

Draft

Report to
the 64th
Montana
Legislature



DRAFT
**SJR 4 Study of State-owned
Properties at Virginia City, Nevada
City, and Reeder's Alley**

Environmental Quality
Council, 2013-2014 Interim

Environmental Quality Council Members

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. EQC members can serve up to three 2-year terms if re-elected and reappointed. Members must be appointed before the 50th legislative day in accordance with 5-16-101, MCA.*

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* This information is included in order to comply with section 2-15-155, MCA.

Introduction

The Environmental Quality Council (EQC) requested SJR 4 for consideration by the 2013 Legislature upon completion of a study conducted during the 2011-2012 interim of state parks and outdoor recreation and heritage resource programs. SJR 4 reflected the Council's opinion that the work it had begun the previous interim to review management of state-owned properties at Virginia City, Nevada City, and Reeder's Alley in Helena had been beneficial and should continue.

Statements in SJR 4's preamble provided the backdrop for the study. They highlight the unique character and value of the properties and artifacts managed by the Montana Heritage Preservation and Development Commission (MHC), as well as the challenges with which the MHC contends as it attempts to operate the facilities in a manner that both protects the properties' fragile historic integrity and secures profits for operations, management, and structure preservation.

The study focused on how that balance might be achieved and ways the Legislature may be able to assist the MHC by removing any statutory impediments to effective management and by establishing an understanding among legislators of the value of the sites to the state and the communities in which the properties are located.

Recommendations

A bill draft, LCMHC1 (Appendix A), incorporates the EQC's recommendations resulting from the SJR 4 study. Key features of the draft include:

- removal of language requiring the MHC to continue to acquire property and purchase fee title interests in real and personal property, leaving the focus on managing properties the state has already acquired;
- removal of references to MHC-managed properties being economically independent and self-supporting, providing instead that the goal be economic stability;
- revision of the authority for appointing MHC members, so that if the Speaker of the House and the President of the Senate do not appoint the members for which they are responsible, the authority reverts to the Governor;
- removal of language that requires certain MHC profits to be deposited in the Cultural and Aesthetic Trust account;
- removal of language that requires proceeds from the sale of personal property from the Bovey assets be placed in a trust fund; and
- removal of language expressing the intent of the 58th Legislature that no general fund money be provided for the operations and maintenance of the properties beyond what the 55th Legislature appropriated.

SJR 4

SJR 4 requested the following of the entity conducting the study:

1. provide continued oversight of the Montana Heritage Preservation and Development Commission and its management and operation of state-owned sites at Virginia City, Nevada City, and Reeder's Alley;
2. review the implementation and impacts of the Commission's restructuring and newly adopted business plan;
3. review in greater detail the myriad properties and artifacts the state purchased at Virginia City and Nevada City to determine whether the statutory mission for the sites should be redefined or whether recommendations should be made regarding deaccession of any properties or artifacts;
4. identify overall preservation needs at Virginia City, Nevada City, and Reeder's Alley and make recommendations regarding the scale and scope of those efforts based on available resources;
5. review marketing efforts and identify other ways to make Virginia City, Nevada City, and Reeder's Alley better known to residents and nonresidents alike;
6. review the Commission's funding and revenue and make recommendations for improving overall finances, especially funding for preservation and maintenance work;
7. identify opportunities to integrate and better coordinate the administration of state-owned sites at Virginia City, Nevada City, and Reeder's Alley with other recreational and heritage resources, including state parks; and
8. evaluate the makeup of the Commission and whether its membership, powers, and duties should be restructured or redefined, including whether some duties should be transferred to the Department of Commerce, to which the Commission is attached.

Timeline of State Acquisition and Management of Properties

The state of Montana's involvement in the ownership and management of Virginia City and Nevada City began in 1997, when the Legislature authorized the purchase of properties and artifacts at those sites that had been in private ownership. State ownership of Reeder's Alley in Helena came about through two separate donations, which the Board of Land Commissioners approved in 2001 and 2006.

1997: Montana Legislature authorizes purchase of the Bovey properties in Virginia City and Nevada City for \$6.5 million.

MHC created, administratively attached to Montana Historical Society.

1999: Owners of Reeder's Alley property in Helena approach MHC to consider

accepting donated property.

2001: MHC proposes to State Board of Land Commissioners that state accept Reeder's Alley; Land Board approves.

Legislature makes changes to MHC membership requirements and staffing (Ch. 308, L. 2001).

2003: Legislature moves administration of MHC from Historical Society to Department of Commerce to take advantage of the department's tourism, promotion, and economic development resources (Ch. 485, L. 2003).

2006: MHC accepts donation of the Pioneer Cabin and Caretaker's House in Reeder's Alley, on the condition that the property "be used exclusively for the public purpose of the historic preservation ... [of the properties], and the public display of the Pioneer Cabin and the artifacts contained therein."

Study Approach

After considering the impetus for the study, reviewing the study plan and background information, and participating in a tour of Reeder's Alley, the EQC designated four of its members to work with the MHC staff, MHC commissioners, and other interested individuals and entities to conduct the bulk of the study and develop recommendations.

Senators Jim Keane and Rick Ripley and Representatives Jeff Welborn and Virginia Court composed the work group, which convened in November 2013 and in April 2014. MHC staff and several of the commissioners played an active role throughout the study, participating in both work group meetings and in each EQC meeting that included an SJR 4 agenda item. Work group members and staff also attended MHC meetings in Helena and in Virginia City.

