provided by the Architecture Division, Agency for Cultural Affairs.

properties in only thirty-six years, but with anticipated new staff, and a special section being created for its administration, the rate of listing in the Register is expected to rapidly increase.⁷³

V. CONCLUSION

There is much to be said in favor of the 1996 amendment to the Law for the Protection of Cultural Properties. It has the potential to extend recognition to a much greater number of historic structures. Once a property is registered, its owner has a variety of preservation incentives and also obligations, such as duties to disclose a property's current condition and any proposed changes, punishable by fines if disregarded. Most importantly, the amendment has the potential to give greater recognition and some limited protection to heretofore undervalued aspects of Japan's tangible cultural patrimony.

There are also obviously some limitations to the Tangible Cultural Properties Register. Listing is subject to owner permission and is restricted to buildings and structures only. The site and context of buildings, which is often as important as the structures themselves, are essential to a property's interpretation and historical eligibility, but are not considered under this program. Also, several of the incentives seem to favor properties of companies, local governments or wealthy owners, rather than everyday historic structures owned by ordinary Japanese. Many of the early listings appear to confirm this same skewing toward powerful and affluent owners.

Some staff in the Agency for Cultural Affairs are concerned that local governments might block the registration of important properties for fear of losing tax revenue. Kyoto is reportedly leery of the concept of tax reduction incentives for fear that it might be inundated for requests from owners of the city's hundreds of register-quality buildings, resulting in a loss in tax revenue.⁷⁴ Except in a few instances, the word so far is that most authorities are cooperating in granting the incentives.⁷⁵ Another concern is the low-interest loan program, which offers only 2.7% interest at a time when, in Japan's current low inflation economy, interest rates for new construction are even lower.⁷⁶

In the broader view, the Register, and the other provisions of the Law for the Protection of Cultural Property comprise only one law, administered by one agency, in a sea of competing laws and separate programs designed to conserve

⁷³ MASUDA INTERVIEW, *supra* note 33.

⁷⁴ *Id.*

⁷⁵ *Id.*; INABA INTERVIEW, *supra* note 3.

⁷⁶ MASUDA INTERVIEW, *supra* note 33.

both the Japanese cultural and natural environment and demolish it for new development at the same time. Large-scale public investments, such as highways, are creating sprawl in a country that can ill afford to waste land, and the deeply held ethic of tearing down to make room for the new is squandering Japan's scarce natural resources.

Recent economic stimulus packages call for rebuilding older areas of cities, many of which contain historic structures and districts, while encouraging suburban housing construction by easing agricultural land restrictions. Moreover, laws limiting the construction of large stores, analogous to the Walmarts and Home Depots of the United States, are being lifted this year with the likely result that more shopping malls, surrounded by oceans of parking, will sprout up at new highway interchanges on the edges of Japanese cities.⁷⁷ Such malls are already drawing trade away from (and threatening) traditional historic retail streets and downtown areas.

If this contradiction between current economic stimulus policies and the attainment of goals such as preservation of cultural resources is understood, it receives little mention. Cultural and environmental stewardship, public policy and investment, and economic development are not being dealt with as a coordinated whole but rather as disparate parts.⁷⁸

Perhaps the recent economic downturn and deregulation will produce a change. For example, the Ministry of Construction, one of Japan's most powerful and autonomous agencies, whose programs often destroy cultural assets, recently began seeking cooperation from the Agency for Cultural Affairs, a much less powerful entity within Japanese government, on various development projects.⁷⁹ Getting money for big projects is not as certain as it was during Japan's "Bubble Economy," so that, now, many officials are beginning to recognize the value of interagency partnerships as an easier way to ensure a project's approval. This is, however, just a beginning.

Limitations aside, the Tangible Cultural Properties Register program is a hard-earned, important step in calling attention to and encouraging the preservation of cultural assets heretofore left substantially unprotected.

⁷⁷ Neil Weinberg, *Bull in a Stationary Shop*, FORBES, Aug. 24, 1998, at 90-91.

⁷⁸ While America seems to have more legislation to provide such coordination, Japanese, looking at the sprawl continuing to engulf the United States, might level a similar critique.

⁷⁹ INABA INTERVIEW, *supra* note 3.

