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Monument Protection Act (MPA M-V)

according to the version of the bulletin dated 6. January 1998

(GVOBI. M-V page 12, corr. page 247)

- changed by law by:

**- article 4 of the act dated 21. July 1998 (GVOBI. M-V page 647),
enacted on 30. July 1998**

**- article 2 of the act dated 21. December 1999 (GVOBI. M-V page 644)
enacted on 1. January 2000**

**- article 17 of the act dated 22. November 2001
(GVOBI. M-V page 438)
enacted on 1. January 2002**

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The amendment comprises:

1. the Monument Protection Act enacted the day after its rendition dated on 30. November 1993 (GVOBI. M-V page 975)

2. the Act on the Treaty between the State of Mecklenburg-Vorpommern and the Evangelic-Lutheran Church of Mecklenburg-Vorpommern and the Pommeranian Evangelic Church dated 20. January 1994, enacted on 3. May 1994 with effect from after its rendition (GVOBI. M-V page 559)

3. paragraph 9 according to proviso of clause 19 No. 3 of the Act on Cost-Reducing Organisational Actions in Mecklenburg-Vorpommern dated on 25. September 1997 (GVOBI. M-V page 502).

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§1

Purpose of the protection and preservation of monuments

- (1) It is the purpose of the protection and preservation of monuments to protect and preserve monuments as testimony to history and tradition, to execute scientific research on them and to support a sensible use.
- (2) The protection and preservation of monuments are tasks of the state, the counties and the municipalities. The counties and municipalities realize these tasks as assignment matters in accordance with this act.
- (3) Public planning and measures shall take into consideration the interest of monument protection and preservation. A preservation and sensible use of the monuments and monumental areas have to aimed at in all considerations. The authorities responsible for monument protection and monument preservation have to be involved at an early stage.

§2

Definitions

- (1) Monuments protected under this act are objects, collection of objects and parts of objects the preservation of which lies in the public interest, as far as these objects are of importance for the human history, for cities, towns and settlements or for the development of working or economic conditions and, as far as the reasons for their preservation and use are related to arts, science, history, national heritage or architecture.
- (2) Architectural monuments are monuments that consist of edificial facilities or parts of edificial facilities. Garden, cemetery and park facilities as well as other landscape areas designed by human beings have to be treated likewise as long as they fulfil the requirements of paragraph 1. Historical equipment objects are to be treated as architectural monuments as long as they form a unit with the monument which is of monumental value.
- (3) Monumental areas are groups of edificial facilities that are worth being preserved for the reasons mentioned in paragraph 1. It is of no importance whether the individual edificial facilities are architectural monuments in their own right. Monumental areas can be outlines of towns and cities, cityscapes and townscapes and –silhouettes, urban districts and quarters, settlements, homestead groups, streets of houses, architectural ensembles, production sites and individual buildings as well as their closer environment as far as it is relevant for the appearance. The assignment of a monumental area is intended to protect the outer appearance.
- (4) Movable monuments are all non-stationary monuments.
- (5) Archaeological and paleontological monuments are movable and immovable monuments that are or were located in the ground, in moors or in waters. In addition, the following is referred to as archaeological and paleontological monuments:
 - objects that bear witness of human life in the past or of animal and herbal life connected to it,

- modifications and discolorations of the natural soil conditions that were effected by archaeological and paleontological monuments which are no longer recognizable autonomously, as long as they fulfil the preconditions of paragraph 1.

(6) The regulations of this act do not apply for archive objects.

Second Section Monument Protection and Preservation Authorities

§3 Monument Protection Authorities

Monument Protection Authorities are

1. the Ministry of Education, Science and Culture as supreme monument protection authority,
2. the heads of the county authorities and mayors of autonomous towns and cities as lower authorities. Provided that no other regulation applies, the lower conservation authorities are in charge of the execution of this act. They co-operate with associations, citizens and honorary monument conservators interested in monument protection and preservation.

§ 4* State Conservation Offices

(1) State offices are the Monument Protection State Office and the State Office for Archaeological and Paleontological Monuments. They provide consultancy and support regarding monument preservation and monument protection for the municipalities, counties and autonomous cities and towns. They contribute to the decisions of the lower conservation authorities and the supreme monument protection authority with their technical and professional expertise.