Work Group Activities and Discussions

The work group organized its review into three main areas:

- statutes governing the MHC, located in Title 22, chapter 3, part 10;
- statutory and earned revenue funding sources for administration, operation, and maintenance of the properties and artifacts; and
- real and personal property acquisition and sale.

After the first work group meeting in November 2013, staff developed a chart (Appendix B) based on EQC and work group discussions and on staff research and information provided by MHC staff, MHC commissioners, and interested stakeholders. The chart formed the basis of the work group's and the EQC's subsequent discussions.

Statutory Provisions

The bill draft, LCMHC1, reflects the work group's and the EQC's recommendation for changes to the MHC's governing statutes, many of which had not been reviewed or amended since the MHC was created in 1997. The work group sought to streamline some of the processes and remove any provisions that may be impeding the ability of the MHC to operate as efficiently as possible.

The work group also recognized that requiring MHC-operated properties to be self-supporting was not realistic and chose to remove those provisions from the MHC's governing statutes. In addition, work group members believed that the statutes should no longer emphasize property acquisition as a primary mission of the MHC. Members agreed that the focus must be on maintaining and preserving the property already acquired and on operating the properties and marketing them in a manner that increases visitation and revenue collections.

At its April 2014 meeting, the work group weighed whether or not to recommend to the EQC that the bill draft strike the provision in section 22-3-1003(3)(c), MCA, that states "It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature." After learning from Legislative Services Division legal staff that the provision is not legally binding and does not constitute a statutory prohibition on the use of general fund money for this purpose, the work group opted to forward the question to the EQC, which agreed to recommend striking the functionally meaningless provision.

Funding Sources

The work group examined in detail the MHC's statutory funding sources and earned revenue, as well as its expenditures. Members considered a number of options to change the amount or nature of statutory funding, but in the end decided not to recommend any changes to the EQC. Members will be following the Department of Commerce's (DOC) Long Range Building Program (LRBP) request for MHC-managed properties as it progresses through the 2015 Legislature. DOC and MHC staff told work group members that funding for preservation and maintenance of the properties is included in the LRBP recommendation that the Governor intends to submit to the 2015 Legislature as provided in Title 17, chapter 7, part 2, MCA.

Sale and Acquisition of Properties

In recent years, the MHC has come to realize that the administrative rules governing sale and acquisition of real and personal property (Title 8, chapter 12, ARM) are unnecessarily complicated. Section 22-3-1003, MCA, requires adoption of rules and provides some guidance, but precisely how the MHC conducts sale and acquisition activities is largely determined by administrative rule and by MHC-adopted policies. The DOC has proposed changes to the administrative rules, which DOC staff presented to the work group at its April 2014 meeting. Work group members expressed support for the proposed changes.

Reeder's Alley

During its 2011-2012 study of state parks and outdoor recreation and heritage resource programs, the EQC visited Virginia City and Nevada City. Because the SJR 4 study sought a review of the administration of all MHC-managed properties, including Reeder's Alley in Helena, a site visit to this unique collection of structures on Helena's west side was warranted.

The EQC dedicated a portion of its September 2013 meeting to touring Reeder's Alley and the Pioneer Cabin, donated to the state on separate occasions in 2001 and 2006. Montana Historical Society staff led the members through the site, providing historical context from the first structures erected in the area through the donation of the properties to the state. MHC staff and commissioners were also on hand to highlight some of the successful ventures located on the property as well as the structural maintenance problems in need of attention, including an unstable and unusable staircase and degradation of a corner of one of the brick buildings. MHC staff and Council members also discussed damage caused by runoff from the housing

development situated above Reeder's Alley and measures under consideration to mitigate the damage.

The EQC and work group members considered the historical significance of Reeder's Alley to the state and to the city of Helena. Some wondered whether managing, preserving, and maintaining these properties was stretching the already-limited resources of the MHC, without enough tourist visitation and revenue to offset some of the investment. Members asked for an account of the state's acquisition of the properties and what conditions may have been associated with the state's acceptance of Reeder's Alley.

At its November meeting, LSD legal staff presented a detailed analysis of the state's acquisition of Reeder's Alley, along with a review of the laws governing acquisition and disposal of land (Appendix C).

Reeder's Alley remained a topic of considerable discussion throughout the study, but neither the work group nor the EQC issued recommendations specific to these properties.

Conclusion

Throughout the course of the study, work group members and EQC members acknowledged that as the owner and steward of these valuable historic resources, the state bears significant responsibility to adequately fund and effectively manage their preservation and maintenance. The properties' value is multifaceted, with artifacts and buildings worth millions of dollars and considering the positive impacts of tourism on southwest Montana's small communities. Less tangible but equally as significant is the intrinsic value of these spots on the map that served as the stages on which so much of Montana's colorful youth was played. Projects like the SJR 4 study forge the partnerships among branches of state government that will help ensure that vital pieces of Montana's past are safeguarded well into the future.

