

At request of Sen. Stewart-Peregoy:

2012 REPORT ON SELECTED HERITAGE PROPERTIES OWNED BY
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by

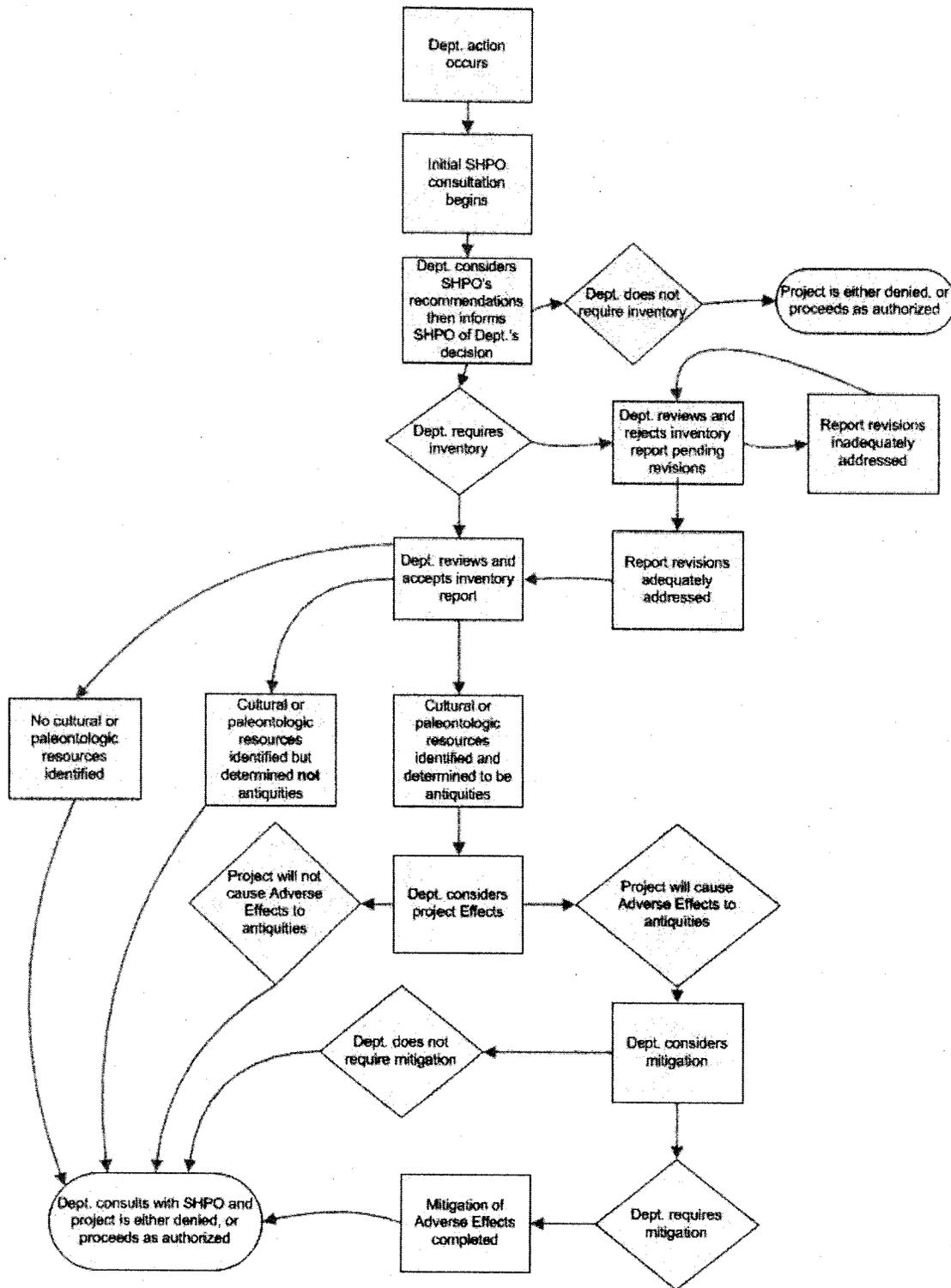
Patrick J. Rennie
DNRC archaeologist
1625 11th Avenue
Helena, MT 59620

for

The Historic Preservation Review Board
in partial compliance with
Senate Bill 3 revisions to the Montana State Antiquities Act

December, 2011

Summary Flowchart of the State Antiquities Act Compliance Process



adequate and relevant levels of integrity, it is considered potentially eligible for listing on the NRHP (i.e., a *heritage property*).

