



Technical Assistance Scholarship Program: Community Assessment and Recommendations to Address Vacancy and Abandonment in Uptown Butte

Report Submitted by Center for
Community Progress to the
City and County of Butte-
Silver Bow, Montana
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TABLE OF CONTENTS

I	Introduction and summary	2
II	Butte and Uptown: Setting the stage	3
	A. Overview	3
	B. Observations: The physical setting	6
	C. Challenges and opportunities: the issues facing Uptown Butte	8
III	Recommendations I: Key areas for consideration	12
	A. Neighborhood and community engagement	13
	B. Governmental organization and strategic thinking	14
	C. Building a property and neighborhood data base	16
	D. Strategic targeting	18
	E. Building strong tools for strategic historic preservation	19
	F. Building the market	21
IV	Recommendations II: Specific recommendations for action	23
	A. Defining vacant and abandoned properties	24
	B. Vacant property registration ordinance	27
	C. Rental regulation: registration, licensing and inspection ordinances	28
	D. Creating a demolition protocol	34
	E. Homeowner strategies	38
	F. Addressing problem properties – further issues	41
	G. Generating resources for change	42
	H. Legislative strategies	44

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I INTRODUCTION AND SUMMARY

In May 2014, the City and County of Butte-Silver Bow, Montana¹ was selected by the Center for Community Progress (“Community Progress”) to receive a technical assistance scholarship to assist the County in developing, as the County’s application put it, “a more holistic approach to managing blight,”² including but not limited to the County’s code enforcement programs. Subsequently, Alan Mallach and Nicole Heyman of Community Progress came to Butte for an on-site assessment visit from August 4 through August 6. The site assessment included meetings with a wide range of public officials and other community stakeholders, and a tour of the Butte community focusing on the Uptown section of Butte, which is the principal target area for the County’s anti-blight efforts.

This report will set forth the findings of this assessment, as summarized below. The initial section of the report is devoted to setting the stage for the recommendations. It provides an overview of the community, and sets forth both observations about the physical context of Uptown Butte, and a discussion of the challenges and opportunities facing Uptown, based on the information provided during the site assessment.

Following that section, the report contains two separate sections in which recommendations are presented. The first, which is subtitled ‘key areas for consideration,’ looks at broad policy and strategy areas that the County and its partners should consider. These include matters that might be seen as the infrastructure for a comprehensive problem property strategy, such as community engagement, building a property data base, and better aligning the structure of County government to the mission of revitalizing Uptown Butte. We use the term problem property here to refer generically to a wide range of properties that represent problems for their surroundings, not only vacant and abandoned properties, but also substandard occupied properties. In addition, this section addresses three key strategy areas – the importance of strategic targeting of resources, the need for stronger tools for strategic historic preservation, and the need for strategies directed at both supporting existing homeowners and fostering increased homeownership in the Uptown area.

While the first body of recommendations are programmatic or strategic, those contained in the second recommendation section, subtitled ‘specific recommendations for action’ pinpoint specific areas where County action may be appropriate, including either new ordinances or changes to existing ones. They include recommendations for more precise definition of what is meant by an abandoned property, for vacant property registration, and for the regulation of rental properties. In addition, they include recommendations for a formal protocol to guide

¹ In the interest of simplicity and consistency, when referring to the local government entity the report uses the term “County,” and when referring to the place, the term “Butte,” except when specifically referring to the entire consolidated city-county as a geographic entity, when “Butte-Silver Bow” will be used.

² This language, as noted, is from the County’s application. The term ‘blight’, as we discuss later, is in need of greater clarification and a more explicit definition.

demolitions, and for specific programs that can be established to carry out the homeownership strategies presented in the preceding section. This section also includes a variety of other recommendations to further the County's problem property strategy, including changes to tax foreclosure practice and to the Community Decay Ordinance, potential sources of revenue, and potential legislative matters to be explored at the state level.

It was clear from the site assessment that the County is strongly committed to not only addressing the specific problems of vacant and substandard properties in Uptown, but to the revival of Uptown as a thriving community. We hope that this report and its recommendations will help the County and its partners move forward and take their efforts to a higher level.

II BUTTE AND UPTOWN: SETTING THE STAGE

A. Overview

Butte has a rich history as a center of copper mining, beginning in the late 19th century. From then through the 1920s, the city grew rapidly, becoming a vital urban community with an intensely built-up, multistory downtown area, more typical of Eastern and Midwestern cities of the time than of the Western United States. The city's population peaked at roughly 42,000 in 1920, at which time the population of Silver Bow County, including the city of Butte, was approximately 60,000. Butte was by far the largest city in Montana at the time, the next largest being Great Falls, slightly more than half Butte's size. In 1970, the last census before City-County consolidation, the population of Butte had dropped to slightly over 23,000, for a population loss of 44%. Since a far greater part of the city's 1920 population lived in what is now known as Uptown Butte, the population loss in that area was substantially more than 50%. Much of this population loss, however, resulted from the demolition of entire neighborhoods to accommodate the change from underground mining to open pit mining. The advent of open pit mining not only led to the loss of entire neighborhoods, but also to disinvestment in nearby residential neighborhoods and the Uptown commercial district.

The focus of the County's technical assistance request and the assessment visit was the area known today as Uptown Butte, which is also in its entirety a National Historical Landmark District ("national landmark district"). This is the area located within the city's historic boundaries north of Front Street, as shown in the map shown on the following page. As the map indicates, for statistical purposes this area is made up of Census Tracts 1 and 2, each of which is further divided into a number of block groups.

The table on page 5 illustrates some features of the Uptown area, which contains slightly less than 30% of the County's population. Overall, it is substantially poorer than the rest of the County, and has a higher percentage of single individual households. Contrary to many impressions, it contains a much *lower* percentage of senior citizen households than the rest of the County. The vacancy rate in Uptown is almost double that of the rest of the County, at approximately 15%.

FIGURE 1: UPTOWN BUTTE, SHOWING CENSUS TRACTS AND BLOCK GROUPS

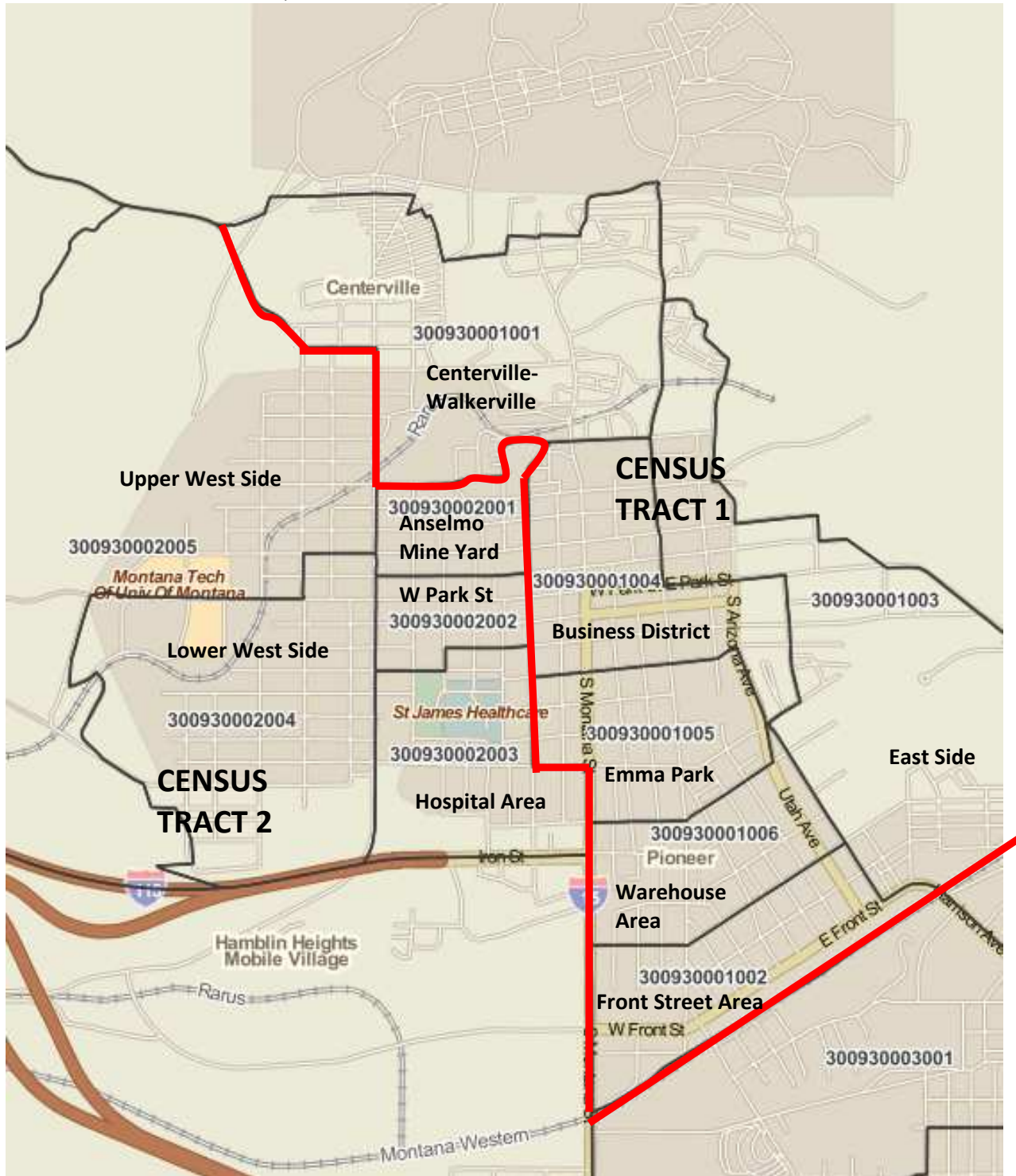


TABLE 1: UPTOWN BUTTE STATISTICAL PROFILE

	BUTTE	UPTOWN	CENSUS TRACT 1							CENSUS TRACT 2					
			ENTIRE TRACT	BLOCK GROUP						ENTIRE TRACT	BLOCK GROUP				
				1	2	3	4	5	6		1	2	3	4	5
Population 2010	33194	9563	4919	1183	635	727	1085	621	668	4644	665	619	745	1349	1266
Population change % 2000-2010	- 1.5%	- 4.3%	- 5.5	-1.0	-5.8	+13.1	- 11.0	- 24.8	+2.9	- 2.4	- 5.0	- 1.6	- 5.3	+ 6.1	- 7.5
% population over 65	16.5	10.8	10.6	12.1	19.8	15.4	3.9	6.3	10.3	11.8	10.2	6.3	9.9	14.7	9.6
Households 2010	14512	4380	2239	479	376	290	511	305	278	2141	374	194	507	607	459
% HH that are single individuals	36.8	42.0	45.9	10.3	46.5	56.9	48.3	46.9	45.7	38.6	41.2	67.5	29.6	29.0	39.4
Median HH income 2012	\$38,800	\$26,700	\$22,500	\$25,400	\$27,500	\$36,000	\$9,500	\$18,300	\$31,800	\$31,100	\$22,900	\$24,800	\$25,800	\$42,300	\$34,800
% population in poverty	16.5%	29.4	32.0							27.0					
RESIDENTIAL VACANCY RATE 2 nd Quarter 14	8.2%	NA	17.7	12.8	13.0	27.0	16.7	18.1	19.1	12.3	15.1	17.8	17.2	5.1	10.3
'Other vacant' units 2010	673	385	275	33	23	83	54	42	40	110	29	30	19	15	17
'Other vacant' % of all units	4.1%	7.4	9.9	5.5	6.0	17.8	9.8	11.4	10.7	4.5	7.0	7.4	4.5	2.4	3.3
Home purchase mortgages 2012	150	22	9							13					
% Home-owners 2000	70.2%	53.0	47.1	62.7	79.7	52.0	14.0	41.5	54.8	59.6	45.3	37.8	52.2	91.9	65.2
% Home-owners 2010	67.3	48.6	42.7	64.5	46.0	41.9	12.8	37.5	51.5	55.1	38.2	32.3	45.0	75.0	65.5

There are, however, significant variations *within* Uptown. Conditions, on the whole, are worse in Tract 1, which makes up the eastern part of the area along with the Centerville neighborhood. Household incomes are substantially lower, housing vacancies are significantly higher, while the area is losing population at a substantially faster rate than is Tract 2. The southwestern part of that area (south of Park St and West of Excelsior Street), however, has substantially higher incomes and fewer housing vacancies than the rest of Uptown – or, for that matter, the countywide average.