APPENDICES

****EQC-APPROVED DRAFT (07/10/14) SUBJECT TO EQC FINAL APPROVAL****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising laws governing the Montana heritage preservation and development commission; removing references to the commission acquiring and purchasing property; removing the requirement that properties become self-supporting; revising how commission members may be appointed; removing the requirement that certain funds be deposited in the cultural and aesthetic trust; removing language expressing the intent of the 58th legislature that no general fund money be used to fund operations; removing the requirement that certain sale proceeds be placed in a trust fund; and amending sections 22-3-1001, 22-3-1002, 22-3-1003, and 22-3-1004, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-1001, MCA, is amended to read:

"22-3-1001. Purpose. The purpose of this part is to ~~acquire and~~ manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, and are genuinely representative of the state's culture and history, ~~and demonstrate the ability to become economically self-supporting.~~ The Montana heritage preservation and development commission shall achieve this purpose by ~~purchasing fee title interests in real and personal property and~~

by managing ~~those~~ the properties for which it is responsible in a manner that protects the properties and encourages economic independence stability."

{*Internal References to 22-3-1001:*
22-3-1003 }

Section 2. Section 22-3-1002, MCA, is amended to read:

"22-3-1002. Montana heritage preservation and development commission. (1) There is a Montana heritage preservation and development commission. The commission is attached to the department of commerce for administrative purposes only, pursuant to 2-15-121. The commission and the department shall negotiate a specific indirect administrative rate annually, with biennial review by a designated, appropriate legislative interim committee.

(2) (a) The commission consists of 14 members. The members shall broadly represent the state. Nine members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house.

(b) If the president of the senate and the speaker of the house do not appoint the members for which they are responsible within 6 months of a vacancy having occurred in those positions, the members must be appointed by the Governor.

(c) The director of the Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members. Of

the members appointed by the governor under subsection (2)(a):

(a)(i) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(b)(ii) one member must have experience in community planning;

(c)(iii) one member must have experience in historic preservation;

(d)(iv) two members must have broad experience in business;

(e)(v) one member must be a member of the tourism advisory council established in 2-15-1816;

(f)(vi) one member must be a Montana historian; and

(g)(vii) two members must be from the public at large.

(3) (a) Except for the initial appointments, members appointed by the governor under subsection (2)(a) shall serve 3-year terms. ~~Legislative appointees~~ Members appointed by the president of the senate and the speaker of the house or by the governor under subsection (2)(b) shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) (a) The commission may employ:

(i) an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property;

(ii) a curator who is responsible for the display and preservation of the acquired property; and

(iii) other staff that the commission and the executive

director determine are necessary to manage and operate commission properties.

(b) The commission shall prescribe the duties and annual salary of the executive director, the curator, and other commission staff."

{*Internal References to 22-3-1002: None.*}

Section 3. Section 22-3-1003, MCA, is amended to read:

"22-3-1003. Powers of commission -- contracts -- rules.

(1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission's jurisdiction.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the ~~profitable~~ operation of properties in a manner that results

in economic stability.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of \$300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks. Funding for these projects must pass through directly to the commission.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds \$300,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) ~~(i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall deposit the portion of profits not used for administrative costs and~~

~~restoration of the properties in the cultural and aesthetic trust.~~

~~—— (ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the~~ The commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

~~(c) It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.~~

(4) The commission may solicit funds from other sources, including the federal government, for the ~~purchase~~, management, and operation of properties.

(5) (a) The commission may use volunteers to further the purposes of this part.

(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The commission shall establish a subcommittee composed

of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the recommendation is supported by a majority of the members of the subcommittee.

(8) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become ~~self-supporting~~ economically stable;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed

sale agreement for real property; and

(i) other matters that the commission considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The commission shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(11) The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission. ~~Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.~~

(12) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets."

{*Internal References to 22-3-1003:
18-2-102* }

Section 4. Section 22-3-1004, MCA, is amended to read:

"22-3-1004. Montana heritage preservation and development account. (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The Montana heritage preservation and development commission shall deposit any federal money that the commission obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

~~(a) the purchase of properties in Virginia City and Nevada City;~~

~~(b) (a) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and~~

~~(c) (b) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.~~

(3) The accounts are statutorily appropriated, as provided in 17-7-502, to the commission to be used as provided in this section.

(4) Unless otherwise prohibited by law or agreement, all interest earned on money in the accounts must be deposited in the state special revenue fund to the credit of the commission."

{ Internal References to 22-3-1004:
15-65-121 17-7-502 22-3-1003 }

- END -

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APPENDIX A

LCMHC1

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JOE KOLMAN, Legislative Environmental Analyst

TO: Members of the Environmental Quality Council

FROM: Senator Keane, Senator Ripley, Representative Welborn, Representative Court

DATE: December 18, 2013

RE: SJR 4 study of Virginia City, Nevada City, Reeder's Alley

On September 12, Chairman Brendan appointed a work group to continue EQC's assigned study of state-owned heritage properties in Virginia City, Nevada City, and Reeder's Alley as proposed in SJR 4 and in the Council's work plan. The work group, chaired by Sen. Keane, met on November 12. Among the participants were members and staff of the Montana Heritage Preservation and Development Commission (MHC) as well as representatives of tourism and historic preservation organizations.

The agenda was divided into three parts: (1) funding sources (both statutory and earned revenue); (2) MHC's governing statutes; (3) and statutes and rules governing acquisition and disposal of properties managed by the MHC. This report, in the form of the chart below, is organized into findings presented at the meeting and lists options that were discussed that may warrant further consideration by the work group and, ultimately, the full EQC. Certainly, the options are not limited to those listed and additional ideas may surface as the interim progresses.

A chart detailing the MHC's revenues and expenditures from FY 2010 through November 12 of FY 2014 is also attached.