(2) Within the scope of monument protection, state conservation offices realize, in particular, the following tasks:

1. systematic registration of monuments (inventory),
2. scientific analysis and investigation on monuments as well as publication and scientific consideration related to methodical and practical questions of monument preservation,
3. guidance and supervision of preservation and restoration of monuments and professional supervision of these measures,
4. scientific excavation, recovery and restoration of archaeological and paleontological monuments, supervision of these measures and registration of movable archaeological and paleontological monuments,
5. administration of the funds for monuments preservation provided by the state
6. general representation of monument preservation interests during planning and other measures

7. the State Conservation Office is authorized to appoint honorary monument conservators following suggestions from lower conservation authorities

(3) Tasks of the State Conservation Office that apply to archaeological and paleontological monuments in the meaning of § 2, para. 5, at the same time fulfilling the requirements for a natural monument in the meaning of § 25 or for a legally protected geotope according to § 20, para. 2 of the Nature Conservation Act of Mecklenburg-Vorpommern dated 21. July 1998 (GVOBl. M-V page 647) are carried out by them in consultation with the responsible Nature Conservation Authority. If no agreement can be achieved, the superordinate authority level shall reach a decision in cooperation with the equivalent administrative level of the Nature Conservation Authority.

* § 4

- para. 3 appended by article 4 of the Act dated 21. July 1998

- amended by article 2 of the Act dated 21. December 1999.

§5*

List of monuments

(1) Monuments have to be recorded in the lists of monuments. The lists are kept by the lower conservation authorities, dividing into archaeological and paleontological monuments, architectural monuments and movable monuments. Movable monuments have to be recorded if this is deemed to be appropriate due to their special importance which could be a historic reference to a location. In case movable monuments are part of a public collection, no recording in the monument list is required. The owner and the municipalities should be heard prior to the recording in the relevant list of monuments and have to be informed after the recording in the relevant list of monuments. Modifications of the lists of monuments must only be carried out with approval of the competent state authority in charge. If the state authority will not make a final statement within six weeks following the receipt of the request to reach agreement, it is considered that a consent has been reached. If the state authority shall refuse to accept the agreement or the lower conservation authority shall refuse the request of the competent state authority in charge for modification of the monument list, the supreme monument protection authority shall make a final decision on request of the lower conservation authority or according to a submission provided by the state authority within four weeks. The lower conservation authority is obliged to modify the lists correspondingly.

(2) The protection under this act does not depend on the recording of a monument in these lists. However, the §§ 6, 7, 8 and 9 apply for movable monuments only if they are recorded in the monument list.

(3) The monument areas are disclosed as agreed upon with the competent state authority in charge and the municipalities by order of the lower conservation authority. In case no agreement can be achieved, the supreme monument authority shall make a decision within 4 weeks. The monument areas have to be announced by the lower monument authority in conformity with local practices.

(4) The records have to be deleted ex officio if the record requirements are not longer fulfilled.

(5) The monument lists are open for inspection to everybody. The monument lists for archaeological and paleontological monuments and movable monuments can only be inspected by those who can furnish proof of a legitimate interest to do so.

* §5 amended by article 2 of the Act dated 21. December 1999.

Third Section Measures on monuments

§ 6 Maintenance duty

- (1) Owners, possessors and persons responsible for the maintenance of monuments are obliged to restore monuments adequately to a reasonable extent, to maintain them and to treat them with care.
- (2) The state, the counties and the municipalities may contribute to this with subsidies.
- (3) All decisions under this act shall consider the legitimate interests of monument owners.
- (4) In case monuments are no longer used according to their originally intended purpose, the owners have to ensure a use that allows a lasting preservation of the material assets to the highest possible extent.
- (5) Any interference at a monument and related costs for the maintenance, professional restoration, recovery and documentation of the monument shall be borne by the person, who caused the interference.

§7* Measures requiring approval

- (1) The approval of the lower conservation authorities is required by those who
 - a) intend to remove monuments, to modify or relocate them or to change their hitherto use,
 - b) intend to carry out measures in the environment of monuments that affects the appearance or the material assets of the monument remarkably
- (2) The approval has to be given,
 - a) if the intended measure corresponds with monument preservation goal of measures to be carried out at the monument approved by the competent state office in charge and to be carried out by the owner and if they do not contravene other reasons of monument protection or monument preservation,
 - b) if a predominant public interest demands this measure.
- (3) Notwithstanding the above, the approval can be refused if and as far as significant reasons of monument protection speak for an unaltered perpetuation of the previous state.

