

COLORADO OFFICE OF THE STATE AUDITOR



CITIES OF BLACK HAWK, CENTRAL CITY, AND CRIPPLE CREEK GAMING CITIES' USE OF STATE HISTORICAL FUND DISTRIBUTIONS



NOVEMBER 2017

PERFORMANCE AUDIT

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November 21, 2017

DIANNE E. RAY, CPA
—
STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the gaming cities' use of State Historical Fund distributions. The audit was conducted pursuant to Section 2-3-123, C.R.S., which requires the State Auditor to conduct, or cause to be conducted, performance audits of the State Historical Fund distributions that are transferred to the cities of Black Hawk, Central City, and Cripple Creek for preservation and restoration. The report presents our findings, conclusions, and recommendations, and the responses of the cities of Black Hawk, Central City, and Cripple Creek.

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REPORT HIGHLIGHTS



GAMING CITIES' USE OF STATE
HISTORICAL FUND DISTRIBUTIONS
PERFORMANCE AUDIT, NOVEMBER 2017

GAMING CITIES OF
BLACK HAWK, CENTRAL CITY, AND CRIPPLE CREEK

CONCERN

It is unclear whether the Cities of Black Hawk, Central City, and Cripple Creek have used all of their State Historical Fund distributions as intended by the Colorado Constitution and statute. The State Constitution and statute do not clearly define allowable uses of State Historical Fund distributions.

KEY FINDINGS

- The three gaming cities spend their distributions from the State Historical Fund for a variety of purposes, including grants to restore historic houses and buildings, land acquisitions, museum and visitor center operations, city infrastructure, marketing, community arts and culture, and general city operations.
- It is unclear whether the cities' spending aligns with the intent of the voters who passed the amendment legalizing limited gaming or with the intent of statute. For example, the cities spent about \$2.8 million between 2014 and early 2017 on such purposes as city infrastructure projects and operations at museums, visitor centers, and theaters, which appear to go beyond the common meaning of historic preservation and restoration but may fit within a broader definition.
- Black Hawk's grants to homeowners for restoring historic private houses did not consistently comply with federal historic preservation standards and state statutes. For example, in a sample of six grants totaling \$5.95 million in State Historical Fund distributions between 2013 and 2017, the City did not always assess the historic character of house interiors prior to demolition, and replaced or demolished some historic features or hardware to modernize interior spaces. Further, the City's Historic Preservation Commission did not review significant portions of the grants or project plans, as required by statute.
- Cripple Creek's grants for exterior improvements to historic structures did not consistently comply with federal historic preservation standards and state statutes. For a sample of six grants totaling \$37,782 in State Historical Fund distributions between 2014 and 2017, the City did not maintain records that it had assessed the historic features of the buildings. For two sampled grant projects, the City spent a total of \$5,147 to replace potentially historic features without documenting the rationale for replacement rather than repair.

BACKGROUND

- In 1990, Colorado voters passed a constitutional amendment allowing casino gaming in the cities of Black Hawk, Central City, and Cripple Creek. The amendment included a provision directing a portion of the gaming taxes paid by casinos to be deposited into the State Historical Fund and distributed to the three cities annually.
- The Constitution requires the cities to use the distributions for "preservation and restoration of the cities," while statute requires them to be used for "historic restoration and preservation."
- From 2014 to 2016, the cities received \$14.7 million in distributions—\$11 million to Black Hawk, \$1.3 million to Central City, and \$2.4 million to Cripple Creek.
- Black Hawk and Central City are home-rule municipalities; Cripple Creek is a statutory city.

KEY RECOMMENDATIONS

- Black Hawk and Cripple Creek should ensure grants using State Historical Fund distributions comply with statutes and federal standards for historic properties, and implement policies requiring (1) historic assessments of all grant projects to identify historic features and ensure they are preserved, whenever possible; (2) documentation of the rationale for replacement or demolition of historic features; and (3) approval of such replacements and demolitions by the Historic Preservation Commission.
- Black Hawk should require its Historic Preservation Commission to review rehabilitation grants and project plans for compliance with federal standards before projects are recommended to City Council.

Black Hawk partially agreed with the audit recommendations, and Cripple Creek agreed with the recommendation.



CHAPTER 1

OVERVIEW

In 1991, casinos began operating in the mountain communities of Black Hawk, Central City, and Cripple Creek (gaming cities) after Colorado voters approved a constitutional amendment allowing limited stakes gaming in these cities [Colorado Const., art. XVIII, sec. 9]. According to the 1990 ballot information booklet that was sent to voters (i.e., the “Blue Book;” see APPENDIX A), a major goal of the amendment was to save these historic mining towns from further deterioration and restore them to how they looked at their peak during the great Colorado gold rushes of the late 19th century. According to proponents of the ballot initiative, the idea was to generate economic activity in the cities through gaming and tourism and to create a steady stream of tax revenue that the cities could use for restoration and preservation.

In 2009, voters in the three gaming cities approved extending the limits on gaming hours, bet maximums, and the types of games that may be played, as allowed by Constitutional Amendment 50, which Colorado voters approved in 2008 [Colorado Const., art. XVIII, sec. 9(7)].

PROFILES OF THE GAMING CITIES

The three gaming cities, though similar in many ways, are quite distinct, as shown in EXHIBIT 1.1. For example, Black Hawk has just over one-tenth the population of Cripple Creek, but casinos in Black Hawk have twice as many gaming devices and generate almost 10 times the amount of gaming tax revenue that is remitted to the State.

EXHIBIT 1.1. PROFILES OF COLORADO'S THREE GAMING CITIES

	BLACK HAWK	CENTRAL CITY	CRIPPLE CREEK
Government	Home Rule Municipality	Home Rule Municipality	Statutory City
Total Area	2.7 sq. miles	2.4 sq. miles	1.5 sq. miles
Population ¹	155	771	1,341
Total Housing Units ^{1,2}	75	593	711
Median Household Income ¹	\$38,500	\$47,132	\$34,107
Number of Casinos ³	15	6	12
Number of Gaming Devices ^{3,4}	7,370	1,895	3,591
Adjusted Gross Gaming Proceeds for State Fiscal Year 2017 ⁵	\$609 million	\$71 million	\$133 million
Gaming Taxes Remitted by Casinos to the State for State Fiscal Year 2017	\$100 million	\$6 million	\$11 million

SOURCES: U.S. Census Bureau's *2011-2015 American Community Survey 5-Year Estimates* and *2016 U.S. Gazetteer Files*, and Division of Gaming's *Gaming Statistics* reported for State Fiscal Year 2017.

¹ Estimated for 2015.

² A housing unit is an occupied or vacant house, apartment, mobile home, group of rooms, or a single room that is intended for occupancy as separate living quarters.

³ As of June 2017.

⁴ Gaming devices include a physical or electronic slot machine, poker table, blackjack table, craps table, roulette table, dice, and the cards used to play poker and blackjack [Section 12-47.1-103(10), C.R.S.].

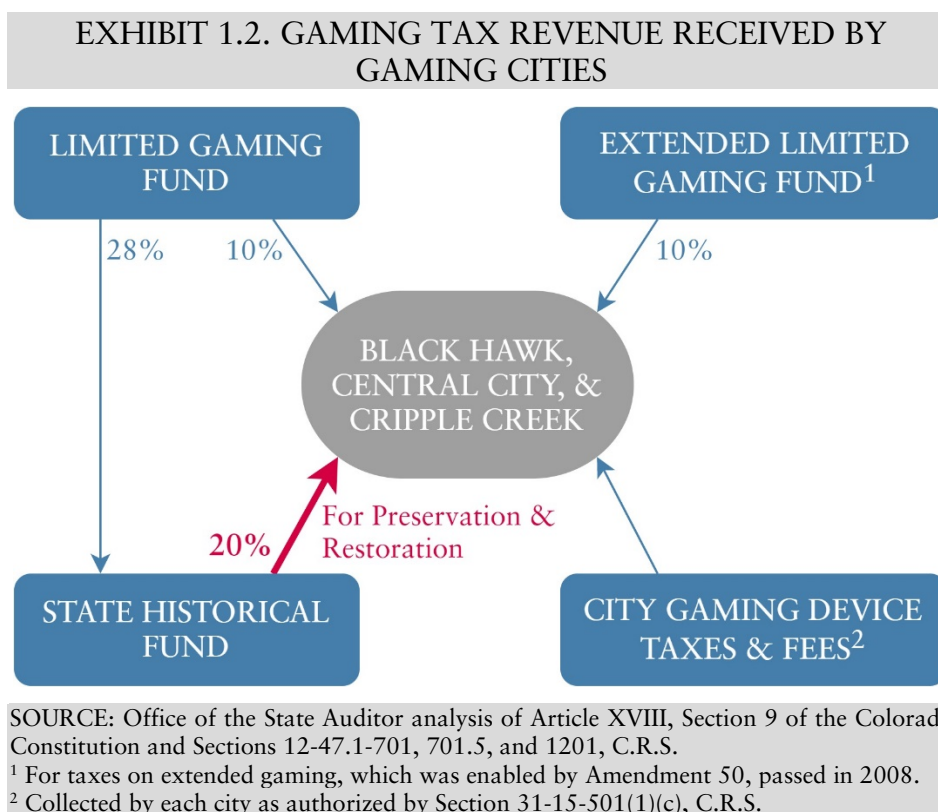
⁵ Adjusted gross proceeds are the total amount of all wagers made by players on limited gaming less all payments to players [Section 12-47.1-103(1), C.R.S.].

GAMING TAXES AND DISTRIBUTIONS

According to the Department of Revenue's Division of Gaming, since limited gaming was implemented in 1991, casinos in the three gaming

cities have produced more than \$16 billion in adjusted gross gaming proceeds, which are all players' bets minus payouts to winners. The Colorado Constitution (Art. XVIII, sec. 9) allows the State to impose a tax of up to 40 percent, as determined by the Limited Gaming Control Commission, on the casinos' adjusted gross proceeds. These taxes are collected by the Division of Gaming; deposited into the Limited Gaming Fund; and then disbursed to several state agencies, institutions of higher education, and the three gaming cities and their respective counties for a variety of purposes. According to the Division of Gaming, casinos in the gaming cities have paid more than \$2 billion in taxes since 1991.

EXHIBIT 1.2 shows an overview of the cities' gaming tax revenue. The red line represents the State Historical Fund distributions that are the subject of this audit. For a more detailed depiction of the flow of gaming tax revenues, see APPENDIX B.



As shown in EXHIBIT 1.2, 28 percent of the Limited Gaming Fund (excluding the portion used by the Division of Gaming, the Limited Gaming Control Commission, and other state agencies for

administrative expenses and that which is attributable to the extended gaming enabled by Amendment 50) is transferred to the State Historical Fund, managed by History Colorado, and 20 percent of that amount (i.e., 20 percent of 28 percent) is distributed to each city based on the proportion of gaming revenues generated in each city [Colorado Const., art. XVIII, sec. 9 (5)(b)(III)]. The Constitution specifies that these State Historical Fund distributions “shall be used for the preservation and restoration of the cities” [Colorado Const., art. XVIII, sec. 9(5)(b)(III)], and the General Assembly declared in statute that they should be used for “historic restoration and preservation” [Section 12-47.1-1202(1), C.R.S.]. The cities’ use of these distributions is the subject of this audit.

In addition to the State Historical Fund distributions, the cities receive other tax revenue from gaming, as follows:

- 10 percent of gaming revenue from the Limited Gaming Fund is distributed to the three gaming cities (after subtracting for Division of Gaming and Limited Gaming Control Commission administrative expenses) based on the proportion of gaming revenue generated in each city [Colorado Const., art. XVIII, sec. 9(5)(b)(II)].
- 10 percent of gaming revenue that is attributable to *extended* gaming that was enabled by Amendment 50 is distributed to the three cities (after subtracting for Division of Gaming and Limited Gaming Control Commission administrative expenses) based on the proportion of gaming tax revenues from extended gaming that are generated in each city [Colorado Const., art. XVIII, sec. 9(7)(c)(III)(B)].
- All three gaming cities collect occupational taxes or fees from casinos on each gaming device and table that they operate, including slot machines, poker and blackjack tables, and video gambling machines, as authorized by statute [Section 31-15-501(1)(c), C.R.S.]. These taxes and fees range from \$600 to \$1,265 annually per device.

The Colorado Constitution and statutes do not place conditions on how the money from these sources may be spent.

GAMING CITIES' STATE HISTORICAL FUND DISTRIBUTIONS

During Calendar Years 2014 through 2016, the three gaming cities received a total of about \$14.7 million in distributions from the State Historical Fund, which are disbursed annually in September. Each city recognizes its distributions as revenue in a dedicated fund. Because each city uses a different name for its fund, we refer to the funds generically as historic preservation funds. The city council of each city approves expenditures from the city's historic preservation fund through a budget process, and all three cities operate on a January-to-December fiscal year.

EXHIBIT 1.3 shows annual revenue, expenditures, and ending fund balances for each city's historic preservation fund.

**EXHIBIT 1.3. REVENUE, EXPENDITURES, AND BALANCES FOR
EACH CITY'S HISTORIC PRESERVATION FUND
CALENDAR YEARS 2014 THROUGH 2016**

	2014	2015	2016
BLACK HAWK			
State Historical Fund Distribution	\$ 3,496,881	\$ 3,691,877	\$ 3,844,192
Revenue from Other Sources ¹	46,772	13,123	18,307
Expenditures & Transfers Out	2,505,408	5,883,946 ²	2,449,976
YEAR-END FUND BALANCE	\$ 5,370,486	\$ 3,191,540	\$ 4,604,063
CENTRAL CITY			
State Historical Fund Distribution	\$ 410,818	\$ 405,480	\$ 431,725
Revenue from Other Sources ¹	25,792	43,538 ³	16,746
Expenditures & Transfers Out	457,585	326,048	403,054
YEAR-END FUND BALANCE	\$ 218,420	\$ 341,390	\$ 386,807
CRIPPLE CREEK			
State Historical Fund Distribution	\$ 787,362	\$ 793,842	\$ 827,218
Revenue from Other Sources ¹	39,742	279,770 ⁴	300,234 ⁴
Expenditures & Transfers Out	821,776	970,220	1,006,448
YEAR-END FUND BALANCE	\$ 1,726,176	\$ 1,829,568	\$ 1,950,572

SOURCE: Office of the State Auditor analysis of the gaming cities' annual financial statements.

¹ Revenue from Other Sources includes investment earnings, ticket sales for theatrical shows, and retail sales at visitor centers and museums.

² Black Hawk's expenditures and transfers out in 2015 were higher than other years partly due to an interfund transfer of \$2.6 million to the city's general fund as a reimbursement for a land purchase.

³ Central City's revenue from other sources for 2015 included \$19,569 from a grant awarded by History Colorado that was separate from its State Historical Fund distributions.

⁴ Cripple Creek's revenues from other sources were higher in 2015 and 2016 compared to 2014 because the city began recording the Butte Theater's ticket sales in the Historic Preservation Fund, rather than in the city's general fund.

We describe each city's spending of State Historical Fund distributions in CHAPTER 2.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this audit in accordance with Section 2-3-123, C.R.S., which was enacted by the General Assembly through Senate Bill 16-073. Statute requires the State Auditor to conduct, or cause to be conducted, performance audits of the State Historical Fund distributions that are transferred to Black Hawk, Central City, and Cripple Creek for preservation and restoration. The audits are required to ascertain how the cities are spending their distributions, whether such expenditures are being used for the preservation and restoration of each

city, and whether the cities have adopted and are following statutory standards for awarding grants from the distributions. Statute further requires the audits to be conducted no later than 2017, 2022, and 2027; this is the first such audit. The audit was conducted from January to October 2017. We appreciate the assistance provided by the city councils, historic preservation commissions, management, and staff of Black Hawk, Central City, and Cripple Creek during this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objective of the audit was to answer the questions posed by Senate Bill 16-073 by examining each cities' historic preservation fund revenue and expenditures and each city's grant program operations from January 2014 through February 2017. Since the fiscal years for all three cities are based on calendar years, this period covers three full fiscal years of financial activity.

