

22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Affected property owner" means a person or entity whose real property will be physically affected by the activity of an applicant or whose real property is proposed for incorporation into a historic district proposed as eligible for listing in the National Register of Historic Places.

(2) "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage properties or paleontological remains provided for in 22-3-432.

(3) "Applicant" means a person who applies to a governmental entity, including a federal, state, or local governmental entity, for a permit, license, or lease on property owned by the governmental entity.

(4) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(5) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(6) "Historic preservation officer" means the officer provided for in 2-15-1512.

(7) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(8) "Preservation review board" means the board provided for in 2-15-1512.

(9) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(10) "Registered property" means any heritage property listed in the register.

(11) "State agency" means any executive agency of the state of Montana.

History: En. Sec. 4, Ch. 563, L. 1979; amd. Sec. 1, Ch. 323, L. 1987; amd. Sec. 2, Ch. 343, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 343 inserted definitions of affected property owner and applicant. Amendment effective April 10, 1995.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

1987 Amendment: In (1), after "granted for", substituted "excavation, removal, or restoration" for "exploration or field investigations".

22-3-422. Duties of preservation review board. The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year;

(5) act in an advisory capacity to the historic preservation office and to state agencies; and

(6) accept reports from state agencies and the Montana university system on the first Tuesday in February of every even-numbered year on the status and stewardship of the agencies' and the university system's heritage properties as required in 22-3-424 and make recommendations regarding management of the properties.

History: En. Sec. 5, Ch. 563, L. 1979; amd. Sec. 1, Ch. 187, L. 2011.

Compiler's Comments:

2011 Amendment: Chapter 187 inserted (6) requiring board acceptance of reports on heritage properties; and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 187, L. 2011, provided: "WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under

the agencies' care will help ensure the state's ongoing stewardship of these valuable resources."

Attorney General Opinions:

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

22-3-423. Duties of historic preservation officer. Subject to the supervision of the director of the historical society, the historic preservation officer has the following duties and responsibilities:

- (1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;
- (2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;
- (3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all inventory work done in the state;
- (4) evaluate and formally nominate potential register properties according to the criteria established by the register;
- (5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;
- (6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;
- (7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;
- (8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;
- (9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter the properties;
- (10) respond to requests for consultation under section 106 of the National Historic Preservation Act, as provided for in 22-3-429;
- (11) develop procedures and guidelines for the evaluation of heritage property or paleontological remains as provided in 22-3-428;
- (12) protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to the resources or to the area or place where the resources are located;
- (13) report the information gathered pursuant to 22-3-422(6), along with any recommendations by the historic preservation officer or the review board, to an appropriate legislative interim committee established under Title 5, chapter 5, part 2. The report required in this subsection must also be incorporated into the biennial report required to be submitted to the governor and the legislature under 22-3-107(8).
- (14) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part.

History: En. Sec. 6, Ch. 563, L. 1979; amd. Sec. 1, Ch. 351, L. 1983; amd. Sec. 2, Ch. 323, L. 1987; amd. Sec. 3, Ch. 343, L. 1995; amd. Sec. 2, Ch. 187, L. 2011.

Compiler's Comments:

2011 Amendment: Chapter 187 inserted (13) requiring report of information gathered pursuant to 22-3-422(6); and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 187, L. 2011, provided: "WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from

which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources."

1995 Amendment: Chapter 343 at beginning of introductory clause inserted "Subject to the supervision of the director of the historical society"; inserted (10) regarding response to requests for consultation; inserted (11) regarding development of procedures and guidelines for evaluation of heritage property and paleontological remains; and made minor changes in style. Amendment effective April 10, 1995.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

1987 Amendment: Inserted (10) relating to duty of historic preservation officer to protect from public disclosure the location or character of heritage properties if such disclosure would create a risk to the properties.

1983 Amendment: Inserted (9) authorizing historic preservation officer to adopt rules outlining procedures for agencies without rules to consider state-owned heritage properties or paleontological remains and avoid actions altering such properties.

1983 Statement of Intent: The statement of intent attached to SB 246 (Ch. 351, L. 1983) provided: "The primary purpose of the bill is to ensure that systematic consideration of heritage properties on state-owned land occurs in state agency planning and actions. The bill provides that agencies that do not choose to prepare their own regulations to afford systematic consideration to heritage properties on state lands adhere to general rules prepared by the Historical Society.

