

General rules for development and reconstruction and their relationship to the protection of architectural heritage

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Abstract

Preparation and reconstruction are two concepts related to the development of cities and urban areas, the regulation of land use and the improvement of infrastructure to meet the needs of people and communities. The protection of architectural heritage is part of this process, aimed at preserving buildings and historical and cultural monuments that represent an important heritage of society and its history. The protection of architectural heritage is also related to preparation and reconstruction by including special policies and laws to preserve historical monuments and buildings that are part of the cultural heritage of the region. Hence, the following problem can be raised: Are

the general rules of preparation and reconstruction an effective mechanism to ensure the protection and valuation of architectural heritage? What is its role in preserving architectural heritage?

As we try to answer this problem, we will try to provide general concepts about the legal rules of preparation and reconstruction, protect the architectural heritage within the framework of the preparation and reconstruction plans, and to determine their effectiveness in protecting this part of the heritage.

Keywords: Architectural heritage, general rehabilitation and reconstruction rules, reconstruction tools, protection.

* Introduction

Architectural heritage reflects the civilizational identity of man because of its historical, cultural, artistic and aesthetic values that grow on the natural secretions of his historical, political, and economic interactions throughout the ages. The legislator first gave him special protection in the field of reconstruction and imposed on the owners of neighboring real estate many restrictions on their real estate property in order to preserve the privacy of this cultural heritage, through the general rules of preparation and reconstruction, which are considered as a means to control the urban environment in order to preserve the public interest. In general, it relates to the control of construction processes and the use of lands adjacent to architectural heritage in a manner that does not affect its shape and appearance as an important cultural and civilizational heritage.

¹ (1)Abdel Rahman Al-Dakkari, Architectural Heritage in Morocco: Spatial Memory and Valorization Manifestations, Journal of Development Research and Studies, first issue, December 2014, p. 09.

(2)Contemporary Islamic architecture between renewal and tradition <https://www.academia.edu>

* Importance of the topic

The importance of this study is as follows: -

- 1- Identifying the policies and procedures necessary to preserve architectural heritage through configuration and reconstruction plans and their role in protecting¹archaeological and historical monuments.
- 2- Identifying directives for historical buildings and heritage areas.
- 3- Highlighting the rules of preservation of historical buildings and specific building standards to preserve the cultural and historical character of the area.

* Study objectives

The purpose of this study is to highlight the status of the general rules of preparation and reconstruction in the field of urban organization in Algeria, and to identify the most important contributing measures for the preservation of architectural heritage through preparation and reconstruction tools.

(3) : Order No. 67-281, dated December 20, 1967, relating to excavations and the protection of historical and natural places and monuments, C.R. No. 07, dated January 23, 1968.

* Issue

Are the general rules of preparation and reconstruction an effective mechanism to ensure the protection and valuation of architectural heritage? What is its role in the preservation of architectural heritage?

The hypothesis that can be formulated revolves around the role of the general rules of preparation and reconstruction in the control and protection of architectural heritage and the scope of its surroundings through the guiding plan for rehabilitation and reconstruction and the land occupancy scheme.

Pillar 1: Architectural Heritage Concept:

Architectural heritage in its comprehensiveness is a heritage that has a cultural, artistic, creative, aesthetic or guest value and reflects the pillars of these civilizations, the perceptions of their communities and their philosophy in managing their daily lives(1).

Architectural heritage is an honest expression of the history and culture of society, which is the material and moral link that binds contemporaries to their authority. It is a division of cultural and cultural values, and a reflection of a strong social and economic structure lived by ancestors(2)

It is also considered part of the tangible cultural heritage and all real cultural properties, and through its impact, Article 20 of Order 67/281 regarding excavations and the protection of natural historical places and monuments defined it in its second paragraph that “a historical monument is an isolated property, built or unbuilt, and considered In its entirety or part of it, as well as the subsurface of the land belonging to it or a property by specification in its entirety or in part of it.” (3)

Also considered are those things, landmarks, or sites that are fixed in a specific spatial space and cannot be moved by their nature, as they are fixed and attached to the ground, unless this characteristic is removed from them, and they are everything that a person perceives with his senses, such as ancient kasbahs, palaces, mosques, temples, castles, etc. Ancient military installations, stone inscriptions and natural sheds.