If an inventory of the APE is required, a report that details the kind of project proposed, the field methods used, and the results of that inventory work is prepared for the DNRC. If the report is acceptable to the DNRC, the DNRC submits a copy of that report to the SHPO for review and comments. The process followed for identification of antiquities on state lands mirrors that followed by federal agencies for compliance with the National Historic Preservation Act mandates. Further, the DNRC has articulated those standards for conducting and reporting on cultural and paleontologic inventory work on state lands (see Rennie 2002).

After reviewing the inventory report, the SHPO outlines its agreement or disagreement with:

- 1) antiquities identification and reporting thoroughness;
- 2) significance evaluations of identified cultural and fossil resources; and
- 3) plans for avoidance or mitigation of potential project effects to antiquities, or plans for no action, disturbance, or possible destruction of antiquities with no intention of avoiding or mitigating potential effects.

Determination of Project Effects on Antiquities

Following Section 800.16.i of the National Historic Preservation Act, a proposed undertaking or development will have an *Effect* on a heritage property (or paleontological resource) if the development will alter the characteristics that qualify it for inclusion in the NRHP or alter its scientific value. Applying this clause to the SAA, if the state land managing agency determines that a heritage property or paleontological resource will be affected with a proposed development, then it must assess whether or not the Antiquity will be affected adversely. If the agency official, in consultation with the SHPO, concludes a finding of *Adverse Effect*, then mitigation measures intended to offset the diminishing effects of the development must be considered and, if feasible, implemented. In some instances an Antiquity can be affected by a development, but the agency official, in consultation with the SHPO, may propose a finding of *No Adverse Effect*. In this instance an undertaking's effects are either considered to not be adverse, or the undertaking is modified, or conditions are imposed, to render potential effects insignificant.

Alternately, in the following instances if:

- 1) no cultural or fossil resources were identified in a project's area of potential effect;
- 2) a cultural or fossil resource was identified within a project's area of potential effect, but was evaluated and determined **NOT** to be an Antiquity; or
- 3) an Antiquity is within a project's area of potential effect, but the development will not alter the characteristics that qualify it for inclusion in the NRHP

then the state land managing agency can seek, in consultation with the SHPO, a finding of *No Heritage Properties Affected*.

If, after 15 days, the SHPO does not respond to the DNRC's request of input, consultation is considered complete. If the SHPO disagrees with the DNRC's findings or

the DNRC's or SHPO's rules which implement the SAA, an agency's cultural resource responsibilities under MEPA can be effectively satisfied.

Unlike the SAA, MEPA is not restricted to state lands only, and requires consideration, regardless of land ownership status, as to how a proposed project will effect *heritage properties* (i.e., products of human behavior that are at least 50 years old and meet the criteria for National Register listing eligibility). Also unlike the SAA, there is no requirement under MEPA to consider proposed project impacts to paleontologic resources (see Rennie n.d.).

Montana Human Remains and Burial Site Protection Act (State Burial Act)

The Montana Human Remains and Burial Site Protection Act of 1999 (22-3-801 *et seq.* M.C.A.) was passed to provide for the protection of human remains and all associated grave goods from unmarked, or marked but unprotected burial sites (specifically accidentally discovered human remains, or suspected human burial sites outside of established cemeteries), while providing for potential law enforcement interests (Appendix 4 of this report). The law applies only to state and private lands within Montana, as federal lands and interests are subject to the mandates of NAGPRA and AIRFA.

The basic procedure to be followed in the event that unanticipated human remains are discovered during an undertaking is for all ground disturbing activities to immediately cease, and the individual who has identified the possible remains must contact the county coroner as soon as possible. If suspected human remains are encountered during ground disturbing activities, all such activities must cease and the individual in charge of the project, or someone who initially identified the remains, must immediately contact the county coroner. The individual reporting the discovery should contact the coroner **directly**, then follow any instructions given. Local police or sheriff's offices should not be contacted unless the coroner is unavailable or the coroner is also a local law enforcement officer. If the county coroner's office cannot be contacted then it is also appropriate to contact the local police or sheriff's office. In this latter scenario it must be made clear that a coroner's case is being reported. The coroner (who may be the local chief of police or sheriff) should **only** be concerned with determining:

- 1) if the remains are human; and
- 2) whether or not the remains represent evidence of a crime.