The rules promulgated pursuant to this bill should ensure that:

(a) the decision on whether to undertake a professional cultural resources inventory or site evaluation prior to a potentially harmful action is made by the agency in consultation with the Society;

(b) any heritage properties identified on state land are afforded direct consideration in an agency's decision on whether or how to undertake an action; and

(c) when feasible, damage to heritage properties is avoided or subject to an appropriate form of mitigation.

The rules are not intended to require a single course of action by the agency or absolute protection of all identified heritage properties.

The rules promulgated by either state agencies or the Historical Society should have as common elements:

(a) a requirement that prior to taking an action affecting state land or property, state agencies will check with the Historical Society to determine the presence or absence of previously identified historic or prehistoric resources, the relative value of any previously identified sites or buildings, and whether a field inventory or further site evaluation needs to occur to determine whether heritage properties might be impacted;

(b) a requirement that the Historical Society provide the information requested within a specified time and in a precise format;

(c) a requirement that each state agency have a system for making and documenting decisions on whether heritage properties identified as being affected by an agency decision or action can be afforded protection, avoidance, reuse, rehabilitation, or recording prior to impact and that the system adopted permits the Historical Society [to] comment to the agency on their decision; [and]

(d) a method for adjudicating differences in instances where the value of jeopardized sites appears to be high.

This bill would be applicable to state agencies in two separate contexts: decisions on remodeling or demolition of historic state-owned buildings and decisions made by state land managing agencies relative to leases, easements, access, [and] development.

In the case of the Montana University System, "rule" means procedures included in the Montana University System Policies and Procedures Manual through the formal and public process used by the Regents for that purpose."

1979 Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Section 6 [22-3-423] authorizes the historic preservation officer to carry out and enforce the

provisions of sections 3 through 16 [2-15-1512(part), all sections in this part, repealer, and severability clause]. This may be done by rule."

Cross References:

- Adoption and publication of rules, Title 2, ch. 4, part 3.
- Use of heritage properties for state agency new space needs, 2-17-107.
- Land preservation, 23-1-106 through 23-1-108.
- State planning on historical sites, 90-1-102.

Attorney General Opinions:

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

22-3-424. Duties of state agencies. State agencies, including the Montana university system, shall:

- (1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;
- (2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;
- (3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains; and
- (4) pursuant to 22-3-422(6), provide to the preservation review board on the first Tuesday in February of every even-numbered year the following information:
 - (a) a list of the heritage properties managed by the agencies as those properties have been identified pursuant to this section;
 - (b) the status and condition of each heritage property;
 - (c) the stewardship efforts in which the agencies have engaged to maintain each heritage property and the cost of those activities;
 - (d) a prioritized list of the maintenance needs for the properties; and
 - (e) a record of the agencies' compliance with subsections (1) and (2).

History: En. Sec. 9, Ch. 563, L. 1979; amd. Sec. 2, Ch. 351, L. 1983; amd. Sec. 3, Ch. 187, L. 2011.

Compiler's Comments:

2011 Amendment: Chapter 187 in introductory clause inserted "including the Montana university system"; inserted (4) regarding heritage properties; and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 187, L. 2011, provided: "WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources."

1983 Amendment: In (1), changed "Adopt policies for the preservation" to "In consultation with the historical society adopt rules for the identification and preservation", substituted "to avoid" for "and avoid", and inserted "or, in the absence of such rules, act in compliance with rules adopted under 22-3-423".

1983 Statement of Intent: For the 1983 statement of intent see compiler's comments under 22-3-423.

1979 Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 [22-3-424, 22-3-433, and 22-3-434] require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

Cross References:

Land preservation, 23-1-106, 23-1-107.

State planning on historical sites, 90-1-102.

Administrative Rules:

Title 10, chapter 121, subchapter 9, ARM State Historic Preservation Office procedural rule.

Title 12, chapter 8, subchapter 5, ARM Cultural resources.

Title 36, chapter 2, subchapter 8, ARM Antiquities on state lands.

Attorney General Opinions:

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).