To accomplish our audit objectives, our work included:

- Reviewing applicable Colorado constitutional amendments, state statutes, federal regulations, and legislative history related to legal gaming and State Historical Fund distributions. We also reviewed federal laws, regulations, and guidance pertaining to federal grants for historic preservation.
- Listening to archived audio recordings of legislative committee hearings on Senate Bill 91-149, which is the Colorado Limited Gaming Act enabling legislation that implemented the voter-approved constitutional amendment.

- Analyzing the annual financial statements and financial audits from each city for their Fiscal Years 2014 through 2016, as well as the cities' budgets for 2014 through 2017.
- Interviewing management and staff from Black Hawk, Central City, and Cripple Creek. We also interviewed staff at History Colorado, the National Park Service, and other cities outside of Colorado that hold historic preservation easements.

We relied on sampling to support some of our audit work, as follows:

- **ACCOUNTING DATA.** We analyzed the revenue and expenditures from each city's historic preservation fund general ledger, recorded from January 2014 through February 2017. To assess the reliability of each city's accounting data, we reviewed supporting documentation for a statistically representative, random sample of 39 expenditures totaling \$6.4 million from Black Hawk, 22 expenditures totaling \$374,000 from Central City, and 83 expenditures totaling \$2.2 million from Cripple Creek.
- **GRANTS.** We reviewed supporting documentation for a nonstatistical sample of six of the 19 house rehabilitation projects at Black Hawk and six of the 15 historic preservation grants at Cripple Creek for which disbursements were made between January 1, 2014, and February 28, 2017. For each sampled house, we reviewed the grant applications, contracts, invoices, and agreements; assessments from technical consultants; and minutes of city council and historic preservation committee meeting discussions.

The samples were selected to provide sufficient coverage to test controls of those areas that were significant to the objectives of the audit; the sample testing results are not intended to be projected to the entire population. We designed our samples to provide sufficient and appropriate evidence for the purpose of evaluating internal controls for ensuring that historic preservation fund expenditures are recorded accurately and that grant awards comply with statutory provisions.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTERS 2 and 3 of this report. We noted certain other matters that we reported to City of Black Hawk management in a separate letter dated November 20, 2017.



CHAPTER 2

SPENDING OF STATE HISTORICAL FUND DISTRIBUTIONS

The primary objective of this audit, as required by Senate Bill 16-073, is to ascertain “how the City of Central, the City of Black Hawk, and the City of Cripple Creek are spending their distributions [from the State Historical Fund] and whether such expenditures are being used for the preservation and restoration of each city” [Section 2-3-123(1)(a), C.R.S.]. CHAPTER 2 is divided into two sections:

- 1 The first section presents an informational summary of how the cities spent their distributions.
- 2 The second section presents a discussion of policy issues relating to the intended uses of these distributions.

SUMMARY OF HOW THE GAMING CITIES SPEND DISTRIBUTIONS FROM THE STATE HISTORICAL FUND

To determine how the gaming cities have spent State Historical Fund distributions, we reviewed expenditure data from the cities' general ledgers for January 1, 2014 through February 28, 2017 (our review period), and the cities' audited financial statements for 2014 through 2016. We found that the cities spend the distributions in different ways, so we worked with the cities to group the expenditures into categories to compare spending among the cities and summarize how the distributions were spent. We also assessed the reliability of each city's labeling and classification of historic-preservation-fund expenditures in their general ledgers by reviewing documentation for a statistically representative, random sample of such expenditures for each city—39 transactions for Black Hawk, 22 for Central City, and 83 for Cripple Creek. Based on this testing, we determined that all three cities' data are reliable for the purpose of assessing how the cities spent their State Historical Fund distributions. We also interviewed management from each city and reviewed applicable city ordinances, resolutions, written policies and procedures, program guides, and contracts related to the sampled transactions to further understand each city's spending.

EXHIBIT 2.1 shows the various ways that the three gaming cities spent their State Historical Fund distributions from January 2014 through February 2017, and EXHIBIT 2.2 shows the same information in a chart for easy comparison.

**EXHIBIT 2.1. GAMING CITIES' EXPENDITURES FROM
STATE HISTORICAL FUND DISTRIBUTIONS
JANUARY 2014 THROUGH FEBRUARY 2017**

	BLACK HAWK	CENTRAL CITY	CRIPPLE CREEK	TOTAL ¹
Grants to Restore Historic Houses and Buildings	\$ 4,748,000	\$ 0	\$ 80,000	\$ 4,828,000
Land Acquisitions	4,376,000	0	0	4,376,000
Restoration/Preservation of Historic Public Buildings, Sites, and Artifacts	874,000	284,000	105,000	1,262,000
Museum and Visitor Center Operations (Net)	0	206,000 ²	994,000 ³	1,200,000
Theater Operations – City-Owned (Net)	0	0	782,000 ⁴	782,000
Administrative Expenses for Grants and Preservation Programs	265,000	194,000	251,000	710,000
City Improvement Projects and Infrastructure	441,000	192,000	0	633,000
City Marketing	16,000	2,000	377,000	394,000
Community Funding for Arts and Culture	0	77,000	21,000	98,000
General Maintenance Related to Historic Buildings	57,000	5,000	29,000	90,000
Sponsorship of Historic Preservation Conference	25,000	0	8,000	33,000
General City Operations	2,000	8,000	7,000	17,000
Bonuses for Historic Preservation Commissioners	4,000	0	0	4,000
TOTAL¹	\$ 10,807,000	\$ 968,000⁵	\$ 2,653,000	\$ 14,428,000

SOURCE: Office of the State Auditor analysis of accounting data provided by Black Hawk, Central City, and Cripple Creek.

¹ Values shown may not sum to totals due to rounding.

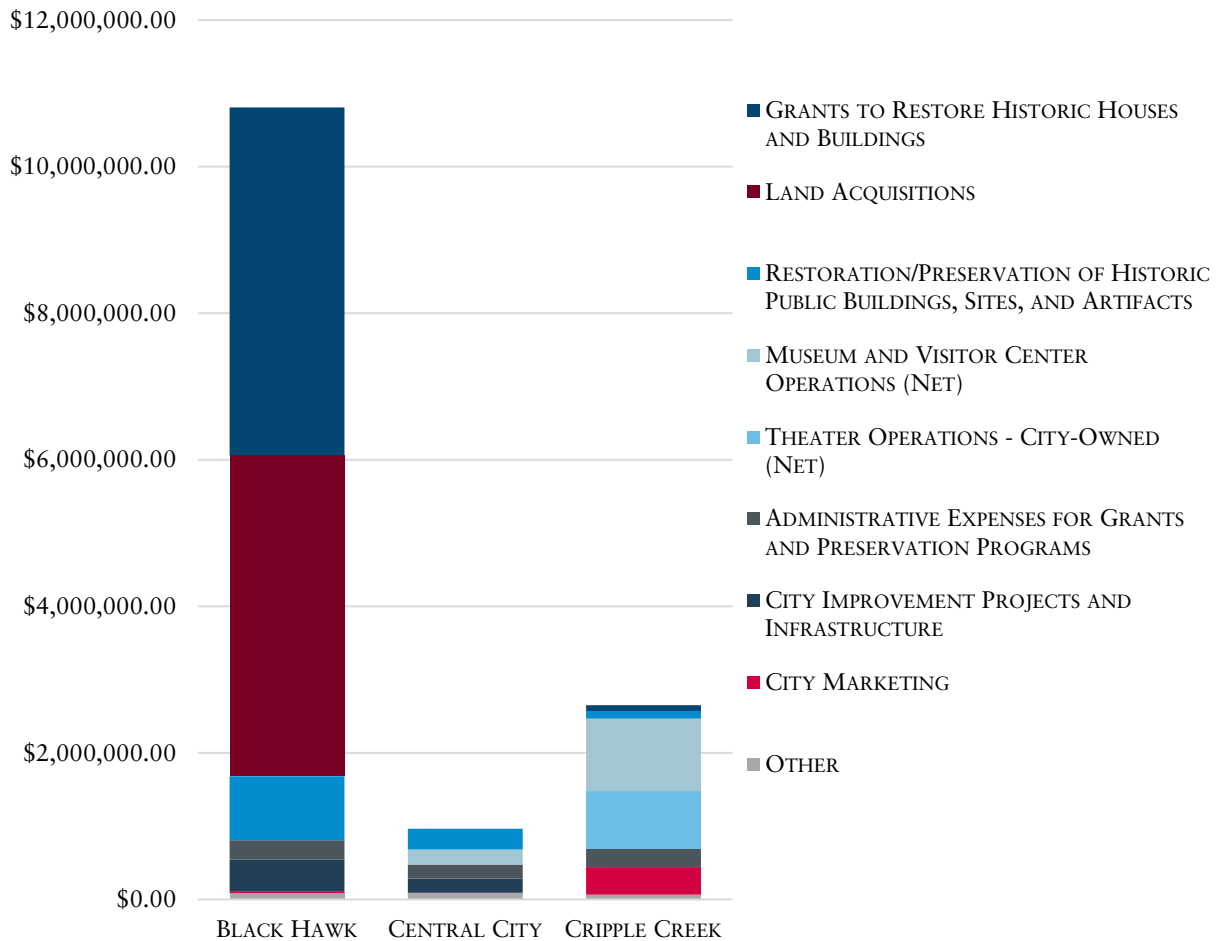
² Central City received \$35,000 in revenue from sales of souvenir items at its visitor center and spent \$115,000 at the visitor center, plus another \$126,000 to support an art gallery that provides historic tours.

³ Cripple Creek received \$116,000 in revenue from sales of tickets and souvenir items at its museums and visitor centers and spent \$854,000, plus another \$255,000 to support local, non-city owned museums.

⁴ Cripple Creek received \$455,000 in revenue from ticket sales at the Butte Theater and spent \$1,237,000.

⁵ Central City also transferred \$193,400 from its historic preservation fund to its general fund in 2016, which had not been spent as of February 28, 2017, and so is not reflected in this exhibit.

EXHIBIT 2.2. GAMING CITIES' CATEGORIZED EXPENDITURES FROM STATE HISTORICAL FUND DISTRIBUTIONS JANUARY 2014 THROUGH FEBRUARY 2017



SOURCE: Office of the State Auditor analysis of accounting data provided by Black Hawk, Central City, and Cripple Creek.

In the following sections, we describe the projects and programs that each city funded within the expenditure categories summarized in EXHIBITS 2.1 and 2.2.

GRANTS TO RESTORE HISTORIC HOUSES AND BUILDINGS

Black Hawk and Cripple Creek use State Historical Fund distributions to award grants to homeowners to pay for the restoration and rehabilitation of historically significant houses within the cities' historic

districts. Cripple Creek also provides grants to non-profit organizations and, until 2014, provided grants to businesses to rehabilitate buildings in the city's downtown area. Central City operated a grant program to restore homes from 1992 to 2013 but has not offered funds to restore homes or commercial buildings since that time. Below is a summary of the spending for Black Hawk's and Cripple Creek's grant programs from January 2014 to February 2017.

- **BLACK HAWK'S HOUSE REHABILITATION GRANT PROGRAM.** During the review period, Black Hawk used \$4.7 million in State Historical Fund distributions to partially or fully rehabilitate and/or renovate 19 privately owned houses in the city's historic district. Of the 19 houses, 14 were slated for full-house rehabilitation of both the interior and exterior. Black Hawk contracts with an architectural firm and a project manager for both interior and exterior work, and with a historic preservation consultant who compares the plans for each house's exterior to the Secretary of Interior's *Standards for the Treatment of Historic Properties* (Standards). For work done on the interior of a house by a general contractor, Black Hawk issues grant money to the homeowner and reimburses the homeowner for any resulting state and federal income tax liability. For all exterior renovation work and for all project-wide costs, such as architectural designs and environmental consulting, Black Hawk pays contractors directly and does not reimburse the homeowners for tax liability. Black Hawk requires participating homeowners to grant a preservation easement to the city to ensure that the historic character of the exterior of the house will be preserved. Black Hawk's grant program is discussed further in CHAPTER 3.

EXHIBIT 2.3 shows Black Hawk's spending on house rehabilitation using State Historical Fund distributions during the review period.

**EXHIBIT 2.3. BLACK HAWK'S REHABILITATION OF
PRIVATE HOUSES FUNDED BY
STATE HISTORICAL FUND DISTRIBUTIONS
JANUARY 2014 THROUGH FEBRUARY 2017 ¹**

PROJECT-WIDE COSTS	Architect	\$ 458,000
	Project Management	306,000
INTERIOR GRANT PROGRAM	Grant Disbursements to Homeowners for General Contractors	1,273,000
	Tax Reimbursements to Homeowners	306,000
EXTERIOR RENOVATION	General Contractors	2,180,000
	Technical Consulting	187,000
	Exterior Paint Projects	24,000
	Historic Preservation Consulting	14,000
TOTAL²		\$ 4,748,000

SOURCE: Office of the State Auditor analysis of accounting data provided by Black Hawk.

¹ Values shown are for 19 house exterior and interior rehabilitation projects, including partial costs for projects that began or ended outside of our review period, as well as partial costs for exterior paint work on 18 houses.

² Values shown may not sum to totals due to rounding.

Total project costs for six houses we sampled from the 19 that were slated for rehabilitation during our review period, including costs incurred prior to January 1, 2014, ranged from \$796,000 to \$1.17 million per house. The vendor costs varied by project. For example, architect fees ranged from \$77,000 to \$138,000 per project, while fees for the project manager ranged from \$33,000 to \$74,000. General contractor fees for the exterior and interior ranged from \$497,000 to \$826,000. EXHIBIT 2.4 shows the breakout of costs for one full-house rehabilitation project.

**EXHIBIT 2.4. COSTS TO REHABILITATE ONE HOUSE IN
BLACK HAWK WITH STATE HISTORICAL FUND DISTRIBUTIONS
MARCH 2014 THROUGH JULY 2016**

VENDOR TYPE	COST
General Contractor (Exterior)	\$ 574,564
General Contractor (Interior) via Grant Payments to Homeowner	261,844
Architect (Exterior and Interior)	92,043
Tax Reimbursement to Homeowner	73,579
Project Management	58,546
Environmental Consultant	25,373
Geotechnical Engineering	9,418
Land Surveyor	8,240
Historic Preservation Consultant	3,263
Retaining Wall Consultant	2,800
Wood Investigation Consultant	1,460
Xcel Energy	1,293
Waste Disposal	1,291
Demolition Contractor	489
Appraiser	450
Permits and Fees	30
Title Company	25
TOTAL PROJECT COST	\$ 1,114,708

SOURCE: Office of the State Auditor analysis of City of Black Hawk expenditures, City Council minutes, and vendor contracts.

- **CRIPPLE CREEK'S GRANT PROGRAM.** During our review period, Cripple Creek used a total of about \$80,000 in State Historical Fund distributions to award 15 grants to reimburse property owners for construction costs related to exterior restoration of eight private houses, three buildings owned by non-profits, and one commercial building. Grants ranged from \$425 to \$14,625 for projects such as roofing replacement, window protection or replacement, and masonry restoration. Cripple Creek allows grant recipients to renovate the exterior of buildings and reimburses them for construction work performed by city-approved contractors. Cripple Creek's grant program is discussed further in CHAPTER 3.

LAND ACQUISITIONS

During our review period, Black Hawk used a combined total of about \$4.38 million in State Historical Fund distributions to acquire land and pay for ancillary costs, such as appraisals and consulting fees. Specifically, Black Hawk used \$2.6 million to partially fund the

purchase of land on Maryland Mountain, which the city intends to develop into an open space area with hiking and mountain bike trails and signage for historic interpretation. Black Hawk also used \$1.35 million to purchase the Bobtail Lode and \$301,000 for the Cyclops Lode, which are historically significant gold mining locations. Black Hawk further spent about \$50,000 on title work, consulting fees, and taxes related to land acquisitions, plus about \$71,000 on appraisals of other mining locations.