The work group looks forward to the EQC's discussion in January.

Funding Sources		
Findings	Options Discussed/Considerations	Statutory Citations
<ul style="list-style-type: none"> MHC's funding is a combination of statutory sources, earned revenue, donations, and earned interest. Statutory sources of funding are \$400,000 of the 4% Lodging Facility Use Tax revenue collected annually and 38 cents of each \$6 fee that a light motor vehicle registrant may opt into for parks visitation. In FY 2013, MHC's revenue from statutory sources equaled \$668,608. In FY 2013, MHC's total revenue equaled \$1,086,631. In FY 2013, MHC's total expenditures equaled \$1,098,112. Long Range Building Program funding for maintenance of MHC-managed properties was requested by the Department of Commerce for the 2013 and 2015 biennia, but was not included in the Governor's submission to the Legislature on either occasion. Amounts requested through the Long Range Building Program were \$1.3 million for the 2013 biennium and \$3 million for the 2015 biennium. Sources of funding for the Long-Range Building Program are 12% of the Coal Severance Tax and 2.6% of the Cigarette Tax revenues. HB 9, the bill establishing priorities for the Cultural and Aesthetic Projects grant awards, appropriated \$758,650 for the biennium ending June 30, 2015. A portion of the light vehicle registration fees collected as provided in 61-3-321 has been dedicated to operation of state-owned facilities at Virginia City and 	<ul style="list-style-type: none"> Change the \$400,000 to a percentage of the total Lodging Facility Use Tax revenue. <ul style="list-style-type: none"> What percentage is appropriate? How would this impact other recipients of tax revenue and programs that rely on the revenue? Should the percentage be somehow tied to visitation numbers? Provide for a grant program requiring a local match. <ul style="list-style-type: none"> What would be the source of the funding for the program? Who would administer the program? What would be the conditions of the local match? What would be the criteria for the grant awards? Established in statute or provided for in rule? Other state-supported grant programs exist that may be used as models. Encourage participation by MHC and businesses in Cultural and Aesthetic Projects Grant Program. <ul style="list-style-type: none"> Should the amount provided for the program (.63% allocated to a trust fund from the Coal Severance Tax revenue as provided in 15-35-108) be changed? Are the grant awards through this program enough for the kind of projects that would make a difference for these properties? 	<p>15-65-121: Lodging Facility Use Tax</p> <p>61-3-321: Light vehicle registration</p> <p>15-35-108: Coal Severance Tax</p> <p>16-11-119: Cigarette Tax</p> <p>Title 17, chapter 7, part 2: Long-Range Building Program</p> <p>Title 22, chapter 3, part 10: Montana Heritage Preservation and Development Commission</p>

<p>Nevada City since 2003. A brief history of the fee follows.</p> <ul style="list-style-type: none"> ▶ The 2003 Legislature enacted SB 336, which sought to implement recommendations of the State Parks Futures Committee II, an entity appointed by Governor Martz in 2001 to study the state parks system in light of changes in the number of parks and visitation numbers. SB 336 provided for the imposition of a \$4 fee with each light vehicle registration, unless the registrant declared that the registrant did not intend to visit state parks or fishing access sites. Of the \$4 collected, \$3.50 was allocated for use by the state parks system, 25 cents for fishing access sites, and 25 cents for operation of state-owned properties at Virginia City and Nevada City. According to the Committee's report, most state parks charged \$4 per vehicle for entrance, providing the rationale for the amount. Dedicating a portion of the \$4 to Virginia City and Nevada City was not specifically contemplated in the Committee report--this occurred during the bill drafting process. However, one of the recommendations was that the state "consolidate the planning and administration of outdoor, culture, and history-related recreation and tourism in one agency. ..." ▶ The 2011 Legislature enacted HB 370, increasing the fee from \$4 to \$6, with \$5.37 allocated to state parks, 25 cents to fishing access sites, and 38 cents to state-owned facilities at Virginia City and Nevada City. HB 370 also added language prohibiting collection of the fee from a registrant who has opted out unless the registrant has declared that the registrant wishes to pay the fee. The bill in its original form allocated 50 cents to state-owned operations at Virginia City and Nevada City. The amount was amended during Second Reading on the Senate floor, with the sponsor's stated intent to keep the amount of the total fee allocated for the properties at the same proportion as it had been since 2003. Twenty-five cents is 6.25% of \$4; 37.5 	<ul style="list-style-type: none"> ▶ <i>Are the projects that require funding at Virginia City, Nevada City, and Reeder's Alley appropriate for this program?</i> • Authorize Long-Range Building Program funding. <ul style="list-style-type: none"> ▶ <i>Long-Range Building projects are recommended to the Legislature by the Governor. Is providing financial support to MHC-managed properties through this program a priority for the Governor?</i> ▶ <i>Does the Legislature wish to support these properties through this funding source?</i> ▶ <i>Should funding sources or percentages of tax revenue for the Long-Range Building Program be changed? How would that impact other recipients of the tax revenue?</i> • Change amount of light vehicle registration revenue or change revenue allocation. <ul style="list-style-type: none"> ▶ <i>How would this affect the other programs that receive revenue from the opt-in light vehicle registration fee?</i> ▶ <i>Increasing the proportion of the total fee to be allocated to the properties was rejected by the 2011 Legislature.</i> ▶ <i>Is the number of registrants who opt in increasing or declining?</i> ▶ <i>Would increasing the total amount result in a significant decline in registrants opting in?</i> ▶ <i>How is the option to pay the \$6 fee conveyed to registrants at the time of registration?</i> ▶ <i>Reeder's Alley is not included in the text of this section. Should it be?</i> 	
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<p>cents is 6.25% of \$6. Discussion on the Senate floor indicated that the bill was unlikely to pass unless this provision and the ongoing "opt-out" provision were adopted.</p>	<ul style="list-style-type: none"> • Encourage more private donations. <ul style="list-style-type: none"> ▶ <i>How might the MHC overcome reluctance among potential private donors to donate to state-operated facilities?</i> • Establish a preservation, repairs, and maintenance account from which money may only be used for certain activities. [MHC request] <ul style="list-style-type: none"> ▶ <i>What would be the source of money for the account?</i> ▶ <i>Should it be a trust account?</i> ▶ <i>What restrictions should be placed on use of the funds? Only for emergencies?</i> ▶ <i>How would this affect the other funding sources for MHC operations?</i> • Allow use of General Fund money (see also Governing Statutes section). <ul style="list-style-type: none"> ▶ <i>Does the Legislature wish to fund operation of these properties with General Fund money?</i> ▶ <i>How would simply removing the prohibition alone result in funding considered to be necessary for the properties? What would removing the prohibition be combined with to provide additional funding for operations?</i> • Allow proceeds from sale of Bovey personal property to be used as determined by the MHC (see also Governing Statutes and Acquisition and Disposal sections). 	
<p>Governing Statutes</p>		