B. Observations: The Physical Setting

Uptown Butte is a richly historic area in a spectacular natural setting, framed by the unique backdrop of headframes from the historic underground copper mines spread across the Butte Hill.³ Uptown Butte, however, has been significantly compromised by fires, demolitions, incompatible uses, neglect, and in many cases, outright abandonment. For example, 7.5% of all the housing units in Uptown were classified as ‘Other Vacant’ by the Census in 2010, a category that can be seen as a rough surrogate for abandonment.⁴ This compares to roughly 4% statewide, 2.6% for the rest of Butte-Silver Bow, and 2.3% in nearby Bozeman.

Reflecting the intense development pressures of the early mining era, and the need to have miners live close to the mines and with only a limited amount of developable land available, Uptown residential areas were intensely developed. In the majority of Uptown neighborhoods, houses, duplexes and multi-family structures were constructed only a few feet (or inches) from one another. Uptown Butte is unusual in that large mansions are found cheek by jowl with modest miner’s houses. Despite some losses, that fabric is still characteristic of many Uptown blocks. As Figure 2 shows, single family homes are interspersed with small multifamily properties, many of which are in substandard condition.

³ Another important element framing the city’s setting is the impact of the open pit mining that took place after World War II, and continues to take place to a limited extent today. Open pit mining destroyed a number of the city’s residential neighborhoods, and left an indelible remnant in the form of the Berkeley Pit, a significant landscape feature immediately east of the Uptown commercial center.

⁴ Abandonment is a complex term, which can include abandonment of the *use* of the property while continuing to carry out some ownership functions, such as payment of taxes; or literal abandonment by the owner with respect to all ownership responsibilities. . The Census defines ‘Other vacant’ as the residual category after all vacant units being offered for sale or rent, held pending occupancy, or used for seasonal or occasional purposes, have been tabulated. It may not be limited to properties that have been abandoned by their owners, as it may include units that are being held off the market for unspecified reasons. According to local stakeholders, many houses in Uptown which are not used for residential occupancy are used for storage; while one can argue that that does not constitute ‘abandonment’, we would suggest that the difference is at most a fine line.

FIGURE 2: 500 BLOCK OF W GALENA STREET



The condition of properties runs the gamut from beautifully restored and maintained homes to dilapidated properties that are often abandoned, or if occupied, unsafe and unhealthy. This not only reflects current conditions, but also the reality that initial construction in Butte varied widely in materials and quality (Figure 3). In the boomtown mentality that existed in early 20th century Butte, not all old houses were built to last. Much of the visible infrastructure in the area is visually unappealing, including streets and sidewalks in need of repair, the absence of a tree canopy, and the presence of visually incompatible uses in otherwise predominately residential areas.

FIGURE 3: S DAKOTA STREET NEAR EMMA PARK



The commercial core of Uptown is characterized largely by multistory masonry buildings, ranging from one and two story commercial properties to early 20th century “skyscrapers” like the Metals Bank building or Finlen Hotel. While many stretches of intact buildings offer a sense of what the area was like in its heyday, and considerable restoration has taken place, the commercial core is compromised by buildings that are entirely vacant or those where only the first floor is being utilized, as well by the loss of many buildings over the years through fires and demolition. Some of the vacant lots created as a result have been reused, but more often than not with parking lots or one-

story buildings incompatible with the area's character, rather than with historically appropriate structures (Figure 4).

FIGURE 4: EAST PARK STREET



These conditions offer daunting challenges, yet considerable opportunities, which will be discussed in the next section.

C. Challenges and Opportunities: The Issues Facing Uptown Butte

Challenges

Some of the challenges that the County faces as it addresses the problems of Uptown are physical and visible, and have been described in the previous section. Most significant are the large number of substandard buildings, many of which are vacant, and the extent to which the historic fabric of the area has been compromised. If these buildings remain substandard and/or vacant, the cost of rehabilitation coupled with limited market demand could eventually result in the destruction of these buildings, further compromising the historic fabric of the Uptown area. While vacant and substandard buildings in Uptown are not only residential but also commercial and industrial structures, the great majority of problem properties are residential ones.

Problematic physical conditions are coupled with the high level of poverty in many parts of Uptown and reflect the limited economic growth in Butte-Silver Bow as a whole. As a result, much of Uptown Butte is subject to distressed housing market conditions. While attractive houses in good condition in Uptown sell at reasonable, if not exceptional levels, prices for much of the area's stock are low and often below replacement cost. Prices vary significantly, however, from area to area, as a summary of listings on Zillow shown in Table 2 illustrates. While most houses west of Excelsior Street have asking prices above \$150,000, most houses east of Montana Street are being offered for less than \$75,000.

Table 3, using data provided by Realtor Denise Kelly from the Multiple Listing Service, shows real estate sales trends for Uptown and for the balance of the urbanized area in

TABLE 2: REAL ESTATE LISTINGS IN UPTOWN

PRICE RANGE	West of Excelsior Street	Between Excelsior and Montana Streets	East of Montana Street	TOTAL
Under \$50,000	1	2	2	5
\$50,000-\$74,999	1	4	8	13
\$75,000-\$99,999	2	4	4	10
\$100,000-\$149,999	3	3	1	7
\$150,000-\$199,999	7	0	0	7
\$200,000 or higher	4	3	0	7
TOTAL	18	16	15	49
% over \$150,000	61%	19%	0%	29%
MEDIAN ASKING PRICE				\$89,000

SOURCE: Zillow.com, accessed August 30, 2014

the County since 2011. The table shows evidence of some improvement in Uptown between 2011 and 2012, but little change since then. While the real estate market in Uptown is clearly weaker than in the balance of the Butte urban area, the sales data suggests no particular pattern of divergence or convergence in the past few years.

TABLE 3A: REAL ESTATE SALES IN UPTOWN 2011-2014 YEAR TO DATE (YTD)

YEAR	2011	2012	2013	2014 YTD
MEDIAN DAYS ON MARKET	84	124	114.5	109
AVERAGE SALES PRICE	\$75,684	\$96,492	\$103,537	\$88,915
MEDIAN SALES PRICE	\$50,000	\$79,600	\$74,000	\$76,000
NUMBER OF SALES	77	102	103	67
% OF SALES > \$150k	9.1%	12.7%	21.4%	13.4%

Compared to the balance of the area, median prices in Uptown are about 40-45% lower, and houses stay on the market about 10-20% longer before selling. Although Uptown sales make up about 1/3 of total sales, they represent only 15% of the sales over \$150,000. It is also worth noting that in 2012 only 22 mortgages were recorded on a total of 103 sales in Uptown during the same year. This may reflect a higher share of investors in the Uptown real estate market than is appropriate in a healthy housing market.⁵

⁵ The inference drawn from this data is not entirely consistent with comments from two Realtors during our visit, who both asserted that the great majority of single family buyers are homebuyers. There are a number of factors that might affect this. A larger than usual share of the sales to homebuyers may be cash transactions, in light of the low prices, and may include some purchases as second homes.

TABLE 3B: REAL ESTATE SALES IN BUTTE URBAN BALANCE 2011-2014 YEAR TO DATE

YEAR	2011	2012	2013	2014 YTD
MEDIAN DAYS ON MARKET	84	94	105	88.5
AVERAGE SALES PRICE	\$130,213	\$133,248	\$146,011	\$145,982
MEDIAN SALES PRICE	\$112,000	\$110,000	\$130,000	\$130,000
NUMBER OF SALES	193	213	235	182
% OF SALES > \$150k	32.1%	32.4%	40.9%	33.0%

Distressed housing market conditions have led to many problems identified by local stakeholders interviewed during the site visit. These include substandard and unsafe housing conditions; increasing numbers of irresponsible absentee landlords, particularly of 2 to 4 family properties; and a shortage of good quality rental housing. Many structures, including single-family houses, exhibit substandard and/or unsafe housing conditions, and high levels of property tax delinquency occur in some areas. There is also evidence of property owners – particularly in the commercial core – sitting on vacant properties with unrealistic asking prices. Market conditions, especially for multi-family structures, are further weakened by widespread lack of off-street parking. The feasibility of rehabilitating older properties is negatively affected by the increased costs of addressing environmental contamination, particularly smelter dust.⁶ Other interviewees cited negative perceptions of Uptown and many of its residents, including residents of social service facilities in the area, as a factor.⁷

The problems identified above are external conditions, which can be addressed through concrete strategies. It is important to recognize that poverty, weak economic growth and limited public sector resources all impose constraints on those strategies. In addition, the implementation of these strategies may be constrained by what may be considered attitudinal or philosophical factors. For example, strong differences of opinion may exist over historic preservation standards, resulting in disagreement about which strategies are most appropriate in light of the historic designation of Uptown. Differences of public opinion also exist over the appropriate use of public funds and whether public funds should be used for activities that are perceived as creating private benefits. If not carefully addressed, these disagreements can hinder the adoption of

⁶ The issue of environmental contamination of the residential environment in Butte associated not only with smelter dust but with a wide range of issues associated with the area's mining history was raised by some interviewees. While an assessment of these issues is beyond the scope of this report, it is clearly a major concern, which may have been taken into consideration as some of this report's recommendations dealing with housing rehabilitation are pursued.

⁷ The perception of Uptown as a high crime area was raised by some interviewees. Overall, crime in Butte-Silver Bow is not high; indeed, based on the most recent FBI data, both total crime rates and the rate of crime against persons per 1,000 population in Butte-Silver Bow were the second *lowest* among Montana's six largest cities, and substantially below national averages. No data was available, however, to compare crime rates for different parts of Butte.

effective strategies. It may be possible, however, to ameliorate or even resolve these conflicts through greater public outreach and engagement, a subject that is discussed in a later section.

Opportunities

Uptown offers valuable opportunities and assets on which to build. The strongest one is the area itself; despite the problems and challenges cited above, Uptown's history, its eclectic architecture and its setting give it a remarkable – even unique – character. It is powerfully evocative in ways that few other places in the United States are. Moreover, despite market constraints, there are important positive signs.

All interviewees agreed that the past 10 years or so have shown definite improvement in physical conditions, while a modest but steady flow of conversions of older buildings in the commercial core to residential uses is evidence of a growing market for higher-density housing. As the price distribution shown above suggests, and as confirmed by Realtors with whom we spoke, the homebuyer demand for houses in Uptown is not insignificant, particularly for good-quality properties. The designation of an expanded urban renewal area, which will offer the opportunity to use tax increment financing to help support revitalization efforts, should make a major difference over the coming years. The work of affordable housing organizations, including the Butte Housing Authority, Human Resource Council, the National Affordable Housing Network, and Habitat for Humanity have had a stabilizing influence on some neighborhoods through rehab of existing buildings and infill development on vacant lots.

The area has other significant assets. Montana Tech and St. James Hospital are both important anchor institutions, as well as potential catalysts for increased housing demand. It is not surprising that the area framed by these two anchors has by far the strongest housing market conditions in Uptown. The open space and trail network that is emerging as former mining areas are reclaimed is another asset, which appears to be not yet fully appreciated by many, while signature events such as the Folk Festival and Evel Knievel Days raise the area's profile – and can potentially help market Uptown as a place to live. Butte's location in southwestern Montana, an area that has increasingly become a destination for in-migrants and visitors, represents a potential asset that has not yet been fully realized. Effective marketing of Butte as a place to live – whether for young couples looking for a starter home or older ones looking for an appealing retirement community – could be a powerful spur for the city's housing market.