According to Article 8, first paragraph of Law 98-04, real cultural property includes: -

- 1- Historical monuments. (4)
- 2- Archaeological sites (5)
- 3- Urban or rural groups(6)

* **Architectural heritage values**

Lack of awareness of the value of heritage leads to damage to the

heritage stock and neglect of its importance. Conscious awareness of heritage values depends on the precise classification of those values, which is based throughout the ages on various fields of knowledge, which are:

Historical values: express a symbolic or temporal heritage meaning.

Aesthetic and creative values: express human interactions towards individual creative abilities.

Functional values: express socio-economic patterns.

The Pillar 2 : General rules for development and reconstruction and their relationship to the protection of architectural heritage

Architectural heritage is part of the tangible cultural heritage and includes cultural real estate properties represented by: historical monuments, archaeological sites,

including archaeological reserves and cultural sheds, in addition to urban and rural collections.(7)

In view of the importance that the Algerian legislator attaches to this heritage, it has established legal mechanisms aimed at protecting and preserving it, and this is through Law 98/04 related to the protection of cultural heritage and other legal texts, including Law 90-29 related to development and reconstruction dated 01/02/ 1990, which aims to define the general rules aimed at regulating the production of constructable lands and the formation and transformation of buildings within the framework of the economic management of the lands and the balance between the²functions of housing, agriculture and industry, as well as the protection of the surroundings, natural environments and landscapes, and

(4) : It is defined and its features are defined in Article 17 of Law 98-04, relating to the protection of cultural heritage: "Any individual or collective architectural construction that bears witness to a particular civilization, an important development, or a historical event, and the monuments concerned in particular are major architectural achievements, painting, and engraving." , decorative art, Arabic calligraphy,

luxurious landmark buildings or complexes of a religious, military, civil, agricultural or industrial nature, prehistoric structures, funerary monuments or tombs, caves, caves, paintings and rock drawings, and memorials, structures or isolated items related to major events in national history."

cultural and historical heritage on the basis of respect for the principles and objectives of the national urban planning policy. (8)

The contribution of the development and reconstruction law to the protection of cultural heritage is evident through development and reconstruction tools on the one hand, as well as licenses related to reconstruction on the other hand, in addition to the imposed reconstruction easements.³

*** The concept of general rules for planning and reconstruction**

General rules fall within the concept of urban rules, which are defined as: “a set of objective rules that in themselves govern the occupation of the urban or urban space, and which determine, for a specific region, the type of real estate activities that are prohibited, restricted or regulated,” and are also defined as “ Rules that are established within the framework of construction law institutions, and which aim to

frame the uses of land as determined by the construction law.” (9)

Returning to the definition of the general rules for development and reconstruction, the Algerian legislator contented himself with controlling their content and specifying the conditions for their application in Chapter Two of Law 90/29 related to development and reconstruction (according to Articles No.: 03, 04, 05, 06, 07, 08, 09). And Executive Decree 91/175, which specifies the general rules for development, reconstruction, and construction, without going into their definition.

In order to improve the infrastructure and control urban expansion in Algeria, in an effective and coordinated manner, the legislator created tools for development and reconstruction as a basic pillar in the field of urbanization.

³(5) : According to Article 28 of Law 98-04 regarding the protection of cultural heritage: “Archaeological sites are defined as built or unbuilt areas without an active function that bear witness to human actions or interaction with nature, including the subsoil connected to

them, and that have value from a historical or archaeological point of view.” Or religious, artistic, scientific, ethnological, or anthropological, meaning in particular archaeological sites, including archaeological reserves and cultural civilizations.”