RESTORATION AND PRESERVATION OF HISTORIC PUBLIC BUILDINGS, SITES, AND ARTIFACTS

All three cities used distributions from the State Historical Fund to restore and preserve public buildings, sites, and artifacts during the review period. For example, each city spent between \$44,000 and \$55,000 for rock wall restoration and construction. Black Hawk used \$698,000 for construction costs to restore the police department building, the City Hall Annex, and two city-owned houses, and used \$131,000 for architectural services, consulting, and project management costs. Cripple Creek used \$52,000 for restoration of the fire department building, the historic Butte Theater, and various other sites. Central City used \$24,000 to begin restoring the Belvidere Theater and used \$200,000 to repair portions of a city street following a rock slide incident.

MUSEUMS AND VISITOR CENTER OPERATIONS

During the review period, Central City and Cripple Creek used State Historical Fund distributions to support museum and visitor center operations, including costs for personnel, utilities, maintenance, office supplies, and inventory of souvenir items that are offered for sale. Central City used \$126,000 in distributions to fund utility, employee, and inventory expenses for a nonprofit arts association that operates an art gallery and gives tours of the historic Washington Hall, which housed the first Gilpin County courthouse and jail. Central City also spent \$80,000 (net) from its distributions to operate a visitor center in a historic building that provides tourist information on historic sites and the city's casinos.

Cripple Creek also spent about \$379,000 (net) in distributions during the review period to operate a visitor center, called the Heritage Center; about \$360,000 (net) to operate a Jail Museum and an information center located in a restored train car; and about \$255,000 to fund two community museums, the Cripple Creek District Museum and the Homestead Museum, which are operated by non-profit organizations.

Central City and Cripple Creek also earn revenue from sales of tickets and souvenirs at their city-owned museums and visitor centers. The revenue in each location is not sufficient to cover operating expenditures, so the cities subsidize the operations with the State Historical Fund distributions, as shown in EXHIBIT 2.5.

**EXHIBIT 2.5. REVENUE AND EXPENDITURES FOR CITY-OWNED MUSEUMS AND VISITOR CENTERS AT CENTRAL CITY AND CRIPPLE CREEK
JANUARY 2014 THROUGH FEBRUARY 2017**

	CENTRAL CITY	CRIPPLE CREEK		
	VISITOR CENTER	HERITAGE CENTER	JAIL MUSEUM	TRAIN CAR INFO CENTER
Revenue from Sales	\$35,000	\$24,000	\$91,000	\$0
Expenditures from State Historical Fund Distributions	\$115,000	\$403,000	\$361,000	\$90,000
NET LOSS SUBSIDIZED BY STATE HISTORICAL FUND DISTRIBUTIONS	-\$80,000	-\$379,000	-\$270,000	-\$90,000

SOURCE: Office of the State Auditor analysis of accounting data provided by Central City and Cripple Creek.

CITY-OWNED THEATER OPERATIONS

After adjusting for revenue from ticket sales, Cripple Creek spent about \$782,000 from its distributions on theatrical shows, personnel, utilities, and other operational costs at the historic Butte Theater, which Cripple Creek owns and operates.

ADMINISTRATIVE EXPENDITURES FOR GRANTS AND OTHER PRESERVATION PROGRAMS

As shown in EXHIBIT 2.6, the three gaming cities used a portion of their State Historical Fund distributions for costs related to administering grants and other historic preservation and restoration programs.

**EXHIBIT 2.6. ADMINISTRATIVE EXPENSES FOR
GRANTS AND OTHER HISTORIC PRESERVATION AND
RESTORATION PROGRAMS FUNDED BY
STATE HISTORICAL FUND DISTRIBUTIONS
JANUARY 2014 THROUGH FEBRUARY 2017**

	BLACK HAWK	CENTRAL CITY	CRIPPLE CREEK
Personnel	\$ 178,000	\$ 132,000	\$ 208,000
Consulting	59,000	55,000	0
Training and Conferences	14,000	2,000	5,000
Stipends for Historic Preservation Commissioners	7,000	6,000	0
Miscellaneous	7,000	0	39,000
TOTAL¹	\$ 265,000	\$ 194,000	\$ 251,000

SOURCE: Office of the State Auditor analysis of accounting data provided by Black Hawk, Central City, and Cripple Creek.

¹ Values shown may not sum to totals due to rounding.

Personnel expenditures at each city included salaries and benefits for staff who administer historic preservation grants and programs. Consulting expenditures at Black Hawk included costs for reviews of exterior renovation plans, construction management, and development of the city's grant program guides. Consulting costs at Central City included the production of historic design guidelines and related land use code updates. Training and conferences expenditures at all three cities included travel expenses to send staff and historic preservation commissioners to historic preservation conferences. Stipends for historic preservation commissioners at both Black Hawk and Central City are \$50 for each meeting that commissioners attend. Miscellaneous expenditures at Black Hawk were for a variety of expenses, including name plates and badges, lunch meetings, and a large storage container. Cripple Creek's miscellaneous expenditures were for insurance, a payroll vendor, and office supplies and equipment.

CITY IMPROVEMENT PROJECTS AND INFRASTRUCTURE

Black Hawk used about \$441,000 in distributions on public works and infrastructure during the review period. Specifically, Black Hawk spent about \$418,000 for utility undergrounding (telephone and electrical conduit and equipment installation) that is part of a larger project to realign and relocate portions of a city street to accommodate a

pedestrian plaza. Black Hawk also spent about \$14,000 for street light replacement and about \$9,000 to commission a bronze cast of the newly recovered city seal to hang in the city council chambers.

Central City used about \$192,000 in distributions on public works and infrastructure, spending \$138,000 on energy efficiency improvements and lighting fixture upgrades in city buildings and outdoor lighting throughout the city, and spending \$40,000 to restore signage marking each end of its historic district and historic sites within the city, plus about \$14,000 on beautification of the downtown area.

CITY MARKETING EXPENDITURES

During the review period, the three cities used a combined total of \$394,000 in distributions to pay for city brochures and other advertising that targets tourists. Cripple Creek spent \$377,000 on magazine and newspaper ads, internet marketing, billboard rentals, and television commercials spotlighting the city's heritage and special events. Black Hawk used \$16,000 to purchase supplies and promotional items, such as lapel pins, key chains, can insulators, and coffee mugs with the city's brand to give away at the annual Saving Places Conference, a historic preservation event hosted by Colorado Preservation, Inc. Central City used about \$2,000 to promote the historic character of the city's business improvement district.

COMMUNITY FUNDING FOR ARTS AND CULTURE

During the review period, Central City used \$77,000 in distributions to support the operations of Central City Opera, a nonprofit organization founded in 1932 that produces historical and educational stage performances in the historic Central City Opera House. Cripple Creek used about \$6,000 in distributions to fund Victorian-era reenactments and annually contributed \$5,000 in 2014, 2015, and 2016, in support of the Gold Belt Tour, a Colorado Scenic and Historic Byway connecting Cripple Creek to Florissant, Cañon City, and Florence.

GENERAL MAINTENANCE RELATED TO HISTORIC BUILDINGS

The three cities used a combined total of \$90,000 in distributions to fund maintenance related to historic buildings, such as filters for HVAC systems, lock repairs, lawn care, elevator maintenance, and fire sprinkler inspections.

SPONSORSHIP OF HISTORIC PRESERVATION CONFERENCE

Black Hawk and Cripple Creek used a combined total of \$33,000 in distributions to purchase sponsorships for the annual Saving Places Conference, hosted by Colorado Preservation, Inc.

GENERAL CITY OPERATIONS

The three cities used a combined total of \$17,000 in State Historical Fund distributions for operational costs that were not tied to any specific historic preservation program. Such costs include general maintenance at Black Hawk, a portion of contracted auditing and accounting services allocated to Central City's historic preservation fund, and telephone bills at Cripple Creek.

BONUSES FOR COMMISSIONERS

Black Hawk spent a total of \$4,200 to pay holiday bonuses of \$300 to each member of its Historic Preservation Commission in 2014, 2015, and 2016.

POLICY CONSIDERATIONS— ALLOWABLE USES OF STATE HISTORICAL FUND DISTRIBUTIONS

During our audit, we sought to determine whether the cities' expenditures, described in the previous section, appeared to be allowable uses of State Historical Fund distributions. However, we found that the intent of voters and the General Assembly regarding the cities' use of State Historical Fund distributions is unclear. This is a matter for policymakers to consider, and therefore, we issue no recommendations in this section.

ALLOWABLE USES OF STATE HISTORICAL FUND DISTRIBUTIONS ARE NOT CLEARLY DEFINED IN THE CONSTITUTION OR STATUTE

According to the State Constitution, the money the gaming cities receive from the State Historical Fund “shall be used for the preservation and restoration of the cities” [Colorado Const., Art. XVIII, Sec. 9(5)(b)(III)]. In 1999, the General Assembly declared through Senate Bill 99-232 that, in approving the constitutional amendment, the voters intended that “*all* moneys expended from the State Historical Fund would be used to restore and preserve the *historic* nature of [the gaming] cities and other sites and municipalities throughout the state” and specified that the statute is intended to assure that the cities use their distributions for “*historic* restoration and preservation” [Section 12-47.1-1202(1), C.R.S., emphases added].

The phrase “preservation and restoration of the cities” was not defined in the constitutional amendment approved by voters in 1990 or in the Colorado Constitution, and “historic restoration and preservation” is not defined in statute. Archived audio recordings of legislative committee discussions did not reveal precisely how legislators expected the cities to spend their distributions, either when the original implementing legislation was passed in 1991 or when the phrase “historic restoration and preservation” was added to statute by Senate Bill 99-232. In 2006, the General Assembly considered House Bill 06-1139, which was crafted by the gaming cities and History Colorado and would have established more definitive restrictions on how the cities may spend their distributions. However, the bill failed and no bills have since been introduced to address this issue.

In the absence of a codified definition in the Colorado Constitution or statute, we evaluated whether the cities’ expenditures of State Historical Fund distributions fit within one of either two possible interpretations. First, the phrases “historic preservation” and “restoration” have common meanings that are widely used in the context of federally funded projects; these commonly used meanings produce a narrow interpretation of what the statute allows. Second, the three gaming cities have defined what they consider to be allowable expenditures of State Historical Fund distributions, and these definitions imply a broader interpretation of what the statute allows. The narrow and the broad interpretations are explained below.

THE NARROW INTERPRETATION BASED ON COMMON USAGE OF “HISTORIC PRESERVATION”

Nationally, “historic preservation” and “restoration” commonly refer to projects that could qualify for funding from the Historic Preservation Fund, which is the federal source for historic preservation grants awarded to states, tribes, local governments, and non-profits. Such grants are enabled by the National Historic Preservation Act of 1966, as amended, which also gave the Secretary of the Interior responsibility for managing the National Register of Historic Places and for

developing the *Standards for the Treatment of Historic Properties*. The Standards set forth requirements related to preserving, rehabilitating, restoring, and reconstructing historic buildings and other structures, such as covered bridges and light houses, as well as cultural landscapes. In the context of federally funded projects conducted under the purview of these Standards, the term “historic preservation” encompasses the concept of restoration and refers to a range of activities aimed at preserving specific buildings, structures, sites, objects, districts, and cultural landscapes that are eligible for inclusion on the National Register for Historic Places, including:

- “[I]dentification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, and conservation” of historic buildings, structures, sites, objects, districts, and cultural landscapes; and
- “[E]ducation and training regarding the foregoing activities” [54 U.S.C., Section 300315].

We used the National Park Service’s *Historic Preservation Fund Grants Manual* (Grants Manual) as a guide to help determine whether certain gaming city costs fit within this narrow meaning of historic preservation. Although this manual is not binding on the gaming cities’ use of State Historical Fund distributions, it is the guide widely used by recipients of federal funding for determining whether certain costs contribute to historic preservation. For example, the Grants Manual specifies the conditions under which costs are allowable for land acquisitions; administration; advertising and public relations; and memberships, subscriptions, and professional activities. In addition to these cost categories, marketing costs for promoting historic sites and features of the cities are within the narrow meaning of “historic preservation,” because, in recent years, federal historic preservation grants have been used to develop “heritage tourism” in certain areas, which is tourism aimed at experiencing the history and unique cultural resources of a place.

The following are reasons why it may be appropriate to apply this narrow meaning of “historic preservation” to the Colorado Constitution and statutes:

- 1 The Colorado statutes relating to the State Historical Fund distributions make several specific references to federal programs that are enabled by the federal Historic Preservation Act, which may indicate that the General Assembly intended for “historic restoration and preservation” to be interpreted in line with such programs. Specifically, statute prohibits the gaming cities from spending any monies from their State Historical Fund distributions unless they have adopted standards for awarding grants from the distributions that (1) assure compliance with the U.S. Secretary of the Interior’s *Standards for Treatment of Historic Properties*; (2) require the city’s Historic Preservation Commission, which is a body that local governments must have to qualify for federal grants from the Historic Preservation Fund, to review all grant awards; and (3) limit grants to properties “located within a national historic landmark district or within an area listed on the National Register of Historic Places” [Sections 12-47.1-1202(3)(a), (3)(a.5), and (3)(c), C.R.S.].
- 2 The narrow meaning seems to align with the 1990 voter’s guide, or “Blue Book” (See APPENDIX A), which helped voters decide how to vote on the constitutional amendment that legalized limited gaming. The Blue Book’s first “argument for” says the amendment would “help ensure the preservation of historic *buildings* in Central City, Black Hawk, and Cripple Creek [emphasis added].” The Blue Book continues: “Without additional resources being committed to the preservation of the *structures and character* of these historic towns, the *buildings* will continue to deteriorate and collapse [emphases added]. If this is permitted to occur, a treasured national and state resource will eventually be lost.” The Blue Book also mentions that the proposal “is an effort to enhance the historic qualities of the communities” and that “the financing of historic preservation, improvement of municipal infrastructure, and increased law enforcement resources are to be funded from gambling revenues.” However, it does not indicate that the cities’ State Historical Fund distributions would be used for anything other than restoration and preservation of historic buildings.

THE GAMING CITIES' BROAD INTERPRETATION OF "HISTORIC RESTORATION AND PRESERVATION"

All three gaming cities reported to us that they understand "historic restoration and preservation" in a broad sense—for activities that help preserve each city as a whole, and not restricted to the preservation of specific buildings, structures, sites, objects, districts, or cultural landscapes. Both Black Hawk and Central City adopted a city ordinance or resolution that defines allowable expenditures within such an interpretation, while Cripple Creek city management reported to us that it also uses an interpretation that is broader than the one used in the National Historic Preservation Act, but has not codified its interpretation in an ordinance or resolution. The following are examples of expenditures that the city councils of both Black Hawk and Central City allow using State Historical Fund distributions, which go beyond the common, narrow meaning:

- Public utility restoration and preservation projects, which can include undergrounding service facilities, replacing water lines and facilities, and improving pedestrian lighting.
- City infrastructure, including improving existing streets and sidewalks. For Black Hawk, this includes paving and, where necessary, widening existing streets.
- Creation, renovation, repair, and maintenance of city-owned and community-oriented facilities that promote the cities' heritage. For Black Hawk, this includes facilities that are "central to the City of Black Hawk's heritage and culture." For Central City, this includes city-owned facilities that "support the City's goal of historical preservation through promotion, tourism, marketing and museums, and other city administrative functions."

The following are reasons the city managers gave for applying this broad meaning of "historic restoration and preservation":

- 1 The voter-approved Constitutional amendment states that the cities' distributions shall be used for "preservation and restoration *of the cities* [emphasis added]." Since cities are composed of more than just buildings, under this interpretation the funds can be used for projects and programs that help preserve and restore the cities but that are not strictly related to preserving buildings, sites, objects, or cultural landscapes.
- 2 Since neither the Colorado Constitution nor statute defines what is meant by restoration or preservation, the city councils believe they have the authority to define allowable uses of State Historical Fund distributions.