Finally, it is clear that County government, led by its chief executive, is strongly committed to change, and to addressing the challenges of revitalizing Uptown. That in itself is an important asset.

III RECOMMENDATIONS I: KEY AREAS FOR CONSIDERATION

The purpose of this section is to identify and discuss new initiatives or strategies the County may want to develop, as well as ways in which it may want to expand and refine activities already under way. The topics discussed in this section run the gamut from broad themes, such as the way in which the County's efforts to revitalize Uptown are presented to the public or the way in which those efforts are organized within County government, to more specific policies, such as the creation of a property data base or the conduct of an architectural and historic heritage survey. Many different issues were discussed during the site visit, and not all can be discussed in detail. This section, therefore, seeks to identify the most important elements of a multi-faceted strategy for discussion and consideration by County staff and other stakeholders. The following section (Recommendations II) offers a series of specific action items for consideration by the County.

The recommendations contained in this and the following section are the product of the site assessment, conversations, both in person and by telephone, with a variety of public and private stakeholders in Butte. In addition to many officials, both elected and appointed, from the consolidated City-County, they included Realtors, property owners, leaders of anchor institutions, historic preservation advocates, and affordable housing developers.

Before presenting the recommendations, a specific question needs to be asked – what exactly is the County trying to accomplish in Uptown? The reason this question comes up is that comments during the site visit, as well as the materials prepared by the County, conveyed a sense that the County's efforts tended to be couched in the negative – for example, to fight (or manage) blight or to combat community decay⁸. This is not to criticize either the work being done or the County's dedicated and hard-working staff, but rather to suggest a different way of looking at that work.

A reactive or negative way of framing the issue severely limits the scope and potential impact of the County's efforts. While it is necessary to define and respond to the area's problems, by couching the goal solely as one of responding to problems – a reactive mission – the County's efforts offer little scope for comprehensive strategies and risk encouraging 'siloes' rather than integrated behavior. Equally important, defining its role reactively limits the County's ability to build public support for its efforts. Such an approach does not offer a vision of change that can inspire community residents and private stakeholders; moreover, since residents tend to resist thinking of their blocks and neighborhoods as 'blighted' even if they want to see a dilapidated house

⁸ To the best of our knowledge, the use of the unusual term 'community decay' as a legal term of art to refer to code violations, nuisances and similar quality of life issues, is unique to the state of Montana, as embodied in the language of Mont. Code Ann. § 7-5-2110 and Butte-Silver Bow, Mont. Code § 8.06.

demolished or an incompatible use removed, it can actually discourage community engagement. For that reason, the County may want to consider de-emphasizing the focus on ‘blight’, a value-laden and imprecise term, and stressing more specific problems, such as vacant and abandoned properties.

More importantly, eliminating blight should not be seen as a goal in itself, but rather as part of a larger goal of fostering the revitalization of Uptown Butte, based on a vision of the area’s future that links physical, economic and social change. While building a strong regulatory framework to combat vacant properties and community decay is critical, sustained improvement is likely to come about more through economic and social change than through regulatory efforts. A critical part of that process is building a stronger neighborhood and community foundation for change.

A. Neighborhood and community engagement

Designing and putting into effect a program of ongoing community-wide outreach and engagement is a critical step to making any systematic anti-blight effort in Butte a success. It often appears that while County staff is working hard to address Uptown’s problems, they are working largely alone. While they have what one might call ‘pragmatic’ partners, such as Realtors and developers, the wider Uptown community appears not to be actively engaged with the County’s efforts to end blight and foster revitalization in the area, either in the sense of individual or organized group participation. This lack of engagement has two important implications:

- Because residents are not widely aware of the County’s initiatives, they offer them little visible support, which means that opposition from small numbers of vocal individuals or special interests can derail potentially valuable efforts; and
- The neighborhood energies that have contributed significantly to efforts to combat blight and foster revitalization in other communities are not being widely tapped.

A major effort should be undertaken to engage residents of Uptown in the revitalization effort. When matters come before the Council of Commissioners it is important that residents and business owners be aware of them, and how they fit into the larger strategy for the revitalization of Uptown Butte. They can then become a voice in support of future initiatives proposed by the County administration. In other cities, organized residents and neighbors have partnered with local government to leverage limited public resources, including supporting local code enforcement efforts.⁹

⁹ Good examples include the programs known as Code Rangers in a number of Texas cities, where members of neighborhood associations are trained to identify code problems and report them to local officials. Cleveland, Ohio has instituted a more formal partnership between the city and a number of Community Development Corporations, where code complaints not involving health and safety

The creation of neighborhood councils – a matter that is currently under consideration as County Ordinance 14-8 – could be an important step. It is critical, though, that if that is pursued, neighborhood boundaries that reflect resident perceptions are identified, the role of the councils is well-defined, and adequate support staff is provided from the County, so that the councils can become truly meaningful bodies.¹⁰ If a structure is created that exists more on paper than in reality, it will bear little fruit.

B. Governmental organization and strategic thinking

Activities directly relevant to the revitalization of Uptown Butte are divided among a number of different departments:

- *Community enrichment*, which administers the community decay ordinance;
- *Planning*, which enforces zoning and building codes, as well as historic preservation planning & ordinance enforcement
- *Community development*, which leads community and economic development efforts and acts as the Urban Revitalization Agency, administering the tax increment financing program; and
- *Land Records*, which maintains systems to organize, manage and control land and property records, and conduct related functions including the sale of County-owned property.

Key roles are also played by Law Enforcement and the County Attorney. Each of these departments is headed by an individual reporting directly to the Chief Executive. Coordination between these departments, and the ability to focus resources on strategic goals and targets, appears to be limited by the administrative structure. To the extent that the County's goal is to become more proactive and strategic, not only with respect to regulatory matters, but with respect to how code enforcement is linked to affirmative revitalization strategies, that goal would be enhanced by greater coordination.

Two basic approaches have been used in other communities to bring about greater coordination of revitalization efforts:

considerations are redirected to trained staff in the partner CDCs, who work to resolve complaints outside the formal legal system.

¹⁰ An excellent example of a small city that has built a strong neighborhood network is Geneva NY, a city which in its entirety is not much larger than Uptown Butte. The city maintains a Neighborhood Resource Center which works closely with the city's neighborhood associations and residents to foster stronger neighborhoods in the city. The Neighborhood Resource Center is operated from a highly-visible storefront in downtown Geneva, rather than an office in City Hall. For further information, see <http://genevanrc.org/>.

- Creation of an inter-agency communication and decision-making structure through some form of working committee or task force; or
- Governmental reorganization, to consolidate related activities in one department under a single head.

Butte-Silver Bow has established a Community Enrichment Committee, as well as a (currently inactive) Land Sales committee, to foster inter-agency communication on many of the issues addressed in this report. These may be able to serve as building blocks for greater coordination of the County's efforts. Where communities pursue the interagency route, however, a critical issue is determining who is in charge, particularly in a governmental structure where everyone reports directly to the Chief Executive. Without a clearly defined leader to set the direction, internal departmental concerns often trump coordination.

In some cities, this role is performed by a city administrator or deputy city manager; that is, a central manager who reports in turn to the chief city elected or appointed officer. No such position currently exists, however, in County government. Alternatively, the Chief Executive could designate one department director as the lead director, and give him/her the authority to resolve disagreements and ensure that everyone is on the same page.

A governmental reorganization is a more ambitious undertaking than creation of an interagency vehicle for coordination and unified decision-making, but is clearer and usually more effective.

TABLE 3: EXAMPLES OF LOCAL GOVERNMENT FUNCTIONAL ALLOCATION

CITY	York, Pennsylvania	Quincy, Illinois	Kalamazoo, Michigan	Lima, Ohio
2010 POPULATION	43,718	40,633	74,262	38,771
DEPARTMENT TITLE	Economic & Community Development	Planning & Development	Community Planning & Development	Community Development
FUNCTIONS	Planning & zoning Code enforcement Permitting Housing Neighborhood support Staff to Redevelopment Authority	Planning & zoning Code enforcement Permitting Business development Downtown revitalization Housing rehabilitation Historic preservation	Planning & zoning Code enforcement Permitting Community development Historic preservation Rental registration	Planning Code Enforcement Neighborhood support Housing Community development Economic development Land bank

It is rare that a local government with a population as small as that of Butte-Silver Bow has as many separate departments with related or overlapping functions. Many communities of similar population with at least roughly similar issues of blight and revitalization tend to combine many of these functions into a single department. Examples of how these functions are allocated in four other small cities are shown in Table 3.¹¹ All of these small cities combine regulatory and proactive revitalization activities within the same department.

C. *Building a property and neighborhood data base*

Good information can be a key to effective implementation of any strategy. A comprehensive data base of properties in Uptown¹² that can measure change over time is an essential resource for a strategic approach to regulation and revitalization.

A survey was recently conducted by Butte-Silver Bow to identify the worst problem properties throughout the community, from which a data base was created by the Department of Community Enrichment to identify and prioritize distressed properties in the study area. This represents a solid first step toward development of a larger, more comprehensive, data base.

To be most effective, the data base should both measure current *conditions* (data base), and track *changes and outcomes* (tracking). While a wide range of possible data elements is shown in Table 4, it should be stressed that there is no need to incorporate all of these elements at the beginning. The data base can begin with a limited number of data sets, but should be designed so it can be expanded to incorporate an increasing number, as resources and capacity permit.

Three specific activities should also be considered:

- Conducting a comprehensive survey of property conditions in Uptown Butte on a regular basis (perhaps once every three years). Such a survey is an invaluable tool for targeting resources and identifying both current and potential problems, particularly when linked to other data base elements. The cost and time involved is modest, particularly if – as has been the case in many other

¹¹ York and Quincy are both particularly germane, because both are richly historic cities currently suffering from significant blight, as well as severe resource constraints.

¹² The data base should ideally encompass the entire county, or at least the urbanized part of the county. It may be more feasible, however, to begin with Uptown and gradually extend it to the rest of the area.

communities – volunteers can be recruited to do much of the survey work.¹³

- Conducting an architectural/historical survey of the Uptown area as described further in section III.E below.
- Developing a simple format to simultaneously track market conditions and changes in the area, including number of sales and days on market, sales prices, whether buyers are homebuyers or absentee buyers, foreclosures, and the like. This could be done in conjunction with local Realtors.

This information can be used to compare market conditions in different parts of the Uptown area, which can then be used to help target interventions appropriate for the conditions of each subarea within the larger area.

TABLE 4: POSSIBLE DATA ELEMENTS IN A PROPERTY DATA SYSTEM

CATEGORY	BASELINE PROPERTY DATA BASE	PROPERTY TRACKING
Baseline information (from the Montana Cadastral Property Survey)	<ul style="list-style-type: none"> • Property type • Lot Size • Assessment 	Not applicable
Ownership	<ul style="list-style-type: none"> • Current owner (Landlord or homeowner) 	<ul style="list-style-type: none"> • Changes in ownership • Changes in tenure form • Mortgage foreclosures
Condition/vacancy	<ul style="list-style-type: none"> • Property survey data • Code, nuisance or other violation notices and citations 	<ul style="list-style-type: none"> • Field updates • Code compliance outcomes • Outcomes of failure to comply (citations, fines, etc.) • Building permits/value of improvements
Historical/architectural	<ul style="list-style-type: none"> • Architectural/historical survey data 	<ul style="list-style-type: none"> • Property actions (rehabilitation, demolition)
County ownership (for properties taken by County)	<ul style="list-style-type: none"> • Status 	<ul style="list-style-type: none"> • Disposition • Buyer compliance with terms of disposition
Property taxes and water bills	<ul style="list-style-type: none"> • Current status 	<ul style="list-style-type: none"> • Tax delinquency • foreclosure auctions
Crime		<ul style="list-style-type: none"> • Crime incidents by type and location

¹³ By way of illustration, the recent property survey in Detroit found that a three-person crew in a car (one driver, and one person to cover each side of the street) equipped with pre-programmed hand-held devices could cover approximately 300 properties per day. On that basis, one such crew could survey every property in Uptown in two to three weeks. The data is entered directly from the device into the central data base, minimizing the need for separate data entry personnel.