(4) The lower conservation authority must only give an approval in consultation with the competent state office in charge. If the state authority will not make a final statement within six weeks following the receipt of the request to reach agreement, it is considered that a consent has been reached. If the state authority denies its approval, a final decision will be made by the supreme monument protection authority at the request of the lower conservation authority within four weeks.

(5) The approval can be given with riders as far as this is deemed necessary to protect the monument. Legitimate interests of the liable persons have to be taken into consideration.

(6) The application for granting the permission has to be handed over in writing to the lower conservation authority together with the documents that are needed to evaluate the project. In individual cases it can be requested to supplement the application for approval by preparatory investigations, particularly by a monument protection goal pursuant to para. 2, letter a.

(7) If a measure that is subject to authorisation requires an official approval of the plan, approval, permission, allowance, accreditation or affirmation according to other legal regulations, this decision shall replace the approval pursuant to para. 1. The responsible authorities shall consider the aspects of monument preservation and protection. The authorities responsible according to sentence 1 and 2 have to make an agreement with the competent state office in charge prior to giving the permission. If the agreement cannot be made within four weeks, the responsible supreme state authority shall make a final decision within four weeks.

* § 7 amended by article 2 of the Act dated 21. December 1999.

§ 8

Notification of sale or changes

If a monument shall be disposed of, the former and the new owner shall notify without delay the competent authority responsible for keeping the list of monuments of the transfer of property but within one month latest. The notice of one liable party releases the other party.

§ 9*

Information and toleration duties

(1) Owners, possessors and other authorized users are obliged to provide the information required for the fulfilment of the duties of monument protection and monument preservation.

(2) The lower conservation authorities as well as the competent state authorities in charge or their representatives are entitled to enter properties and flats and to examine and investigate as far as this is essentially necessary for monument preservation and monument protection matters, particularly for a recording in the monument list or other measures in accordance with this act. Homes may only be entered against the will of the owner or other authorized users in case immediate danger occurs.

(3) The base right of inviolability of the home (article *13 of the German Constitution) is limited by this act.

* § 9 amended by Art. 2 of the Act dated 21. December 1999.

§ 10 *
Monuments owned by churches
and religious communities under public law

- (1) The churches and the state share the responsibility for the protection and preservation of church monuments.
- (2) The churches ensure that their monuments are preserved and accessible to the public as far as there is a public interest in this. In this respect, expropriations are impermissible according to the monument protection act.
- (3) For decisions about monuments which directly serve worship services, cult and similar ecclesiastic services, monument protection authorities take the interests determined by the chief ecclesiastic authority into consideration. The chief ecclesiastic authority decides in consultation with the supreme monument protection authority, in case the lower conservation authority or the competent state authority in charge does not accept the claimed interests.
- (4) Tasks of monument protection can be assigned by agreements to the churches.
- (5) For the promotion according to the monument protection act as well as for the provision of subsidies, the state considers the special monument protection tasks of the churches. It will plead for a support of churches even by those institutions which operate on the national and international level of culture and monument preservation.

* § 10 amended by Art. 2 of the Act dated 21. December 1999.

Fourth Section
Special measures

§ 11 *
Finds of monuments

- (1) Whoever discovers or finds objects, collections of objects or parts of objects, whose preservation according to § 2 para. 1 is assumed to be a matter of public interest, has to give notice of that immediately. A duty of notification exists for
 - the discoverer
 - the work leader
 - the landowner
 - accidental witnesses who recognize the value of the object.
- (2) The announcement has to be made towards the lower conservation authority. It will forward the announcement immediately to the competent state office in charge.
- (3) The find and the place of finding have to be kept in unchanged condition. The obligation expires five working days after the announcement, with written announcements after one week latest. The lower conservation authorities is entitled to prolong the time limit as long as reasonable, in consultation with the responsible state office if a proper investigation or a recovery of the monument requires this.

(4) The competent state office in charge, the lower conservation authorities authorized by the state office as well as their authorized representatives are entitled to retrieve the monument and to take possession of it for evaluation and scientific research for up to one year. For this, all measures necessary for the preservation of the monument have to be implemented. The competent state office in charge is entitled to prolong the period for one more year if this is deemed necessary for a preservation of or scientific research on the monument.

* § 11 amended by Art. 2 of the Act dated 21. December 1999.

§ 12
Field research

Field research, in particular excavations or the application of technical detectors, with the goal of uncovering archaeological and paleontological monuments requires the approval of the supreme monument protection authority.