Although the three cities are alike in using a broad interpretation of "historic restoration and preservation," in some cases they have made different decisions about the limits of allowable expenditures. For example, Black Hawk and Central City's city councils decided that infrastructure projects are allowable uses of their distributions, whereas Cripple Creek's city council has not. Since the three cities do not share the same approach to implementing the broad interpretation of "historic restoration and preservation," and because it is not clear whether the voters intended any meaning beyond the narrow one, we grouped the cities' expenditures based on whether they fit either within the narrow, commonly used meaning of "historic preservation" or within the broader meaning that the gaming cities have adopted.

WHAT ISSUES DID THE AUDIT WORK IDENTIFY?

Overall, we found that from January 2014 through February 2017, the three gaming cities spent \$11.6 million, or 81 percent of their total expenditures from State Historical Fund distributions in ways that fit within the common, narrow meaning of historic preservation. However, about \$2.8 million, or 19 percent of State Historical Fund distributions—\$0.5 million by Black Hawk, \$0.4 million by Central City, and \$1.8 million by Cripple Creek—were spent in ways that may be outside the common, narrow meaning and are shown in EXHIBIT 2.7.

**EXHIBIT 2.7. GAMING CITIES' EXPENDITURES FROM
STATE HISTORICAL FUND DISTRIBUTIONS THAT MAY BE OUTSIDE THE
COMMON, NARROW MEANING OF HISTORIC PRESERVATION
JANUARY 2014 THROUGH FEBRUARY 2017**

	BLACK HAWK	CENTRAL CITY	CRIPPLE CREEK	TOTAL
Museum and Visitor Center Operations	\$ 0	\$ 206,000	\$ 994,000	\$ 1,200,000
Theater Operations (City-Owned)	0	0	782,000	782,000
City Projects and Infrastructure	441,000	152,000	0	593,000
Community Funding for Arts and Culture	0	77,000	21,000	98,000
General Maintenance Related to Historic Buildings and Sites	57,000	5,000	29,000	90,000
General City Operations	2,000	8,000	7,000	17,000
Bonuses for Commissioners	4,000	0	0	4,000
TOTAL¹	\$ 504,000	\$ 448,000	\$ 1,833,000	\$ 2,785,000
PERCENTAGE OF TOTAL SPENDING	5%	46%	69%	19%

SOURCE: Office of the State Auditor analysis of accounting data provided by Black Hawk, Central City, and Cripple Creek.

¹ Values shown may not sum to totals due to rounding.

Officials at all three cities reported to us that they believe their respective expenditure categories, shown in EXHIBIT 2.7, are allowable. Central City and Cripple Creek both reported that their expenditures contributed in various ways to preserving the historic character of their cities. Black Hawk city officials reported to us that Black Hawk city council disagrees that State Historical Fund distributions can only be spent on *historic* restoration and preservation activities, citing the absence of the word “historic” in the State Constitution. Black Hawk officials also provided us a letter that was written by one of the original drafters of the 1990 ballot initiative on limited gaming, which stated that the drafter intended for the Constitution to allow the cities to use their distributions for preservation and restoration, but not necessarily for historical purposes. Notwithstanding the General Assembly’s declaration and spending requirements in Section 12-47.1-1202, C.R.S., Black Hawk city officials believe that the city’s expenditures are allowable because they contributed to the general restoration and preservation of the city.

The reasons why the expenditures shown in EXHIBIT 2.7 may fall outside of the narrow interpretation of the Colorado Constitution and statute are described in the following sections.

- **MUSEUM AND VISITOR CENTER OPERATIONS—CENTRAL CITY AND CRIPPLE CREEK.** Although the museums and visitor centers at Central City and Cripple Creek are important for historical education and for the care and study of objects that have historic significance, it is not clear that they contribute to historic preservation as this term is commonly used. For example, the National Park Service’s Grants Manual states that “costs of museum exhibits, staff salaries, and other administrative expenses, including maintenance, are unallowable, if they are not directly related to [Historic Preservation Fund] eligible activities.”

Although expenditures for ongoing museum operations at Central City and Cripple Creek do not appear to fit within the narrow meaning of historic preservation, it is unclear whether they are unallowed, since such spending is similar to how the State has spent the remaining portion of the State Historical Fund that is not distributed to the cities. Specifically, since 2003 the General Assembly has made annual appropriations from the State Historical Fund to cover regular operations at the state history museum managed by History Colorado, and statute authorizes History Colorado to “make reasonable expenditures from the [State Historical Fund] for the reasonable costs incurred...to collect, preserve, and interpret the history of Colorado and the West” [Section 12-47.1-1201(5)(b), C.R.S.]. Further, between 2008 and 2010, the General Assembly approved monies from the State Historical Fund to be used to construct a new state history museum [Section 12-47.1-1201(5)(d)(III), C.R.S.]. Nonetheless, it is not clear that the Colorado voters or General Assembly intended to provide the gaming cities the discretion to use their distributions from the State Historical Fund for museums.

- **THEATER OPERATIONS—CRIPPLE CREEK.** Although the Butte Theater in Cripple Creek is a historic building, the funding of theatrical shows and operations in this venue does not appear to meet the criteria for the narrow interpretation of historic restoration and preservation.

- **CITY PROJECTS AND INFRASTRUCTURE—BLACK HAWK AND CENTRAL CITY.** Although the cities may need new infrastructure to support the influx of visitors due to gaming, it is not clear that Black Hawk’s investments in utility undergrounding to create a new pedestrian plaza, and Central City’s investments in new street lighting, preserved or restored any particular historic aspect of the cities’ historic districts.
- **COMMUNITY FUNDING FOR ARTS AND CULTURE—CENTRAL CITY AND CRIPPLE CREEK.** Although the Central City Opera has been in existence since 1932 and helps visitors experience the history of the city, providing support for this opera company does not directly support the historic preservation or restoration of the opera house itself. Similarly, the Victorian reenactments at Cripple Creek do not appear to fit within the narrow interpretation of “historic restoration and preservation.”
- **GENERAL MAINTENANCE RELATED TO HISTORIC BUILDINGS AND SITES—ALL THREE CITIES.** Although maintenance expenditures at all three cities were for the upkeep of historic buildings and grounds, ongoing general maintenance is not typically considered to be within the bounds of historic preservation or restoration. For example, while the definition of historic preservation in the national Historic Preservation Act includes maintenance, the National Park Service does not allow money from the federal Historic Preservation Fund to be used for ongoing maintenance of properties, once such properties have been restored or preserved.
- **GENERAL CITY OPERATIONS—ALL THREE CITIES.** Expenses for city utilities, maintenance, and contracted services do not fit within the narrow interpretation of “historic restoration and preservation.”
- **BONUSES FOR HISTORIC PRESERVATION COMMISSIONERS—BLACK HAWK.** Although stipends for historic preservation commissioners may be a legitimate administrative expense, it is not clear that the Colorado voters or General Assembly intended for the cities to use State Historical Fund distributions to pay the commissioners holiday bonuses in addition to their normal stipends.

In addition to the issues above, as we describe later in the finding titled “Black Hawk’s Compliance with Historic Preservation Standards,” we found that some of the funds that Black Hawk spent rehabilitating houses may not be allowed, because the city did not ensure compliance with the Secretary of Interior’s Standards and its Historic Preservation Commission did not review all the construction plans for the houses, as required by statute [Section 12-47.1-1202(3), C.R.S.].

WHY DOES THIS POLICY ISSUE MATTER?

It is not clear whether the cities’ spending of the State Historical Fund distributions are in line with the intent of the voters in passing the constitutional amendment that legalized limited gaming or with the intent of statute. By spending State Historical Fund distributions on projects and programs that are not clearly related to historic restoration and preservation, as these terms are commonly understood, the three gaming cities may be out of compliance with the will of the voters and the legislative intent of the General Assembly. Conversely, if the voters and General Assembly intended the cities to be able to spend these funds for any purpose they consider to be in support of preserving or restoring the cities as a whole, no further clarification may be needed.

Officials from all three cities reported to us that they do not believe the interpretation of voter intent is a matter that requires clarification from the General Assembly. Black Hawk and Central City also pointed out that, as home rule cities, their city councils can legislate locally to determine allowable uses of State Historical Fund distributions in the absence of guidance in the Colorado Constitution.

If the General Assembly were to decide to provide legislative direction to the cities of Black Hawk, Central City, and Cripple Creek, it may want to clarify the types of programs, projects, and other expenditures that may be funded with State Historical Fund distributions.

RESPONSES

CITY OF BLACK HAWK

Black Hawk does not believe that legislative direction is necessary regarding its expenditures derived from State Historical Fund distributions (the “Funds”). However, Black Hawk would not object to legislation confirming that the three cities are authorized to determine expenditures for “preservation and restoration” as legislatively determined appropriate by each city’s governing body.

Confirming municipal authority for such expenditures is consistent with the plain language of Article XVIII, Section 9 of the Constitution. The gaming cities’ receipt of the Funds is intended to be similar to their receipt of the 10% proportional share of the limited gaming fund, with the additional constitutional requirement that the Funds be used for “preservation and restoration” of the gaming cities.

Legislative history confirms that distribution of these Funds is the purview of the local governments. Each gaming city is authorized to determine whether an expenditure or project preserves or restores the community. To the extent that Senate Bill 99-232 modified C.R.S. §§ 12-47.1-1201 and 1202 by purporting to restrict the gaming cities’ use of the Funds, it did so without constitutional support and improperly added a requirement for the Funds to be used for “historic” preservation and restoration.

Attached hereto as Exhibit A is an Affidavit from the drafter of the constitutional amendment, Lary Brown, confirming Black Hawk’s interpretation of the original intent of the Constitution. Moreover, because Black Hawk is a home rule municipality, Black Hawk’s expenditure of such funds is a matter of purely local concern. Black Hawk is also separately providing a Position Statement to the State Auditor.

Black Hawk would not object to legislation that reinforces the original

intent of Article XVIII, Section 9 of the Constitution, but would object to an interpretation of the expenditure of such funds in a manner that is contrary to the language in the Constitution.

AUDITOR'S ADDENDUM

Along with the preceding response, Black Hawk sent the OSA a letter containing a position statement, the substance of which is reflected in our audit report and the City's response. Black Hawk also sent the OSA an affidavit from Lary Brown, one of the people who helped develop the 1990 ballot proposal that amended the state Constitution to enable limited-stakes gaming in the three gaming cities. The information contained in the affidavit reflects the views of one citizen on matters that are either explained in the audit report or that go beyond the objectives of the audit, such as whether the State has authority to control how the cities spend their distributions from the State Historical Fund. For this audit, we deferred to the General Assembly's judgment in 1999 when it found and declared that, in passing the amendment allowing limited-stakes gaming in the three gaming cities, the voters "believed that all moneys expended from the State Historical Fund would be used to restore and preserve the historic nature of [the gaming] cities and other sites and municipalities throughout the state" [Section 12-47.1-1202, C.R.S.]. Further, contrary to Black Hawk's response, the distributions we audited are fundamentally different from the 10-percent portion of state-collected gaming taxes that is returned directly to the cities in that the former pass through the State Historical Fund and carry constitutional and statutory restrictions on spending, whereas the 10-percent portion does not. As indicated in the audit report, the General Assembly's interpretation of the will of the voters, and the extent to which legislative direction on the gaming cities' use of State Historical Fund distributions is necessary, are policy considerations, on which the OSA takes no position.

CITY OF CENTRAL CITY

Central City does not believe that there is a need for the General Assembly to provide legislative direction to the cities of Central City, Black Hawk and Cripple Creek clarifying the types of programs,

projects or other expenditures that may be funded out of the gaming cities' respective shares of the twenty percent of State Historical Fund ("SHF") distributions (the "20% Distributions"). Article VXIII, § 9 of the Colorado Constitution (the "Amendment") only requires that the City Council use its 20% Distributions "for the preservation and restoration of the [City]." The Amendment does not otherwise restrict the use of these funds.

Conversely, the Amendment requires recipients of the remaining eighty percent of the SHF to use those funds for historic preservation and restoration in a manner to be determined by the General Assembly. The use of the word "historic" to restrict one portion of the SHF and not the other plainly indicates an intent not to restrict the City's use of its 20% Distributions to projects that qualify as "historic." The City believes that the State Auditor incorrectly interprets the Amendment in concluding that the City may be out of compliance with the intent of the voters and the General Assembly by spending its 20% Distribution on items not clearly related to historic restoration and preservation.

More importantly, Central City adopted standards for expending its 20% Distributions in 2010. The City is a home rule municipality and the utilization of its 20% Distributions for restoration and preservation programs is a matter of local concern.

All City expenditures examined in this audit (1) preserve and/or restore the City; and (2) comply with the City's standards. Therefore, Central City believes that there is no need for legislative direction. Please refer to the City's position statement submitted to the State Auditor.

AUDITOR'S ADDENDUM

Along with the preceding response, Central City sent the OSA a letter containing a position statement, the substance of which is reflected both in our report and in the City's response. Our conclusion that the City may be out of compliance with the will of the voters and the intent of the General Assembly is based on criteria found in both the Colorado Constitution and state statute (i.e., not the Constitution alone). In 1999, the General Assembly found and declared that when the voters

approved the constitutional amendment allowing limited-stakes gaming in the three gaming cities “they believed that all moneys expended from the State Historical Fund would be used to restore and preserve the historic nature of [the gaming] cities and other sites and municipalities throughout the state” [Section 12-47.1-1202, C.R.S.]. Additionally, the General Assembly affirmed its intention “to assure that expenditures from the fund by [History Colorado] and the cities of Central, Black Hawk, and Cripple Creek are used for historic restoration and preservation” [Section 12-47.1-1202, C.R.S.].

CITY OF CRIPPLE CREEK

The City of Cripple Creek does not believe that it would be beneficial for the General Assembly to provide additional legislative direction to the cities of Black Hawk, Central City, and Cripple Creek clarifying the types of programs, projects, and other expenditures that may be funded with the State Historical Fund distributions. Cripple Creek’s City Council and management team believe that the goal of SB 16-073 has been met by the State Auditor’s Office report. Cripple Creek does not believe clarification on how these funds can be used needs to be addressed by the General Assembly.

Cripple Creek believes the voters’ intent was to allow the three gaming towns to use the funds, as each community sees fit, within the guidelines established by the enabling legislation, subsequent additions by the State of Colorado and by their own governing bodies, either set forth in home rule charters, or as presented, and adopted, in their annual budgets. Cripple Creek complies with Senate Bill 99-232 that states that in approving the constitutional amendment, the voters intended that “all money expended from the State Historical Fund would be used to restore and preserve the historic NATURE (emphasis added) of {the gaming} cities.” In addition, it specified that the statute is intended to assure that the cities use their distributions for “historic restoration and preservation.” Cripple Creek has complied with Senate Bill 99-232, as well as the original constitutional amendment approved by the voters in 1990, the Colorado Constitution and the State of Colorado’s statutes. Further direction by the General Assembly is not necessary and would border on interference of what is a local control issue.

CHAPTER 3

GRANT PROGRAMS AT BLACK HAWK AND CRIPPLE CREEK

The gaming cities of Black Hawk and Cripple Creek both operate grant programs using their State Historical Fund distributions for restoration or rehabilitation of historic buildings and/or houses that are within their historic districts. This chapter contains our findings and recommendations pertaining to these grant programs.

BLACK HAWK'S COMPLIANCE WITH HISTORIC PRESERVATION STANDARDS

The City of Black Hawk (Black Hawk or the City) uses money from its State Historical Fund distributions for grants to rehabilitate privately owned houses in its historic district through the City's Historic Restoration and Community Preservation Fund Program (house rehabilitation program or program). From January 2014 through February 2017, Black Hawk spent about \$4.72 million of its State Historical Fund distributions to partially or fully rehabilitate and renovate the interiors and exteriors of 19 private houses through this house rehabilitation program.