D. Strategic targeting

Uptown Butte is a large area, containing nearly 30% of the County's population over roughly 2.5 square miles. It includes a commercial core, numerous distinct residential areas, as well as areas characterized principally by institutional or industrial use, such as the Warehouse District. As noted earlier, housing market conditions, housing quality, historic and architectural significance, and other features all vary widely within the area. Not only does this wide variety in conditions dictate that different approaches or priorities are appropriate for different areas, but the area's size dictates that not all of the important tasks can be addressed simultaneously by the County in light of its limited financial and staff resources.

Serious consideration should be given to how to target resources around strategic objectives and priorities. Those objectives can be geographic, or they can be based on particular property or ownership types, including:

- Prioritizing vacant and abandoned properties
- Developing specific strategies around problem landlords
- Designating specific target areas for particular interventions

Target areas could be neighborhoods, or they could be corridors. One suggestion that resonated with the observations offered earlier in this report was that the W. Park Street corridor could be a potential priority area. It links what are arguably the two most significant assets Uptown offers, the commercial core and Montana Tech, separated by less than half a mile. The corridor already contains significant historic assets, but at the same time contains scattered problem properties as well as a number of vacant lots or underutilized parcels.

As the data presented in the first section of this report indicates, there are significant differences in housing market conditions as well as in the economic condition of the population within Uptown. The area east of Montana Street in census tract 1 is generally poorer, with much lower house values than census tract 2, particularly compared to that part of tract 2 south of Montana Tech. Over 2/3 of the Uptown area's homeowners with incomes under \$25,000 live in tract 1. Differences in housing market and economic conditions can also be used as a framework for targeting efforts, including targeting of incentives or focusing code enforcement efforts.

Given the vast size of the national landmark district, and the considerable variation in condition within the district, a similar approach to targeting may be appropriate for historic preservation, by distinguishing between areas of greater or lesser historic value within the larger historic district. Criteria could include integrity of the historic fabric, and quality of architecture or ensemble. At this point, however, it does not appear that a comprehensive body of data about the quality and features of the district's historic

fabric is available at a level that would enable such an evaluation process to take place. A survey as discussed below is strongly recommended, as an important step to enable the County to develop a rational targeting strategy.

Such a strategy could in turn enhance the ability to make useful distinctions between different areas within the national landmark district with respect to the standards that should be imposed for building rehabilitation or modification, as well as the criteria used to determine under what circumstances demolition may be appropriate.

When geographic areas are targeted for intervention, the targeting effort should not be limited to regulation. Targeting should be multifaceted, including allocation of resources and specific activities designed to strengthen market conditions and quality of life in the area.

E. Building strong tools for strategic historic preservation

Historic preservation is a central element in any strategy for the revitalization of Uptown Butte. Because it is so important, it needs to be strategic, and more effectively linked to other efforts to improve the area and foster its economic recovery. As the community moves forward, proposals will regularly be made about properties which need to be evaluated through a historic preservation lens, including how to deal with existing buildings or with new buildings proposed for the historic district. In order to make those decisions strategically, in the context of the overall vision for the future of Uptown, additional tools are likely to be critically important.

The existing National Historic Landmark (NHL) documentation, while valuable, does not meet Butte's current planning needs. It assesses buildings individually, even though in many cases the primary basis for their value is their contribution to a larger ensemble. Moreover, it treats all contributing buildings as equally valuable. As a result, planners and the public find it difficult to articulate the value and meaning of neighborhoods or groups of buildings, or to make nuanced planning decisions, whether with respect to targeting resources, setting rehabilitation standards, or permitting demolition. There is a need for a preservation planning tool which will give planners and the public a firmer grasp on Butte's historic environment. The most effective way to address this issue is by conducting a new survey of architectural and historical resources, carried out with a high level of public, community involvement. Such a survey would not replace but rather supplement the existing NHL documentation. It should be based on the following principles:

- Unlike most landmark surveys, which focus on documenting the history and design of individual buildings, it should focus on assessing the character of areas, ranging from entire neighborhoods down to much smaller areas.

- Unlike most landmark surveys, which are carried out entirely by experts, it should be a public process in which residents are encouraged to participate through activities such as public meetings, workshops, mapping exercises, and walks.
- Unlike most landmark surveys, which define significance relative to “historical” information such as that contained in archives, it should include oral history as provided through the observations of residents.

Such a survey would not require the in-depth analysis of individual building histories that has been part of previous work, and as a result would not be an expensive project to carry out. It aims at a level of detail in between that of individual building assessments and overall boundary-setting: the level of areas, *as they are perceived to exist*.¹⁴

The survey could be the central tool, or resource, designed to enable the County and its bodies to make informed, rational decisions about whether particular actions are or are not appropriate when applied in particular locations. It would be designed to inform the decision-making process with respect to demolition as discussed in Section IV.D, as well as review of rehabilitation proposals or new buildings. The value of the survey, and the entire strategic approach to historic preservation would be further enhanced by the preparation of two documents, a rehabilitation pattern book (or design guidelines), and a guidebook to resources for housing rehabilitation.

The rehabilitation pattern book is designed to serve as a straightforward guide to property owners to ensure that rehabilitation activity, particularly where visible exteriors are involved, that may not be subject to Secretary of Interior standards is nonetheless carried out in ways that are appropriate for the District, while being non-burdensome to property owners, particularly homeowners with limited resources. In addition to identifying appropriate treatments and materials, it can also provide a straightforward guide to which activities require which level of review; i.e., those that require no review, those that can be addressed at the staff level, and those that require review by the Historic Preservation Commission.¹⁵

¹⁴ The proposed survey as briefly described here departs in many ways from established US preservation practice; it is close, however, to the practice, extensively developed in the UK, of *historic landscape characterization*. This is an approach, which has been applied to both countryside and urban areas, and which aims, as the name suggests, to understand the character of particular parts of the landscape – a scale in between the totality and the individual components. It does this by layering historical data with public input aimed at understanding how people *perceive* the landscape.

¹⁵ There are many examples of good design guidelines issued by local governments. Two good examples are the Rowhouse Manual prepared by the New York City Landmarks Preservation Commission (see http://www.nyc.gov/html/lpc/downloads/pdf/lp_rhmanual.pdf), and the Fort Collins CO Old Town design guidelines (see <http://www.fcgov.com/historicpreservation/pdf/old-town-design-guidelines.pdf>).

The resource guide would provide easily understood information about forms of financial and technical assistance available for existing property owners, particularly lower-income homeowners, as well as those purchasing historic properties in Butte.

F. Building the market

In the final analysis, the *only* thing that will bring an end to widespread blight in Uptown Butte is a strong, healthy real estate market, where strong real estate values motivate people to buy and improve properties, owners to convert vacant properties to productive use, businesses to fill vacant storefronts, developers to replace low-value uses with higher-value ones and construct new, architecturally and historically compatible buildings on vacant lots. This is not to minimize the value of effective, strategic code enforcement. Code enforcement is critical, but needs always to be seen in the context of the market, and how the market drives property owners' behavior.

While Uptown Butte appears to have seen some gradual improvement in market conditions in recent years, improvement has been slow and modest. The County cannot rely on the invisible hand of the marketplace to bring about the changes that are needed. The County should see creating the conditions for market revival in Uptown as an important part of its mission, and should work in close partnership with residents, businesses and other stakeholders to that end.

Some specific suggestions include:

1. Develop and implement, in partnership with local Realtors and other stakeholders, a systematic effort to market Uptown as a place to live.

This should include careful identification of potential target groups for the marketing effort. In addition to local residents, particularly people associated with St. James Medical Center and Montana Tech, potential target groups may include retirees – in particular people raised in Butte who have left but may be willing to return – as well as artists and others. A good model, although far more ambitious than might be appropriate for Butte, is the Live Baltimore Home Center, a professionally-staffed center devoted to marketing Baltimore as a good place for people to buy their home.¹⁶

2. Identify and promote incentives for people to buy vacant houses or houses in need of major repair, such as tax abatement or TIF assistance.

¹⁶ For further information, see <http://livebaltimore.com/>

This is an important step in light of the low prices in much of Uptown, and the gap between the cost of rehabilitation and the resulting market value of the homes. Proposed strategies to pursue this suggestion are presented in detail in Section IV.E.2 below.

3. Focus on improving the ‘curb appeal’ of areas targeted for the marketing strategy.

Many parts of Uptown present an unattractive face to the public, or to the prospective homebuyer walking or driving through the area, as in Figures 5 and 6. While not all areas in need of improvement can be addressed at the same time, the County should consider designating target areas, and carrying out programs that might include tree

FIGURE 5: 600 BLOCK OF N ALASKA ST



FIGURE 6: 600 BLOCK OF S COLORADO STREET



plantings, sidewalk replacement, street lighting, and other improvements in conjunction with enforcement of the community decay ordinance as well as possible targeted vacant property and landlord strategies. This could also include assistance to existing homeowners to upgrade their properties, as discussed below.

4. Assist struggling homeowners to make needed repairs.

Many homes in Uptown are owned by lower income homeowners, often senior citizens¹⁷, and are in need of repair. In many cases, the repairs needed may be more than cosmetic, and may affect the health and safety of their owners, who cannot afford to make the repairs. The presence of such houses not only affects the quality of life of many of Butte’s most vulnerable citizens, but affects the market demand for other houses in the vicinity. Strategies to pursue this goal are discussed in greater detail in Subsection IV.E under Specific Recommendations below.

A further area that may become important as the County’s revitalization efforts expand may be the need for government to become more actively involved in the acquisition, rehabilitation and reuse of key buildings in Uptown, to create vehicles that can supplement the limited community capacity that currently exists. If adopted as an important element in the County’s long-term strategy, this could appropriately be a mission for the Urban Revitalization Agency, perhaps through a non-profit entity that could be created under the URA umbrella. We would not, however, recommend creating such an entity immediately, but would suggest that priority be given – as we discuss below – to building stronger strategies and tools, first, to motivate private property owners to better maintain their properties and put vacant properties back to use; and second, to increase the ability of the County to gain control of problem properties. For similar reasons, in our recommendations for possible legislative action in Subsection 4H, we do not recommend pursuing legislation authorizing land bank entities at this time.

IV RECOMMENDATIONS II: SPECIFIC RECOMMENDATIONS FOR ACTION

The purpose of this section is to offer a ‘menu’ of recommendations for specific ordinances, activities and programs that the County may want to consider in the course of developing and refining its strategies to combat blight and foster revitalization. While none of the recommendations are mutually exclusive, they may well add up to more than the County can currently undertake, either with respect to resources or

¹⁷ The median age of homeowners in Uptown is 55. Unfortunately, the available data does not enable us to determine the distribution of homeowners by income *and* by age.

capacity. For that reason, they are presented as a menu – some recommendations can be implemented immediately, some later, and some may not be worth pursuing at all. All should be carefully considered and discussed, whatever the ultimate outcome. In addition, while preliminary research suggests that the County *may* have the legal authority to carry out those recommendations which involve enacting or amending local ordinances, they should not be pursued until further legal research has taken place to ensure that the County *does* indeed have the power to take these actions.¹⁸

With respect to the County’s legal powers, it is worth making a point about the underlying issue. The legal authority of a local government to enact and enforce a particular ordinance may flow either from specific state enabling legislation, or from what is known as the ‘police power’, the authority of local governments to protect their citizens’ health and safety. Under what are known as ‘Dillon’s Rule’ states, such as North Carolina or Virginia, municipalities are clearly limited to taking those actions that have been explicitly authorized by the state legislature. In other states, the extent of the police power can vary widely. In what are known as ‘Home Rule’ states, these powers are generally defined broadly. Montana is a Home Rule state, and the State Constitution provides with respect to charter local governments such as Butte-Silver Bow that “a local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter.” (Art. XI, §6).