§ 13
Treasure shelf

Movable monuments which are ownerless or had been remained undiscovered for such a long period that no owner can be determined, will become possession of the state at the time of their discovery if they were detected during state-run investigations or within excavation territories according to § 16 or if they are of extraordinary scientific value.

§ 14 *
Protected excavation sites

(1) The lower conservation authority or the state office for the preservation of archaeological and paleontological monuments is entitled in consultation with the responsible municipality to declare certain properties that are likely to contain archaeological and paleontological monuments as protected excavation sites by recording them in the monument list.

(2) The information to the owner and the municipality according to § 5, para.1 shall include all measures that require approval. The approval is given by the lower conservation authority.

* § 14 amended by Art. 2 of the Act dated 21. December 1999.

§ 15
Special rules for measures of natural resource mining

In territories where measures according to the Federal Law on Mines are intended regarding the goals of regional development and land use planning, the competent state office in charge shall be given the opportunity for a scientific investigation of the assumed monuments, particularly in case of archaeological and paleontological monuments, or to retrieve them duly prior to the beginning of the measure. For this, due notice has to be given to the lower conservation authority regarding all corresponding measures and their changes.

* § 15 amended by Art. 2 of the Act dated 21. December 1999.

Fifth Section
Monument Act orders, Access to monuments, Identification, Compensation

§ 16
General measures of monument authorities

The lower conservation authorities have to implement those measures that are deemed to be necessary to them according to their best judgment to protect, preserve and retrieve monuments and to avert danger from them.

§ 17
Restoration of the Original State

(1) Any party, who carries out an act, that requires permission under this law, without obtaining such permission, and is acting improperly or in contravention to the requirements, shall, at the request of the responsible lower conservation authority, stop the work without delay and restore the original state. In the event of imminent danger the competent conservation authority in charge is authorized to order the work stop until the lower conservation authority has made a decision. The stoppage of work at building site in compliance with the building regulations remains unaffected.

(2) Any party, who unlawfully damaged or destroyed a monument, either acting wilfully or negligently, shall be obliged, at the request of the lower conservation authority, to restore the damaged parts.

(3) Notwithstanding the above, the regulations of the Act on Public Order and Security shall be applicable.

§ 18
Access to monuments

(1) In a reasonable way the owner and otherwise beneficiary shall provide access to monuments or parts thereof to the public.

(2) The lower conservation authorities shall make provisions regarding the access with the owners and otherwise beneficiaries.

§ 19
Identification of monuments

Monuments can be marked. Details are regulated in way of administrative rule by the supreme conservation authority. Owners and otherwise beneficiaries of monuments are obliged to tolerate the installation of marks and information boards.

§ 20
Enforcement of maintenance duty

(1) If owners, possessors or other persons liable to provide maintenance will not comply with the obligations under § 6 and if this non-compliance provides a risk to the monuments, the

lower conservation authority may advise them to implement necessary maintenance to a reasonable extent.

(2) If the condition of a monument shall require measures for its maintenance, repair or its protection and if without immediate execution of such measures the monument would be put at risk, the architectural conservation authorities may implement or introduce measures that prevent immediate damage to the maintenance of the monument. Owners and possessors are obliged to tolerate such measures. Owners, possessors and other persons liable to provide maintenance can be made liable to reimburse occurring costs to a reasonable extent.

§ 21 Expropriations

(1) Pursuant to this act, expropriation of monuments is permitted, if such action can

- a) maintain a cultural monument in its existence, its characteristic feature or its appearance,
- b) provide public access to a monument, if such access is of public interest, or
- c) enable planned scientific research at a protected excavation site.

(2) Notwithstanding the above, the Expropriation Act of the Land of Mecklenburg-Vorpommern shall apply.

§ 22 Pre-emptive right

(1) The municipality shall possess a pre-emptive right for the purchase of properties, on which or in which monuments are located. The pre-emptive right may only be exercised, if it enables the permanent maintenance of the monument. The pre-emptive right shall be excluded, if the owner of the property disposes of the property to his/her spouse or a person, who is related in direct line or related by marriage, or to a person, who is a collateral relative up to the third degree. The pre-emptive right shall be excluded by way of purchasing rights pursuant to the Residential Property Act or in the event of heritable building rights.