Findings	Options Discussed/Considerations	Statutory Citations
<ul style="list-style-type: none"> • Section 22-3-1001 states that the purpose of Title 22, chapter 3, part 10 is for the acquisition and management of properties that, among other qualities, "demonstrate the ability to become economically self-supporting." The section also requires the MHC to manage properties in a manner that protects the properties and encourages economic independence. • The MHC is administratively attached to the Department of Commerce, as provided in 22-3-1002. When the MHC was created, it was attached to the Montana Historical Society. The Legislature amended the section in 2003 to move administration to Commerce, reasoning that the move may better take advantage of Commerce's promotion and marketing functions. • The Montana Historical Society continues to provide interpretive assistance at many of the properties. • Section 22-3-1003 states that the MHC may enter into contracts for up to 20 years with private organizations, and contracts are not subject to state procurement laws (22-3-1003). • Management activities must be undertaken to encourage profitable operation of properties (22-3-1003). • No general fund money may be provided for operations and maintenance of Virginia City and Nevada City beyond what was appropriated for the purchase (22-3-1003). • The MHC shall adopt rules for acquiring and selling real and personal property. The rules must require that certain factors, listed in 22-3-1003(8)(a) through (i) be considered, one of which is whether the property in question can become self-supporting. 	<ul style="list-style-type: none"> • Eliminate requirement or change wording of requirement found throughout governing statutes that the MHC continue to acquire properties. <ul style="list-style-type: none"> ▶ <i>Allow for acquisition without requiring it? Might there be an occasion when acquisition is appropriate?</i> ▶ <i>Allow acquisition of only real or only personal property?</i> ▶ <i>Limit acquisition to occasions when funding is at certain levels?</i> • Eliminate references to properties being self-supporting. <ul style="list-style-type: none"> ▶ <i>Is it realistic to expect the properties to be entirely self-supporting?</i> ▶ <i>Should an unrealistic expectation remain in the statutes?</i> • Eliminate prohibition on use of General Fund money <ul style="list-style-type: none"> ▶ <i>Does the Legislature wish to fund operation of these properties with General Fund money?</i> ▶ <i>How would simply removing the prohibition alone result in funding considered to be necessary for the properties? What would removing the prohibition be combined with to provide additional funding for operations?</i> ▶ <i>Reeder's Alley is not included in the text of this provision. Should it be?</i> • Amend administrative rules to streamline sale of real and personal property. <ul style="list-style-type: none"> ▶ <i>Department of Commerce staff indicated that</i> 	<p>22-3-1001: Purpose</p> <p>22-3-1002: Makeup of the Montana Heritage Preservation and Development Commission</p> <p>22-3-1003: Powers of MHC, contracts, rules</p> <p>22-3-1004: Montana Heritage Preservation and Development Account</p>