According to Black Hawk's *Community Restoration and Preservation Guide to Programs* (Program Guide), the goal of the house rehabilitation program is to "promote the restoration and preservation of qualified properties through proper rehabilitation, which includes making qualified properties habitable and sustainable. . . . Historically significant exterior and interior finishes are expected to remain on each property." For Black Hawk's program, "historic" generally refers to the period of time from 1859 to 1918, which is the period of significance when the Central City-Black Hawk Historic District met the criteria for inclusion in the National Register of Historic Places.

The house rehabilitation program has two components:

- **INTERIOR REHABILITATION.** The City awards grants to homeowners for remodeling the interiors of historic houses. To receive an interior rehabilitation grant, a homeowner must concurrently participate in the exterior rehabilitation component of the program, which is described

below. Once approved for the interior rehabilitation grant, the homeowner contracts with a general contractor who is typically the same contractor that the City selects for the exterior component. As the project progresses, Black Hawk receives all contractor invoices and disburses funds to the homeowner for costs related to the interior rehabilitation; the homeowner then pays the general contractor.

The general contractor's expenses (e.g., materials and labor) related to the interior rehabilitation grant are considered taxable income for the homeowner, so the City reports the grant amount disbursed to each homeowner annually to the state and federal governments. The City then reimburses homeowners for the state and federal tax liability they incur for participating in the grant program.

- **EXTERIOR REHABILITATION.** Through this component of the program, the City pays to renovate the exteriors of houses, which the City defines as including the outer walls from the inside surface of the drywall outward, as well as the roofing, subflooring, siding, windows, and exterior doors. The City also funds the replacement of fencing and limited landscaping. Black Hawk selects, contracts with, and directly pays service providers for the exterior rehabilitation, as well as for professional services that span both the interior and exterior rehabilitations, such as architects, project managers, and historic preservation and environmental consultants. The City does not reimburse homeowners for any tax liability for these expenditures, having determined that they do not result in taxable income for the homeowners.

To participate in the exterior rehabilitation component of the program, Black Hawk requires the homeowner to grant the City a historic preservation easement on the property, which is a legal agreement between Black Hawk and the homeowner designed to preserve the historic character of the house's exterior in perpetuity. The easement requires current and future homeowners to maintain the house in a "good and sound state of repair" and gives the City the right to restrict changes to the house's exterior.

There are three steps that must happen for a house to be a part of the City's house rehabilitation program.

- 1 **APPLICATION AND WAIT LIST.** Homeowners apply to participate in the program, and City staff review applications for completeness and place the house on the wait list for the full house rehabilitation. Most of the houses rehabilitated between 2014 and 2017 were on the wait list for about 6 years.
- 2 **PLANNING.** Once a house reaches the top of the wait list, the City and homeowner work with an architect and specialists, such as structural engineers, environmental consultants, and wood investigation consultants, to assess the overall condition of the house. Some demolition work occurs at this time to allow the architect and specialists to determine the condition of the house and materials. The City also contracts with a historic preservation consultant to determine the historic features of the house exterior and how to incorporate those features into the rehabilitation plans in accordance with federal historic preservation standards. Information from these specialists is used to develop plans for the interior and exterior rehabilitation. For the interior and exterior work on all house rehabilitation projects, Black Hawk typically contracts directly with the same architect, specialists, and historic preservation consultant involved in planning.
- 3 **CONTRACTING FOR THE REHABILITATION WORK.** Once the rehabilitation plans are developed, Black Hawk's Historic Preservation Commission reviews and discusses the exterior plans with the historic preservation consultant, who advises it on how to ensure the rehabilitation is compliant with federal standards. General contractors bid on the project, and the City Council approves the winning general contractor bid, along with the interior rehabilitation grant award agreement and amount, and plans for the exterior rehabilitation.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed the City's supporting documentation for a sample of six of the 19 house rehabilitation projects (labeled in this report as Houses A through F) that Black Hawk funded with State Historical Fund distributions and that were completed between January 2014 and February 2017. The six sampled houses underwent full interior and exterior rehabilitations; City expenditures for the projects totaled \$5.95 million and were made between January 2013 and February 2017. Supporting documentation included historic preservation consultant reports and assessments; architect reports, assessments, and bids; floor plans; before and after photographs; home program outlines, which are completed by the homeowner, City staff, and project manager at the beginning of the planning phase to document the condition of the house, as well as needed and desired improvements; and the minutes from the Historic Preservation Commission and City Council meetings at which the projects were discussed. The purpose of our audit work was to determine whether Black Hawk has sufficient processes to ensure that the interior and exterior rehabilitation projects comply with federal standards for the treatment of historic properties, as required by state statute. See EXHIBIT 3.1 for a brief description of each house in our sample and the costs for rehabilitating each house.

**EXHIBIT 3.1. DESCRIPTIONS AND REHABILITATION COSTS
FOR THE SAMPLE OF HOUSE REHABILITATION GRANT PROJECTS
COMPLETED BETWEEN JANUARY 2014 AND FEBRUARY 2017**

SAMPLED GRANT	HOUSE SIZE ¹	PROPERTY VALUE PER COUNTY ASSESSOR IN 2016	CITY EXPENDITURES FOR HOUSE EXTERIOR	CITY EXPENDITURES FOR HOUSE INTERIOR	CITY REIMBURSEMENTS TO HOMEOWNER FOR TAXES	TOTAL CITY EXPENDITURES ²
A	834 sq. feet 1 bed/1 bath	\$167,200	\$656,500	\$334,400	\$142,500	\$1,133,400
B	771 sq. feet 1 bed/1 bath	\$84,500	\$709,800	\$200,400	\$41,900	\$952,100
C	2,425 sq. feet 3 bed/1 bath	\$169,500	\$896,700	\$206,100	-- ³	\$1,102,800
D	984 sq. feet 1 bed/1 bath	\$107,500	\$834,400	\$261,800	\$73,600	\$1,169,800
E	672 sq. feet 1 bed/1 bath	\$121,200	\$585,500	\$172,200	\$38,100	\$795,800
F	740 sq. feet 1 bed/1 bath	\$147,200	\$534,500	\$196,200	\$65,200	\$795,900
TOTALS		\$797,100	\$4,217,400	\$1,371,100	\$361,300	\$5,949,800

SOURCE: Office of the State Auditor analysis of the City of Black Hawk's house rehabilitation program project data and costs for the period of January 2013 through February 2017 from its financial system, and Gilpin County Assessor property records for 2016.

¹ Based on project data, the house sizes reported by the County Assessor are from before the rehabilitations.

² The City's expenditures for the six projects were made between January 2013 and February 2017.

³ As of April 13, 2017, the owner of House C had not requested reimbursement from the City for the taxes associated with the grant.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

We used the following criteria to evaluate Black Hawk's house rehabilitation program projects.

PROJECTS SHOULD COMPLY WITH STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES. Statute [Section 12-47.1-1202(3), C.R.S.] specifies that the gaming cities shall not expend monies from their distributions of the State Historical Fund unless they have standards that:

- 1 Require and assure all work completed with grants comply with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Standards).
- 2 Require the City's Historic Preservation Commission to review and recommend grant awards to the City Council.

Black Hawk’s Program Guide also requires both interior and exterior components of projects to comply with the Standards. The Standards [36 CFR 68] specify four approaches to treating historic properties—preservation, rehabilitation, restoration, and reconstruction. According to Black Hawk, the house rehabilitation projects primarily fall under the Standards for Rehabilitation, which the Code of Federal Regulations defines as “the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.” The rehabilitation standards emphasize:

- Retaining and preserving the property’s historic character.
- Repairing deteriorated elements of historic character when possible.
- Avoiding removing distinctive materials or altering features, spaces, and spatial relationships that characterize the property.

The National Park Service, which is the federal authority for historic preservation, defines a property’s historic character as the “tangible architectural components that, prior to rehabilitation, convey the building’s sense of time and place” and promulgated the following guidance for interpreting and applying the Standards:

- *Rehabilitating Interiors in Historic Buildings*
- *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*
- *New Exterior Additions to Historic Buildings: Preservation Concerns*
- *Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings*

The guidance specifies how to identify, evaluate, and preserve the elements that contribute to a building’s historic character during a rehabilitation project; recommends techniques for repairing houses and building additions to comply with the Standards; and recommends how

to improve historic buildings to make them more sustainable and energy efficient in accordance with Standards. For example, the Standards state, “Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved,” and the *Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, page 94, addresses the types of features and finishes that should be identified, retained, and preserved, and recommends not “removing or radically changing features and finishes which are important in defining the overall historic character of the building...” and, not “installing new decorative material that obscures or damages character-defining interior features or finishes.” The guidance states that early in the rehabilitation planning stage “a thorough professional assessment should be undertaken” to identify elements of historic character and that the “best rehabilitation is one that preserves and protects those rooms, sequences of spaces, features, and finishes that define and shape the overall historic character of the building” [*Rehabilitating Interiors in Historic Buildings*, pages 1 and 7].

We recognize that the National Park Service’s guidance consists of recommendations, not strict requirements, for applying the Standards; however, this guidance is the most authoritative interpretation of the Standards. According to the National Park Service website for the Standards, the guidance is used by federal, state, and local agencies and officials across the country to carry out their historic preservation responsibilities. Thus, we expected to see Black Hawk follow the guidance consistently to ensure rehabilitation projects comply with the Standards.

Additionally, in 2011 Black Hawk adopted *Residential Design Guidelines* for rehabilitating the City’s historic houses that echo the National Park Service guidance and are intended to help ensure historical accuracy and consistency among houses in the City’s historic district and compliance with the Standards. For example, these guidelines state that historic building materials and character-defining features should be “protected and maintained” during rehabilitation projects and that features that are “extensively deteriorated, damaged, or missing” may be replaced. The *Residential Design Guidelines* also state that buildings, alterations, and additions that occurred during the

Central City-Black Hawk Historic District period of significance should be preserved, while anything constructed after the period of significance may come under less stringent review depending on the historic significance, integrity, and condition of the building.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

For all six house rehabilitation projects we sampled, we found that the rehabilitation work did not fully comply with the Secretary of the Interior's Standards for Rehabilitation and the National Park Service guidance on the Standards, as described below.

INTERIOR REHABILITATION

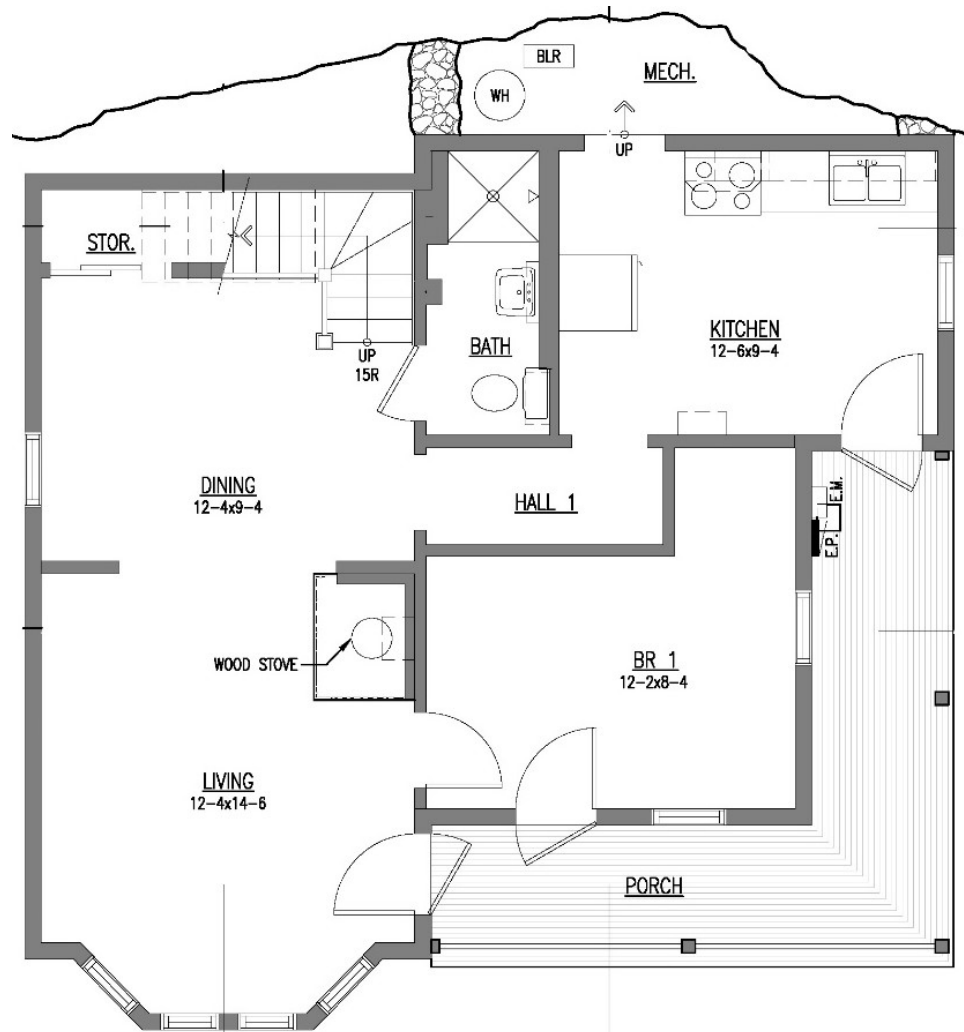
We found that aspects of all six sampled house interior rehabilitations did not follow the National Park Service guidance for applying the Standards. Specifically:

HISTORIC FLOOR PLANS AND SPACES NOT PRESERVED. All six house rehabilitations involved demolition of interior walls. For three of the six, the interiors were reconfigured to create modern, open floor plans which appears to violate the Standards because all interior walls were demolished and rooms were moved and resized. Specifically, the original living room of House D was remodeled to become a kitchen, a new living room was created in what had been a bedroom, and the dining room was demolished to become a bathroom and mechanical room (see EXHIBIT 3.2). In House C, the historic living room was reduced by more than 9 feet to make a bedroom larger. In House B, the dining room was demolished and the kitchen was moved to add a hallway and a bedroom. For the remaining three houses in our sample, either the existing floor plans were preserved or the rehabilitation plans showed that the existing floor plans were not historic. *Rehabilitating Interiors in Historic Buildings*, page 5, recommends retaining and preserving “floor plans and interior spaces that are important in defining the overall historic character of the building,” including the “size, configuration, proportion, and relationship of rooms and

corridors; the relationship of features to spaces; and the spaces themselves....” This guidance is consistent with the Standards for Rehabilitation that state, “A property will be used as it was historically or be given a new use that requires minimal change to its...spaces and spatial relationships,” and “alteration of features, spaces and spatial relationships that characterize a property will be avoided.”