(2) The pre-emptive right can only be exercised by an administrative act towards the seller within two months after notification of the purchase agreement. The §§ *504, *505 para. 2, §§ *506 to 509 and *512 of the German Civil Code shall apply. After notification of the purchase agreement and upon request of the municipality, a provisional entry in the land charge register shall be placed to safeguard the municipalities' claim to conveyance of property. The municipality shall bear all costs related to the placing and deletion of such entry. The pre-emptive right shall not be transferable. In the event of acquisition of property by exercising the pre-emptive right, contractual pre-emptive rights shall be extinguished. If the municipality shall be registered as owner in the land charge register after exercising the pre-emptive right, the municipality may request the land registry to delete an existing provisional entry for safeguarding the purchaser's claim to conveyance in the land charge register. The municipality may only submit such request, if the exercising of the purchaser's pre-emptive right is incontestable.

(3) The party liable to grant the pre-emptive right shall notify the municipality without delay regarding the content of the contract concluded with a third party. The notification of the

liable party shall be replaced by the notification of the third party. The land registry shall have the right to register the purchaser as owner in the land charge register, if the purchasing party has been furnished with sufficient proof of the non-exercising or non-existence of the pre-emptive right. If no pre-emptive right exists or if the pre-emptive right is not exercised, the municipality is obliged to issue without delay a certificate of this fact upon request of any involved party. The certificate shall be deemed as renunciation of exercising the pre-emptive right.

(4) The municipality is authorized to exercise the pre-emptive right in favour of a different corporate body. For corporate bodies in the meaning of the civil law, the authorization shall only apply, if the permanent maintenance of the architectural monuments located at or in the property or immovable archaeological and paleontological monuments form integral part of the corporate body's statutory tasks and is ensured under consideration of all circumstances. Para. 1, sentences 2 and 3, apply accordingly. The municipality is only authorized to exercise the pre-emptive right in favour of a third party, if it possesses the approval of the beneficiary.

§ 23 Compensation

Any measures pursuant to this act that have expropriatory effect, require a compensation in compliance with § 5 of the Expropriation Act.

Sixth Section Monument promotion

§ 24 Financial allowances

The Land, the counties, autonomous towns, cities and municipalities may grant subsidies for the maintenance of monuments in accordance with the respective budgets. Funds shall be allocated under consideration of the economic performance of the owner. Any funds require an application to be submitted.

§ 25 Certificates for fiscal purposes

The Ministry of Education, Science and Culture shall be authorized by statutory order to regulate the responsibility for the issue of certificates on monuments for fiscal purposes.

Seventh Section Concluding provisions

§ 26 Misdemeanour

(1) A party is acting unlawfully, if it, wilfully or negligently,

1. does not file without delay necessary charges pursuant to § 8 or § 11, para. 1,

2. introduces or has introduced measures, requiring a permission pursuant to § 7 para. 1 and § 12, without or deviating from the permission,
3. pursuant to § 11, para. 3, does not leave unchanged discovered archaeological and paleontological monuments or discovered locations,
4. does not issue an information pursuant to § 9, para. 1,
5. does not comply with its obligations pursuant to § 6, para. 1 to repair, maintain and handle with care monuments appropriately, even, if the responsible body has provided an order, which describes the obligations in an adequate and specific way. A fine may only be imposed, if the order refers to this fine regulation.

(2) Misdemeanour is punishable by fines of up to 150,000 Euro. If a monument is destroyed without permission pursuant to §7 para. 1 letter a, a fine can be imposed of up to 1,500,000 Euro.

(3) The prosecution of misdemeanour becomes statute-barred after 5 years.

(4) The responsible body pursuant to § *36 para. 1, No. 1 of the Act on Misdemeanour is the lower conservation authority.

* § 26 para. 2 amended by article 17 of the Act dated 22. November 2001.

§ 27 Administrative rules

The Ministry of Education, Science and Culture shall introduce administrative rules that are deemed necessary for the execution of this act.

§ 28 Transitional provisions

The monuments included in the list of archaeological and paleontological antiquities pursuant to §§ *4 an *6, para. 1 of the Ordinance for the protection and maintenance of prehistoric and early archaeological and paleontological antiquities dated 28. May 1954 (law gazette GBI. No. 54 page 547) are subject to the provisions of this act until 31. December 2006. By this point of time, the lists are to be verified by the competent conservation authorities in charge and transferred to the monument lists pursuant to § 5. Afterwards these lists shall be handed over to the conservation authorities.

§ 29 (Entry into Force)