This power gives the County considerable flexibility to enact ordinances to protect the public health and safety, potentially including those discussed below. That flexibility is not unlimited, however. Even if there is no explicit barrier in state statutory law, case law may limit the County’s discretion. Moreover, the possibility of a legal challenge always exists, of course, even when an ordinance is explicitly authorized by state statute. Thus, one can never state *with certainty* that a particular ordinance not explicitly authorized by state law will not be challenged, and if challenged will be upheld. The job of the county attorney, in evaluating local ordinance proposals, is to evaluate the probability of challenge and, in the event of a challenge, the probability of success.

A *Defining vacant and abandoned properties*

One specific issue that was raised during our visit was the absence of a definition of vacant or abandoned property that could be used to enforce codes or other regulations. Since the need to focus on vacant and abandoned properties came up often during the assessment visit, a clear definition that can be used by County officials and readily understood by the public is clearly needed. *The threshold principle is that a building that is not being used or actively marketed, and exhibits any one of a number*

¹⁸ Nothing in this section or any other part of this report should be construed as providing legal advice. Any questions about Montana or local law or regulation must be determined by qualified local counsel.

of indicia of abandonment, should be considered abandoned. That principle is effectively operationalized under the New Jersey Abandoned Property Rehabilitation Law, as shown in Table 5. Research for this report suggests that no comparable definition exists in Montana law.

This New Jersey definition makes clear what triggers the determination (not being in legal use for six months or more); what additional criteria must be met; and, if the public officer¹⁹ makes his or her determination on the basis of the nuisance criterion, what conditions are considered in this case to be a nuisance. One important principle inherent in this ordinance is that *a property can be considered abandoned even if property taxes are being paid*, if it is a public nuisance or cannot be re-occupied without rehabilitation.²⁰

We are *not* suggesting that the County simply adopt the New Jersey language, although its clarity and simplicity make it potentially an appropriate starting point. One issue that arose in our visit is the fact that many otherwise abandoned buildings are being used for storage as the principal (sole) use, while being maintained in a dilapidated condition. Clearly, that ‘use’ should not bar a finding of abandonment. This could be addressed in the New Jersey definition in a number of ways:

- (1) Changing the threshold definition to read:

The property has not been legally occupied for at least six months for a use permitted as a principal use under the zoning code, and meets **one** of the four **additional Criteria**; or

- (2) Adding language along the following lines:

A building being used solely or principally for storage shall be considered abandoned under this ordinance if (a) any one of the four additional criteria applies; or (b) the property is in violation of the Community Decay Ordinance.

Similarly, a sixth category could be added to the nuisance criteria: (f) the property is

¹⁹ In New Jersey legal terminology, the public officer is the individual designated by the mayor or governing body as the person in municipal government responsible for making determinations of abandoned property as well as other related matters. It is usually the senior code enforcement official, or in some cases, a senior official responsible for community development or neighborhood stabilization.

²⁰ This distinguishes this definition from those found in the general law of abandonment, which are typically based on the complete relinquishment of the owner’s rights. The basis for making this distinction is the significant negative effect of *de facto* abandonment, in the sense of failure to maintain a property or allowing it to become a public nuisance, on other property owners and the community at large.

TABLE 5: STATUTORY DEFINITION OF ABANDONED BUILDINGS UNDER NEW JERSEY LAW (N.J.S.A.55:19-80 THROUGH 82)

Threshold Criterion	Additional Criteria	Nuisance criteria
<p>The property has not been legally occupied for at least six months, and meets one of the four additional Criteria</p>	<ul style="list-style-type: none"> a. The property is in need of rehabilitation in the reasonable judgment of the public officer, and no rehabilitation has taken place during that six-month period; b. Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six months as of the date of a determination by the public officer pursuant to this section; c. At least one installment of property tax remains unpaid and delinquent on that property [...] as of the date of a determination by the public officer pursuant to this section; or d. The property has been determined to be a nuisance by the public officer (based on meeting one of the Nuisance Criteria) 	<ul style="list-style-type: none"> a. The property has been found to be unfit for human habitation, occupancy or use pursuant to section 1 of P.L.1942, c.112 (C.40:48-2.3); b. The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties; c. The property is subject to unauthorized entry leading to potential health and safety hazards; the owner has failed to take reasonable and necessary measures to secure the property; or the municipality has secured the property in order to prevent such hazards after the owner has failed to do so; d. The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards; or e. The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable and necessary measures to remedy the conditions.

determined to be a public nuisance as a result of violations of the Community Decay Ordinance.

Whether or not the County chooses to use language from New Jersey or elsewhere as a basis for its definition, the critical factors in any definition are that (1) it be clear, easily understood and easily applied; and (2) it be seen as reasonable in light of local conditions.

B Vacant Property Registration Ordinance

As we have noted, weak market conditions in the Uptown commercial corridor, as well as in surrounding residential areas, are a major challenge facing the County. Major factors affecting the distressed real estate market are vacant properties in general, as well as the phenomenon of property owners sitting on vacant commercial properties, while nominally offering them for sale at unrealistic asking prices. We recommend the County design, enact and implement a Vacant Property Registry Ordinance (“VPRO”). While the ordinance can be applied to all vacant properties in the County, or all vacant properties in Uptown, the County may want to consider a pilot program that would initially target the Uptown commercial core.²¹

A VPRO is a straightforward way to identify property owners, to obtain contact information for noticing and compliance requirements, and to ensure that properties meet minimum standards for security and exterior maintenance. Over 1,000 such ordinances have been enacted by towns, cities and counties around the United States.²² The most effective VPROs couple registration with a modest fee to cover the administrative costs of the program, and establish a graduated fee that increases the longer the property remains vacant.

Vacant Property Registration Ordinances serve three purposes:

- To ensure that owners of vacant properties are known to the city and other interested parties and can be reached if necessary;
- To ensure that owners of vacant properties are aware of the obligations of ownership under relevant codes and regulations; and
- To ensure that owners meet minimum standards of maintenance of vacant properties.

An additional benefit of the VPRO is it may encourage property owners to set realistic asking prices for commercial properties by adding to the costs of holding them. The costs of bringing the commercial properties into compliance with minimum standards coupled with an escalating

²¹ While we have reason to believe, as we were advised in light of the ‘home rule’ provisions of the Montana constitution, that enactment of such an ordinance would fall into the powers of the County, this would have to be verified by the county attorney.

²² An interactive data base of VPROs is available at http://safeguardproperties.com/Resources/Vacant_Property_Registration/Default.aspx?filter=vpr

fee for maintaining the vacant property over time may motivate some owners to restore and reuse their property, or alternatively to offer it for sale at a realistic price.²³ Caution should be taken, however, not to set registration fees and maintenance requirements at higher levels than the market can support. An owner, particularly one who is keeping current on property taxes, is likely to comply with requirements to bring properties into compliance with minimum maintenance standards and pay registration fees only if it makes financial sense to her.

We recommend that the ordinance include the following elements:

- A clear definition of which properties and which parties are subject to registration;
- The registration requirements and procedures, including the information required of the owner;
- The fee structure;
- The obligations of the owner, with respect to maintaining and securing the property; and
- The penalties for failing to register in timely fashion.

Finally, the registration data should be used to create a searchable, publicly accessible data base on the Butte-Silver Bow website, and residents should be encouraged to report vacant properties subject to the ordinance that do not appear on the list. The community is an invaluable resource and should be utilized as such when possible.

C Rental Regulation: Registration, Licensing and Inspection Ordinances

57 percent of all the dwelling units in Uptown Butte are absentee-owned rental properties, as shown in Table 6, including well over 1/3 of all of the single family homes in the area, more than double the national average.

During the site assessment, serious problems with substandard rental properties in Uptown, particularly among 2 to 4 unit properties, were frequently noted by interviewees. Threshold issues standing in the way of the County getting a better handle on these problems included:

- Lack of an inventory of rental properties.
- Lack of information, including contact information, on rental property owners.
- Lack of a straightforward method to set minimum property standards.

The County should consider adopting a rental property registration and licensing ordinance, through which they can address all three of these issues. As noted earlier, that action may fall within the County's home rule powers, a matter which would have to be determined by the county attorney to be certain that no state statutes or case law offer impediments to enactment of such an ordinance. In the event that the County moves forward with this

²³ Fees and fee schedules are discussed in further detail in section 4.G of this report.

recommendation, once it is in place, it may also want to consider adding a Good Landlord program, as discussed below.

TABLE 6: TENURE BY TYPE OF PROPERTY IN UPTOWN BUTTE²⁴

CENSUS TRACT	PROPERTY TYPE	OWNER- OCCUPIED UNITS	RENTER- OCCUPIED UNITS	RENTAL %
1	1 family	918	490	38%
	2-4 family	105	271	72%
	5+ family	0	528	100%
2	1 family	933	538	37%
	2-4 family	21	433	95%
	5+ family	0	216	100%
UPTOWN	TOTAL	1872	2476	57%

1. Overview

Rental registration and licensing ordinances provide ground rules for rental regulations, establish minimum property maintenance standards and set licensing fees. The goal of rental registration and licensing is not to discourage investors or rental housing, but to promote responsible ownership, establish threshold standards for rental housing in the community, and ensure that owners comply with those standards.

A typical rental registration ordinance requires contact information for the property owner or registered agent and basic property information including the number of units. The goal of rental registration is to create a database of known rental properties and to ensure that the County has the information necessary to communicate with property owners and ensure proper service of process. Creating a rental housing registry is a starting point for a regulatory strategy leading to greater compliance with local standards and a higher quality of rental housing generally.

Rental licensing is based on the principle that offering property for rent to members of the public is a business activity appropriately subject to licensing to protect the public interest.²⁵

²⁴ This data is taken from estimates created for the five-year 2008-2012 American Community Survey on the basis of sample data and has a significant margin of error. It should be noted that for that reason the owner/renter distribution shown in Table 6 differs somewhat from that shown in Table 1 on page 5.

²⁵ The County already licenses a long list of business activities, ranging from itinerant vendors to newspapers and water companies. The licensing of rental properties is arguably a matter of greater direct impact on the health and safety of County residents than many of the activities already subject to licensing:
<http://www.co.silverbow.mt.us/546/Business-License-Fees>

Coupled with rental registration, licensing is designed to ensure that all properties offered for rent meet minimum health and safety standards. In addition to the information required by a rental registration ordinance, rental licensing includes an inspection of the property to ensure that it meets appropriate health and safety standards to be used as rental housing. It is important to stress that the licensing inspection is limited to health and safety matters, and does not imply compliance with all code provisions. If the property does not meet health and safety standards set by the municipality, the owner must make the necessary repairs to the property or risk being denied a license, and with it the legal right to rent the property to a third party.

The basic steps for rental property registration and licensing include:

- The property owner must obtain and complete the rental registration form.
- The property owner must apply for the rental license and pay the set fees.
- The property owner must undergo a rental property inspection.
- If the property passes inspection, the license is granted to the property owner.
- If the property fails inspection and the violation is not substantial so as to prevent occupancy, the license is issued conditioned on fixing the violation within a reasonable time.
- If the property fails inspection and the violations are fundamental to health and safety, the owner is ordered to vacate the property until the violations have been corrected.