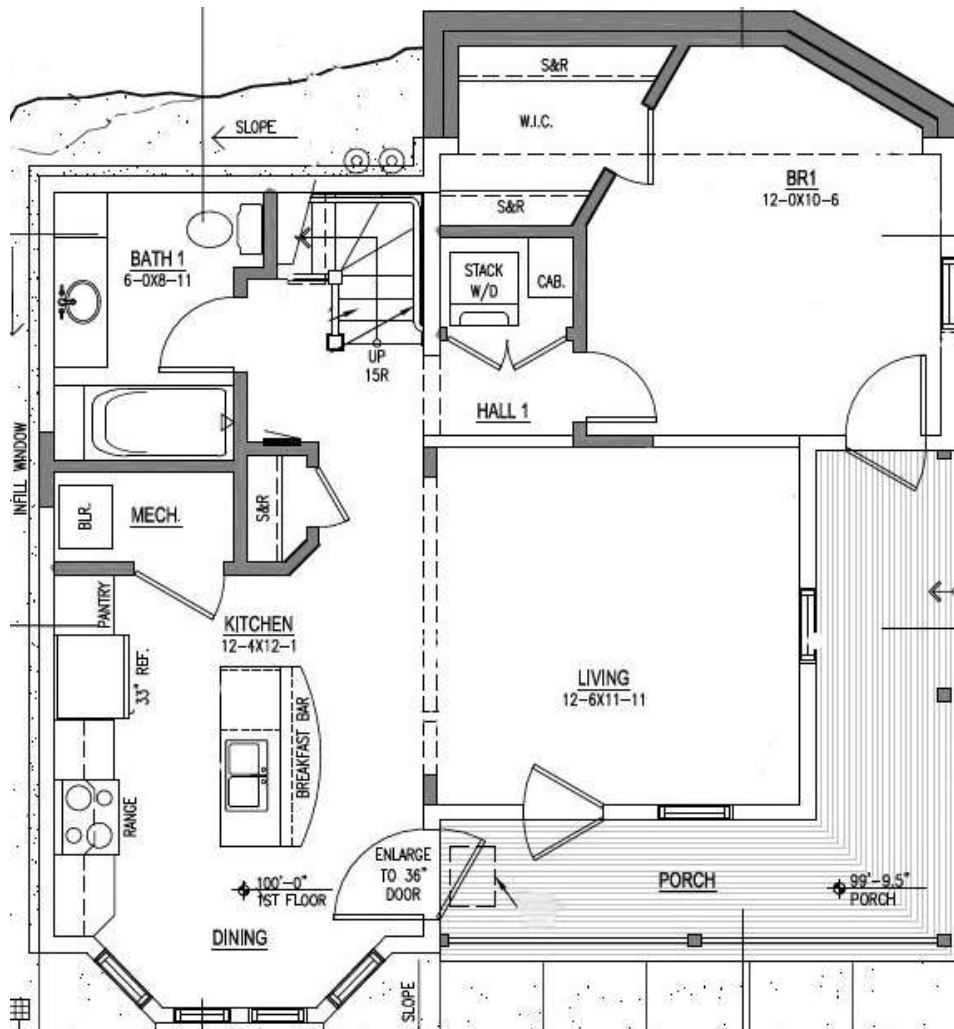
EXHIBIT 3.2. HOUSE D - FLOOR PLAN RECONFIGURED

BEFORE



SOURCE: City of Black Hawk.

EXHIBIT 3.2 CONTINUED. HOUSE D - FLOOR PLAN RECONFIGURED
AFTER



SOURCE: City of Black Hawk.

STAIRS REMOVED OR MOVED WITHOUT ASSESSING HISTORIC SIGNIFICANCE. In House A the stairs were demolished and rebuilt in another area of the house (see EXHIBIT 3.3, House A), and in House F the stairs were replaced with a ladder, without assessments being conducted of whether the existing stairs were historic and dated to the period of significance for the City's historic district. The *Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings* (page 94) recommends not relocating stairs in such a way that the historic relationship between features and spaces is altered. During the audit, the City asked its contracted historic preservation consultant

to review the documentation for these projects that had occurred in 2013 and 2014. The consultant stated that the stairs in both houses appeared to be part of non-historic renovations, but no assessment of the stairs was documented at the time of the projects.

EXHIBIT 3.3. HOUSE A - STAIRS DEMOLISHED AND MOVED
BEFORE REHABILITATION AFTER REHABILITATION



SOURCE: City of Black Hawk.

INTERIOR FEATURES AND FINISHES NOT PRESERVED OR NOT ASSESSED FOR HISTORIC SIGNIFICANCE. The City allowed homeowners to replace interior features and architectural finishes with new materials in all six houses, but for five of the houses, the City’s documents did not show that the existing materials had been too deteriorated to repair, were not historic, or had been installed after the period of significance. According to *Rehabilitating Interiors in Historic Buildings*, page 5, interior features such as doors, baseboards, and hardware, as well as finishes such as woodwork, plastered walls, and decorative materials that “accent interior features and provide color, texture, and patterning to walls, floors, and ceilings” are “important in defining the overall historic character of the building” and should be retained and preserved. The problems are described in the following bullets and illustrated in EXHIBITS 3.4 through 3.7.

- For all six houses, all interior doors and hardware were replaced, but City documentation only showed that the doors and hardware in three of the houses were not historic. For two (Houses B and D) of the remaining three houses, the architect noted that some of the doors and door hardware *were* historic and could be rehabilitated. For House B, the architect noted in its bid for the project that the historic doors were in “fair condition for restoration” (see EXHIBIT 3.4). During the audit, the City reported to us that the historic hardware in House B could possibly have been reused, but upon a closer inspection by the project manager, architect, and City staff, the doors were in poor condition; however, this information was not documented during the project.

EXHIBIT 3.4. HOUSE B – HISTORIC DOORS AND HARDWARE REPLACED

EXAMPLE OF ORIGINAL DOORS



EXAMPLE OF REPLACEMENT DOORS

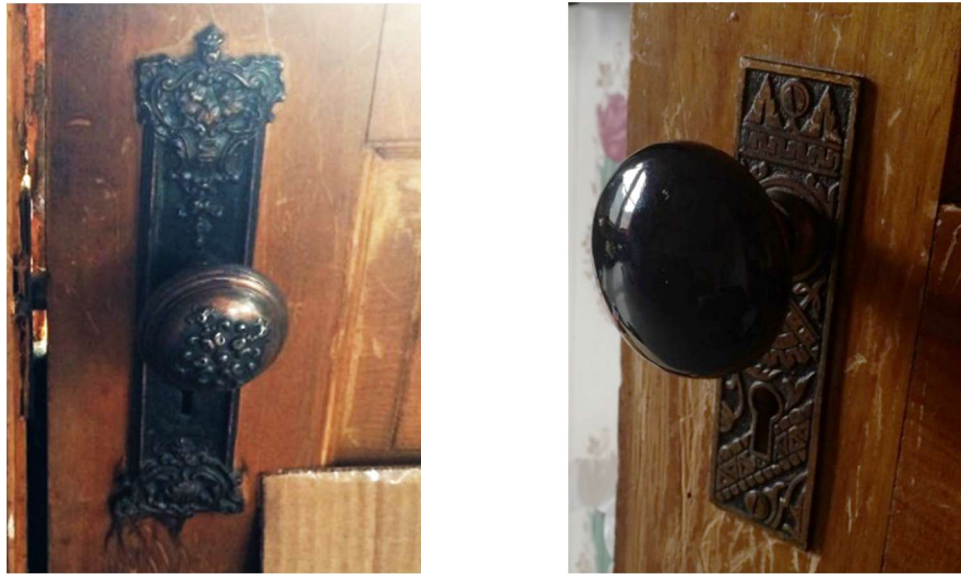


SOURCE: City of Black Hawk.

For House D, the historic doors and door hardware, as well as some historic trim, were replaced with new materials (see EXHIBIT 3.5). The City reported to us that during environmental abatement, workers mistakenly removed and disposed of historic trim and hardware. However, the City’s rehabilitation planning documents for House D showed that the architect planned the installation of new trim, doors, and door hardware throughout the house. For the third house (House C), the City did not have an assessment of whether the doors and

hardware were historic. During the audit, the City reported to us that some of House C's doors may have been historic because they were salvaged from another property by the former owners; however, this information was not documented during the project.

EXHIBIT 3.5. HOUSE D – HISTORIC DOOR HARDWARE REMOVED
EXAMPLES OF REMOVED HARDWARE



SOURCE: City of Black Hawk.

- For all six houses, all interior trim was replaced, but City documentation only showed that the trim in two of the houses was not historic. For one of the remaining four houses (House D), the architect noted that sections of the trim *were* historic. For the remaining three houses (Houses B, C, and E), the City did not have assessments of whether the trim was historic. During the audit, the City reported to us that the trim in House B had been replaced because the house had been abandoned for several years and the interior had extreme deterioration and carpenter ant infestation. However, the City did not have documentation or an assessment supporting that the trim was too deteriorated to repair.
- In House A, a historic, exposed stone retaining wall that defined three sides of a historic addition to the house was demolished, and only a small section of the wall was rebuilt as part of the rehabilitation (see EXHIBIT 3.6). During the audit, the City explained

that the wall was demolished because it was not originally built to be an interior wall and water leaked into the house. However, the City did not have documentation showing that the architect or City had explored options for resolving the problems with the wall while keeping the historic feature.

**EXHIBIT 3.6. HOUSE A – HISTORIC EXPOSED STONE WALLS DEMOLISHED
BEFORE REHABILITATION**



AFTER REHABILITATION



SOURCE: City of Black Hawk.

- For House E, the architect had documented during the 2013 rehabilitation planning that some interior walls appeared to be plaster and “possibly the original plaster and lath walls,” but the walls were not preserved. During the audit, the City reported to us

that the walls were not original because this house had electrical upgrades in the 1990s that required drywall repair, which was also funded by a State Historical Fund distribution grant from the City. However, the City's documentation for the prior grant only indicates that the walls were repaired as needed and not that the original plaster walls were replaced. The City did not have information showing the architect's assessment in 2013 was incorrect.

- For House C, the bannister at the top of the stairs was replaced without an assessment of whether the feature was historic. During the audit, the City's historic preservation consultant reported recalling that the homeowner had said the house had undergone significant alterations over the years and the bannister appeared to be a historical reproduction added in the 1960s or 1970s. However, this information was not documented at the time of the project. See EXHIBIT 3.7.

EXHIBIT 3.7. HOUSE C – BANNISTER REPLACED
BEFORE REHABILITATION



AFTER REHABILITATION



SOURCE: City of Black Hawk.

EXTERIOR REHABILITATION

For the six houses in our sample, the City's historic preservation consultant had reviewed the exterior rehabilitation plans during the project planning stage and found that elements of five house exterior rehabilitation plans were not compliant with the Standards and the City's *Residential Design Guidelines*, but the City decided to make the changes anyway. Specifically:

HISTORIC EXTERIOR FEATURES REPLACED OR DEMOLISHED. For three house rehabilitations (Houses B, C, and D), historic features such as exterior doors and windows were replaced instead of repaired, against the advice of the City’s historic preservation consultant. Specifically, all historic exterior doors were replaced with new doors in two houses (Houses B and D); and in all three houses, all historic windows were replaced with new windows instead of being repaired—except for one window in House D which the homeowner requested remain untouched. For House D, which was built in 1897, three historic exterior doors were replaced, even though the City noted in project planning documents that repairing the doors was an option. One of these historic doors is shown in EXHIBIT 3.8.

EXHIBIT 3.8. HOUSE D – HISTORIC EXTERIOR DOOR REMOVED



SOURCE: City of Black Hawk.

Also for House D, the wood specialist could not perform a thorough window condition investigation prior to rehabilitation because the windows were covered by aluminum storm windows. However, the wood specialist reported that the hardware visible through the glass appeared to date to the period of construction and/or early modification (ca. 1910), indicating that the “windows may [have been] historic and/or original to the construction or early modification of the building.”

While it may seem intuitive to replace doors and historic windows for energy efficiency purposes, the Standards [36 CFR 68.3] require “[d]eteriorated historic features will be repaired rather than replaced” and statute [Section 12-47.1-1202(3)(k), C.R.S.] specifies that “sustainable solutions such as environmentally sensitive and energy efficient windows” are allowed “as long as the use of such sustainable solutions does not adversely affect the appearance or integrity of a historic property.” The *Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings*, pages 4-5, also instructs to preserve and “repair rather than replace” deteriorated features. For example, it recommends that historic windows be made “weather tight” by “weather stripping or caulking,” replacing only when they are missing or “too deteriorated to repair,” and recommends not “removing repairable historic windows and replacing them with new windows....” Black Hawk’s *Residential Design Guidelines* align with the National Park Service’s guidance by recommending that original doors and windows should be retained, preserved, and repaired if damaged, with replacement only occurring when necessary.

OTHER NON-HISTORIC FEATURES ADDED TO EXTERIORS. The exterior rehabilitation for two houses (Houses A and F) included adding or replacing features, such as fences and house additions, with non-historic features and designs. For example, the existing fence for House F was replaced with a fence design that the historic preservation consultant documented was “more elaborate than would have been found on a house of this style” during the house’s period of significance. Black Hawk’s *Residential Design Guidelines*, page 4, require fences to be “similar to those seen historically.”

The rehabilitation project for House A (See EXHIBIT 3.9) included an upstairs addition, at the homeowner’s expense, that was taller than the main house and made the one and half story house a full two-story house. Although the homeowner paid for the cost of the architect and construction of the addition, this work is subject to the Standards because it was performed as part of a comprehensive rehabilitation project that was mostly funded by State Historical Fund distributions. During planning for the project, the historic preservation consultant had noted

that the addition was problematic because it had the “potential to visually dominate the primary historic building.” The City’s consultant specifically documented that the construction of the large rear addition that extended above the historic roof line and beyond the historic east wall of the primary building did not comply with the City of Black Hawk *Residential Design Guidelines* and/or the U.S. Secretary of the Interior’s Standards for Rehabilitation. The Standards require new additions to “not destroy historic materials, features and spatial relationships that characterize the property” and “new work will be differentiated from the old and will be compatible with the historic...size, scale and proportion, and massing to protect the integrity of the historic property....” Additionally, *New Exterior Additions to Historic Buildings: Preservation Concerns*, pages 12-14, states that a new addition should be distinguished from the historic building and should not be highly visible from the public right of way; and that “constructing another floor on top of a small, one, two or three-story building is seldom appropriate for [small residential structures] as it would measurably alter the building’s proportions and profile, and negatively impact its historic character.” *New Exterior Additions to Historic Buildings: Preservation Concerns*, also states on page 1 that “[a] new exterior addition to a historic building should be considered in a rehabilitation project only after determining that requirements for the new or adaptive use cannot be successfully met by altering non-significant interior spaces.” Since House A was not being adapted to a new use, the addition shown in EXHIBIT 3.9 appears to conflict with federal guidance.

**EXHIBIT 3.9. HOUSE A - VISUALLY DOMINATING ADDITION
BEFORE REHABILITATION****AFTER REHABILITATION**

SOURCE: City of Black Hawk.

WHY DID THESE PROBLEMS OCCUR?

During the audit, Black Hawk officials stated that they believe the City has been successful in making homes look more historic and that they have been told that the City has the finest collection of period homes in Colorado. Nonetheless, if the City chooses to use State Historical Fund distributions to rehabilitate houses, it will need to ensure that its projects consistency comply with the Standards that are required by statute.

Overall, we found that the City has not developed adequate processes during the planning and approval stages of rehabilitation projects to ensure that the Standards are applied on all projects. The City also lacks processes to ensure that those charged with administering and overseeing the program and State Historical Fund distributions operate the program in a manner that emphasizes preserving and restoring the historic houses. While Black Hawk's rehabilitation program guides require interior and exterior rehabilitation projects to comply with the Standards, no one—including City staff, the Historic Preservation Commission, and City Council—is ensuring that the Standards are consistently applied. Specifically, the following factors contributed to the problems we identified.

FOCUS ON MODERNIZING INTERIORS (PLANNING STAGE). Black Hawk's program guides state that the City wants the homes to be “comfortable”, “habitable”, and “sustainable” for the inhabitants. It may be necessary to balance the values of modern conveniences and efficiency with the requirements for maintaining historic characteristics; however, the problems we identified raise questions as to whether these values and requirements are being balanced. Based on the results of our sample review, in practice the City appears to give preference to modern comfort and design preferences over historic preservation. For example, demolishing all or most interior walls in three of the houses in our sample was done to provide more modern, open floor plans and enlarge some rooms, such as bedrooms, that were historically small. As another example, for one project a City official discouraged the homeowner from rehabilitating two historic exterior doors, saying “the City does not want issues down the road if the final product does not live up to [the homeowner's]...expectations.” The homeowner rehabilitated one door and replaced the other with a new door.

INCOMPLETE ASSESSMENTS AND DOCUMENTATION OF THE HISTORIC CHARACTERS OF INTERIORS (PLANNING STAGE). During the audit, City staff told us that although Black Hawk contracts with a historic preservation consultant to identify historic character and apply the Standards for the exterior of houses, it does not have this professional conduct a historic character assessment of house interiors. Additionally,

City staff initially reported to us they did not believe the Standards applied to the interior rehabilitation projects, even though the rehabilitation program guide states that they do. City staff later said that the project architect identifies “interior historic defining features” and incorporates those into the interior rehabilitation plans. However, the architect’s rehabilitation plans for the interiors of the six sampled projects did not include assessments of historic character for three of the houses, and the assessments for the other three houses did not show which elements of historic character should be preserved and which elements could be demolished or replaced, whether the floor plans and interior spaces contributed to the historic character, or how to preserve those spaces. For example, for one house, the architect did not document whether there were any historic defining features or otherwise note a lack of historic character, so we could not verify that any assessment had been made.