*** Development and reconstruction tools as a means of protecting architectural heritage**

Development and reconstruction tools or plans are a type of methods and techniques through which the administration intervenes to organize lands and balance the various functions that improve people's living conditions and ensure the protection of natural environments and archaeological and historical monuments and their value and preservation for future generations as they are non-renewable real estate wealth. Development and reconstruction plans in accordance with the general rules stipulated under Law 90-29 amending and supplementing the aforementioned in the master plan for development and reconstruction and the land occupation plan. (10)

The development and reconstruction tools also specify the basic directions for developing the

lands in question, as well as setting development expectations and rules, and specify ⁴in particular the conditions that allow, on the one hand, to rationalize the use of spaces, protect agricultural activities, and protect sensitive areas, sites and views, and on the other hand, designate lands allocated for activities. Economic purposes of public benefit and buildings designated for current and future needs in the field of collective equipment related to service, activities and residents, and also determines the conditions for preparation and construction to prevent natural hazards.(11)

In the same regard, the Development and Reconstruction Law classified monuments and archaeological sites within regions with a prominent natural and cultural advantage.(12)

The general development and reconstruction tools are limited to the

(6) : Defined by Article 41 of Law 98-04 relating to the protection of cultural heritage, they are reserved sectors "established in the form of urban or rural real estate groups such as kasbahs, cities, palaces, villages and traditional residential complexes, distinguished by the predominance of the residential area in them and characterized by their homogeneity and

architectural unity. aesthetic, historical, architectural, artistic or traditional importance that would justify its protection, repair, rehabilitation and valorization."

7) Article 8 of Law No. 98-04 of 06/15/1998, relating to the protection of cultural heritage, Article No. 4 of 06/17/1998

master plan for development and reconstruction and the land occupation plan.

*** Protecting architectural heritage within the framework of the master plan for development and reconstruction**

The master plan for development and urbanization is a tool for spatial planning and urban management. It determines the basic directions for urban development for the municipality and the concerned municipalities, taking into account development designs and development plans, and sets the reference formulas for the land occupation plan.(13)

It aims to identify areas of intervention in the urban fabric and the areas that must be protected (14). Hence, it can be said that this plan aims to identify the areas that can be reconstructed according to what the

urban fabric requires. In return, we find that it identifies the areas that must be protected.

The master plan for development and reconstruction is also considered a performance of space planning and urban management in light of the⁵principles and objectives of the national policy for development, with the necessity of balancing between the construction sector, the agricultural sector, and the industrial sector, protecting the surroundings, natural environments, and cultural and historical heritage, and taking into account development plans and demographic growth. Population distribution, as well as high rates of migration from the countryside to cities, and even social and political conditions.(15)

Its great importance is evident in areas containing real cultural

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(8) Article 01 of Law No. 90-29 of 12/01/1990, relating to development and reconstruction, Article No. 52 of 15 Jumada al-Awwal 1411

(9) Al-Aifawi Karima, The role of general rules for planning and reconstruction in the field of urban planning, Journal of Policy and Law Notebooks, second issue, 2021, p. 127

(10) Jadili Nawal, Protecting cultural real estate properties according to the rules of development and reconstruction, Journal of Legal and Social Sciences, Issue 04, December 2022, p. 663.

(11) Article 11 of Law 90-29, op. cit

(12) : Article 46 of Law 90-29, ibid

(13): Article 16 of Law 90-29, op. cit

property, in addition to the fact that Article 36 of Law 98-04 requires that the authorities responsible for preparing orientation and reconstruction plans and land occupation plans at the level of each municipality be informed of the archaeological reserves registered in the additional inventory list or classified as such. It prompts us to question the fate of unregistered or classified reserves. (16)

It also aims to identify the areas that must be protected, such as agricultural lands, the protection of the coast, the environment and natural resources, and the protection of areas of natural, cultural and historical importance, so as to allow the rationalization of green spaces, the protection of lands and agricultural activities, and the protection of lands of a forest nature as it is a national treasure that must be preserved. Preserving it, in addition to protecting areas of a cultural and historical nature as an integral part of

the national wealth. In this regard, this plan identifies sensitive areas, fertile agricultural lands, and lands of a prominent natural and cultural character. It also assumes responsibility for organizing industrial real estate and taking the necessary precautions to protect the environment.(17)

By extrapolating the above-mentioned objectives, the development and reconstruction plan is considered the reference document for all intervention works on the property, and a means of protecting areas with cultural and historical heritage, such as excavations and historical monuments, as they are 'limited and non-renewable resources, through coordination and organization of the relationship. Between it and the rest of the urban centers located at the local and regional levels.

⁶ (14) Article 18 of Law 90-29, *ibid*

(15) Jadili Nawal, *op. cit.*, p. 664

(16) See Khawadija Samiha Hanan, *The Role of Development and Reconstruction Plans in Protecting Archaeological Monuments*, Prince Abdelkader Journal of Islamic Sciences -

Constantine, Algeria -, Issue 02, December 13, 2018, p. 652.

