

LAND GRANT COMMITTEE

2008 INTERIM
FINAL REPORT
to the
FORTY-NINTH LEGISLATURE
FIRST SESSION



New Mexico Legislative Council Service
Santa Fe, New Mexico
December, 2008

LAND GRANT COMMITTEE

2008
REPORT

Santa Fe, New Mexico
December 2007
File No. 205.207-08

LEGISLATIVE INTERIM LAND GRANT COMMITTEE SUMMARY OF COMMITTEE WORK

The legislative interim Land Grant Committee held five meetings during the 2008 interim in Santa Fe, Carnuel, El Rito, Abiquiu and Albuquerque. Several ongoing issues and projects were addressed this interim.

In late August, the committee received the attorney general's official response to the Government Accountability Office's (GAO's) 2004 report on longstanding community land grant claims. The response raised serious questions and concerns about the GAO's legal conclusions and the basis for its reasoning in the report. The committee will be sponsoring legislation requesting that the attorney general's response be made part of the Congressional Record and that Congress consider legislation addressing longstanding community land grant claims during its upcoming session.

Another major issue addressed by the committee concerned the audit requirements that land grants, along with all other political subdivisions of the state, are subject to. The state auditor presented a report to the committee addressing this issue; the report recommends that the audit requirements for land grants and other special districts be modified to consider the amount of revenue the entities handle on an annual basis and to eliminate reporting in certain instances. This change would be particularly helpful to small political subdivisions of the state that are often severely burdened by the current statutory requirement of a full annual audit.

The committee was pleased to hear that the University of New Mexico land grant studies program, which was established with the help of a special appropriation in 2008, will become a permanent part of the university and is already working with the land grant community on various projects. The committee also received a status report on the various projects involving

land grants that are being conducted at the State Records Center and Archives and expressed its continued support for those projects.

Among other topics considered by the committee were the federal Bureau of Land Management's update of its Rio Puerco region management plan, the Department of Game and Fish's administration of elk hunting permits and elk depredation issues, the state's uranium mining permitting process and celebrating the return of a parcel of land to the Abiquiu Land Grant.

At its last meeting, the committee endorsed several pieces of legislation for introduction during the 2009 legislative session, in addition to the previously mentioned proposals. Endorsed legislation included the following:

- allowing land grants that are political subdivisions of the state to purchase tort liability coverage through the Risk Management Division of the General Services Department;
- making community land grants eligible for conservation easement tax credits;
- establishment of a land grant bureau to address ongoing land grant governance issues and intergovernmental relations between land grants and state and federal agencies;
- requiring state agencies to include land grants in their planning processes when the process involves land within a land grant;
- requesting the State Game Commission to explore ways to return use rights to land that it owns that was once part of the Tierra Amarilla Land Grant; and
- amending land grant election procedures.

Total expenditures for voting members during the interim were \$10,491.95 and expenditures for advisory members totaled \$1,142.42.

**2008 APPROVED WORK PLAN AND MEETING SCHEDULE
for the
LAND GRANT COMMITTEE**

Members

Sen. Richard C. Martinez, Chair
Rep. Miguel P. Garcia, Vice Chair
Sen. Rod Adair
Rep. Paul C. Bandy
Sen. Joseph J. Carraro

Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. James G. Taylor

Advisory Members

Sen. Carlos R. Cisneros
Rep. Justine Fox-Young
Sen. Phil A. Griego
Rep. Ben Lujan

Sen. Bernadette M. Sanchez
Sen. William E. Sharer
Rep. Eric A. Youngberg

History

The land grant committee was originally created by statute for the 2003 interim and has been renewed each year as a legislative council-created committee since 2004.

Approved Work Plan

The land grant committee proposes to consider the following issues and topics during the 2008 interim and develop appropriate legislation for the 2009 legislative session:

1. consider legislation creating a single state agency to deal with community land grant issues on an ongoing basis and act as a liaison between community land grants and local, state and federal government agencies; review operation of the treaty of Guadalupe Hidalgo division of the office of the attorney general and request funding of the division as part of the base budget of the office of the attorney general; and hear the attorney general's response to the 2004 U.S. government accountability office report on community land grants;
2. examine the implications of granting political subdivision status to community land grants, including: state auditor requirements for auditing of community land grants; department of finance and administration procedures for evaluating and approving \$200,000 in capital outlay appropriations to community land grants; allowing the purchase of insurance from the risk management division of the general services department by boards of trustees; consider amendments to election procedures for boards of trustees; request the Rio Puerco office of the federal bureau of land management (BLM) to work with land grants that are political subdivisions on transfers of property slated for disposal by the BLM; and consider whether or not to make the town of Atrisco land grant a political subdivision of the state;
3. consider amendments to statutes governing delinquent tax sales of land located within boundaries of community land grants; review title abstracts by the state commission

- of public records on state-owned property located within the historic boundaries of community land grants; receive an update on the establishment of a land grant studies program at the university of New Mexico and consider continued funding of the program; follow up on transfer of department of game and fish property to Abiquiu; review a big-game proposal from department of game and fish; review the open-gate program of department of game and fish; receive a report on the Bill Humphries wildlife area from the department of game and fish; invite the energy, minerals and natural resources department to address ownership of former land grant property; and determine the need to ask the U.S. forest service to permit more firewood gathering in national forests; and
4. consider a proposal to allow conservation easements on the common lands of community land grants.

Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 18	Santa Fe
July 10-11	Carnuel
August 14-15	El Rito/Abiquiu
September 29-30	UNM, Albuquerque
October 31	Santa Fe

AGENDAS

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
LAND GRANT COMMITTEE**

**June 18, 2008
Room 2027, State Records Center and Archives
1205 Camino Carlos Rey, Santa Fe**

Wednesday, June 18

- 10:00 a.m. **Call to Order**
—Senator Richard C. Martinez, Chair
- 10:05 a.m. **Interim Committee Protocols**
—Paula Tackett, Director, Legislative Council Service
- 10:30 a.m. **Update on State Archives Land Title Research and State Historian
Digital History Project and Tour of the State Records Center and
Archives**
—Sandra Jaramillo, Director, State Records Center and Archives
—Estevan Rael-Galvez, Office of the State Historian
—Angela Lucero, Records Management Division Director
—Melissa Salazar, Archives Division Director
- 12:00 noon **Discussion of Work Plan and Itinerary for the 2008 Interim**
—Committee Members and Members of the Public
- 1:00 p.m. **Adjourn**

Revised: July 7, 2008

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
LAND GRANT COMMITTEE**

**July 10-11, 2008
Cañon de Carnue Land Grant Hall
Carnuel, New Mexico**

Thursday, July 10

- 10:00 a.m. **Call to Order and Welcome**
—Senator Richard C. Martinez, Chair
- 10:15 a.m. **Welcoming Remarks**
—Macario Griego, President, Cañon de Carnue Land Grant
- 10:30 a.m. **State Auditor Issues Affecting Community Land
Grants-Mercedes and Other Entities**
—Evan Blackstone, General Counsel, Office of the State Auditor
- 11:15 a.m. **Creation of a State Entity to Manage Land Grant Issues**
—Juan Sanchez, President, Chililí Land Grant-Merced
- 12:15 p.m. **Lunch**
- 1:30 p.m. **Risk Management Coverage of Land Grant Boards of Trustees**
—George McGeorge, Assistant Director, Risk Management Division
- 2:30 p.m. **Proposed Election Code Changes Affecting Land Grants**
—Committee Staff
- 3:00 p.m. **Manzano Land Grant Forest and Fire Issues**
—Daniel Herrera, Manzano Land Grant Board of Trustees
- 3:30 p.m. **Public Comment**
- 4:30 p.m. **Recess**

Friday, July 11

- 9:00 a.m. **Possible Tour of Areas Near Tajique and Manzano (not confirmed)**
- 12:00 noon **Adjourn**

Revised: August 11, 2008

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
LAND GRANT COMMITTEE**

**August 14-15, 2008
North Gymnasium, Northern New Mexico College
El Rito**

Thursday, August 14

- 10:00 a.m. **Call to Order and Welcome**
—Senator Richard C. Martinez, Chair
- 10:15 a.m. **Welcoming Remarks**
—Carlos Martinez, Director, El Rito Campus, Northern New Mexico
College
- 10:30 a.m. **Open Gate Program**
—R.J. Kirkpatrick, Department of Game and Fish
- 11:00 a.m. **Landowner Elk Permits and Depredation Issues**
—R.J. Kirkpatrick, Department of Game and Fish
—Pat Block, Assistant Director of Support Service, Department of Game
and Fish
—John Zamora, Tierra Aramrilla District Conservation Officer,
Departments of Game and Fish
—James Martinez, Chama District Conservation Officer, Department of
Game and Fish
—Brady Griffith, Cuba District Conservation Officer, Department of
Game and Fish
—Ken Baca, Chama Supervisory District Sergeant, Department of Game
and Fish
- 1:00 p.m. **Lunch**
- 2:00 p.m. **Landowner Perspectives on Elk Permit and Depredation Issues**
—John Hernandez, David Sanchez, Moises Morales, Jake Vigil and
Carlos Salazar, Local Landowners and Ranchers
- 3:00 p.m. **Guadalupe Hidalgo Treaty Division Annual Report and Status of
Attorney General Response to GAO Report**
—David Thomson, Deputy Attorney General, Office of the Attorney
General