The coroner is solely responsible for the remains and has 2 working days to address those two questions and must cause as little disturbance to the remains as possible in making his determination. If he cannot make a determination within the appropriated time, he must notify a member of the Burial Board and explain the reasons why such a determination could not be made. Alternately, if the coroner determines that the remains are not human, or are human, but do not represent evidence which can be used in a criminal proceeding, the coroner must notify the State Historic Preservation Officer within 24 hours of his determination. In turn, the Historic Preservation Officer has 24 hours, following notification, to contact the owner of the land containing the human remains and appropriate representatives of the Burial Board as outlined in 22-3-805(4-5) M.C.A. Within 36 hours of notification of appropriate members of the Burial Board, the Burial Board members will approach the landowner to view the site containing the human remains and determine the appropriate course of action to take as outlined in 22-3-805(6-8) M.C.A. Project related ground disturbing activities are only allowed to proceed after the

review, however, it was determined that only 31 of those resources are owned or administered by DNRC. They consist of 11 segments of various abandoned railroads, 12 archaeological sites, two historic schools sites, one stage coach station site, a series of buildings associated with the Galen State Hospital, and the historic buildings associated with DNRC's Swan, Stillwater, and Anaconda Unit offices. As such, standardized *Montana State-Owned Heritage Property Reporting Form* forms developed by the SHPO were completed for these 31 properties only. Completed *Montana State-Owned Heritage Property Reporting Forms* for each Heritage Property inspected in 2011 are presented in Appendix 1 of this document. The corresponding site forms (CRIS Forms) are presented in Appendix 2.

Only five of the 31 Heritage Properties inspected (Table 1), are ranked as a priority for Preservation Efforts. These consist of the Eagle Butte School (24CH1118), the Quinn Creek site (24JF0110), the Surprise Creek site (24JT0296), the DNRC's Stillwater Unit buildings (24FH0162), and the DNRC's Anaconda Unit buildings (24DL0206). To date, DNRC has invested approximately \$269,662 to preserve the historic qualities or archaeological data contained in these Heritage Properties. An additional \$574,330 is needed to address upgrades, maintenance needs, or developments proposed in the *Montana State-Owned Heritage Property Reporting Forms* (Appendix 1) for each of these resources.

If all 31 of the DNRC administered Heritage Properties reviewed during 2011 are restored to their original historic conditions, or proposed historically consistent improvements are made, the cost is estimated to be \$5,603,600. Estimating increased tourist dollars that would be spent locally if these Heritage Properties are restored and promoted is wrought with difficulties. However, using data available through Travel Montana, an expected annual increase of \$80,000 to 100,000 is reasonable. Estimating appraised values of these Heritage Properties once restored or developed is as difficult a task as attempting to estimate additional tourist dollars spent annually. In some instances where buildings could be restored or maintained and actively used for administrative purposes the value of the property will likely increase. Alternately, many of the developments proposed would encumber the land, or would at the very least beg the question of what the highest and best use of the School Trust asset is.

Cost of advertising DNRC administered Heritage Properties to the touring public, is not presented on a site by site basis and therefore does not appear in the associated *Montana State-Owned Heritage Property Reporting Forms*. Once developed, the DNRC can provide a list and brief description of the Heritage Properties accessible to the travelling public on the Travel Montana Website (visitmt.com and getlostmt.com) free of charge. Staff of Travel Montana and Department of Commerce recommended advertising at a regional level as well. Advertising in the Yellowstone Hotel Directory cost \$1,000 annually; advertising in Gold West Country costs \$1,200 annually; and advertising in the True West source book costs \$500 annually. Other costs not calculated on a site by site basis are DNRC management of developed Heritage Properties vs. lease of developed properties to either a government or private entity for a ten year period.

As a point of possible interest to the reader, DNRC staff invested approximately 300 hours in compliance with Senate Bill 3 during 2011. Although this amount of time is expected to decrease somewhat in the following years, it is worth noting that time invested in SB3 compliance has led to a modification in the way that DNRC has traditionally focused its resources in State Antiquities Act compliance. Specifically, fewer proposed developments will be inspected at the field level or reviewed at the office level in order to comply with Senate Bill 3 regulations.