(17) Zaqrar Lamia, *Construction tools and their role in protecting the environment*, Master's degree thesis, Ibn Khaldun University - Tiaret, 2019-2020, p. 26.

*** Protection of architectural heritage within the framework of the land occupation plan**

The land occupation plan is one of the main plans stipulated by the legislator in Law No. 29-90 related to development and reconstruction, as it allows control and monitoring of development through the organized development of each city or population center.

It specifies land use and building rights, within the framework of the directives of the development and reconstruction master plan. It also identifies neighborhoods, streets, memorials, sites, and areas that must be protected, renovated, and reclaimed.¹⁸⁾

What is meant is that the land occupancy plan is a tool through which the urban form of each area can be determined by regulating building rights on the lands, as well as showing how to use them in accordance with the directives specified by the master plan for development and reconstruction.

In addition to the above, the land occupancy plan specifies easements (19), and these easements are not subject to any modification license except for minor adaptations imposed by the nature of the land.⁽²⁰⁾

Regarding the definition of construction easements, Law No. 90-29 did not address their definition, and merely mentioned them in Article 22, which specified future development sectors, and that all lands located in these sectors are temporarily subject to a non-construction easement, and this easement will not be lifted within the deadlines stipulated except for lands that fall within the scope of application of the approved land occupation plan, and Article 31 specifies land use and building rights.

As well as the easements through the land occupation plan within the framework of the directives of the master plan for development and reconstruction. As for Article 33 thereof, these easements were subject to amendment within the limits of simple adaptation according to the nature of the imposed land.

The Algerian legislator imposed administrative easements under the Construction Law 29-90. He justified the establishment of these easements with the requirements of the public interest, which necessitate the existence of easements in the area of urban real estate, as well as requirements related to infringement on sacred private property as a rule, but they can be

restricted on the condition that legal texts are issued in this area similar to the law. Development that created administrative easements that restrict the use of land, especially with regard to the role of development easements in protecting cultural property at the height of buildings and building prevention easements.

Types of urban easements imposed to protect architectural heritage

Several easements have been imposed on the neighborhood of the built architectural heritage, taking the form of negative easements that deprive the owners of these properties from exercising the rights granted to them by the right of ownership over their properties, represented by density easements and non-building easements.

*** Density easements**

Density easements, in particular, include two types of urban easements: setback easements and elevation easements.

What is meant by setback is to delay the building a certain distance determined by the administration to achieve the distance between the building and neighboring urban units,

and the easement of setback basically relates to delaying the building to a certain distance compared to roads and public property on the one hand and compared to neighboring plots on the other hand, which is known as the vision easement, as it was ⁷required Article 17 of Law 98-04, in its fifth paragraph, expands the field of vision to a distance of not less than 200 metres, in order to avoid damaging the landmark views included in particular in that area, while prohibiting the placement of banners and advertising panels or affixing them to historical monuments except with prior permission.

On the other hand, the legislator imposed a height easement on properties adjacent to the built architectural heritage, where the maximum height of the archaeological building is controlled in relation to the buildable areas according to legal texts, which are embodied in the development and reconstruction plans according to the specificities of each area and according to the easements related to the protection of the archaeological and cultural monuments that It requires limiting the height to serve

⁷ (18) Article 31 of Law 90-29, op. cit
(19) Article 31 of Law 90-29, op. cit
(20) Article 33 of Law 90-29, op. cit

the public interest, as well as easements related to aesthetic appearance that require a certain height.(21)

Article 14 of Decree No. 03-324 specified the height of buildings in archaeological areas at 1/500, which was included in the written documents.

The density easement contributes to defining the structure of buildings and giving the urban character of each particular area within the framework of the specificity of archaeological areas.

*** Non-building easements**

Non-construction easements are construction easements that represent the existence of a legal impediment that prevents the completion of works in some areas due to the danger that may result from that, or due to the specificity of those areas as restricted areas to protect historical and archaeological monuments and cultural sites. Non-construction easements are often linked to distances. a wish

It specifies the area in which construction is prohibited, which reflects the direct relationship

between setback easements and non-building easements.