—Stephen Vigil, Assistant Attorney General, Office of the Attorney General

4:00 p.m. **Public Comment**

5:00 p.m. **Recess**

Friday, August 15

9:00 a.m. **Ceremony in Abiquiu**
Transfer of Land from the Department of Game and Fish to the Abiquiu
Land Grant

10:00 a.m. **Adjourn**

Revised: September 25, 2008

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
LAND GRANT COMMITTEE**

**September 29-30, 2008
Ballroom A, Student Union Building
University of New Mexico, Albuquerque**

Monday, September 29

- 10:00 a.m. **Call to Order**
—Senator Richard C. Martinez, Chair
- 10:05 a.m. **Welcoming Remarks**
—David Schmidly, President, University of New Mexico
- 10:30 a.m. **Department of Transportation Issues (DOT) —Wildlife Crossings and
Land Disposal Procedures**
—Lawrence Barreras, Property Asset Management Director, DOT
—Rusty Parry, Assistant General Counsel, DOT
- 11:15 a.m. **Land Grant Studies Program Update**
—Dr. Manuel Garcia y Griego, Director, Southwest Hispanic Research
Institute
- 12:00 noon **Lunch**
- 1:30 p.m. **Tour of UNM Library Archives Related to Land Grants**
—Jacob Baca, Research Assistant, Southwest Hispanic Research
Institute
- 2:30 p.m. **Risk Management Division Proposed Legislation to Allow Liability
Coverage of Land Grants**
—Patrick Simpson, Risk Management Division
- 3:00 p.m. **Recommendations of the State Auditor's Task Force on Rural
Accountability**
—Hector Balderas, State Auditor
- 4:00 p.m. **Uranium Mining Leases—Cebolleta and Juan Tafoya Land Grants**
—Jerry Pohl, Secretary, Cebolleta Land Grant Board of Trustees
—James Martinez, Juan Tafoya Land Grant

5:00 p.m. **Recess**

Tuesday, September 30

9:00 a.m. **Attorney General Response to the 2004 GAO Report "Treaty of
Guadalupe Hidalgo: Findings and Possible Options Regarding
Longstanding Community Land Grant Claims in New Mexico"**
—David Benavides and Ryan Golten, New Mexico Legal Aid
—David Thomson and Stephen Vigil, Office of the Attorney General

10:30 a.m. **Atrisco Heritage Foundation Organization and Functions**
—Peter Sanchez, Director, Atrisco Heritage Foundation

11:15 a.m. **Bureau of Land Management—Rio Puerco Resources Management
Plan (RMP) Revision Process**
—Joe Blackmon, RMP Team Lead, Rio Puerco Field Office, BLM

12:15 p.m. **Lunch**

1:15 p.m. **Establishment of a Land Grant Bureau to Coordinate Federal and
State Programs Affecting Community Land Grants**

2:00 p.m. **Public Comment**

2:30 p.m. **Adjourn**

Revised: September 25, 2008

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
LAND GRANT COMMITTEE**

**September 29-30, 2008
Ballroom A, Student Union Building
University of New Mexico, Albuquerque**

Monday, September 29

- 10:00 a.m. **Call to Order**
—Senator Richard C. Martinez, Chair
- 10:05 a.m. **Welcoming Remarks**
—David Schmidly, President, University of New Mexico
- 10:30 a.m. **Department of Transportation Issues (DOT) —Wildlife Crossings and
Land Disposal Procedures**
—Lawrence Barreras, Property Asset Management Director, DOT
—Rusty Parry, Assistant General Counsel, DOT
- 11:15 a.m. **Land Grant Studies Program Update**
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- 12:00 noon **Lunch**
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- 2:30 p.m. **Risk Management Division Proposed Legislation to Allow Liability
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- 3:00 p.m. **Recommendations of the State Auditor's Task Force on Rural
Accountability**
—Hector Balderas, State Auditor
- 4:00 p.m. **Uranium Mining Leases—Cebolleta and Juan Tafoya Land Grants**
—Jerry Pohl, Secretary, Cebolleta Land Grant Board of Trustees
—James Martinez, Juan Tafoya Land Grant

5:00 p.m. **Recess**

Tuesday, September 30

9:00 a.m. **Attorney General Response to the 2004 GAO Report "Treaty of
Guadalupe Hidalgo: Findings and Possible Options Regarding
Longstanding Community Land Grant Claims in New Mexico"**
—David Benavides and Ryan Golten, New Mexico Legal Aid
—David Thomson and Stephen Vigil, Office of the Attorney General

10:30 a.m. **Atrisco Heritage Foundation Organization and Functions**
—Peter Sanchez, Director, Atrisco Heritage Foundation

11:15 a.m. **Bureau of Land Management—Rio Puerco Resources Management
Plan (RMP) Revision Process**
—Joe Blackmon, RMP Team Lead, Rio Puerco Field Office, BLM

12:15 p.m. **Lunch**

1:15 p.m. **Establishment of a Land Grant Bureau to Coordinate Federal and
State Programs Affecting Community Land Grants**

2:00 p.m. **Public Comment**

2:30 p.m. **Adjourn**

Revised: October 31, 2008

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
LAND GRANT COMMITTEE**

**October 31, 2008
Room 309, State Capitol
Santa Fe**

Friday, October 31

10:00 a.m.

Call to Order

—Senator Richard C. Martinez, Chair

10:05 a.m.

Consideration and Endorsement of Legislation

- Audit provisions for special districts.
- Risk management division liability coverage.
- Land grant eligibility for conservation easement tax credits.
- Delinquent property tax auction — right of first refusal for land grants.
- Board of trustee election procedure changes.
- Request to put AG's response to GAO report into Congressional Record.
- Include land grants in state agency planning process for certain lands.
- Create state agency for land grant affairs.
- Memorial on restoration of use right to heirs of the Tierra Amarilla Land Grant.

12:30 p.m.

Adjourn

MINUTES

**MINUTES
of the
FIRST MEETING
of the
LAND GRANT COMMITTEE**

**June 18, 2008
Piñon Meeting Room, State Records and Archives Center
Santa Fe**

The first meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:22 a.m. on Wednesday, June 18, 2008, at the State Records and Archives Center in Santa Fe.

Present

Sen. Richard C. Martinez, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph J. Carraro
Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Rep. Debbie A. Rodella

Absent

Sen. Rod Adair
Sen. Gerald Ortiz y Pino
Sen. James G. Taylor

Advisory Members

Rep. Ben Lujan

Sen. Carlos R. Cisneros
Rep. Justine Fox-Young
Sen. Phil A. Griego
Sen. Bernadette M. Sanchez
Sen. William E. Sharer
Rep. Eric A. Youngberg

Staff

Jon Boller, Legislative Council Service (LCS)
Tamar Stieber, LCS
Kate Ferlic, LCS
Alicia Santos, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Interim Committee Protocols

Paula Tackett, director, LCS, addressed the following topics regarding interim committee protocols:

- A quorum consists of one-half plus one of the voting members assigned to the committee. Once a quorum is established, it is presumed to exist unless someone challenges it.
- If a quorum cannot be established, the committee can dissolve into a subcommittee. A subcommittee cannot vote, but it can hear testimony, and members may be reimbursed for attending. Subcommittees accommodate presenters and audience members who may have traveled a long way to attend. A subcommittee consists of a chair or vice chair, one house Democrat, one house Republican, one senate Democrat and one senate Republican.
- The speaker of the house and the president pro tempore have the authority to appoint substitute voting members to the committee if a quorum of voting members is not present. The general rule is that they appoint substitutes from the same house and party as the absent member so as not to "stack" the committee.
- Only voting members, as opposed to advisory members, may vote.
- The blocking provision states that no action shall be taken if a majority of members from one house who are assigned to that committee vote against a measure.
- The sound systems in committee rooms adjust automatically and are easily disrupted by background noise. Anyone having trouble hearing might check for excessive background noise (e.g., side conversations, paper rustling, typing, etc.). Open laptop screens can block the microphones. Microphones should be turned off until a member is ready to speak to avoid feedback.
- In creating the interim meeting calendar, the LCS tries to avoid conflicts as best it can. Any changes to the calendar must be approved by the Legislative Council.
- Seating preference will be given to committee members who respond to the LCS's meeting reminder.
- Committee members may attend up to four meetings of other committees with the permission of the respective chairs or vice chairs and with the knowledge of the president pro tempore or the speaker of the house.
- Committee members may resign at any time.