<ul style="list-style-type: none"> Funds from the sale of personal property from the former Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property This restriction does not apply to sale of real property. At times, there has not been clarity regarding what constitutes "personal property from the former Bovey assets". The balance in the trust fund is \$31,694. 	<p><i>there was interest in simplifying the rules, which require numerous steps, meetings, and committees of the MHC to approve real property sales.</i></p> <ul style="list-style-type: none"> ▶ <i>Board of Land Commissioners would still be ultimate approving entity.</i> ▶ <i>Rule changes are subject to the public hearing and rule review processes required under the Montana Administrative Procedure Act</i> <ul style="list-style-type: none"> Eliminate requirement that funds from the sale of personal property from the former Bovey assets be placed in a trust fund with only the interest available for use. 	
Property Acquisition and Disposal		
Findings	Options Discussed	Statutory Citations
<ul style="list-style-type: none"> The MHC is authorized to acquire and sell real and personal property and the MHC must adopt rules governing acquisition and disposal. The procedures the MHC must follow to acquire both real and personal property are set forth in 8.112.102, ARM. In general, to acquire property the Commission must: consider the factors listed in 8.112.102, 8.112.106, 8.112.109, and 8.112.110, ARM, which are similar to, but more in depth, than the factors listed above that are referenced in 22-3-1003, MCA; provide public notice in the geographical area of the proposed acquisition; hold a hearing; and assess the property for acquisition upon consideration of the criteria listed in the rules and on the comments provided by affected local government officials, professional historians, and the public. The MHC's decision on acquisition of personal property is final; the Board of 	<ul style="list-style-type: none"> Amend administrative rules to streamline sale of real and personal property. <ul style="list-style-type: none"> ▶ <i>Department of Commerce staff indicated that there was interest in simplifying the rules, which require numerous steps, meetings, and committees of the MHC to approve real property sales.</i> ▶ <i>Board of Land Commissioners would still be ultimate approving entity.</i> ▶ <i>Rule changes are subject to the public hearing and rule review processes required under the Montana Administrative Procedure Act.</i> 	<p>22-3-1001: Purpose</p> <p>22-3-1003: Powers of MHC, contracts, rules</p> <p>Title 77, chapter 2, part 3: Sale of state-owned property</p> <p>Title 22, chapter 3, part 4: State Antiquities Act</p>

<p>Land Commissioners makes the final decision on acquisition of real property, based on a recommendation by the MHC.</p> <ul style="list-style-type: none"> • The preference is for all acquisitions to be conveyed to the MHC unconditionally. • Sections 8.112.206 and 8.112.209, ARM, govern disposal of real and personal property. • The process for selling real property is as follows: <ol style="list-style-type: none"> 1. The MHC establishes a real property sales committee that makes a recommendation to the executive committee using the criteria established by rule in 8.112.202, ARM. 2. The executive committee decides whether to proceed to the next level of review, request additional information regarding the sale criteria, forward a recommendation directly to the full MHC for consideration, or deny the recommendation. 3. If the executive committee elects to further consider a property for sale, the real property sales committee prepares a written report that addresses several factors, including but not limited to: the quality of the significance of the property in Montana history; whether the property can become self-supporting; the economic and social benefits the property provides to the public compared to the potential economic and social benefits to the public possible with private ownership; whether the property is an educational resource for the study and interpretation of Montana's history; the manner in which local and state agencies with operations or facilities in the area of the proposed sale would be notified of the potential sale and how these entities would be affected by the potential sale; the need for any preservation covenants in a proposed sale agreement; a 		
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<p>copy of a letter of support by the Director of the Historical Society or a description of why support was not provided; and a letter from the State Historic Preservation Officer indicating whether he or she supports the proposed sale.</p> <p>4. Following the report from the real property sales committee, the executive committee decides whether to: publicly notice the sale and hold a hearing as specified in the rules; request additional information; or deny the recommendation.</p> <p>5. Following public notice and a hearing, the MHC decides whether to proceed with the proposed sale and recommend the proposal, along with any covenants or conditions, to the Board of Land Commissioners.</p> <ul style="list-style-type: none"> • The Board of Land Commissioners determines when sales of state land are to be held and what state lands are to be offered for sale. • Any governmental or private entity or any person who is 18 years of age or older may purchase state land, with specific limitations on purchase of state land by the federal government. • Upon approval by the Board of Land Commissioners, state land is sold through a public auction held at the county courthouse, and land must be sold to the highest qualified bidder at no less than the value determined by the Board after appraisal. • Another process, provided for in 77-2-351, allows state land to be sold or exchanged to another public entity, including a city or county government, for an amount other than the appraised value "on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to the Enabling Act and constitutional restrictions." 		
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<ul style="list-style-type: none"> Heritage properties are also required to be protected, with adverse impacts mitigated, as provided in the Montana State Antiquities Act. 		
MHC Staffing Levels		
Findings	Options Discussed/Considerations	Statutory Citations
<ul style="list-style-type: none"> The MHC is required under the State Antiquities Act to consult with the State Historic Preservation Office (SHPO) on undertakings proposed for properties in Virginia City, Nevada City, and Reeder's Alley The State Historic Preservation Officer sent a letter to the MHC on November 6, 2013, regarding cultural resources staffing levels and the 2010 programmatic agreement entered into between the SHPO and the MHC. The programmatic agreement was intended to facilitate consultation for MHC-managed properties required under the State Antiquities Act. The PA states that "MHC will employ an in-house Preservation Team made up of building preservation specialists and an Archaeologist to carry out or oversee preservation and documentation of cultural resources owned by MHC." According to the PA, the in-house Preservation Team includes a Historic Preservation Specialist and at least three building preservation specialists, along with the Archaeologist who must meet certain Secretary of the Interior standards. The letter states that currently, "MHC has two building preservation specialists, no Historic Preservation Specialist, and no Archaeologist." The SHPO's stated concerns are viability of the PA and that "time and the elements will progress at a rate faster than preservation work is able to." 	<p>The work group did not discuss options specifically in the context of the letter or the PA.</p>	<p>Title 22, chapter 3, part 4: State Antiquities Act</p>

<ul style="list-style-type: none">Information provided by MHC states that according to the American Alliance of Museums, MHC should have 6 full-time curators, based on the number of artifacts under its stewardship. This information estimates MHC's personal services deficit to be roughly \$300,000.		
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**Montana Legislative Services Division**
Legal Services Office

TO: Members of the SJR 4 (2013) Workgroup
FROM: Helen Thigpen, Staff Attorney, Environmental Quality Council
DATE: November 1, 2013
RE: Analysis of Reeder's Alley Properties in Helena and Review of Acquisition and Disposal Laws Relating to Heritage Commission Properties

Introduction

During the September 2013 Environmental Quality Council (EQC) meeting, committee members inquired about the history of the state's ownership of Reeder's Alley and the adjoining Pioneer Cabin and Caretaker's House. The purpose of this memorandum is to provide the EQC and members of the SJR 4 workgroup with information on the state's acquisition of these properties and to provide a summary of the legal documents upon which their conveyance was based. Because staff has also received inquiries regarding the process the Montana Heritage Commission (Commission) follows to acquire and dispose of properties, a summary of the statutes and administrative rules that govern these processes is also provided below.