TABLE 1: Heritage Properties inspected and reported on by DNRC for 2012

County Name	Site No	Status	Site Type	Action Taken	Condition	Total Cost of Stewardship Efforts by DNRRC (specific to historic preservation)	Priority Ranking
Flathead	24FH0897	NRL	North Fork Road	Owned by MDoT		\$0.00	
Hill	24HL0191	HP	Archaeological, stone circle	SB3 form completed by DNRRC	Stable	\$0.00	5
Jefferson	24JF0110	HP	Quinn Creek Site	SB3 form completed by DNRRC	Stable	\$5,000.00	2
Jefferson	24JF1600	HP	Montana Central Railroad	SB3 form completed by DNRRC	Abandoned, heavily disturbed/obliterated by natural and cultural processes	\$0.00	5
Judith Basin	24JT0231	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Judith Basin	24JT0231	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Judith Basin	24JT0231	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Judith Basin	24JT0231	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Judith Basin	24JT0231	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Judith Basin	24JT0231	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Judith Basin	24JT0296	HP	Surprise Creek Site	SB3 form completed by DNRRC	Actively used and maintained by BNSF	\$0.00	
Lake	24LA0265	HP	Swan State Forest HQ	SB3 form completed by DNRRC	some portions are stable and others are deteriorating	\$4,000.00	2
Lewis and Clark	24LC1110	HP	Archaeological, stone circle	No action. Not on DNRRC administered land. Appears to be FWP land.	Actively used and maintained by DNRRC	\$10,000.00	4
McCone	24MC0462	HP	Archaeological, cairn	SB3 form completed by DNRRC		\$0.00	
Mineral	24MN0164	HP	Chicago, Milwaukee and St. Paul Railroad	SB3 form completed by DNRRC	Stable	\$0.00	5
Mineral	24MN0164	HP	Chicago, Milwaukee and St. Paul Railroad	SB3 form completed by DNRRC	Abandoned, heavily disturbed/obliterated by natural and cultural processes	\$0.00	5
Mineral	24MN0245	HP	Cedar-Quartz Mining District	SB3 form completed by DNRRC	Abandoned, heavily disturbed/obliterated by natural and cultural processes	\$0.00	5
Mineral	24MN0245	HP	Cedar-Quartz Mining District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0245	HP	Cedar-Quartz Mining District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0245	HP	Cedar-Quartz Mining District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0245	HP	Cedar-Quartz Mining District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0245	HP	Cedar-Quartz Mining District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0245	HP	Cedar-Quartz Mining District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0263	HP	Keystone-Iron Mountain Historic District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0263	HP	Keystone-Iron Mountain Historic District	No action. No associated cultural features are on state land		\$0.00	
Mineral	24MN0263	HP	Keystone-Iron Mountain Historic District	No action. No associated cultural features are on state land		\$0.00	

County Name	Site No.	Status	Site Type	Action Taken	Condition	Total Cost of Stewardship Efforts by DNR/C (specific to historic preservation)	Priority Ranking
Rosebud	24RB1035	HP	Chicago, Milwaukee and St. Paul Railroad	SB3 form completed by DNR/C	Abandoned, heavily disturbed/obliterated by natural and cultural processes	\$0.00	5
Sheridan	24SH1222	HP	Soo Line Railroad	SB3 form completed by DNR/C	Some segments are abandoned, other segments are actively used and maintained by BNSF	\$0.00	5
Silver Bow	24SB0445	HP	Historic, underground water delivery system	No action. Not state owned. Owned by the city of Butte.		\$0.00	
Stillwater	24ST0270	HP	Northern Pacific Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Teton	24TT0409	HP	GN Railroad	SB3 form completed by DNR/C	Some segments are abandoned, other segments are actively used and maintained by BNSF	\$0.00	5
Teton	24TT0409	HP	GN Railroad	SB3 form completed by DNR/C	Some segments are abandoned, other segments are actively used and maintained by BNSF	\$0.00	5
Toole	24TL0171	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Toole	24TL0171	HP	GN Railroad	No action. No abandoned segments on state land (not state owned)	Actively used and maintained by BNSF	\$0.00	
Valley	24VL0099	HP	GN Railroad	SB3 form completed by DNR/C	Some segments are abandoned, other segments are actively used and maintained by BNSF	\$0.00	5
Valley	24VL0099	HP	GN Railroad	SB3 form completed by DNR/C	Some segments are abandoned, other segments are actively used and maintained by BNSF	\$0.00	5
Valley	24VL0099	HP	GN Railroad	SB3 form completed by DNR/C	Some segments are abandoned, other segments are actively used and maintained by BNSF	\$0.00	5
Wheatland	24WL0131	HP	Jemisen, Yonica, and O.K. ditches	No action. Not state owned (actively used)	Stable	\$0.00	

Appendix 2: CRIS Forms for Heritage Properties inspected during 2011