Welcome and Introductions

Senator Martinez announced a quorum at 10:41 a.m. After Ms. Tackett's presentation, he asked members of the committee, the staff and the audience to introduce themselves.

State Archives

Sandra Jaramillo, director, State Records Center and Archives (SRAC), introduced members of the center's staff and read aloud from a handout with highlights of the center's activities since 2004 that relate to land grants. They include the following:

- 2004
 - As authorized by Senate Joint Memorial 10, the SRAC hired former State Historian Robert Torrez to conduct a study to determine which state properties were once part of the common lands of former Spanish- or Mexican-period land grants. The study identified three state agencies as owning such property and how many acres they own:
 - the Energy, Minerals and Natural Resources Department (EMNRD) with 2,045 acres;
 - the Department of Game and Fish (DGF) with 58,868 acres; and
 - the General Services Department (GSD) with 2,758 acres.
- 2005
 - The SRAC received a \$33,200 appropriation to continue its survey of state-owned property within former common lands and to document the chains of title for those properties. Mr. Torrez identified 22 separate parcels that merit full abstracts of title.
- 2007
 - The SRAC received \$45,000 in appropriations to conduct the abstracts.
 - The State Game Commission agreed to return 32.5 acres to the Merced del Pueblo de Abiquiú.
- 2008-2009
 - The SRAC hired LandAmerica Albuquerque Title Company to complete abstracts on seven state-owned parcels:
 - Coyote Creek State Park (Mora Land Grant);
 - William Humphries Wildlife Management Area (Tierra Amarilla Land Grant);
 - El Vado Lake State Park (Tierra Amarilla Land Grant);
 - Villanueva State Park (San Miguel del Vado Land Grant);
 - Storrie Lake State Park (Town of Las Vegas Land Grant);
 - New Mexico State Hospital (Town of Las Vegas Land Grant); and
 - Manzano Mountain State Park (Town of Manzano Land Grant).
 - The SRAC received a \$27,000 appropriation to digitize original land grant documents and make them available to the public online.
 - The SRAC will contract with Malcolm Ebright of the Center for Land Grant Studies to summarize the abstract findings, provide a history of each land grant in which state property is located and identify discrepancies in the chains of title.

- The SRAC will hire a part-time, temporary employee to scan into the New Mexico Digital History Project approximately 130 land grant records.

Ms. Jaramillo said the center moved 12 years ago from Montezuma Street to its current location at 1205 Camino Carlos Rey, which it shares with the New Mexico State Library. Ms. Jaramillo thanked Speaker Lujan and retired Senator Joseph A. Fidel, both of whom she said were instrumental in the state acquiring the new building.

Melissa Salazar, director, Archives Division, SRAC, and Samuel Sisneros, senior archivist, SRAC, gave a PowerPoint presentation of the New Mexico Digital History Project (<http://www.newmexicohistory.org/>) and explained the painstaking process by which original documents are electronically scanned and archived on gold compact discs for use on the public web site. Noting that the documents are "incredibly fragile", Mr. Sisneros said the process of copying a single page is very time-consuming because it involves retrieving a document from the vault, removing it from the Mylar sleeve and using a microspatula to flip the page very carefully onto the platen. Sometimes the documents are out of order and have to be arranged chronologically. He said the scanning process takes an average of two minutes per page and that it causes some minimal damage to documents by exposing them to light. He noted, however, that once a document is scanned, it no longer has to be handled physically, thus eliminating future damage.

In addition to displaying original documents, the web site will offer context and provide hyperlinks to relevant essays. It will also provide transcriptions for hard-to-read documents and translations of Spanish-language documents. The latter will include translations from the 1930s by the Work Projects Administration. Responding to a comment from the audience, Ms. Jaramillo acknowledged that early translations of land grant documents were often inaccurate and biased. She said contemporary translators will include the state historian; Malcolm Ebright, director, Center for Land Grant Studies; and former state archivist Richard Salazar.

Ms. Jaramillo said that, except for court records, all of the documents for the history project were donated. Former Lieutenant Governor Roberto Mondragon noted that many old land grant documents are kept in shoe boxes. He said the state historian's web site represents "a good opportunity to encourage all land grants to archive their documentation in some place that will have much more permanency".

Senator Martinez suggested that the committee write a letter to all land grants, encouraging them to allow the SRAC to copy and digitize their historical documents. Arturo Archuleta, director of land grant services, North Central New Mexico Economic Development District (NCNMEDD), said people fear that if they lend out their documents, they will no longer have access to them. He said that ensuring free access to their documents will go a long way in encouraging land grants to loan them to the state archives. Senator Martinez agreed, noting that many local churches that gave santos, crosses and other historical relics to the archdiocese now have to ask permission to borrow them. He requested that Mr. Archuleta and Mr. Boller draft a letter to land grants and that the committee come up with a policy. Ms. Jaramillo suggested a policy similar to one that the SRAC has with acequia associations, in which the parties sign five-

year loans for documents, which the SRAC makes available to the associations.

Responding to a question from the audience about land grant documents belonging to federal agencies, Ms. Jaramillo said that, in 1973, New Mexico's first state historian, Myra Ellen Jenkins, helped negotiate an agreement to house federal Bureau of Land Management (BLM) records in New Mexico rather than in Denver. However, she said, many still remain in Denver as well as in Fort Worth, Texas. She said the state can try to arrange a loan agreement for those documents. In addition, she said, the state learned about U.S. Survey General files that were being sold at a bookstore and negotiated with the U.S. National Archives and Records Administration for their release to New Mexico.

Mr. Mondragon pointed out that many land grant documents remain in Mexico, notably in Durango and Mexico City, as well as in Spain. He suggested, to general laughter, that the Land Grant Committee hold meetings in those countries. Ms. Jaramillo responded that the SRAC does want to go to Spain and Mexico to microfilm or scan New Mexico-related historical documents. Dr. Manuel Garcia y Griego, director of the Southwest Hispanic Research Institute at the University of New Mexico (UNM), said the institute is attempting to get copies of documents from Guadalajara that related to the land grant of the Camino Real.

Representative Miguel Garcia said the SRAC has some original documentation required for land grants to file for subdivision status. He suggested that the SRAC make copies for the land grants. He said it is important for land grants to have title to their own documents and suggested land grants "copyright" their documents before loaning them to the state in order to retain legal title. He called it "kind of shaky" when a land grant brings its historical documents to a state entity and only gets credit for volunteering its documents. He said the land grant deserves more than just a thank you. He noted that the Anton Chico Land Grant got copies from the Oñate Center in Española of its own documentation, which the U.S. Government Accountability Office (GAO) called the most extensive in the state. He recalled how one heir kept historic documents in wax paper and suggested that the SRAC offer training, perhaps through workshops, on how to preserve such documents.

Ms. Jaramillo responded that the SRAC can show a digital watermark on any document stating that copies are available only with the permission of the *merced* (land grant) that owns the document. She added that the SRAC provides grants to organizations to buy supplies to preserve their historical documents and that the center would be happy to talk to land grants about how to apply for those grants.

Mr. Mondragon recalled how land grant heirs gathered documents and submitted them to the GAO for its comprehensive study on land grants, but that the GAO did not return the documents when requested to do so. He suggested that the committee collaborate with New Mexico's congressional delegation to make those documents available to the state, perhaps through the SRAC.

Dr. Garcia y Griego said the GAO agreed during a presentation to the UNM School of Law to make its archives available to the state. He said the state cannot determine how the

GAO came to its conclusions in the land grant study without seeing the material upon which it based those conclusions.

Representative Hall asked about the SRAC's relationship with UNM's Zimmermann Library. Ms. Jaramillo said the agencies have an unwritten agreement to provide copies of documentation to each other at no cost. She said both agencies submit their findings to the Rocky Mountain Online Archive, which tracks information in New Mexico, Colorado and Wyoming.

The committee asked Ms. Jaramillo to include funding for the projects the SRAC was working on as a part of the SRAC's operating budget.

Tour of the State Records and Archives Center

The committee toured the SRAC, including viewing a selection of historical books and documents from the archives, and reconvened in the meeting room at 12:35 p.m.