The key to a successful rental registration and licensing program is to ensure that the system does not impose undue burdens on either owners or regulators. If the County lacks the personnel to conduct timely inspections, it may want to create a list of approved private inspection firms with whom property owners can contract to get their properties inspected, for a standard fee established by the County.²⁶

2. Re-inspection requirements

Periodic re-inspection of properties is an essential element of a rental licensing ordinance. There are several ways to establish re-inspection schedules. The simplest is to require all rental properties be re-inspected at a set time. The re-inspection should not be onerous to the municipality or the property owner. A three year re-inspection cycle is common. A more complicated, but more productive and cost-effective system varies the cycle on the basis of how well the property is maintained and how well the owner complies with County

²⁶ Boulder, Colorado operates a rental licensing program which provides that owners can have their properties inspected by any firm on a list of firms licensed by the city to perform inspections. Boulder also provides a list and map of all licensed properties on their web site.

See <https://bouldercolorado.gov/plan-develop/rental-housing-licensing>

requirements. To do that, however, the County must have a good property data system that tracks code violations, police calls, neighbor complaints and the like. A model program is that of the city of Brooklyn Center, Minnesota, which ranks properties from 1 to 4, inspects category 1 properties (with at most one violation or police call in a year) every three years, and category 4 properties every six months.²⁷

3. Getting landlords into the system

Experience has shown that many landlords, particularly those outside the community, tend not to register their properties and obtain licenses without active steps by the County. If the County wants its rental licensing program to be effective, it will have to take proactive steps to get landlords into the system. Three methods for identifying rental properties and locating the property owners are mass mailing, transaction-driven mailing and citizen reporting. None of these methods will capture *all* absentee-owned rental properties, but collectively may enable the County to reach 80-90% compliance.

- *Mass mailing*

The first step is to create a list of ‘presumptive’ rental properties, by comparing property addresses to the name and address of the person to whom property tax bills are sent, and sorting by the latter address. Properties where the two addresses are different are considered presumptively absentee-owned rental properties. This list is used as a basis for a mailing to the owner of record of each presumptive rental property. The mailing should consist of a packet containing the following information:

- A cover letter explaining that all rental properties in the municipality are subject to the licensing ordinance.
- A flier explaining the provisions of the licensing ordinance and other important rental housing regulations.
- A licensing form, for the owners of rental properties to return to the city with the appropriate fee, if any; and
- An affidavit of non-rental status, a sworn document which the owner can complete and return (without a fee) if the property is not being used as a rental property.

A follow-up letter should be sent to owners who fail to respond, one way or the other, to the initial mailing. This letter should go out 30 to 45 days after the initial mailing.

- *Transaction-driven mailing*

²⁷ See <http://www.cityofbrooklyncenter.org/index.aspx?NID=237>. Owners of category 3 and 4 properties are also required to participate in various remedial programs designed to address their deficiencies as property owners and managers.

The County Land Records Office should provide the office responsible for the rental licensing program with an electronic list of sales transactions on a regular basis, at least monthly. As new property transactions take place, the same packet described above should be mailed to the new owner of record, making it clear that if the property has been acquired for the purpose of rental, it must be registered and licensed. Since the buyer may not be familiar with the Butte area, the mailing should also include other information likely to be useful to a property owner such as emergency phone numbers, landlord-tenant ordinances, code requirements, and trash collection schedules.²⁸

- *Citizen reporting*

A third method for collecting information on rental properties is citizen reporting. Although the majority of landlords are likely to respond to mailings, a significant number, including some of the more problematic landlords, will remain unlicensed. In order to get more of them licensed, local governments can create a system on the municipal web site that relies on residents' eyes and ears to report unlicensed landlords. This can be an effective way of supplementing the other strategies suggested above, if the community feels that it is appropriate, and would not be seen as potentially discouraging landlords from complying.

The first step to making this possible is creating and posting an accessible, searchable data base of all of the *licensed* rental properties, with their owners' names and contact information in a visible location on the municipal web site. The next step is to create on the website a simple means by which residents or neighborhood organizations can report properties that (1) they believe to be rental properties; and (2) do not appear in the County's licensed rental property data base. This can take the form of a box in which the resident can type in the address of the property being reported.

In contrast to filing a complaint, where the complainant must usually identify herself, the process should be anonymous. Requiring people who report properties to identify themselves discourages reporting, and is not legally required, since reporting a property does not trigger any legal intervention such as a fine or an inspection.

4. Point of sale ordinance (certificate of occupancy)

A point of sale ordinance is a mechanism by which rental properties are identified, and inspected at the time that a conveyance takes place, at which point they are issued a certificate of occupancy establishing that the property meets required health and safety standards. A

²⁸ It is worth exploring whether the State of Montana would be able or willing to add questions about rental use to the Realty Transfer Certificate (<http://revenue.mt.gov/Portals/9/property/forms/488RTC.pdf>). Doing so would require only a minor change to the form and would provide invaluable rental property information to all Montana municipalities.

point of sale ordinance can include all property ownership transfers, or it can be limited to transactions involving rental properties.

Point of sale ordinances require that the subject property be inspected and issued a certificate of occupancy. They are generally more extensive than rental licensing inspections, and require a higher maintenance standard. A point of sale ordinance can require that the property be in compliance with County housing maintenance codes. This becomes an effective way of establishing and maintaining a sound level of quality control for the area's rental housing stock.

No research has been done to determine whether enacting a point of sale ordinance would be allowed by existing Montana statutes and case law. If it is determined that such an ordinance could be enacted, the County may want to consider enacting an ordinance limited to rental properties, which would require inspection and a certificate of occupancy at these events:

- Change of ownership of property already in rental use
- Conversion of previously owner-occupied or vacant residential properties into rental properties
- Tenant turnover and re-occupancy

Care must be taken, however, to ensure that the County can carry out the inspections needed in a timely fashion. Delays in closing on a property or filling a vacancy because the County cannot schedule a timely inspection can cause sellers, buyers, landlords and tenants material harm. Again, as noted above, with appropriate oversight, inspections could be carried out by a qualified third-party entity.

5. Good landlord program

Ultimately, the goal of landlord regulation is not only to discourage bad property management, but to encourage responsible landlords who maintain their properties well and provide a service to the community by providing good quality rental housing. Thus, as a step following adoption and implementation of rental licensing, the County may want to consider what is known in some communities as a Good Landlord Program, a series of resources and incentives to motivate responsible rental property management.

Under any Good Landlord Program, the local government establishes a set of standards for what constitutes a good landlord, and offers a variety of financial and other incentives to landlords who meet those standards. Typical standards involve:

- Compliance with code requirements
- Participation in Crime-Free Housing or similar programs offered through the County Law Enforcement (Sheriff) Department
- Compliance with reasonable standards of tenant selection, and use of an appropriate lease document

- Timely payment of property tax and other municipal billings

Incentives can include, among others, a reduction in municipal fees, expedited processing of permit applications, training and technical assistance, ‘recommended landlord’ status for housing vouchers, and access to loans to upgrade properties.²⁹ Under a state enabling statute, Utah municipalities are authorized to impose a Disproportionate Impact Fee on rental properties, which is rebated to landlords who qualify for the municipality’s Good Landlord Program.³⁰ These programs are widely credited with improving the quality of rental housing in the cities where they have been adopted.

D *Creating a Demolition Protocol*

Controversies over demolition were brought up often during our visit, in particular instances where the Historic Preservation Commission or non-governmental historic preservation advocates objected to demolitions being proposed by the Community Enrichment Department. While these differences are grounded as much in fundamental policy and value differences as they are in disagreements about specific decisions, a clear protocol setting forth the circumstances under which demolition should take place, and what factors should be examined before a decision to demolish a building can be taken, could reduce the areas of disagreement. Before presenting what such a protocol might look like, some brief general observations are in order.

Demolition of any building, particularly in a community as rich in history as Butte, is invariably a painful issue. Still, the reality is that over time, areas change and evolve, and some old buildings have to be removed in order to further positive change in the area. Vacant dilapidated buildings have a deleterious effect on their surroundings, both with respect to immediate health and safety concerns as well as more indirect effects on property values and community morale. Recent research has shown that removal of dilapidated vacant buildings by demolition, in and of itself, can have a positive effect on both real estate equity and mortgage foreclosure levels in the vicinity.³¹ These effects were independent of whether the outcome of demolition was a vacant lot³² or construction of a new building.

²⁹ For a detailed discussion of good landlord incentives, see Mallach (2010) *Meeting the Challenge of Distressed Property Investors in America’s Neighborhoods*, published by the Local Initiatives Support Corporation, and available at http://www.lisc.org/docs/publications/102010_Distressed_Property_Investors.pdf.

³⁰ For the Utah enabling statute, see Utah Code §10-1-203.5. For a typical municipal program, see http://www.ogdencity.com/en/doing_business/business_licensing/good_landlord.aspx?p=1

³¹ See Nigel Griswold et al. (2014) *Estimating the Effect of Demolishing Distressed Structures in Cleveland, OH, 2009-2013: Impacts on Real Estate Equity and Mortgage-Foreclosure*. Available at <http://www.wrlandconservancy.org/pdf/FinalReportwithExecSummary.pdf>

³² Where demolition will result in a vacant lot that is unlikely to be reused in the immediate future, it is important that the lot be modestly but appropriately landscaped and fenced upon completion of demolition to deter

A central question in all cases of potential demolition is what are the alternatives? In theory, each case should offer four alternative resolutions:

- Demolish the building
- Mothball the building, securing it, stabilizing it structurally and preventing water damage for future reuse
- Rehabilitate the building and restore it to productive use
- Let it remain vacant, dilapidated and unsecured.

In practice, the second and third options are often not realistically available, whether because of economic feasibility, cost, or the owner's unwillingness to place the property in the hands of someone capable and willing to restore it to productive use. While the County has the power to enter on property and abate nuisance conditions, its ability to do so is severely limited by fiscal constraints.³³ Where those options are not realistically available, allowing a property to remain vacant and continue to be a public nuisance that is harming its neighbors is neither responsible stewardship nor sound public policy.

A demolition protocol is a decision-making tool that makes the responsible parties take all the relevant factors into account before making a decision to demolish a property. Table 7 summarizes what we consider to be the relevant factors. The condition of the building is perhaps the most important factor, but not the only one. While some extreme conditions, such as imminent building collapse, dictate that the building must be demolished whatever the other considerations involved, most demolitions involve a balancing process.

There are different ways to implement a demolition protocol. One approach is by using what is known as a 'decision tree', which walks the user through the different elements of the protocol step by step. An example of a demolition decision tree, taken from Alan Mallach's book *Bringing Building Back*, is shown as Figure 7 on page 36. The figure, which is presented for illustration purposes, shows a decision tree that might be used in a community with a housing surplus such as in Butte, as distinct from one experiencing substantial growth and housing shortages, in which case the considerations would be different. Should the County want to use a decision tree, the actual elements should be tailored to local conditions, perhaps using some of the factors shown in Table 7.

potential dumping and inappropriate use. The Pennsylvania Horticultural Society's Philadelphia LandCare program is a good model. See <http://phsonline.org/greening/landcare-program>

³³ Mont. Code Ann. § 27-20-102 et seq. providing for appointment of a receiver for real property appear to limit appointment to an entity that has a direct ownership or financial interest in the property, presumably to enable that entity to safeguard its interests. While it is *possible* that the County could enact an ordinance creating a receivership program under its home rule powers, the legal authority to do so would appear much weaker than that associated with other possible local ordinances discussed elsewhere in this report. It may be worth exploring the possibility of state legislation in this area, which might take the form of amendments to the existing statute.