When discussing these findings with City officials, they indicated that having a historical preservation consultant conduct a historic character assessment on house interiors would be costly. For the six houses in our sample, Black Hawk paid a consultant between \$250 and \$3,900 per house to assess the exterior historical features, or between about 0.03 and 0.35 percent of the total rehabilitation costs of the homes. If interior assessment costs are similar to exterior assessment costs, these additional assessment costs appear reasonable given that the City’s interior rehabilitation projects using State Historical Fund distributions are required to comply with federal historic preservation standards.

LACK OF HISTORIC PRESERVATION COMMISSION OVERSIGHT (APPROVAL STAGE). We found that Black Hawk’s Historic Preservation Commission does not review the interior rehabilitation grants or interior project plans at all, although the Commission is required by statute [Section 12-47.1-1202(3)(a.5), C.R.S.] to review and recommend all grant awards to the governing body. City staff told us that their understanding was that the Commission was required to review *only* the exterior rehabilitation projects, which appears to be a misunderstanding of statutory requirements. With regard to exterior rehabilitation projects, we found that when the historic preservation consultant identifies

elements that are noncompliant with the Standards, the Commission does not always require the project plans to be revised to come into compliance. Moreover, there is no policy requiring the Historic Preservation Commission to document its reasons for diverging from the Standards or to determine when it is acceptable to allow an exception to the Standards, such as when deterioration prevents the repair and requires the replacement of historic features. For two of the sampled houses, the Commission did not document why it approved plans that diverged from the Standards. For three other sampled projects, the Commission did document its rationale in meeting minutes. The Commission's rationales included that replacement is less expensive than repair and that, in some cases, historic doors needed to be replaced in order to enlarge the doorways. For one house, the Commission deferred to the homeowner's wishes to replace the historic doors and windows because the new ones are commonly found in the City's historic district and/or look similar to the original style.

CITY COUNCIL NOT ENFORCING THE STANDARDS AND STATUTORY REQUIREMENTS FOR GRANTS (APPROVAL STAGE). We found that the City Council approves interior rehabilitation grants without inquiring whether the rehabilitation plans meet the Standards, and the City Council approves exterior rehabilitation projects without consistently requiring that elements that are noncompliant with the Standards be corrected to comply, although statute [Section 12-47.1-1202(3), C.R.S.] prohibits the gaming cities from expending their State Historical Fund distributions "unless they have adopted standards for distribution of grants from [the] fund" that include assuring compliance with the Standards. The City also does not have a process to follow up after rehabilitation projects are approved and during the construction phase to ensure that the work on houses complies with the Standards. Further, we found that the City Council has directed the rehabilitation program to have all windows in the houses replaced instead of rehabilitated, which is contrary to the Standards and guidance.

WHY DO THESE PROBLEMS MATTER?

When Black Hawk does not consistently comply with the Secretary of the Interior's Standards for rehabilitating houses and related guidance, there is less assurance that the State Historical Fund distributions used to pay for the rehabilitation of these houses are spent in the spirit of the law. Due to the lack of thorough historical character assessments for the interiors of projects and the overall lack of enforcement of the Standards by the Historic Preservation Commission and City Council, it is unclear whether at least \$5.95 million that was spent on the six sampled house interior and exterior rehabilitations between January 2013 and February 2017 was done so in accordance with statute and the Standards.

Additionally, Black Hawk's failure to assure compliance with the Standards for the six sampled historic houses resulted in the loss of some of the City's history and true historic character, contrary to the Constitution and statutes which stress that the distributions are to be used for the "preservation and restoration" and "historic restoration and preservation", respectively. For example, the house addition in EXHIBIT 3.9 appears to change the look of the historic building, as the historic preservation consultant warned that it might. Another example is the removal of historic doors, decorative hardware, and original windows from Houses B and D in EXHIBITS 3.4 and 3.5. In the case of House D, those historic features, which had been removed, had helped illustrate the architect's statement prior to the rehabilitation that the house "still holds the historic charm it had over a century ago." According to *Rehabilitating Interiors in Historic Buildings*, page 3, the "interior of a plain, simple detailed worker's house of the 19th century may be as important historically as a richly ornamented, high-style townhouse of the same period. Both resources...convey important information about the early inhabitants and deserve the same careful attention to detail in the preservation process." By removing the original doors, hardware, and windows in these examples, Black Hawk altered or eradicated historical features and adversely impacted the historic character of the houses.

RECOMMENDATION 1

The City of Black Hawk should improve its processes and internal controls over the house rehabilitation programs to ensure compliance with statutory requirements and the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Standards) by:

- A Revising the *Community Restoration and Preservation Guide to Programs* to require that a house's historic features, finishes, spaces, and design elements be preserved, repaired, and rehabilitated whenever possible, as opposed to replaced.
- B Implementing a policy requiring staff to document the reason for any replacement or demolition of historic features in house rehabilitation plans and obtaining approval of such changes from a historic preservation consultant. Such policy should also provide guidance on when it is acceptable to diverge from the Standards.
- C Implementing a policy requiring complete documented assessments of the historic character and elements of each house interior prior to designing the rehabilitation, and consulting with a professional historic preservation consultant or similar professional to ensure all elements of interior rehabilitations preserve and retain the house's historic character in compliance with the Standards and National Park Service guidance for interpreting and applying the Standards, before rehabilitation projects are approved.
- D Requiring the Historic Preservation Commission to review and discuss the interior rehabilitation grants and plans for compliance with the Standards before the projects are recommended to the City Council.
- E Implementing a process for a historic preservation or similar professional to conduct follow up reviews during each project to ensure the rehabilitation work is conducted according to the Standards.

RESPONSE

CITY OF BLACK HAWK

A PARTIALLY AGREE. IMPLEMENTATION DATE: DECEMBER 2019.

As set forth previously in the City's response to CHAPTER 2, the City would suggest that for all of the recommendations "PART A through E" below, to the extent that Senate Bill 99-232 modified C.R.S. §§ 12-47.1-1201 and 1202 by purporting to restrict the gaming cities' use of the State Historical Fund distributions (the "Funds"), it did so without constitutional support and improperly added a requirement for the Funds to be used for "historic" restoration and preservation. The City nonetheless strives to rehabilitate homes dating back to the City's period of significance in a responsible manner that is consistent with Colo. Const., Article XVIII, Section 9.

Accordingly, the City with the assistance of its historic preservation consultant and other qualified individuals will conduct a thorough review of its policies regarding under what circumstances a house's historic features, finishes, spaces, and design elements can be preserved, repaired, and rehabilitated, as opposed to replaced. While doing so, the City will not rehabilitate any homes as part of the 2018 budget while it conducts this evaluation of the guidelines to assure continued and more effective compliance with the Secretary of the Interior's Standards. Thus, the City anticipates an implementation date in 2018, effective in budget year 2019 for all of the City's responses to "PART A through E" below.

AUDITOR'S ADDENDUM

According to statute [Section 2-3-123(1), C.R.S.], this audit must ascertain whether the gaming cities follow Section 12-47.1-1202(3), C.R.S., which, in part, prohibits the cities from spending State Historical Fund distributions for grants unless they comply with the Secretary of the Interior's *Standards for the Treatment of Historic*

Properties (Standards). Our audit work found that the City of Black Hawk has not ensured that all grant projects consistently comply with the Standards, which specify repairing and preserving historic features, finishes, spaces, and design elements whenever possible rather than replacing them. Consequently, RECOMMENDATION 1, PART A asks the City of Black Hawk to take action beyond reviewing its policies and guidelines, by *revising them to require* compliance with the Standards of repairing and preserving historic elements whenever possible.

B PARTIALLY AGREE. IMPLEMENTATION DATE: DECEMBER 2019.

The City with the assistance of its consultants will seek to consider and adopt additional policies documenting the reason for replacement and demolition of historic features related to the City's period of historic significance, including policies regarding when it is appropriate to diverge from the Standards. As set forth above, while doing so, the City will not rehabilitate any homes as part of the 2018 budget.

AUDITOR'S ADDENDUM

During the audit, the City of Black Hawk could not provide documentation to justify demolishing some houses' historic features, including doors, trim, and windows, and, in the instances of the exterior features, replacing them against the advice of the historic preservation consultant whom the City retains to help it ensure projects are compliant with the Standards. As a result, RECOMMENDATION 1, PART B asks the City not only to consider and adopt, but to *implement* a policy that provides guidance on when it is acceptable to diverge from the Standards and that requires documentation of the reasons for any such divergence.

C PARTIALLY AGREE. IMPLEMENTATION DATE: DECEMBER 2019.

As part of the process identified herein regarding the review of policies included in the City's Guide to Programs, the City will review and consider updated guidelines for the rehabilitation of

interior spaces, including more complete documented assessments of the historic character and elements of each house interior prior to designing the rehabilitation, and consulting with a professional historic preservation consultant or similar professional to ensure that the interior rehabilitations preserve and retain the house's historic character related to the City's period of historic significance. While the City is concerned about significant increased costs associated with additional professional consultant review, the City will evaluate a reasonable scope for continuing to consult with the City's historic preservation consultant or similar professional for a more thorough evaluation of the interior rehabilitation work to assure such work preserves and retains the historic character of primary spaces consistent with the Standards.

As set forth above, while doing so, the City will not rehabilitate any homes as part of the 2018 budget.

AUDITOR'S ADDENDUM

The audit found that some grant projects did not comply with the Standards required by statute because the City of Black Hawk does not have consistent processes for assessing the historic character and elements of house interiors before they are rehabilitated or for documenting the assessment. RECOMMENDATION 1, PART C asks the City not only to review its policies for interior rehabilitation projects, but to *implement* a policy requiring complete, documented assessments of each house's interior historic character and elements. This recommendation also asks the City to have its historic preservation consultant, who reviews the exterior component of all rehabilitation projects at a cost of less than 0.4 percent of the total project cost, to also review the interior component of each project to ensure the entire house rehabilitation will comply with the Standards before each project is approved for a grant.

D AGREE. IMPLEMENTATION DATE: DECEMBER 2019.

The City will include Historic Preservation Commission review and

discussion of the rehabilitation of interior spaces before they are recommended to City Council once the review and revision of the Guide to Programs described above is completed.

E PARTIALLY AGREE. IMPLEMENTATION DATE: DECEMBER 2019.

As part of the process identified herein regarding the review of policies included in the City's Guide to Programs, the City will review and consider the need for follow up reviews during construction conducted by a historic preservation consultant or other similar professional while at the same time being cognizant of the increased costs associated with additional professional consultant review.

As set forth above, while doing so, the City will not rehabilitate any homes as part of the 2018 budget.

AUDITOR'S ADDENDUM

Our audit work found that the City of Black Hawk is not ensuring that house rehabilitation projects are completed according to the Standards required by statute, because the City does not have a process for monitoring the projects during the construction phase to ensure compliance. RECOMMENDATION 1, PART E asks the City not only to review and consider the need for follow-up reviews, but to *implement* such a process to ensure compliance on all projects.

CRIPPLE CREEK'S COMPLIANCE WITH HISTORIC PRESERVATION STANDARDS

From January 2014 through February 2017, the City of Cripple Creek (City) spent about \$79,579 of its State Historical Fund distributions to award grants for exterior improvements to 15 historic structures through the City's Historic Preservation Grant Program (grant program). The grant program provides funding for two types of structures: (1) private residential structures constructed prior to 1921 and (2) public or non-profit structures constructed between 1896 and 1910. The City previously awarded grants for commercial structures constructed between 1896 and 1910, but it has not offered this type of grant since 2014, citing funding constraints. The grant program prioritizes awarding grants for exterior improvements, including structural stabilization and waterproofing. However, public and non-profit applicants may also receive grants for improvements to façade aesthetics, awnings, signs, and certain interior items, such as furnaces, wiring, and plumbing that could be considered dangerous to the historic structure.

To be considered for a grant, property owners must provide proof of ownership, the structure's history, and three contractor bid proposals. Owners must also agree to pay a percentage-based cost match for the work. The City's Historic Preservation Commission (Commission) reviews each grant application and visits all grant project sites. Annually, the Commission recommends grant applications to the City Council, which has final authority for approval or denial. Approved grantees pay for and manage their projects directly and receive reimbursement from the City after the work is completed.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed the supporting documentation for a sample of six of the 15 grant projects that Cripple Creek funded with State Historical Fund distributions. The six projects were completed between January 2014 and February 2017 at a total cost of \$37,782. Our sample included four grants for private houses involving replacement of historic windows, restoration of wood logs, and new roofs and gutters; one grant for a non-profit organization involving brick repair and protection of historic windows; and one commercial grant involving masonry restoration that was awarded before the City ceased awarding such grants. The supporting documentation we reviewed included grant applications, narratives about the structures' histories, contractor bids, award letters, inspection forms, photographs, and the minutes from Historic Preservation Commission and City Council meetings. The purpose of our audit work was to determine whether Cripple Creek has sufficient processes to ensure that approved grant projects comply with restrictions in statute and Standards.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

GRANT PROJECTS SHOULD COMPLY WITH THE STANDARDS. Statute [Section 12-47.1-1202(3), C.R.S.] specifies that the gaming cities shall not expend their State Historical Fund distributions unless they have standards that ensure grant projects comply with the Secretary of the Interior's Standards. Cripple Creek's grant program guidelines specifically require work to comply with the portion of the Standards pertaining to rehabilitation, which state:

- Deteriorated historic features will be repaired rather than replaced.
- Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

The authoritative guidance for interpreting and applying the Standards, which is promulgated by National Park Service, states: “In any evaluation [of window conditions], one should note at a minimum, 1) window location, 2) condition of the paint, 3) condition of the frame and sill, 4) condition of the sash..., 5) glazing problems, 6) hardware, and 7) the overall condition of the window (excellent, fair, poor, and so forth).” [*Preservation Brief 9: The Repair of Historic Wooden Windows*].

Based on this criteria, for projects involving renovation of features that may be historic, we expected the City’s grant process to include the following:

- Identification of historic features of the structure
- Condition assessments of historic features and the severity of deterioration
- Documentation of the rationale for either repairing or replacing of historic features

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that Cripple Creek did not maintain records showing that it had identified historic features or performed conditions assessments for any of the six grant projects in our sample. Further, for five projects that involved potentially historic features (i.e., all except one roofing project), the City did not document its rationale for allowing the features to be repaired or replaced. Due to the lack of documentation, we were unable to determine whether two of the projects that involved replacement of potentially historic features complied with the Standards, as explained below:

- **HISTORIC WINDOWS WERE REPLACED ON ONE PRIVATE HOUSE WITHOUT A DOCUMENTED ASSESSMENT.** The City’s records for one grant project of \$2,375 did not include an assessment of the

condition of the windows or evidence that they needed to be replaced, rather than repaired. During our audit, a member of the City's Historic Preservation Committee reported to us via City officials that "no one in this area could complete the job due to damage of the panes and sashing. There was extensive water damage and aging where the paint had deteriorated." However, this information was not documented at the time the Commission and the City Council approved the grant, and the City did not maintain evidence that the damage was too severe for restoration.

- **GUTTERS THAT MAY HAVE BEEN HISTORIC WERE REPLACED ON ONE PRIVATE HOUSE WITHOUT A DOCUMENTED ASSESSMENT.** The City's records for one project of \$8,581 did not indicate whether the gutters were a historic feature and did not include a formal assessment of their condition or the rationale for replacement. A bid from one of the contractors stated, "The historical society will need to do some research to try and determine if gutter was originally installed on this building." However, the City's records do not indicate that such research was performed or that City officials had assessed the gutters' age or condition.