Atrisco Land Grant

Richard Griego, secretary of the board of trustees of the Town of Atrisco Land Grant, requested a bill for the land grant to get political subdivision status so that the heirs can have a "seat at the table" in establishing a trust fund for recognized land grants. Senator Carraro noted that the heirs sold Atrisco's common lands to SunCal Companies, a private development firm. Mr. Griego said the Town of Atrisco Land Grant consists of more than *ejidos* (common lands), but also includes *solares*, or land granted to an individual. Thus, he said, the land grant still exists, and the heirs want to be compensated if a trust fund is established. He said SunCal would not benefit if the land grant reconstitutes itself by combining *solares* to establish a land base. He explained that SunCal is a separate entity from the land grant, which comprises three entities: the Atrisco Heritage Foundation, which promotes and preserves heritage and history of the land grant; El Campo Santo, Inc., which oversees the cemetery in which the land grant heirs are buried; and Atrisco Oil and Gas, LLC, which owns the mineral rights on the land grant. Mr. Griego stressed that he represents only lineal heirs to the Town of Atrisco Land Grant, not the Westland Development Company, a stockholder corporation established in 1967 to manage and maintain the land grant and whose shareholders include non-heirs. It was Westland that sold the common lands to SunCal.

Speaker Lujan asked how Atrisco intended to formalize a land grant when it has no common lands. Mr. Griego said that because the *solares* are still maintained by lineal heirs, the land grant "exists and persists". Representative Miguel Garcia said it is not out of the ordinary for the Land Grant Committee to pursue political subdivision status for a land grant with no common lands. Representative Miguel Garcia requested that the Town of Atrisco Land Grant issue be added to the committee's work plan, including a presentation by representatives of the land grant and SunCal and drafting legislation to grant it political subdivision status.

Representative Thomas Garcia said he thought that a land grant need not have common lands in order to achieve political subdivision status. However, he said, only land grants that lost land due to political and financial "shenanigans" in the 1800s would qualify for

compensation. Mr. Griego pointed out that the land grant originally had 88,000 acres, but that was reduced to 55,000 acres due to encroachment, fraud and other unjust taking of its lands in the past, including by the City of Albuquerque. Representative Thomas Garcia said that is yet to be determined, but if it is true, then he would support looking into potential compensation for the land grant. For now, he said, he supports his colleagues' efforts to discuss the issue, but noted that a land grant does not need political subdivision status to receive compensation.

Representative Rodella said she wants to be sure that all parties, opponents and proponents, are at the table if the committee includes the Town of Atrisco Land Grant in its work plan. She said she is confused about why private land holdings can be considered a land grant, especially "when the common lands were to be held in perpetuity and not sold off". Mr. Griego pointed out that land grants have been established around private land. Representative Rodella replied that she would not personally trust anyone to place her private holdings in a land grant, especially after people who were looking after the common lands sold them. Mr. Griego said the purpose of making the private holdings a land grant is not to encumber those lands in any way, but to re-create a historical community. Representative Rodella replied, "Well they already had that, Mr. Chairman, and now it's gone."

Speaker Lujan asked what Mr. Griego's personal interest in the land is. Mr. Griego said he does not own any of the private holdings, but that he is a bloodline heir of the Town of Atrisco Land Grant. Speaker Lujan pointed out that Mr. Griego got paid for whatever shares he owned in Westland. Mr. Griego responded that whatever money he got from the sale of the land to SunCal was used to try to stop the sale.

Noting that a similar situation occurred on his own land grant, Speaker Lujan said he sympathizes with Atrisco and that the committee needs to explore the legal issues. To Mr. Griego's question about how Atrisco differs from Tomé, Speaker Lujan said Tomé's land was stolen while the Town of Atrisco Land Grant sold its land.

Mr. Griego said he does claim fraud because the land sold to SunCal was worth \$2 billion, but was sold for only \$250 million. "In my opinion, the board of directors of Westland was involved in a fraudulent transaction", he said. "They benefited personally to a certain extent more than other heirs did for shares they gave to themselves for free – Class B shares. So if fraud is the standard, then we're going to ask for a seat at the table because there was fraud."

Representative Bandy said the committee should not be discussing specifics at this point, but should only discuss whether to include the Atrisco Land Grant in the committee's work plan, which he said he supports.

Mr. Archuleta of NCNMEDD said that he wanted to put the issue into context. The fraud perpetrated on most land grants occurred historically, he said – between 60 and 200 years ago. In contrast, Atrisco lost its common lands relatively recently in what may have been a legal transaction. But numerous historical land grant transactions deemed legal at the time were later found to be fraudulent, he said, describing the Atrisco issue as "shares versus heirs". Not

every heir had an opportunity to voice an opinion on the sale, he said, and many heirs did not benefit from it. He said the sale could be "maybe another great chicanery that took place" or it could be legal. In either case, he said, it behooves the committee to see what actually happened, and that may require some legal research.

On a motion made, seconded and unanimously approved, the committee agreed to add the Town of Atrisco Land Grant issue to its work plan for the 2008 interim.

San Antonio de Las Huertas Land Grant

Tony Lucero, president of San Antonio de Las Huertas Land Grant, asked the committee to draft a letter or a memorial to the BLM for the return of approximately 600 acres of land grant property that the BLM currently manages. He said the National Register of Historic Places recognizes the land. He added that the BLM has in recent years disposed of up to 6,000 acres in the Placitas area that were originally within the historical boundaries of the land grant and that the land grant wants only a portion of that back.

Mr. Lucero said the San Antonio de Las Huertas Land Grant has been in existence since 1765, though some heirs trace their ancestors there back to 1598. He said the land grant lost most of its property over the centuries to the federal government, including the 12,841-acre Tejon tract that he said the government gave away erroneously and patented illegally due to the machinations of Thomas B. Catron.

He showed the committee a handout, a copy of which is in the meeting file, describing the desired tracts of land and the history of the land grant.

Representative Thomas Garcia said the BLM will only accept a letter within a certain period of time and that the letter would ask the BLM to consider the acreage "disposable property". Mr. Lucero said the deadline is the end of July.

A motion to draft a letter to the BLM requesting that it consider disposing of the 600 acres identified by the San Antonio de Las Huertas Land Grant and that the land grant get first priority in acquiring it was made, seconded and passed without objection.

Work Plan, Meeting Dates and Locations

The committee voted without opposition to consider the following issues and topics during the 2008 interim and develop appropriate legislation for the 2009 legislative session:

- legislation creating a single state agency to deal with community land grant issues on an ongoing basis and act as a liaison between community land grants and local, state and federal government agencies;
- reviewing operation of the Treaty of Guadalupe Hidalgo Division of the Office of the Attorney General and request funding of the division as part of the base budget of the Office of the Attorney General;

- hearing the attorney general's response to the 2004 GAO report on community land grants;
- examining the implications of granting political subdivision status to community land grants, including:
 - state auditor requirements for auditing of community land grants;
 - Department of Finance and Administration procedures for evaluating and approving \$200,000 in capital outlay appropriations to community land grants;
 - allowing the purchase of insurance from the Risk Management Division of the GSD by boards of trustees;
 - amendments to election procedures for boards of trustees;
 - requesting the BLM's Rio Puerco office to work with land grants that are political subdivisions on transfers of property slated for disposal by the BLM; and
 - whether or not to make the Town of Atrisco Land Grant a political subdivision of the state;
- amendments to statutes governing delinquent tax sales of land located within boundaries of community land grants;
- reviewing title abstracts by the State Commission of Public Records on state-owned property located within the historic boundaries of community land grants;
- receiving an update on the establishment of a land grant studies program at UNM and considering continued funding of the program;
- the following DGF issues:
 - follow up on the transfer of DGF property to Abiquiú;
 - review a big-game proposal;
 - review the open-gate program; and
 - receive a report on the Bill Humphries Wildlife Area;
- inviting the EMNRD to address ownership of former land grant property;
- determining the need to ask the U.S. Forest Service to permit more firewood gathering in national forests; and
- a proposal to allow conservation easements on the common lands of community land grants.

The committee agreed to the following meeting schedule:

- July 10 and 11: Carnuel/Chililí;
- August 14 and 15: El Rito/Abiquiú; and
- September 29 and 30: UNM.

Members agreed to request an additional meeting on October 31 in Santa Fe.

The committee adjourned at 2:08 p.m.

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**MINUTES
of the
SECOND MEETING
of the
LAND GRANT COMMITTEE**

**July 10-11, 2008
Cañon de Carnue Land Grant Hall
Cañon de Carnue Land Grant, New Mexico**

The second meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:24 a.m. on Thursday, July 10, 2008, at the Cañon de Carnue Land Grant Hall in the Cañon de Carnue Land Grant, New Mexico.

Present

Sen. Richard C. Martinez, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Paul C. Bandy (7/10)
Rep. Thomas A. Garcia (7/10)
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella

Absent

Sen. Rod Adair
Sen. Joseph J. Carraro
Sen. James G. Taylor

Advisory Members

Sen. Bernadette M. Sanchez

Sen. Carlos R. Cisneros
Rep. Justine Fox-Young
Sen. Phil A. Griego
Rep. Ben Lujan
Sen. William E. Sharer
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not attending the entire meeting.)