TABLE 7: FACTORS AFFECTING THE DEMOLITION DECISION

FACTOR	ISSUES/QUESTIONS
Architectural/historical value	<ul style="list-style-type: none"> Does the building have architectural or historic features worthy of consideration?
Reuse potential of building	<ul style="list-style-type: none"> Is the building less desirable from a market or reuse perspective, by virtue of small size, location or physical character; or Does it have greater reuse potential by virtue of its attractive appearance, high quality construction, or architectural or historical value?
Condition of building	<ul style="list-style-type: none"> Is the building structurally sound so that repairs needed to restore it to use can realistically be made? Can the repairs to the building needed to restore it to use be carried out for a cost that is economically feasible in light of the post-rehabilitation value and marketability of the building?
Neighborhood or historic fabric	<ul style="list-style-type: none"> Is the building located in an area where the fabric has largely been lost through previous loss of buildings and incompatible land uses; or Is the building in an area where the fabric is still strong? If the latter: <ul style="list-style-type: none"> Does the building contribute materially to the fabric of the area? Can productive use be made of the vacant lot that would result from the demolition?
Nuisance level	<ul style="list-style-type: none"> Does the nuisance impact of the building and the harm it is doing, in the absence of immediate reuse potential, outweigh the benefits of saving it for future use; or Does the reuse potential of the building, even if not immediate, outweigh the harm it does in its present condition?

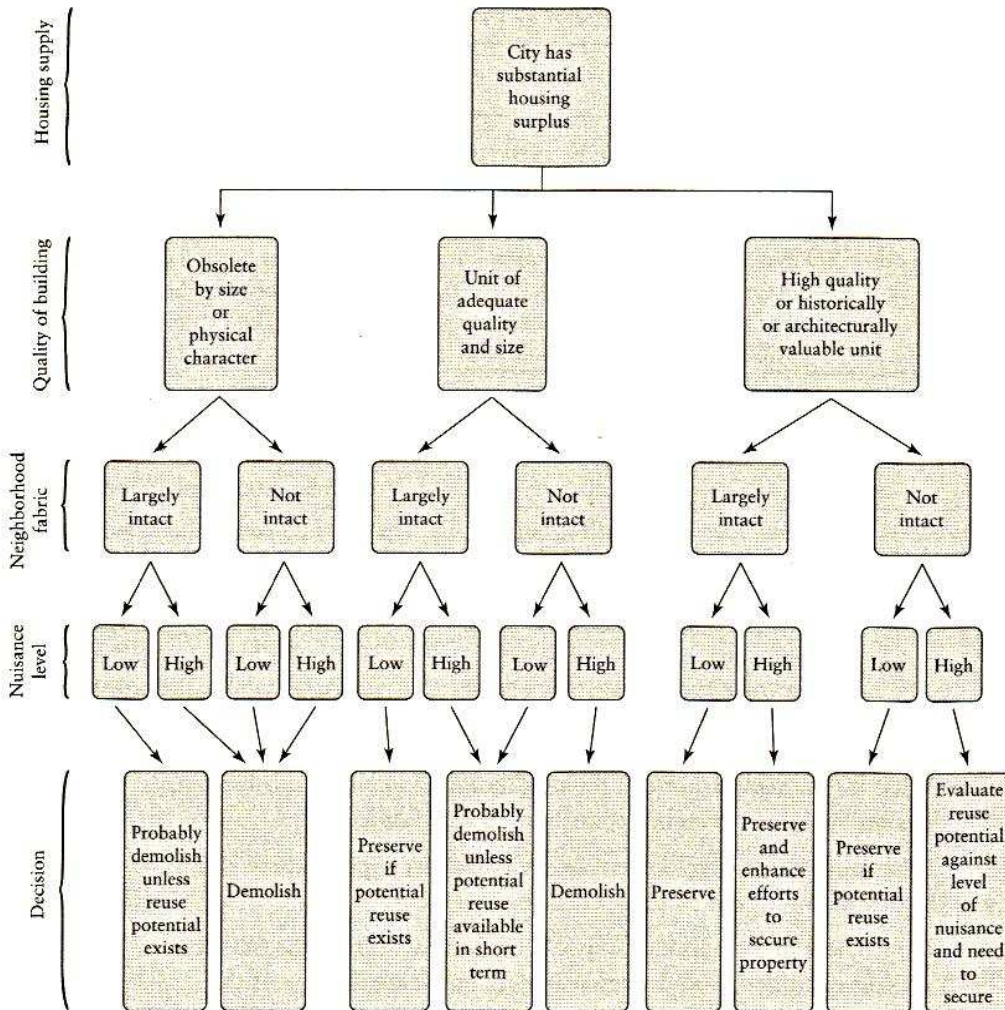
While in a few cases, the decision tree points to a clear outcome, in most cases it suggests *the direction of* the most appropriate outcome rather than the outcome itself – exercise of the users’ judgment is still a critical part of the process. A decision tree simply makes the considerations visible and transparent, however, so they can be discussed more thoughtfully and the range of disagreement narrowed.

Given how important this issue is, the County should prepare and adopt a formal written document to govern demolition, setting forth the following elements:

- A policy statement, describing why demolition may be necessary in some cases, and the County’s approach to balancing historical and other considerations.
- A description of the process followed by the County when demolitions are proposed, whether by the County or by a private property owner, including a flow chart of the process showing steps and approximate timelines.
- A description of the factors considered by the County, and the manner in which they are considered. This could use the material shown in Table 7 and Figure 7 above as a starting point.

- A description of the process by which interested parties can appeal from County decisions.

FIGURE 7: ILLUSTRATIVE DEMOLITION DECISION TREE



SOURCE: From Mallach (2010), *Bringing Buildings Back: From Abandoned Properties to Community Assets*

In some cases, the demolition of a structure in Uptown Butte may result in the loss of a recognizable historic resource, a loss which is suffered by the community as a whole. In those cases, it is not unreasonable for the County to require some form of mitigation by the owner to compensate for this loss. If the County decides to do so, however, it is important that the authorization and standards for any mitigation required be established clearly in a County ordinance, and if necessary, spelled out in guidelines formally adopted by the Historic Preservation Commission.

E Homeowner strategies

Uptown's future vitality is dependent on its stability as a residential community with a high level of owner-occupancy. This vitality is at risk. Between 2000 and 2010 the homeownership rate in Uptown – already relatively low – declined at a rate roughly three times that of the rest of Butte-Silver Bow; as noted earlier, the percentage of absentee-owned single family houses in Uptown is far greater than the national average. A number of County officials and others noted during the site assessment that many lower-income, particularly elderly, homeowners in Uptown were living in substandard, unhealthy conditions because they lacked the resources to make needed home repairs and upgrades. To address these two issues, the County should consider developing strategies in two areas:

- (1) Helping existing lower-income homeowners, and
- (2) Encouraging or incentivizing more people not currently living in Uptown to buy homes in the area, in order to strengthen the market and raise property values.

In light of concerns (political, not legal) expressed about using public resources to help private citizens, these strategies may require careful preparation of the ground with the Commissioners and the general public, including explaining how they will benefit the public as a whole as well as the individuals involved, before being introduced. These strategies are appropriate uses for Tax Increment Financing (TIF) resources that will be generated by the newly-adopted Urban Renewal District.

1. Helping lower-income homeowners

There are roughly 550 homeowners in Uptown with household incomes under \$25,000, making up roughly 1 out of every 8 households in the area, and more than 1 out of every 4 homeowners. As noted earlier, the great majority live in census tract 1, the eastern part of the area. Many of them live in old houses, often in substandard, unhealthy conditions. Many if not most are likely to lack savings to cover the cost of needed repairs and cannot borrow these funds from conventional sources, either because of poor credit or their inability to repay the loan. The use of public funds, particularly federal Community Development Block Grant (CDBG) and HOME funds, to assist such homeowners to make needed repairs is widespread throughout the United States, and is explicitly authorized, without limitation as to the source of those funds, by Montana law at Mont. Code Ann. § 7-15-4103. Helping these homeowners to improve their properties not only enables them to live in decent conditions, but enhances the quality of life and market values for the entire Uptown area, benefiting the entire community.

The County should consider establishing a program to assist income-qualified homeowners in need, perhaps by setting aside an amount (say, \$100,000-\$250,000) of TIF proceeds on an annual basis for the purpose. The County should also consider applying to the state of Montana

for an allocation of CDBG funds for this purpose.³⁴ While the greater part of the funds should be limited to repairs and improvements directly related to health and safety, a small amount should also be used where necessary and appropriate on exterior improvements, such as façades and fencing, to improve the property's curb appeal. This program should be coordinated to the extent feasible with weatherization assistance available through the District XII HRC to leverage limited local resources.

Rather than making outright grants, the County should consider designing this program as a loan program, where the proceeds become a mortgage on the property, subordinated to any existing mortgages.³⁵ To the extent that homeowners are unable by virtue of low incomes or temporary hardship to make regular loan payments on the full amount, the County would make the remainder a 'silent' mortgage; that is, one where no payments are required, but where the amount becomes due with interest at a modest rate at the time the property is sold.³⁶ In that manner, the funds would revolve or – if no longer needed for the purpose – be returned to the County treasury. In addition to benefiting the owners, this program would yield direct benefits to the County by increasing the value not only of the property being improved, but of neighboring properties as well.

2. Incentivizing new home buyers

While it is important to support existing owners, it is equally important to draw new homeowners into Uptown; in particular, to attract homebuyers who will take on houses that are in need of significant upgrading or rehabilitation, and who will put in the effort and resources needed to bring old houses back to life. While some of this is happening, particularly in the area near St. James and Montana Tech, the County needs to expand the pool of homebuyers. The financial incentives we recommend below should be seen as part of a total package, including:

- Active promotion and marketing of Uptown as a place to buy a house
- Assistance from the County in addressing any permitting, historic preservation and/or code compliance issues arising in the course of rehabilitation.³⁷

³⁴ While the availability of these funds is limited, and the number of legitimate competing uses within the county is considerable, this should nonetheless be seen as a priority area, because of the potential for positive impact on the housing market.

³⁵ Approximately 45% of the low income homeowners in Uptown have a mortgage on their homes.

³⁶ The amount the owner would pay, and the percentage that would be 'silent', could be determined on the basis of a formula that factored in household income and other ongoing payment obligations. It could be adjusted in the case of temporary hardship.

³⁷ Homebuyers should not be expected to comply with Secretary of Interior standards, but exterior work should be reviewed to ensure that it is compatible with the character of the historic district. The pattern book discussed

Within this framework, individuals and families who buy a house in need of major work to be suitable for occupancy would be eligible for the following benefits:

- Historic district property tax abatement pursuant to Mont. Code Ann. §15-24-1601; and
- A rebate of approximately one-third of the actual expenditures for rehabilitation up to a maximum of perhaps \$15,000.³⁸

It is important that this be a rebate, rather than a grant. Funds would not be provided until the owner had actually done the work and had it approved by the County building inspector. Moreover, the funds would be provided as a loan subject to a pledge by the owner that he or she would occupy the house. Twenty percent of the loan would be forgiven for each year that the owner remained in the house, so that after five years of owner-occupancy, the entire loan would be forgiven. No payments would be required during the period that the loan was in place.

The County should set explicit criteria for eligible homebuyers and properties. These incentives should then be available *as of right* to any eligible homebuyer of an eligible property, who meets the requirements of the program; that is, restores the property and occupies it as a homeowner. In other words, every prospective buyer should know that, if she follows the program requirements, she will get the incentives. That certainty makes it a much more powerful incentive than if the buyer has to go through an uncertain, discretionary process, and does not know if she will qualify until after she has already bought the house. At the same time, the County should track market conditions in Uptown closely; as they improve, the incentives should be reduced, and eventually entirely phased out.

