



# ENVIRONMENTAL QUALITY COUNCIL

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**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"> <li>MHC's funding is a combination of statutory sources, earned revenue, donations, and earned interest.</li> <li>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.</li> <li>In FY 2013, MHC's revenue from statutory sources equaled \$668,608.</li> <li>In FY 2013, MHC's total revenue equaled \$1,086,631.</li> <li>In FY 2013, MHC's total expenditures equaled \$1,098,112.</li> <li>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.</li> <li>Amounts requested through the Long Range Building Program were \$1.3 million for the 2013 biennium and \$3 million for the 2015 biennium.</li> <li>Sources of funding for the Long-Range Building Program are 12% of the Coal Severance Tax and 2.6% of the Cigarette Tax revenues.</li> <li>HB 9, the bill establishing priorities for the Cultural and Aesthetic Projects grant awards, appropriated \$758,650 for the biennium ending June 30, 2015.</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>Change the \$400,000 to a percentage of the total Lodging Facility Use Tax revenue. <ul style="list-style-type: none"> <li>What percentage is appropriate?</li> <li>How would this impact other recipients of tax revenue and programs that rely on the revenue?</li> <li>Should the percentage be somehow tied to visitation numbers?</li> </ul> </li> <li>Provide for a grant program requiring a local match. <ul style="list-style-type: none"> <li>What would be the source of the funding for the program?</li> <li>Who would administer the program?</li> <li>What would be the conditions of the local match?</li> <li>What would be the criteria for the grant awards? Established in statute or provided for in rule?</li> <li>Other state-supported grant programs exist that may be used as models.</li> </ul> </li> <li>Encourage participation by MHC and businesses in Cultural and Aesthetic Projects Grant Program. <ul style="list-style-type: none"> <li>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?</li> <li>Are the grant awards through this program enough for the kind of projects that would make a difference for these properties?</li> </ul> </li> </ul>	<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"> <li>▶ 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. ..."</li> <li>▶ 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</li> </ul>	<ul style="list-style-type: none"> <li>▶ <i>Are the projects that require funding at Virginia City, Nevada City, and Reeder's Alley appropriate for this program?</i></li> <li>• Authorize Long-Range Building Program funding. <ul style="list-style-type: none"> <li>▶ <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></li> <li>▶ <i>Does the Legislature wish to support these properties through this funding source?</i></li> <li>▶ <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></li> </ul> </li> <li>• Change amount of light vehicle registration revenue or change revenue allocation. <ul style="list-style-type: none"> <li>▶ <i>How would this affect the other programs that receive revenue from the opt-in light vehicle registration fee?</i></li> <li>▶ <i>Increasing the proportion of the total fee to be allocated to the properties was rejected by the 2011 Legislature.</i></li> <li>▶ <i>Is the number of registrants who opt in increasing or declining?</i></li> <li>▶ <i>Would increasing the total amount result in a significant decline in registrants opting in?</i></li> <li>▶ <i>How is the option to pay the \$6 fee conveyed to registrants at the time of registration?</i></li> <li>▶ <i>Reeder's Alley is not included in the text of this section. Should it be?</i></li> </ul> </li> </ul>	
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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"> <li>• Encourage more private donations. <ul style="list-style-type: none"> <li>▶ <i>How might the MHC overcome reluctance among potential private donors to donate to state-operated facilities?</i></li> </ul> </li>   <li>• 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"> <li>▶ <i>What would be the source of money for the account?</i></li> <li>▶ <i>Should it be a trust account?</i></li> <li>▶ <i>What restrictions should be placed on use of the funds? Only for emergencies?</i></li> <li>▶ <i>How would this affect the other funding sources for MHC operations?</i></li> </ul> </li>   <li>• Allow use of General Fund money (see also Governing Statutes section). <ul style="list-style-type: none"> <li>▶ <i>Does the Legislature wish to fund operation of these properties with General Fund money?</i></li> <li>▶ <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></li> </ul> </li>   <li>• 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).</li> </ul>	
<p><b>Governing Statutes</b></p>		