Staff

Jon Boller, Legislative Council Service (LCS)
Alicia Santos, LCS
Tamar Stieber, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Thursday, July 10

Welcome and Introductions

Senator Martinez asked committee members to identify themselves. He introduced Dr. Manuel Garcia y Griego, director of the Southwest Hispanic Research Institute at the University of New Mexico (UNM), and explained that students from the program were filming the meeting. He asked if there were any objections. None was offered, and Senator Martinez introduced the first speaker, Macario Griego, president of the Cañon de Carnue Land Grant.

Cañon de Carnue Land Grant

Mr. Griego said the Cañon de Carnue Land Grant, commonly known as the Carnuel Land Grant, was settled in 1763 with 90,000 acres. Today only about 1,000 acres remain, of which he said the land grant manages 600 acres.

Mr. Griego described Cañon de Carnue as a "unique situation" compared to other land grants because its land is worth a lot of money — up to \$100,000 per acre — due to its proximity to Albuquerque and the interstate and because, with the help of capital outlay money, it is developing a 50-acre commercial/residential tract. It is also building a structure adjacent to the land grant hall at a cost, thus far, of \$100,000. He noted that Cañon de Carnue is one of the few land grants exercising the capital outlay process because, unlike most New Mexico land grants, it has a sizeable income — primarily from sand and gravel operations and leasing land for billboards and cell towers — and thus can afford to pay for capital projects up front and wait for reimbursement from the Department of Finance and Administration (DFA). It can also afford \$4,000 a year in liability insurance.

Mr. Griego said Cañon de Carnue collaborated with the neighboring Chililí Land Grant for a collaborative forest restoration grant from the North Central New Mexico Economic Development District (NCNMEDD). Juan Sanchez, president of the Chililí Land Grant and of the Land Grant Council, said most of the \$120,000 they received will be used to fund a required National Environmental Policy Act study that then makes them eligible for a piece of the \$5 million federal appropriation for communities to help restore forests. He said the land grants became eligible for federal money after acquiring political subdivision status as provided in Chapter 49, Article 1 NMSA 1978.

Mr. Griego suggested that other land grants look to Cañon de Carnue and Chililí as models of how collaboration can help them get funding for projects, though he said he is not "gung ho" about land grants relying on the federal government for help.

In response to questions from Representative Miguel Garcia, Mr. Griego said Cañon de Carnue will spend about \$50,000 to plan its commercial development, including hiring an architect and engineer. It will cost \$300,000 to comply with water and fire codes, he said, and another \$50,000 or \$60,000 for a sewer extension, which he said the Albuquerque Bernalillo County Water Utility Authority is "pushing" despite an engineer's assessment that it is unnecessary.

Representative Miguel Garcia said Cañon de Carnue, as a political subdivision, can renegotiate its lease with the water authority. Because Cañon de Carnue granted the water authority an easement for the sewer, he suggested that it should be allowed to connect to the sewer line at a reduced cost. In years back, he said, local governments took advantage of land grants that negotiated in traditional ways without legal counsel. Now, he said, there is "nothing to hold you back in renegotiating your lease and seeking what's fair".

Mr. Griego said Cañon de Carnue lost much of its land to the U.S. Forest Service (USFS) during the creation of the agency, when the federal government took prime grazing and forest land and would not allow heirs access to those lands for traditional uses. As a result, he said, Cañon de Carnue lost the basis by which it supported itself. He said heirs went to work in town or went on welfare, and many people turned to drugs and alcohol. "It was a bad, bad move what the federal government did to us", he said. Because the government left them their streams and an acequia, people kept small farms and orchards. But when the highway came through, he said, the State Highway and Transportation Department knocked out their orchards and cut off the mountain streams that fed the acequias. He said the state had money and lawyers, but the land grant had neither, so the people "finally gave up and accepted it".

In response to a question from Representative Bandy, Mr. Griego said there are no grazing allotments, nor does the USFS allow heirs to harvest wood unless the trees are already down. As a result, the juniper and undergrowth are "growing like weeds", which he said is why there have been catastrophic forest fires such as the recent ones in Tajique and Trigo.

Mr. Griego said Cañon de Carnue does not yet have a water line, which is particularly problematic for the land grant because its septic tank is leaking into the wells. He said Cañon de Carnue worked out a deal to get water from Albuquerque, but after fighting with the state engineer over the deal, the land grant gave up. Now, he said, Cañon de Carnue is working with the water authority and is hoping to get water into the village within two years. Until then, he said, the land grant must depend on its own well system. He said the land grant must erect water tanks for the fire department, a project he said will cost between \$30,000 and \$40,000. Despite the high cost, Mr. Griego said he understands the need, especially since the land grant lost a couple of buildings to fire.

Responding to questions from Senator Sanchez, Mr. Griego said that the land grant board manages all of Cañon de Carnue's business as well as the land grant hall bar, which operates as a 501(c)(3) nonprofit entity. He said Cañon de Carnue earns between \$40,000 and \$50,000 a year and files income tax returns — one of the few land grants to do so. He said most of its revenue goes toward property taxes, insurance and, recently, legal fees to fight the state Department of Transportation (DOT) on the following two issues.

1. The DOT wants the land grant to pay for a fence along Interstate 40 to block bear, deer and other wildlife. The land grant maintains it should not have to pay for the fence.

2. The DOT recently condemned property within land grant borders and offered it up for public auction without giving Cañon de Carnue the right of first refusal, as is statutorily required for land grants with political subdivision status.

Representative Hall noted that the latter issue is of particular interest to the Land Grant Committee, which was successful in getting the state to return property to the Abiquiú Land Grant. He then asked about hunting on the land grant. Mr. Griego said there is none, though the land grant would like to get hunting licenses for heirs and sell bull elk licenses to outsiders for hunting north of the highway.

The committee moved, seconded and unanimously agreed to invite the DOT and the Department of Game and Fish to a subsequent interim meeting to discuss the issues Mr. Griego raised and resolve them in a friendly manner that is beneficial to the land grant.

Representative Miguel Garcia asked about Cañon de Carnue's ongoing study to create its own zoning. Mr. Griego said the plan is before the DFA. It was that plan, begun in 2003, and a law passed in 2004 that allowed the land grant to build its new structure without having to apply to the county for approval. Instead, the land grant held three advertised public meetings, after which the board approved the construction. Representative Garcia described the process as "empowering" and recommended that UNM's land grant studies program "exploit this monumental feat" so that other land grants with political subdivision status can use it as a model for their own planning.

Senator Ortiz y Pino asked why the village is called "Carnuel" and the land grant is called "Carnue". Mr. Griego explained that people and state agencies, especially in the nineteenth century, consistently mispronounced "Carnue" in a variety of different ways, usually by adding a "t" or some other consonant to the end of the name. So the land grant added an "l" to ensure consistent (mis)pronunciation. UNM's Dr. Garcia y Griego added that many people, including himself, grew up believing the name of the land grant was "Carnuel". It was only when he happened upon its original petition that he discovered the true name of the land grant: Cañon de Carnue .

Expressing sympathy for the capital outlay and liability insurance problems that land grants face, Senator Martinez said that Santa Cruz de la Cañada and other land grants have alleviated those problems by collaborating with county governments, which act as fiscal agents, rather than "jumping through the hoops you guys had to".

Bernalillo County Commissioner Michael Brasher, who is a disc jockey for KANW-FM radio, thanked the leaders of Cañon de Carnue for their economic development efforts and concurred that fire and water, including ground water pollution from sewage, are critical issues for the land grant and the surrounding area.

State Auditor

Evan Blackstone, general counsel for the Office of the State Auditor (OSA), sent State Auditor Hector Balderas' regrets and said he, along with audit managers Antonio Corrales and Steve Archibeque, would address the committee in Mr. Balderas' stead.

Mr. Blackstone explained that state law requires all agencies and political subdivisions of the state to undergo a financial audit. The OSA oversees audits of more than 600 entities, most conducted by independent auditors that have contracts with the state or local government. The audited entities bear the cost of the audit under state law, which he said presents a great financial burden for land grants and other small entities with limited resources. Some spend half or more of their budgets on the annual audit, which he said usually costs a minimum of \$3,000 to \$5,000.

Often, said Mr. Blackstone, smaller entities need training to conform with the audit laws, including how to keep their books. He said the OSA is working on a pilot project to offer financial training for mutual domestic water associations, which could be extended to land grants. The OSA has convened a task force to hear testimony from citizens across the state regarding the impact on and needs of their communities in complying with the audit requirement. He said the task force was to hold its first meeting on July 7 and expects to submit a report, including recommendations, by October 1. The task force will hear from representatives of land grants, acequias, mutual domestic water associations, etc.; from local and state officials; and from independent auditors who will provide expert testimony. He said the state auditor is adamant in wanting a "buy-in", i.e., a consensus, from communities on how to proceed. "This is a priority for him", Mr. Blackstone said, adding that Mr. Balderas wants to convey that he is committed to maintaining a dialogue with the Land Grant Committee. Senator Martinez expressed appreciation.