The reason this particular benefit would be offered to new buyers – but only those buying houses in need of major repair – is because it is specifically designed to enhance the housing market by overcoming the current market reality that the after-rehab value of many houses in Uptown is not high enough to fully compensate a buyer for both the cost of as-is acquisition and the cost of rehabilitation. The goal of the incentive is specifically to bridge the ‘market gap’, and motivate greater homebuying activity in Uptown. That said, it remains essential that the County not favor new buyers over existing homeowners – any strategy must address the needs of both groups.

above in Section 3E is an invaluable tool to foster compatible rehabilitation without imposing undue burdens on property owners.

³⁸ These amounts are suggested based on a preliminary sense of what is likely to be an effective level of assistance that is also financially sustainable. The actual percentage and amount to be offered should be the subject of further analysis.

F Addressing problem properties – further issues

1. Property tax foreclosure

Butte-Silver Bow County, like many counties around the United States, is burdened by an ineffective property tax foreclosure system. The municipality must wait three years after the first year of tax delinquency to foreclose on tax delinquent properties. Thereafter, title issues often prevent the transfer of an insurable title. While many property owners redeem their property, some do not. According to some observers, these owners often abandon their property, leading to deterioration and decay, which may require the County to step in and abate the nuisance, even to the point of demolishing the property.

At the same time, it appears that the County can expedite the process by bringing a quiet title action to gain title. While we are not suggesting that the County initiate large-scale land banking activity, the County should consider selectively using its ability to take properties through tax foreclosure where they are in strategic locations, represent particular problems, or offer valuable opportunities.

2. The Community Decay Ordinance

The County's Community Decay Ordinance establishes an administrative process to provide notice of and cite violations of the decay ordinance. It also authorizes the County to enter properties to remediate nuisance conditions and to assess the costs incurred by the County to abate the nuisance.³⁹ If the property owner fails to pay the costs, the violation becomes a lien on the property and may be added to the property tax bill for collection in the same manner as property taxes. For truly egregious violations, the property owner may be prosecuted in City Court and if found guilty of the criminal misdemeanor of maintaining a public nuisance fined \$500. Since each day the nuisance exists is a separate offence under the ordinance, a daily fine up to \$500 can be imposed.

In recent months, the County has stepped up efforts to encourage compliance with the Community Decay Ordinance. Initial efforts, including so-called 'good guy' letters, appear to have been met with considerable success, showing the value of proactive ordinance enforcement. Nevertheless, if residents do not comply, the remedies available to the County are limited. The County can abate the nuisance, but may have difficulty recovering its costs, or it can take the owner to court.

The County should consider amending the Community Decay Ordinance to restructure its

³⁹ The Butte-Silver Bow Decay Ordinance can be found by following the link: (https://library.municode.com/HTML/16233/level2/TIT8HESA_CH8.06CODE.html#TIT8HESA_CH8.06CODE_8.06.05OPREN)

enforcement powers. The goal of any code enforcement action is voluntary compliance from the property owner. The more tools the community has available to motivate responsible property ownership the greater the likelihood of obtaining compliance. Therefore, we recommend expanding the remedies of the ordinance to give the County the authority to levy fines for non-compliance through an administrative process, rather than through a criminal judicial procedure. Unpaid fines can be collected in the same manner as property taxes. Successful code enforcement programs that employ an administrative enforcement system that provides for fines for failing to remediate violations include the City of Baltimore Housing Department⁴⁰ and the City of New Orleans Department of Code Enforcement.⁴¹ The City of New Orleans proactively enforces health and safety codes, while continuing to respond to citizen complaints.

In New Orleans, after a property has been inspected and found to be in violation of the health or housing code, a citation is issued setting the matter for hearing. At the administrative hearing the property owner may:

- Prove that he has complied with the order to remedy the violation;
- Show why the property is not in violation of the code;
- Enter into a compliance agreement to make repairs within a specified time; or
- Plead guilty and pay the set fine and fees.

If a property owner fails to appear at the administrative hearing, the property is automatically found in violation and a fine is imposed. Failure to pay the fine results in a lien being placed on the property. The city has the option of remediating the nuisance at its cost or placing the property into the sheriff sale process. If the city remediates the nuisance it adds the abatement costs and administrative fees to the lien. After due process, the unpaid lien is subject to foreclosure, seizure and public sale. The foreclosure process is analogous to a mortgage foreclosure and cleans the title of all outstanding encumbrances making it insurable and marketable.

G. Generating resources for change

One of the greatest constraints affecting the County's efforts to transform Uptown Butte is the limited amount of resources available. This is likely to be an ongoing problem, and no silver bullet is likely to be available. At the same time, this is an issue that calls for some future exploration.

Enacting the ordinances and reforms described above, for vacant property registration, rental

⁴⁰ http://www.baltimorehousing.org/code_enforcement

⁴¹ <http://www.nola.gov/code-enforcement/>

registration and licensing, and code enforcement liens, will generate some additional cash flow. Both the vacant property and rental ordinances should have fees associated with them. Fees should not be treated, however, as a means of generating revenues for the County's general fund. In the case of rental properties, where the goal is compliance with property standards and responsible ownership, fees should be set low, so that they cover no more than the cost of administering the ordinance and conducting any necessary inspections.

Fees for vacant properties, particularly if the County focuses on the vacant properties in the commercial core, can appropriately be higher. The cost to the community of these properties, both in direct costs to County government for police, fire, and code enforcement services, and in indirect costs such as the loss of property value in the surrounding area, is significant.⁴² Moreover, the purpose of the fee is at least in part to motivate the owner to put the property back into productive use. Thus, a fee as mentioned earlier, which begins at a modest level, but increases with every year that the property remains vacant may deserve serious consideration.

While fines should never be outrageous or unconscionable, they *should* be significant, in that they should reflect the damage that problem properties cause and serve as a deterrent to property owners. All proceeds from fees and fines, other than a modest amount to cover the County's administrative costs, should be earmarked to support strengthening enforcement as well as affirmative revitalization strategies in the Uptown area.

Tax Increment Financing is another important tool. While up to now it has only been used in conjunction with non-residential development, and with large-scale development in the commercial core, it appears that the County is considering using TIF proceeds in the future to support residential projects as well. This is an extremely important step; two appropriate and highly cost-effective uses for TIF funds are support for low-income homeowners and homebuyer incentives, as discussed in subsection 4E above. Depending on the amount of TIF funds available, the Urban Revitalization Agency may want to consider also using funds for acquisition of problem and vacant properties, in order to expedite their reuse.

Finally, one somewhat outside the box suggestion should be added. Although Butte is not a wealthy community, a few very wealthy individuals with family foundations have major business connections to the community. Many locally-based foundations around the United States provide strong support for community revitalization efforts. While many are in large cities, such as the Gund and Cleveland Foundations in Cleveland and the MacArthur Foundation in Chicago, the Lancaster County Community Foundation in Lancaster PA, has played a major role in that small city's revitalization efforts. Serious consideration should be given to

⁴² Depending on the specific provisions of Montana statutes or case law, the county may want to do an analysis prior to enacting such a fee in order to document that it does not exceed the costs, direct and indirect, of vacant properties to the county. In an analogous situation, the state of Utah allows municipalities to impose what they call disproportionate impact fees on rental properties, but only after the municipality has conducted a formal study to determine the disproportionate cost of rental properties in the community. See Utah. Code § 10-1-203.

approaching both of the families or family foundations in question in an effort to get them to support some of the work taking place or planned for Uptown.

Since neither currently supports community revitalization efforts, the approach would have to be carefully planned, and pursued directly by the Chief Executive. A specific and multi-year ‘ask’ needs to be developed, and the County needs to reach the key individuals informally through intermediaries who are willing to advocate on the County’s behalf, in order to begin the conversation. It must be a public-private partnership, rather than exclusively coming from County government. Furthermore, any proposal must make clear from the beginning that the County and its partners are not looking for a handout, but are committed to using local resources to the maximum extent realistically feasible for the activities for which they are seeking support – but that, simply stated, the County’s resources are not adequate for the challenge.

H Pursuing legislative strategies

Finally, we would urge the County and its partners to explore the possibility of seeking action by the Montana State Legislature to help address some of the issues that we have touched upon in this report. The experience in many other states – across political lines – shows that when effectively presented, broad support can be garnered for measures that can enhance local governments’ ability to solve their problems, as long as the rationale for the measures is clearly defined, and ideological ‘hot button’ issues avoided. When talking about vacant and problem properties, the property rights argument cuts both ways: while owners’ property rights must be respected, so must the property rights of other owners, who are harmed by neglect and abandonment of nearby properties. It is also important to make distinctions, and recognize differences. An abandoned shack in the middle of the mountains far from the nearest other house may be an eyesore, but it’s a fundamentally harmless one. The same shack in the middle of Uptown Butte is not just an eyesore, but a public nuisance, doing harm to its neighbors and the community as a whole.

Some possible areas for legislative action might include the following:

- Property tax foreclosure of vacant and abandoned properties

Technical changes to law could be enacted to allow more expedited foreclosure with stronger provisions to ensure marketable title for properties that meet a statutory definition of vacant and abandoned property. It may be appropriate to define the scope of this narrowly, to include only properties in urbanized areas, and only properties that have been determined (under the community decay or similar ordinance) to be public nuisances.

- Vacant property receivership or conservatorship

As discussed earlier, it does not appear that Montana law provides an adequate statutory basis

for receivership of vacant properties by parties, such as County government, that do not have a direct financial or ownership interest in the property. Receivership is a powerful tool both to hold owners accountable for their properties, as well as to gain control of properties where all other efforts have failed.⁴³ Under receivership (or conservatorship, the term used in Pennsylvania law) a local government, or in some cases a non-profit entity,⁴⁴ can ask a court to designate it the receiver of an abandoned property, in order to restore it to productive use. In light of property right concerns, any effort to pursue this should make clear that (1) any property owner is given ample notice and opportunity to restore the property both before and during the court proceeding; and (2) the owner is given the opportunity to regain control of the property after the conservatorship by making the receiver whole.⁴⁵ It is possible that the changes to state statutes needed to provide local governments in Montana with this tool could take place through changes to the language of Mont. Code Ann. §27-20-102 et seq., rather than through enactment of an entire new statute.

Finally, one area which was specifically highlighted was the need for revolving funds for nuisance abatement, demolition, and rehabilitation. In light of the surplus in the Montana state treasury, which was estimated at over \$500 million – or roughly 10% of the state budget – at the end of the 2012-2013 fiscal year,⁴⁶ it might well be timely to seek legislative authorization for such a fund, which could make loans⁴⁷ to local governments to create their own revolving funds, subject to state oversight. Creating such a fund would require that a coalition of cities and counties come together to advocate for the measure.⁴⁸

⁴³ An excellent article on receivership by Jim Kelly, of Notre Dame University Law School, is “Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment”, which appeared in 2004 in the *Journal of Affordable Housing*. It is available at <http://www.communityprogress.net/refreshing-the-heart-of-the-city-resources-9.php>

⁴⁴ Most statutes grant the power to seek a receivership to local governments, although some, like New Jersey, allow the municipality to delegate its power to a qualified nonprofit entity. Statutes in Illinois and Missouri allow non-profit entities to act directly to seek receiverships.

⁴⁵ The Baltimore receivership law does not permit the owner to come back after the property has been restored, but basically provides that if the owner fails to come forward at the court proceeding, the property is then sold outright. This is a more effective and efficient process, but it may be seen as too violative of property rights to be acceptable in some other contexts.

⁴⁶ *Missoulan*, Sept. 26. 2013.

⁴⁷ Loan terms would have to be flexible, because even in the most successful revolving funds, there is never any assurance that 100% of the funds will be recaptured, and it would be inappropriate for a struggling city or county to have to make up the difference with its own funds.

⁴⁸ It is worth noting that the six largest cities in Montana contain roughly 1/3 of the state’s population – this is actually a substantially larger share of statewide population than the six largest cities in seemingly more urban states like New Jersey, Pennsylvania or Ohio. While Butte may have proportionately more serious blight issues than Montana’s other cities, all of the state’s cities share the same problems to some degree.