Findings	Options Discussed/Considerations	Statutory Citations
<ul style="list-style-type: none"> <li>• Section 22-3-1001 states that the purpose of Title 22, chapter 3, part 10 is for the <b>acquisition</b> and management of properties that, among other qualities, "<b>demonstrate the ability to become economically self-supporting.</b>" The section also requires the MHC to manage properties in a manner that protects the properties and encourages <b>economic independence.</b></li> <li>• The MHC is administratively attached to the <b>Department of Commerce</b>, 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.</li> <li>• The Montana Historical Society continues to provide interpretive assistance at many of the properties.</li> <li>• Section 22-3-1003 states that the MHC may enter into contracts for up to 20 years with private organizations, and contracts are <b>not</b> subject to state procurement laws (22-3-1003).</li> <li>• Management activities <b>must be undertaken to encourage profitable operation</b> of properties (22-3-1003).</li> <li>• <b>No general fund money</b> may be provided for operations and maintenance of Virginia City and Nevada City beyond what was appropriated for the purchase (22-3-1003).</li> <li>• The MHC <b>shall adopt rules for acquiring and selling real and personal property.</b> 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 <b>can become self-supporting.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Eliminate requirement or change wording of requirement found throughout governing statutes that the MHC continue to acquire properties. <ul style="list-style-type: none"> <li>▶ <i>Allow for acquisition without requiring it? Might there be an occasion when acquisition is appropriate?</i></li> <li>▶ <i>Allow acquisition of only real or only personal property?</i></li> <li>▶ <i>Limit acquisition to occasions when funding is at certain levels?</i></li> </ul> </li> <li>• Eliminate references to properties being self-supporting. <ul style="list-style-type: none"> <li>▶ <i>Is it realistic to expect the properties to be entirely self-supporting?</i></li> <li>▶ <i>Should an unrealistic expectation remain in the statutes?</i></li> </ul> </li> <li>• Eliminate prohibition on use of General Fund money <ul style="list-style-type: none"> <li>▶ <i>Does the Legislature wish to fund operation of these properties with General Fund money?</i></li> <li>▶ <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></li> <li>▶ <i>Reeder's Alley is not included in the text of this provision. Should it be?</i></li> </ul> </li> <li>• Amend administrative rules to streamline sale of real and personal property. <ul style="list-style-type: none"> <li>▶ <i>Department of Commerce staff indicated that</i></li> </ul> </li> </ul>	<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"> <li>Funds from the sale of <b>personal property</b> from the former Bovey assets must be placed in a <b>trust fund</b>, and interest from the trust fund must be used to manage and protect the remaining personal property <b>This restriction does not apply to sale of real property.</b></li> <li>At times, there has not been clarity regarding what constitutes "personal property from the former Bovey assets".</li> <li>The balance in the trust fund is \$31,694.</li> </ul>	<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"> <li>▶ <i>Board of Land Commissioners would still be ultimate approving entity.</i></li> <li>▶ <i>Rule changes are subject to the public hearing and rule review processes required under the Montana Administrative Procedure Act</i></li> </ul> <ul style="list-style-type: none"> <li>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.</li> </ul>	
<b>Property Acquisition and Disposal</b>		
<b>Findings</b>	<b>Options Discussed</b>	<b>Statutory Citations</b>
<ul style="list-style-type: none"> <li>The MHC is authorized to acquire and sell real and personal property and the MHC must adopt rules governing acquisition and disposal.</li> <li>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.</li> <li>The MHC's decision on acquisition of personal property is final; the Board of</li> </ul>	<ul style="list-style-type: none"> <li>Amend administrative rules to streamline sale of real and personal property. <ul style="list-style-type: none"> <li>▶ <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></li> <li>▶ <i>Board of Land Commissioners would still be ultimate approving entity.</i></li> <li>▶ <i>Rule changes are subject to the public hearing and rule review processes required under the Montana Administrative Procedure Act.</i></li> </ul> </li> </ul>	<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"> <li>• The preference is for all acquisitions to be conveyed to the MHC unconditionally.</li> <li>• Sections 8.112.206 and 8.112.209, ARM, govern disposal of real and personal property.</li> <li>• The process for selling real property is as follows: <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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</li> </ol> </li> </ul>		
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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"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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."</li> </ul>		
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<ul style="list-style-type: none"> <li>Heritage properties are also required to be protected, with adverse impacts mitigated, as provided in the Montana State Antiquities Act.</li> </ul>		
<b>MHC Staffing Levels</b>		
<b>Findings</b>	<b>Options Discussed/Considerations</b>	<b>Statutory Citations</b>
<ul style="list-style-type: none"> <li>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</li> <li>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.</li> <li>The programmatic agreement was intended to facilitate consultation for MHC-managed properties required under the State Antiquities Act.</li> <li>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."</li> <li>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.</li> <li>The letter states that currently, "MHC has two building preservation specialists, no Historic Preservation Specialist, and no Archaeologist."</li> <li>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."</li> </ul>	<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"><li>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.</li></ul>		
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