Mr. Blackstone acknowledged the OSA's receipt of a \$10,000 appropriation to help land grants comply with state audit requirements. He noted that it is a relatively small amount of money and said the OSA has not yet decided how to expend it, but that it will seek guidance from the task force on how to maximize the money. The OSA is also working with Arturo Archuleta, director of land grant services for the NCNMEDD, on getting matching money from that organization. He added that the OSA is committed to transparency.

Mr. Archibeque, senior manager, OSA, said he reviews the functions of all financial audits of every entity in the state. As of the date of the meeting, he said, no land grants have complied with the audit statute. By way of clarification, Senator Martinez noted that most audits are a year or two behind and, as such, land grants are late rather than out of compliance. Mr. Archibeque concurred.

Mr. Archibeque explained that an auditor has three objectives when doing an audit for the state: (1) expressing an opinion on the financial statements of the audited entity; (2) getting a clear understanding of the entity's internal controls, including the processing and recording of all financial transactions; and (3) determining whether an entity is complying with federal, state and local regulations in all contracts and other financial transactions that have a material impact

on the entity. He said the OSA must approve each independent certified public accountant (CPA) conducting a state-required audit, noting that independent auditors perform 95 percent of all state-required audits and that the OSA reviews each one. He said the OSA has rejected many audits over the years because of errors and omissions.

Representative Hall said some land grants do not even earn \$1,000 per year and asked if the OSA requires that even they be audited. Mr. Archibeque said any entity that receives public funds, including grants, is subject to the annual audit requirement, despite its size or income. He noted, however, that the Audit Act has not been revised in many, many years and that it does not take into consideration small entities with little or no income. He said the OSA and the task force will make recommendations on amending the act to address those issues, including possibly exempting certain small entities from its requirements, requiring that they be audited every two years instead of annually or requiring them to present financial statements rather than undergoing a full-bore audit.

In the meantime, said Mr. Blackstone, while the OSA does not at present have the discretion to waive the annual audit, it is considering creating criteria that would effectively exempt certain entities. Mr. Archibeque said many other states do exempt entities from their audit requirements based on revenue. But until the Audit Act is amended, he said, local agencies usually must agree to submit an audit report before receiving grant money so the grantor understands the entity's financial situation. That would include land grants, mutual domestic water associations, acequia associations and other small entities with political subdivision status.

Representative Hall asked whether capital outlay money could fund an audit. Mr. Archibeque said he was not aware of audit fees being included in a capital outlay appropriation. Representative Rodella asked whether staff could investigate the question. Senator Martinez directed staff to ask the DFA if an audit can be considered an administrative expense for capital outlay requests, particularly if a county or a school board acts as the fiscal agent for an appropriation.

In response to questions from Representative Bandy, Mr. Archibeque acknowledged that the OSA is unable to identify all the entities in the state that must comply with the state's annual audit requirement. Once they appear on the audit list, they stay there. "But getting them on the list is a different story", he said. That usually occurs when the OSA finds out from a source that an entity is receiving public funds. But even in those cases, he said, it is difficult to make an entity get an annual audit when it cannot pay for one, and CPAs are reluctant to do an audit if they might not get paid. Sometimes, it is difficult to find a CPA to do an audit in a remote part of the state. These and other issues will be among the topics the task force will address, he said.

Representative Thomas Garcia asked what the task force's goal is for the \$10,000 appropriation for auditing land grants. Mr. Blackstone said the OSA is hoping for guidance from the task force on that issue, but has absolutely not delegated authority to the task force to spend the money. He said it will be the task force's mission to develop a work plan. Representative Thomas Garcia said it was the committee's mission that the \$10,000

appropriation would result in two land grant audits by the next legislative session. He said he does not want to see that money "bottled up" while the task force gathers information.

Representative Miguel Garcia asked whether land grants would be precluded from spending pending capital outlay money if they have not been audited while the OSA is deciding how to spend the \$10,000. Mr. Archibeque said the OSA needs to be sure that it is spending the money legally. He added that a political subdivision of the state does not have authority to expend capital outlay funds unless the DFA approves its annual budget, which it cannot do without an audit.

Representative Miguel Garcia said land grants do not operate with general funds; they are not a taxing entity like a municipality, school board or water district and cannot be "lumped" in the same category. They often have no money in their coffers, he said, and what little money they do have often comes from grazing allotments, leases to state agencies, cell towers, gravel operations, etc., which he described as private enterprise rather than tax money. He said the committee needs a concrete solution from the OSA so capital outlay funding to land grants is not put in jeopardy.

Representative Hall said it bothers him greatly that money appropriated for auditing land grants will be used for a task force. Mr. Blackstone assured Representative Hall that no dollars from that appropriation will be used for or by the task force and that the appropriation will be expended only for its designated purpose.

"That's what we wanted to hear", Senator Martinez said.

Recess

The committee recessed for lunch at 12:30 p.m. and reconvened at 1:30 p.m.

State Entity to Manage Land Grants

Mr. Sanchez of the Land Grant Council presented a draft bill called the Land Grant Support Act. The bill creates a new state agency to assist land grants with:

- research and paperwork for political subdivision status;
- budgets and complying with state audit requirements;
- risk management issues; and
- federal agencies like the Bureau of Land Management (BLM) and USFS.

Mr. Sanchez noted that the NCNMEDD has helped land grants with many of those issues, but that not all land grants fall within the organization's district. He said creating this new agency and putting it under the DFA would serve land grants well.

Mr. Boller said he has worked closely with Mr. Sanchez on this concept, primarily to get recognition for land grants from state and federal agencies. Often, he said, land grants fall through the cracks, especially after an administration change, when land grants find they are back to the same place they were four years earlier, i.e., dealing with people who do not know

the issues and have to be brought up to speed. He said that the Land Grant Committee cannot help land grants with day-to-day issues.

Senator Sanchez said she encourages land grants to come forward and support the bill and wondered if it would be possible to merge the bill with another one creating a Department of Hispanic Affairs.

Representative Bandy said he was unclear about the difference between a land grant bureau and a land grant council, as defined in the bill. Mr. Boller explained that the bureau is the state agency while the council is an advisory committee, composed of all 24 land grants with political subdivision status, that would make recommendations to the bureau. Addressing other concerns of Representative Bandy, Mr. Boller said the bill could make it explicit that the land grant bureau be authorized to enter into memoranda of understanding (MOUs) with other state and federal agencies on behalf of land grants for such things as allowing *parciantes* to graze or gather wood on government land within a land grant's boundaries.

Representative Rodella said she concurs with the concept but wants to be sure of DFA support and that there will be sufficient funding to staff the bureau. Senator Martinez suggested inviting the DFA secretary to a future meeting to discuss the bill.

Representative Thomas Garcia suggested creating an executive committee that reports to the legislature and whose members are eligible for mileage and per diem.

Representative Miguel Garcia wondered if the entity could be created as a commission under the Governor's Office rather than a bureau with four layers of bureaucracy (the DFA, land grant bureau, land grant council and executive committee). Representative Rodella said a commission would not have the authority to enter into MOUs. Mr. Sanchez said he served on the Acequia Commission and found it very restrictive because it only met monthly and acted only in an advisory capacity. Mr. Boller said a bureau would have permanent, professional staff with access to the resources of a department that gets recurring funding.

Representative Miguel Garcia warned about discarding the notion of a commission, pointing to the Acequia Commission as a model. He said the governor "owes the land grants and owes the Hispano people in this state". He said the governor is more likely to approve funding for an entity under his auspices rather than one under the DFA. He said the Guadalupe Hidalgo Treaty Division in the Office of the Attorney General is in a "protracted process" of approval. The committee needs to decide if it wants to pursue something else that will be protracted or something that will start off immediately, "even if it's not fully loaded with scud missiles and neutron bombs and cluster bombs", he said. "Maybe it's just a Fourth-of-July sparkler".

Senator Sanchez said she is worried about the size of the proposed Land Grant Council and thinks a smaller executive committee would be more manageable. She asked about funding and whether Mr. Sanchez has spoken to the governor about such a land grant agency. Mr. Sanchez said the governor approved a \$200,000 appropriation that remains unspent. Regarding

the creation of a land grant agency, Mr. Sanchez said the governor told him, "*Yo le ayudo* (I will help you)". Senator Sanchez suggested he also speak with the secretary of finance and administration.

Representative Rodella directed Mr. Boller to find out if the \$200,000 appropriation can be used to support this bill.

Risk Management

Mike Wilson, director, Risk Management Division (RMD), General Services Department, George McGeorge, RMD deputy finance director, and Al Duran, state property insurance appraiser, RMD, discussed the kinds and costs of liability coverage the RMD might be able to provide for land grants. Mr. Wilson said it would be similar to that provided for acequias through legislation passed in 2006, but would require amending the law to include land grants. He said he will direct the RMD's attorney to work with Mr. Boller to draft legislation for the committee's review. He said the RMD embraces the concept of including land grants in its liability coverage and will work to analyze the variables and determine an equitable premium.