In the context of imposing an easement not to build in archaeological areas as they are protected areas, Law No. 98-04 stipulates the illegality of building⁸ on monuments or archaeological sites classified for the purpose of protecting them except with a prior permit, as Article 04 of Law No. 90-29 stipulates in its third paragraph, “No.” Can be built except for land plots: which are within the limits consistent with the necessity of protecting archaeological and cultural monuments, as stipulated in Article 69 of the same law: “No construction or demolition that would harm the natural, historical and cultural heritage or constitute a danger shall be permitted, except after Consultation and approval of the competent authorities in this field.

*** Aspects of protection achieved by imposing urban easements for the benefit of architectural heritage**

The purpose of imposing urban easements in areas where architectural heritage is located is to protect the aesthetic appearance of

⁸ (21) Sinai Bin Shartiwa, The Role of Construction Easements in Protecting Cultural

Property, Journal of Human Sciences, No. 51, June 2019, p. 384

these properties or maintain their durability.

*** Protecting the aesthetic appearance of architectural heritage**

It was necessary for the legislator to impose retreat easements and elevation easements on properties adjacent to the architectural heritage so that it would be possible to preserve their aesthetic appearance without obscuring the full image of the archaeological landmark, as this highlights its beauty on the one hand and its historical importance on the other hand as it is a classified and protected area. Globally (22), the building permit can be restricted if the buildings and facilities to be built affect their location, size or external appearance, the importance of neighboring places and cultural monuments, as well as the preservation of the horizons of archaeological monuments.(23)

*** Protecting architectural heritage from demolition and extinction:**

The basic scope of protection provided by the non-building

easement next to the architectural heritage is to provide protection for this heritage from any building works that may harm its solidity or pose a danger to it, such as causing its demolition. This does not negate that imposing a non-building easement contributes, by extension, to the retreat easement in moving ⁹away. The legal distance imposed from the archaeological landmark makes it provide protection for the architectural heritage by preserving its aesthetic appearance within the framework of vision easements.(24)

Protecting architectural heritage in light of development and reconstruction permits:

These licenses contribute to the protection of architectural heritage by implementing the laws and regulations that must be adhered to in any real estate project as preventive measures for lands and buildings that have a special character from a historical, cultural, and aesthetic standpoint. They are generally represented in the building permit, demolition permit, and retail

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(22) Sinai bin Shartiwa, previous reference, p. 389

(23) Article 27, Executive Decree No.: 91-175 of Dhul-Qi'dah 14, 1411, corresponding to May 28,

1991, which specifies the general rules for development, reconstruction, and construction.

(24) Sinai bin Shartiwa, previous reference, p. 390

permit, and this What Article 04 of Law 90-29 relating to development and reconstruction stipulates: “Only plots of land that are within the limits compatible with the need to protect archaeological and cultural monuments shall be capable of construction. The methods of implementing this article shall be controlled by regulation.”

Article 7 of Executive Decree 91-175 states: “If the construction is of a nature to disturb the preservation or repair of the place or historical monuments, the building permit may be refused or its grant may be restricted by respecting the special provisions in accordance with the conditions stipulated in the legislation.”(25)

Article 27 of the same decree states: “A building permit may be refused or its grant may be restricted in compliance with special provisions if the buildings and facilities to be built, by their location, size, or external appearance, harm the character or importance of neighboring places, monuments, and natural or urban landscapes, as well

as the preservation of the horizons of archaeological monuments.”(26)¹⁰

Based on the above, no construction or demolition that would harm the natural and cultural heritage or pose a threat to it shall be authorized except after consulting the competent authorities.(27)

However, development and reconstruction permits must be applied appropriately and logically to ensure the effective protection of the architectural and cultural heritage in the region. This is done through the concerted efforts of all relevant actors and interests and with the involvement of civil society to make appropriate decisions that enhance the preservation of the architectural heritage for future generations.

*** Findings**

One of the most important results reached in this topic is that the general rules for development and reconstruction combine care for architectural heritage and achieving sustainable and balanced urban development through:

1- Develop a legal and regulatory framework to preserve historical and architectural buildings of cultural and

¹⁰ 25- Article 07 of Executive Decree No. 91-175, *ibid*
26- Article 27 of Executive Decree No. 91-175, *ibid*

27- Article 04 of Law 90-29, *op. cit*

heritage value, and define procedures and standards to preserve these buildings and prevent their destruction or infringement.