WHY DID THESE PROBLEMS OCCUR?

NO POLICY REQUIRING CONDITIONS ASSESSMENTS. The City does not require an assessment of the condition of historic features that are proposed to be replaced, such as by including an assessment in the grant application, contractor bid, or staff inspection report. City management reported to us that the Commission performs site visits for all grant awards to determine the condition of the structure and ensure compliance with the Standards. However, these site visits were not documented for any of the six grant projects in our sample.

LACK OF A PROCESS FOR DOCUMENTING DECISIONS. The City lacks a policy requiring the Commission to document its rationale for deciding to replace, rather than repair, historic features of structures for which grants are awarded or its reasoning for allowing a project to diverge from the Standards, such as when there is a lack of qualified contractors

who are capable of repairing historic features. The City also lacks a policy regarding when is acceptable for a grant project to diverge from the Standards.

WHY DO THESE PROBLEMS MATTER?

When Cripple Creek does not document assessments of the condition of historic features in rehabilitation projects funded by State Historical Fund distributions or its rationale for decisions to replace rather than restore such features, there is less assurance that projects comply with statute and the Standards. For example, due to a lack of City documentation, we were unable to determine whether \$5,147 spent on replacement of potentially historic features on two sampled grants was spent in compliance with statute and the Standards.

RECOMMENDATION 2

The City of Cripple Creek should improve its historic preservation grant program to ensure compliance with statutory requirements and the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Standards) by implementing a policy requiring (1) identification of and condition assessments for all historic features of structures for which grants are awarded, (2) documentation of the rationale for replacement or demolition of historic features, and (3) approval of such replacements and demolitions by the Historic Preservation Commission. Such policy should also provide guidance on when it is acceptable to diverge from the Standards.

RESPONSE

CITY OF CRIPPLE CREEK

AGREE. IMPLEMENTATION DATE: JANUARY 2018.

The City of Cripple Creek agrees that additional documentation regarding the residential grant program would be beneficial. The City will ensure compliance with statutory requirements and the Secretary of the Interior's Standards for the Treatment of Historic Properties (the Standards) by implementing a policy requiring (1) identification of and condition assessments for all historic features of structures for which grants are awarded, (2) documentation of the rationale for replacement or demolition of historic features, and (3) approval of such replacements and demolitions by the Historic Preservation Commission. The policy will provide guidance on when it is acceptable to diverge from the Standards.

APPENDIX A



1990 BLUE BOOK ANALYSIS OF LIMITED GAMING AMENDMENT

The following text is the entire discussion pertaining to the limited gaming amendment to the Colorado Constitution that appeared in *An Analysis of 1990 Ballot Proposals*, also known as the “Blue Book” voter’s guide, published by the Legislative Council of the General Assembly.

AMENDMENT NO. 4 - CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limited Gaming

Ballot *An amendment to Article XVIII of the constitution of the state of Colorado*
Title: *by the addition of a new section 9 to allow the conducting of limited gaming in the cities of Central and Black Hawk, county of Gilpin, Colorado, and the city of Cripple Creek, county of Teller, Colorado, on and after October 1, 1991.*

Provisions of the Proposed Constitutional Amendment.

The proposed amendment to the Colorado Constitution would:

— legalize limited gambling in Central City, Black Hawk, and Cripple Creek beginning October 1, 1991. Gambling would be restricted to blackjack, poker, and slot machines, and would be further limited to a single maximum \$5 bet;

— restrict limited gambling to the commercial districts of these cities and to structures which conform to the architectural styles and designs common to such areas between 1875 and World War I, regardless of the age of said structures, and which conform to the requirements of the applicable city ordinances;

Limited Gaming

- restrict the area to be used for gambling to no more than thirty-five percent of the total square footage of each building and no more than fifty percent of the square footage of any one floor;
- prohibit limited gambling between the hours of 2:00 a.m. and 8:00 a.m. (the hours in which liquor establishments must be closed);
- allow limited gambling in establishments licensed to sell alcoholic beverages;
- create the “Limited Gaming Control Commission” which would be responsible for the administration and regulation of limited gambling and the promulgation of rules and regulations governing the licensing thereof;
- create a limited gaming fund in the state treasury to which licensing fees and up to forty percent of the gross proceeds generated from limited gambling would be paid;
- provide for the following distribution of moneys in the limited gaming fund less administrative and regulatory costs: fifty percent to the state general fund or such other fund as designated by the General Assembly; twenty-eight percent to the state historical fund (of this, twenty percent shall be used for the preservation and restoration of Central City, Black Hawk, and Cripple Creek, and the remaining eighty percent for historic preservation throughout the state); twelve percent to Gilpin and Teller counties; and ten percent to Central City, Black Hawk, and Cripple Creek; and
- require the General Assembly to enact, amend or repeal such laws as are necessary to implement the provisions of the proposed amendment. These laws would include provisions for the licensing of qualifying nonprofit charitable organizations which may periodically host limited gambling activities in licensed gambling establishments.

Comments on the Proposed Amendment

History of gambling law in Colorado. The Colorado Constitution, as adopted in 1876, prohibited gambling. Over the years, certain forms of gambling have been legalized by the General Assembly and the voters. In 1947 a referred law was adopted which authorized pari-mutuel wagering at horse and dog races. In 1952, the Colorado Supreme Court decided that pari-mutuel betting on dog and horse races did not amount to the maintenance of a lottery prohibited by the constitution and the legality of pari-mutuel wagering was sustained. The constitutional prohibition on gambling remained unchanged until 1958 when an initiated amendment was adopted which permitted the operation of games of chance (bingo and raffles) by certain nonprofit organizations. Implementing legislation was enacted in 1959. After previous attempts to authorize a sweepstakes or lottery failed, a constitutional amendment which established a state-supervised lottery was approved in 1980. Implementing legislation for the lottery was enacted in 1982. Lotto games were authorized by the General Assembly in 1988.

In 1979, the General Assembly enacted a law which permitted certain nonprofit, tax exempt, religious, charitable, educational and other organizations to conduct lawful gambling on liquor-licensed premises under specified conditions. For the next five years casino-type gambling by certain nonprofit organizations in conjunction with a liquor license was conducted. Because of much

Limited Gaming

confusion in the administration and enforcement of the law and many abuses in the operation of such gambling activities, the law was repealed in 1984.

Previous attempts to authorize casino-gambling and other forms of limited legal gambling have failed. For example, a 1982 initiated proposal to permit casino gambling in the southern part of the state and in resort areas and economically depressed counties failed to qualify for the ballot because of fraud in the petition drive. In 1984, voters rejected an initiated proposal to legalize casino gambling in a designated area of Pueblo County. An initiated effort in 1984 to permit the conduct of poker and to revive "charitable gambling" failed to qualify for the ballot.

This year the General Assembly rejected a proposal to authorize "betting pools" in liquor-licensed establishments and a proposal to authorize licensees under the bingo law to use electronic or computerized devices or machines for the playing of poker. The General Assembly also rejected a proposed constitutional amendment similar to this initiated proposal to permit limited gambling in several historic communities.

State revenue. The state of Colorado receives a percentage of the revenue derived from legal gambling. The figures below reflect the amount received by the state in the latest fiscal or calendar year.

Pari-mutuel— The state receives 4 percent of the total bet. In 1989 the Betting state's share was \$8.2 million.

Lottery — The state receives approximately 30 percent of the proceeds from lottery and lotto for state parks and recreation, capital construction, and local parks and recreation (conservation trust fund). In fiscal year 1988-89, lottery sales equaled \$78.9 million, and the total amount distributed to the three areas was \$18.9 million.

Bingo and — The state receives 3 percent of the net profit of bingo and Raffles raffle games. In 1989 the state's share was \$811,348.

Arguments For

1) Limited gambling would help to ensure the preservation of historic buildings in Central City, Black Hawk, and Cripple Creek, and in other areas of the state. With the diminishing economies of these communities, legalized gambling would help raise the necessary funds to restore the historic character of the designated towns without burdening the taxpayers of Colorado or the citizens of the communities. The flavor of the frontier gold mining life should be maintained since the significance of these areas was in large part responsible for Colorado becoming a state in 1876. Without additional resources being committed to the preservation of the structures and character of these historic towns, the buildings will continue to deteriorate and collapse. If this is permitted to occur, a treasured national and state resource will eventually be lost.

2) Limited gambling will assist in capturing more tourist revenue and will increase tourism overall. The added attraction of limited gambling will create an extended tourist season for these towns. The benefits of added tourism will be felt not only in the towns where limited gambling is allowed but in the surrounding communities. More tourist dollars spent will result in more available state and local funds and less taxation on the residents of Colorado. Almost

Limited Gaming

half of the tax revenue generated will go to the state general fund to be shared throughout the state.

3) The new service type businesses necessary to support the increased tourism in these areas will create new jobs both locally and statewide. These additions to the work force will increase individual income and sales tax revenues to the state and local governments. The proposal will benefit many nonprofit charitable organization by allowing so-called "charity nights" in licensed gambling establishments.

4) Limited gambling is designed to act as a supplement to, and not a replacement of existing businesses in the communities. Taxes derived from gambling will ensure the preservation of historic buildings. The proposal is an effort to enhance the historic qualities of the communities, boost the economies of the areas by providing a year-round tourist attraction, and capture a portion of Colorado gambling dollars which are now being spent in other states. The proposal is designed to eliminate the incentive of high profits which attract high dollar investors and organized crime. By limiting the possibility of excessive profits, any attempt at exploitation by outsiders will be limited. The proposal sufficiently taxes the net revenues from gambling to ensure that all increased expenditures necessary for the set-up, regulation and enforcement will be funded directly from the revenue received. The financing of historic preservation, improvement of municipal infrastructure, and increased law enforcement resources are to be funded from gambling revenues.

Arguments Against

1) The historic character of these communities as collections of unaltered, original, and authentic buildings will be sacrificed to maintain the gambling industry. Property values will increase and any commercial structure which could possibly qualify for a gambling license will command a premium price for ownership. Resident owners will be bought out. Pressure will be great to expand the space available for gambling. The renovation and expansion of existing historic buildings as well as construction of architectural reproductions will result in fewer unaltered historical buildings. This could lead to these towns being deleted from the list of National Historic Landmarks and National Register Districts. The historic quality of these communities will be overshadowed by the primary business of gambling.

2) Limited gambling will not be a cure for the ills of these historic communities, but will create more ills. Other than providing year-round, rather than seasonal, employment for some residents, the communities will not benefit greatly from higher employment anticipated from limited gambling. Employees of the gambling industry will most likely live in the larger surrounding communities since housing in the historic communities is limited. The limited housing that is now available will be at a premium price, driving up property values, and further tempting resident owners to sell and move elsewhere. Existing residential areas may be subject to integration of non-historic construction in the midst of historic buildings, thereby further weakening the historic character. Basic infrastructure to serve the public (e.g. bathroom facilities, streets and roadways, and parking) should be in place before gambling begins. To provide the increased infrastructure capacity to meet the increased demand will utilize all the resources of the community.

Limited Gaming

3) The authorization of limited gambling in a few designated areas is the first step toward legalized statewide casino gambling. This forecast seems inevitable since it makes little sense to authorize slot machines, poker and blackjack in these designated communities while prohibiting the local VFW hall from operating video poker machines with a payout to winners. Once limited gambling is allowed in a few communities, other depressed communities will want to participate for the economic development aspect it offers. Since there are limited dollars available for gambling, the inevitable expansion to other areas of the state would dilute any perceived benefits to the designated communities and they would be back to competing for tourist dollars. This measure will lead to an effort to legalize casino gambling statewide which is not in the best interest of the state.

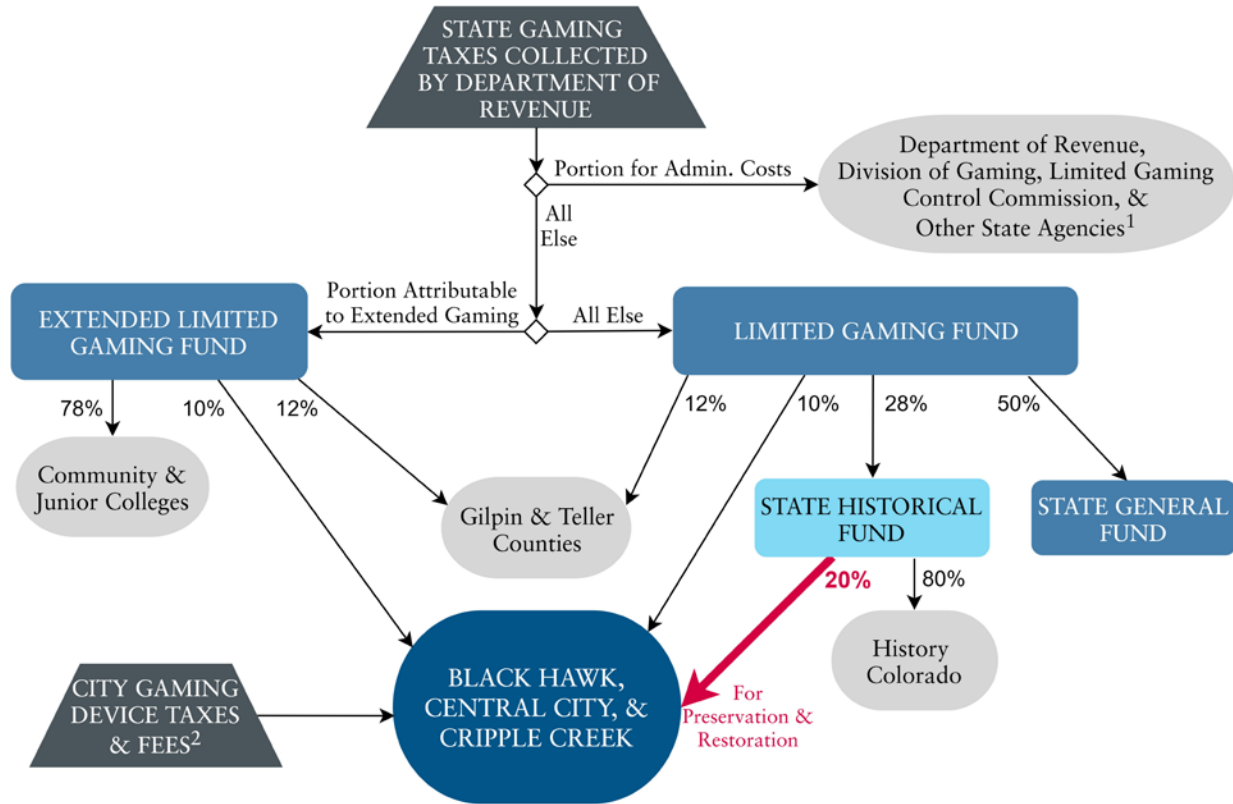
4) The incidence of compulsive gambling, with its injurious effects to the individual and society, will increase with the authorization of limited gambling. The increase in the number of people attracted to these communities by gambling will result in an increase in crime, thereby creating a need for more law enforcement personnel. Building an economic base on gambling is not sound public policy. While gambling is a cost-effective way to tax citizens, it is a regressive tax preying on those who can least afford it. It is not a painless tax. Government should not depend on gambling as a source of revenue, nor should it encourage a quick-buck, no-work ethic that undermines the value of honest and meaningful labor and savings.



APPENDIX B



FLOW OF LIMITED GAMING TAX REVENUE



SOURCE: Office of the State Auditor analysis of Article XVIII, Section 9 of the Colorado Constitution, Sections 12-47.1-701, 701.5, and 1201, C.R.S., and the Municipal Codes of Black Hawk, Central City, and Cripple Creek.

¹ The State Treasurer is authorized to pay all ongoing expenses of the Department of Revenue, the Division of Gaming, the Limited Gaming Control Commission, and any other state agency that has expenses related to the administration of the Colorado Limited Gaming Act [Section 12-47.1-701(1)(b)(I), C.R.S.].

² Collected by each city as authorized by Section 31-15-501(1)(c), C.R.S.