Senator Ortiz y Pino asked if RMD rates would be lower than commercial insurance for land grants. Mr. Wilson said commercial companies would probably not even consider insuring land grants or acequias because they comprise too small a market. He stressed that land grants and acequias without liability insurance run enormous risks because members can be personally liable for damage to someone's person or property. While claims are few and far between, he said the exposure exists.

Mr. Wilson said that Mr. Duran would work with former Lieutenant Governor Roberto Mondragon, who was at the meeting, on sending a letter to land grants and acequias advising them that the RMD may be able to provide liability coverage.

Election Code Changes

Mr. Boller presented to the committee draft legislation that would clarify election requirements for land grants with political subdivision status. The bill exempts land grants from certain requirements, such as early voting times and places, how to register voters and holding an election when there are no competitors for the open positions. Other potential conflicts for land grants with the Election Code include that not all stakeholders are eligible to vote and not all eligible voters are residents of New Mexico.

Several committee members expressed confusion about who may vote in land grant elections. Mr. Boller said that land grants determine their own membership and who may vote. Mr. Sanchez said only an heir may vote and that an heir is defined by law. A member of the audience noted that he is heir to several land grants and wanted to know if he can vote in all their elections. Mr. Sanchez said it is up to each land grant to decide who may vote, but that if someone can prove heirship to eight land grants, for example, then that heir has a vote in each one.

Representative Miguel Garcia said the definition of an heir is "real clear"; that an heir is someone with ancestral and lineal rights and an interest in the common lands. He said some land grants have given voting rights to *vecinos* (neighbors) who have no ancestral link to the land grant but who have put up money to save a land grant from tax delinquency. He said that can be problematic when a "*gringo*" artist comes in from New York, when someone is on their death bed, and the hippie from New York says, 'I'll give you fifty thousand dollars for your interest' and that guy now has the power to vote and has an *herencia*, an interest, in the commons".

Representative Rodella said she understands the intent behind the bill, but worries that it might create additional problems regarding provisional ballots, keeping a registry book, issuing election proclamations, etc. She said she is also concerned about the specificity of the language. Representative Rodella said she cannot get a straight answer when she calls the Secretary of State's Office because of the turnover in staff. She said that, based on her experience on the House Voters and Elections Committee, she is reluctant to endorse the bill at this point and suggested having someone from the Bureau of Elections meet with the committee to go over the provisions of the bill and make recommendations. Mr. Sanchez said someone from the Bureau of Elections said last year that land grants must follow the Election Code.

Manzano Land Grant Forest and Fire Issues

Daniel Herrera and Gloria Zamora of the Manzano Land Grant spoke about the Trigo and Tajique fires there. Ms. Zamora described Manzano residents as people of strong faith and cultural values who are knowledgeable about and defenders of the land and water. She said their strong faith and will to survive protect them from fear. So residents refused to evacuate during the Trigo fire, which she said "does not make us fools, but heroes".

Ms. Zamora said that "outsiders, newcomers and intruders" do not understand that the land grant has its own watershed protection program and emergency response and soil conservation teams. Instead, they treat long-time residents like they are "ignorant hillbillies" and have instituted unnatural land management practices that have resulted in great damage to the area from the fires. However, she thanked the firefighters who worked so hard to put out the fires and called them "innocent victims". Noting that the Tajique fire was allegedly caused accidentally by a turkey hunter and that it destroyed 14,000 acres, she asked the committee to consider laws that will prohibit hunting, hiking, picnicking and other potentially hazardous activities on the land grant during the fire season.

Mr. Herrera, who is on the land grant's board of trustees, said Manzano has shrunk from 48,000 acres to 17,050 acres since 1909, and only 110 acres of common land remain. He said the government turned much of the land grant into wilderness area without consulting the heirs and residents, and land that was once multiple-use became neglected, which he said is why catastrophic burns destroyed much of the forest under federal control while healthy burns did little damage to forest land managed by residents.

Senator Sanchez said she grew up in the area and that the surrounding land, including Manzano, is "precious" to her. She recalled federal representatives coming through the area and

refusing to talk to community leaders, including her mother, who she said is on the central committee of the local Democratic Party.

Ms. Zamora said a private investigator caught a USFS employee using thousands of gallons of Manzano's domestic water for mulching and seeding without getting permission from the land grant. Mr. Herrera said that is typical because the USFS disregards the heirs.

Noting that Manzano has been reluctant to talk to the committee, Senator Sanchez suggested that the committee arrange a meeting between the land grant and the USFS. Ms. Zamora said heirs, including board members, fear that talking to the government will lead to a bad outcome. Mr. Herrera agreed, saying that the land grant "loses things" when it gets involved with a governmental body.

Representative Rodella asked about a fence separating the land grant from the forest. Mr. Herrera said the USFS wants the land grant to help repair the fence, which was badly burned by fire. He said there is nothing in writing; that the land grant and the USFS had a "formal meeting with an informal proposal".

A man from the audience said the fence is to keep land grant heirs out of the forest. "That mountain belongs to us", he said. "It does not belong to the government. They fenced it without permission". He said the land grant has no use for a fence because it has no livestock. "The way I see it, if they want a fence, they can build their own fence", he said.

Representative Rodella proposed having USFS representatives appear before the committee so members could question them on those and other issues. She called it "totally absurd" that the land grant should pay for repairing a fence it does not want. She suggested that the land grant start using the forest land. "It was yours to begin with", she said. She added that the committee has been trying to get the USFS to be more cooperative with the land grant community, including allowing heirs to gather firewood, especially with a harsh winter coming. She directed Mr. Boller to draft a letter to the USFS asking it to open the forest to land grant heirs and to explain its position on the fence.

Representative Rodella expressed frustration that, despite the Land Grant Committee explaining to the USFS that land grants know how to take care of the environment, the agency has taken over the forests and the forests have "gone to heck". Ms. Zamora agreed, saying the USFS prescribes fires in the wrong season and the deer are "shaking in fear".

Mr. Herrera said he thought the USFS allowed itself to be influenced by people from back east who wanted to turn land grant property into wilderness areas. He said that is what caused the catastrophic undergrowth that fueled the recent fires. He added that the land grant heirs will defend their land and their property.

Senator Martinez said the committee has heard similar stories all over the State of New Mexico, calling such situations an "injustice".

Recess

The committee recessed at 4:30 p.m.

Friday, July 11**Tour**

The committee reconvened at 9:00 a.m. for a tour of Manzano, Tajique and Torreon.

**MINUTES
of the
THIRD MEETING
of the
LAND GRANT COMMITTEE**

**August 14, 2008
North Gymnasium, Northern New Mexico College
El Rito**

**August 15, 2008
Abiquiú Land Grant, New Mexico**

The third meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:50 a.m. on Thursday, August 14, 2008, in the North Gymnasium at Northern New Mexico College in El Rito, New Mexico.

Present

Sen. Richard C. Martinez, Chair (8/14)
Rep. Miguel P. Garcia, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph J. Carraro (8/14)
Rep. Thomas A. Garcia (8/14)
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino (8/14)
Rep. Debbie A. Rodella

Absent

Sen. Rod Adair
Sen. James G. Taylor

Advisory Members

Sen. Carlos R. Cisneros
Rep. Justine Fox-Young
Sen. Phil A. Griego
Rep. Ben Lujan
Sen. Bernadette M. Sanchez
Sen. William E. Sharer
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not attending the entire meeting.)

Staff

Jon Boller, Legislative Council Service (LCS)
Tamar Stieber, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Thursday, August 14

Welcome

Carlos Martinez, director of the El Rito Campus, Northern New Mexico College, welcomed the committee to the campus and gave a brief history of the college. He explained that the college is promoting its corporate retreat facilities (El Rito Heritage Retreat Center) and noted that the college has both dining facilities and 46 rooms available for retreat attendees.

Felipe Martinez, Rio Arriba County commissioner, also welcomed the committee to El Rito and noted that the area is part of his district.

Open Gate Program

R. J. Kirkpatrick and Pat Block, Department of Game and Fish, described the "Open Gate Hunting and Fishing Access" Program, which they explained is designed to allow hunting and fishing, along with other outdoor activities, on private lands and to allow access over private land to public lands for those same purposes. Mr. Kirkpatrick noted that Aaron Roberts is now the full-time open gate coordinator for the department. The program is funded by a fee structure whereby each resident and nonresident license or permit includes a \$1.00 open gate conservation and access fee. Approximately \$250,000 has been taken in under the program, according to Mr. Kirkpatrick, with \$145,000 of that coming in last year. Asked how the program could benefit land grants, he said that a land grant could meet with the department and negotiate the terms of access and value of that access, sign an agreement and go from there. According to Mr. Kirkpatrick, there are currently 15-20 such agreements in place so far. Asked if the state can indemnify private landowners, Mr. Block replied that he did not think the state could *not* do so, though no additional liability is incurred under the agreements.