2- It contributes to directing future planning of cities in a parallel manner that takes into account the preservation of architectural heritage and meets the needs of modern society.

3- General rules for development and reconstruction help ensure good protection of the architectural heritage and that it is not exposed to damage or destruction due to unregulated urban development.

4- Achieving a balance between urban development and preserving architectural heritage to enhance the sustainability of cities and communities in the future.

5- Reconstruction tools (the master plan for development and reconstruction and the land occupation plan) are considered a type of tribal control over any activity that falls within the reconstruction process by conducting an investigation into the application files related to a building, demolition, or retail permit.

6- In order to ensure the benefit of the architectural heritage, the

development and reconstruction plans represented in the master plan for development and reconstruction and the land occupation plan work in cooperation between the relevant authorities, civil society and experts in the field, as follows:

1- Designation and classification: Important historical and architectural areas are identified and classified based on their cultural importance, and inappropriate construction in them is prevented.

2- Determining uses: Urbanization tools can determine the permitted uses in archaeological areas (such as the preservation and rehabilitation of historical buildings for cultural or tourism use).

3- Limiting excess development: by regulating the size and shape of new development in heritage areas to reduce negative impacts on the old architectural structure.

4- Landscape preservation: It helps preserve the natural landscape surrounding archaeological and historical areas, which contributes to¹¹preserving the charm and beauty of these areas.

5- Directing urban growth: Plans can direct the growth of the urban complex to reduce pressure on

¹¹ 28- Article 30 of Law 98-04, op. cit
29- Article 43 of Law 98-04, ibid.

30-Article 40 of Law 98-04, op. cit.

heritage areas and reduce problems associated with congestion and overcrowding.

6- Financial support and legislation: Development and reconstruction plans can be supported by legislation and regulations that direct financial investments to support the preservation of architectural heritage.

* **Conclusion**

At the conclusion of our study of this topic, it cannot be denied that the general legal mechanisms and rules in the field of development and reconstruction had a role in protecting the architectural heritage and achieving the dimensions of development through various reconstruction tools. However, the shortcomings in legislation in this field led to the development of protection and development plans. And the organization of this heritage.

These plans differ and vary according to the diversity and diversity of cultural archaeological areas. For archaeological sites, we find a plan for archaeological sites and their affiliated protected areas and their reclamation. Likewise, for preserved sectors, we find the permanent plan for preserving and reclaiming the preserved sectors, which replaces the land occupation plan(29), in addition to the general plan for preparing cultural sheds, and

it is considered a tool. To protect it so that it is included in the development and reconstruction plans and replaces the land occupation plan.(30)

Finally, and based on what we presented previously, we propose the following recommendations:

1- The necessity of involving local authorities and civil society in preparing plans to protect cultural heritage, especially because the latter has a large and widespread influence to spread awareness of the importance of architectural heritage in the nation's history and thus protect it from all the dangers of construction and reconstruction in or near it.

2- The necessity of involving specialists in archaeology, alongside architects, in preparing plans to protect archaeological sites, whether stipulated in the Development and Reconstruction Law, the Cultural Property Protection Law, or other laws, to benefit from their experience in the field of protecting cultural heritage.

3- The policy of preserving and valuing archaeological wealth must be integrated when preparing development and reconstruction plans, and this will only be possible through an accurate inventory of archaeological monuments and the establishment of an information bank

regarding the antiquities present on the surface of the earth and buried in its interior, especially the training of frameworks and professionals, because the lack of Algerian experts in the field must be recognized. The field of archaeological restoration.

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Abdel Rahman Al-Dakari, Architectural Heritage in Morocco: Spatial Memory and Valorization Manifestations, Journal of Development Research and Studies, first issue, December 2014.

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From Law No. 90-29 of 12/01/1990, relating to development and reconstruction, Article No. 52 of 15 Jumada al-Awwal 1411.

Executive Decree No.: 91-175 of Dhul-Qi'dah 14, 1411, corresponding to May 28, 1991, which specifies the general rules for development, reconstruction, and construction.