Background -- Reeder's Alley and the Pioneer Cabin and Caretaker's House

The Commission obtained Reeder's Alley from Darrell and Kathleen Gustin (Gustins) in 2001. The property was formally held by The Alley, LLC, a limited liability company that was formed by the Gustins for the purpose of managing Reeder's Alley. The Alley, LLC, was dissolved after Reeder's Alley was gifted to the Commission.¹ The Montana Board of Land Commissioners (Land Board) approved the acquisition of Reeder's Alley on November 19, 2001.²

The deed for the Reeder's Alley property states that the grant from The Alley, LLC, was made to the Heritage Commission "for permanent endowment purposes" and that through execution of the deed, the grantor made a charitable contribution to a qualified endowment as defined in 15-30-165, MCA (renumbered 15-30-2327 in 2009). The contribution allowed the grantors to qualify for the endowment tax credit authorized by 15-31-161, MCA.

The deed for Reeder's Alley also contains language stating that the property is subject to certain limitations including existing rights-of-way; various building, use, zoning, sanitary, and environmental restrictions; two easements, a contract of encroachment, city resolutions and

¹ The Montana Secretary of State lists the status of The Alley, LLC, as "inactive" and states the reason for the status as "voluntary dissolution" occurring in 2003. See <https://app.mt.gov/bes/> for more information.

² Minutes of the Montana Board of Land Commissioners (November 19, 2001).

ordinances and an unrecorded lease agreement. There do not appear to be additional restrictions in the deed for Reeder's Alley; however, a more in-depth assessment of the property, including an analysis of any associated documents of record, would need to be completed for a comprehensive analysis. In addition, there may be potential questions regarding whether the language in the deed that references "permanent endowment purposes" acts as a condition that may limit potential future uses of the property. This question would need to be analyzed further in order to assess any potential legal restrictions imposed by the permanent endowment language.

The conveyance of Reeder's Alley to the Commission in 2001 did not include the Pioneer Cabin or Caretaker's House. These structures were owned by an organization known as the Last Chance Gulch Restoration Association (LCGRA). In 2004, the LCGRA approached the Commission to explore donating the Pioneer Cabin and the Caretaker's House to the Commission.³ Following a request for authorization by the Commission to acquire the property, the Land Board approved the acquisition on June 19, 2006.⁴

Similar to the deed for Reeder's Alley, the deed for the Pioneer Cabin and the Caretaker's House sets forth certain limitations and obligations. For example, the deed includes language stating that the conveyance is subject to "any and all prior reservations, exceptions, restrictions, limitations, conditions, or provisions, of record, as may be contained in prior Patents, Deeds, or Grants, or which may be imposed by law". This type of language is common in any deed transferring property.

However, unlike the deed for Reeder's Alley, the deed for the Pioneer Cabin and the Caretaker's House specifically states that the grant to the Commission is subject to the express condition that the properties must "be used exclusively for the public purpose of the historic preservation of the Pioneer Cabin and Caretaker's House, and public display of the Pioneer Cabin and the artifacts contained therein". Significantly, the clause also states that "should the above-described property cease to be used for the above-described purpose, that the same shall revert to the Grantor". This language created what is known as a reversionary interest in the LCGRA because it reserved to the LCGRA, as the grantor of the property, a future ownership interest in the event the property is not used for the purposes described in the deed. There are different types of reversionary interests that may be created, and further investigation would be

³ Minutes of the Montana Board of Land Commissioners (June 19, 2006).

⁴ *Id.*

needed to determine the type of reversionary interest that was created in the deed for the Pioneer Cabin and the Caretaker's House.⁵

Copies of the deeds for Reeder's Alley and for the Pioneer Cabin and Caretaker's House are attached to this memorandum and were provided to members of the EQC and previously posted to the EQC's interim committee website under the "meeting and materials" link for September 11 and 12, 2013.

Summary of Property Acquisition and Disposal Laws

As described in 22-3-1001, MCA, the purpose of the Commission is to "acquire and manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting". To achieve this purpose, the Commission is charged with purchasing both real and personal property that possess these characteristics and must do so in a way that protects the properties while encouraging economic independence.

Section 22-3-1003(8), MCA, authorizes the Commission to acquire and sell both real and personal property. This section requires the Commission to adopt rules that establish a policy for acquiring and selling property. Pursuant to the policy, the Commission must consider several factors, including but not limited to the following:

- whether the property represents the state's culture and history;
- whether the property can become self-supporting;
- whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state; and
- whether the sale is supported by the Director of the Montana Historical Society.

⁵ There is often confusion as to whether a reversionary interest is classified as a "possibility of reverter" or a "fee simple subject to condition subsequent". The distinction is relevant because it may affect whether the reversion to the grantor is automatic or subject to the grantor taking some action to reenter the property, although in either case, some action on part of the grantor would likely need to occur. Disputes may occur over whether a deed created an automatic or contingent reversion and whether the event allegedly causing the reversion actually occurred. If there is any doubt with regard to a deed, rules of construction applicable to written instruments would be applied to determine the terms of the deed.

1. Property Acquisition

The procedures the Commission must follow to acquire both real and personal property are set forth in 8.112.102, ARM. In general, to acquire property the Commission must:

- consider the factors listed in 8.112.102, 8.112.106, 8.112.109, and 8.112.110, ARM, which are similar to, but more in depth, than the factors listed above that are referenced in 22-3-1003, MCA;
- provide public notice in the geographical area of the proposed acquisition that includes a brief statement and description of the property that is being considered for acquisition;
- hold a hearing in the general geographic area where the property being considered is located and allow comments on the proposed acquisition; and
- assess the property for acquisition upon consideration of the criteria listed in the rules and on the comments provided by affected local government officials, professional historians, and the public.

For personal property, the Commission makes the final decision and is not required to recommend the acquisition to the Land Board. For real property, the Commission makes an acquisition recommendation to the Land Board, and the Land Board decides whether or not to approve the acquisition. Under the rules adopted by the Commission, the preference is for all acquisitions to be conveyed to the Commission unconditionally.⁶

2. Property Disposal

The procedures for disposing of real and personal property are set forth in 8.112.206 and 8.112.209, ARM, respectively. The process for selling real property is as follows:⁷

- The Commission establishes a real property sales committee that makes a recommendation to the executive committee using the criteria established by rule in 8.112.202, ARM.
- The executive committee decides whether to:
 - proceed to the next level of review;

⁶ 8.112.105, ARM.

⁷ The process for selling personal property is somewhat similar to the process for selling real property and is therefore not explained further in this memorandum. However, additional information from staff may be requested regarding the sale of personal property.

- request additional information regarding the sale criteria;
 - forward a recommendation directly to the full Commission for consideration; or
 - deny the recommendation.
- If the executive committee elects to further consider a property for sale, the real property sales committee prepares a written report that addresses several factors, including but not limited to:
 - the quality of the significance of the property in Montana history;
 - whether the property can become self-supporting;
 - the economic and social benefits the property provides to the public compared to the potential economic and social benefits to the public possible with private ownership;
 - whether the property is an educational resource for the study and interpretation of Montana's history;
 - the manner in which local and state agencies with operations or facilities in the area of the proposed sale would be notified of the potential sale and how these entities would be affected by the potential sale;
 - the need for any preservation covenants in a proposed sale agreement;
 - a copy of a letter of support by the Director of the Historical Society or a description of why support was not provided; and
 - a letter from the State Historic Preservation Officer indicating whether he or she supports the proposed sale.
- Following the report from the real property sales committee, the executive committee decides whether to:
 - publicly notice the sale and hold a hearing as specified in the rules;
 - request additional information; or
 - deny the recommendation.
- Following public notice and a hearing, the Commission decides whether to proceed with the proposed sale and recommend the proposal, along with any covenants or conditions, to the Land Board.

Following the recommendation by the Commission, the Land Board considers whether to sell the property and include any covenants or conditions on the property. The process governing sales of state-owned property by the Land Board is set forth in Title 77, chapter 2, part 3, of the MCA. Pursuant to 77-2-301, MCA, the Land Board decides "when sales of state land are to be held and what state lands are to be offered for sale". In addition, pursuant to 77-2-308, MCA, the Land Board has the authority to "disapprove any sale which in its opinion would be disadvantageous to the state". Any governmental or private entity or any person who is 18 years of age or older may purchase state land. State land, however, may not be sold to the federal government except in limited circumstances.⁸ Upon approval by the Land Board, state land is sold through a public auction held at the county courthouse of the county in which the land is located, with limited exceptions on the location of the auction.⁹ Notice of the sale must be provided as set forth in 77-2-322, MCA, and the land must be sold to the "highest qualified bidder" and cannot be sold "for less than the value determined by the board after appraisal".¹⁰

In addition to the process for selling state property described above, 77-2-351, MCA, which was enacted by House Bill 902 in 1991, provides that state land may be sold or exchanged to another public entity, including a city or county government, for consideration other than the appraised value. Section 77-2-351, MCA, states that "Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land **or for other consideration** with another public entity on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions".

If the land in question is not held by the state as trust land for the support of the common schools, for a state institution, or for another specific purpose, 77-2-351, MCA, authorizes the Land Board to "accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public purpose". For purposes of this section, a public entity is defined as any entity that is a county, city, municipal corporation, school district, regional water authority, or special improvement or taxing district. There do not appear to be any court cases that interpret

⁸ 77-2-306(3), MCA (prohibiting land from being sold to the federal government except for the purpose of building federal facilities and structures).

⁹ 77-2-321, MCA (providing that all "sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located". State lands are those lands defined in 77-1-101(8), MCA, and do not include certain lands such as lands granted through the issuance of a patent).

¹⁰ 77-2-323, MCA.

this section, but the legislative history suggests that it has been used several times since it was enacted.

The foregoing provides a summary of the acquisition and disposal laws pertaining to existing or potential Commission properties. Please let me know if committee members would like additional information on any item raised in this memorandum.