Elk Management and Depredation Issues

Mr. Kirkpatrick and Mr. Block were joined by game officers John Zamora from Tierra Amarilla and Jaime Martinez from Chama. Mr. Kirkpatrick provided a detailed description of the department's elk management program, noting many of the problems associated with trying to balance the interests of different parties with the allocation of elk permits and with elk depredation.

Asked if he had utilization figures on wildlife areas like the Sargent and the Humphries, Mr. Kirkpatrick replied that he did not because they are wildlife areas, but he estimated that there are approximately 1,000 to 1,500 elk in those areas. It was suggested that the Sargent Wildlife Area might be a good place to study how limited livestock grazing could benefit the area. Mr. Kirkpatrick said the department had considered that, but that federal agencies have a big say in accepting or rejecting such a proposal. He also noted that he thinks livestock grazing

can be beneficial and that the Chama area may be deteriorating without it. The committee voted to make a formal request to the director of the Department of Game and Fish to work with the Range Improvement Task Force to study the feasibility of conducting livestock grazing in the W.A. Humphries, Edward Sargent and Rio Chama wildlife areas and to submit the resulting plan to the U.S. Fish and Wildlife Service.

Committee members queried Mr. Kirkpatrick on a number of issues related to elk hunting and depredation, including:

- the number of appeals to the department and the number that have been favorably resolved for landowners;
- how the number of permits to be issued in a particular area is determined;
- conflicts between those wanting more trophy elk and those who are hurt by the consequent larger herds necessary to produce big bulls;
- the number of bonus allocations that are based on unconverted permits;
- the alternative ways of getting elk off private land;
- how deer are managed compared to elk;
- the amount of income to the department attributable to hunting versus fishing;
- the distribution of permits to residents (78%) versus nonresidents (10%) and guided nonresidents (12%); and
- the number of permits issued to various land grants.

Mr. Kirkpatrick said he would provide the information requested by various committee members as soon as possible.

Landowner Perspectives

Carlos Salazar, a local rancher and landowner, expressed concerns on a number of issues, including that:

- grazing is a right, not a privilege, under the Treaty of Guadalupe Hidalgo;
- greater numbers of elk create a hardship among ranchers because elk spread disease, knock down fences and compete with cattle for grazing;
- the Department of Game and Fish does not manage the elk population well, and perhaps an independent task force can do a better job;
- the Open Gate Program will result in too many hunters on private land;
- elk herds are a "big money-making machine" for the Department of Game and Fish, but threaten the livelihoods of ranchers and other locals;
- the socio-economic impacts of a proposed wildlife corridor in Ojo Caliente need to be analyzed; and
- environmental groups are conspiring with the Department of Game and Fish and the U.S. Forestry Service to kick ranchers off their land.

John S. Hernandez and John Y. Hernandez, Jr., ranchers and landowners from the Cuba area, expressed frustration with the elk situation on their land and with the response from the Department of Game and Fish, noting that, at one point, John S. Hernandez was threatened with a reduction in landowner permits if he kept complaining. John Y. Hernandez, Jr., submitted a

copy of the letter to the committee that he had written to the State Game Commission outlining the problems he and his father had been experiencing since the erection of a game-proof fence on a neighbor's land. He said that all he is asking is for the department to communicate and work with them on the problem, adding that the local game management officer has not been cooperative. Representative Rodella requested that a formal apology be sent to John S. Hernandez, that the department respond to Mr. Hernandez's letter and that Mr. Kirkpatrick meet with the Hernandezes and come to a resolution.

Attorney General Response to General Accounting Office (GAO) Report on the Treaty of Guadalupe Hidalgo

David Thomson, deputy attorney general, and Stephen Vigil, assistant attorney general, introduced attorney David Benavides, whom the Attorney General's Office hired to co-author its response to the GAO's 2004 analysis of the Treaty of Guadalupe Hidalgo. The 72-page report raises serious questions and concerns about the GAO's legal conclusions, the basis for its reasoning and the resulting inequities affecting the historical treatment of land grants in New Mexico. The major issues that the attorney general response raises are as follows:

1. The GAO concluded that the Treaty of Guadalupe Hidalgo was not "self-executing" and that Congress therefore had sole discretion in confirming land grants. However, there was little analysis of whether Congress, in confirming land grants, implemented the terms of the treaty and considered what was owed to land grant heirs.
2. The report only cursorily addressed the issue of community grants that, contrary to the treaty, were often confirmed as tenancies-in-common, rather than as community grants, thus subjecting them to partition suits that deprived heirs of their land.
3. The GAO report suggested that the courts provide the best venue for contesting abuses against land grants. However, the GAO mistakenly relied on a New Mexico district court decision, since reversed, for the proposition that wrongful confirmations can be attacked in state court.

The chair asked that Mr. Vigil, Mr. Thomson and Mr. Benavides attend the committee's next meeting to give a more detailed summary of the report to the committee and to give members a chance to read through the report.

Recess

The committee recessed at 6:55 p.m.

Friday, August 15

Tour

The committee reconvened at 9:00 a.m. on the banks of the Chama River near Abiquiú for a ceremony commemorating the transfer of approximately 35 acres of land from the State Game Commission to the Abiquiú Land Grant.

**MINUTES
of the
FOURTH MEETING
of the
LAND GRANT COMMITTEE**

**September 29-30, 2008
Ballroom A, Student Union Building
University of New Mexico, Albuquerque**

The fourth meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:25 a.m. on Monday, September 29, 2008, in Ballroom A of the Student Union Building at the University of New Mexico (UNM) in Albuquerque, New Mexico.

Present

Sen. Richard C. Martinez, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph J. Carraro
Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Rep. Debbie A. Rodella (9/30)

Absent

Sen. Rod Adair
Sen. Gerald Ortiz y Pino
Sen. James G. Taylor

Advisory Members

Sen. Bernadette M. Sanchez

Sen. Carlos R. Cisneros
Rep. Justine Fox-Young
Sen. Phil A. Griego
Rep. Ben Lujan
Sen. William E. Sharer
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not attending the entire meeting.)

Staff

Jon Boller, Legislative Council Service (LCS)
Damian Lara, LCS
Raúl Burciaga, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Monday, September 30

Welcome

Dr. David J. Schmidly, University of New Mexico president, welcomed the committee to the university and thanked the committee for its work in establishing the Land Grant Studies Program at the university.

Department of Transportation (DOT) Issues

Lawrence Barreras, DOT property asset management director, and Germaine Chappelle, DOT general counsel, appeared on behalf of the DOT to report on the status of negotiations on a wildlife crossing in Tijeras Canyon that affects the Cañon de Carnue Land Grant. Mr. Barreras reported that the department has come to an agreement with the land grant on an exchange of property interests related to the crossing and that the interests in land given to the land grant are more valuable than the interests received by the department. Asked what role the department will play in monitoring the wildlife crossing, Mr. Barreras said that the Department of Game and Fish would actually be monitoring the crossing. Ms. Chappelle added that the DOT would still inspect the fencing periodically.

Representative Bandy requested a meeting with the DOT concerning the use of land that is part of a right of way by an acequia in his district. Mr. Barreras said he would contact Representative Bandy to look at the issue.

Ben Chavez of the Cubero Land Grant asked if the DOT had done an environmental assessment of the new exit off I-40 planned near the Pueblo of Acoma. He said that the Pueblo of Acoma and the state had been meeting since 1997, and that Cubero had started meeting with the DOT in 2003, and he wondered if Cubero would have been better off negotiating with the Pueblo of Acoma so that both communities could benefit from the exit and make it a win-win situation. Right now, he said, things are not working out so well for Cubero. Mr. Barreras said the DOT will continue to meet with Cubero and that if the department gets the right to enter, it will not have to condemn the property right now and negotiations can continue.

Macario Griego thanked the DOT for working with Carnuel on the wildlife crossing, but noted that it took a long time and did not go so well at the beginning. He also expressed hope that the department will work with the land grant on runoff problems created by I-40 because contaminants are fouling the land grant's acequia and ground water.

Land Grant Studies Program

Dr. Manuel Garcia y Griego, director of the Southwest Hispanic Research Institute (SHRI) at the University of New Mexico, updated the committee on the land grant studies program at the university. He said the program has received a very positive response and that he was happy to report that the program will receive recurring funding and, thus, he will not have to come back to the legislature for a special appropriation this year to continue the program. Part of the program — basic research — is being funded by outside grants through

the SHRI and by university "ING" funds, he explained. Though the program is only three months old, it has already sponsored a public forum on land grant issues, which, he said, brings the university in closer contact with the community, and it is one way the program can help serve the interests of the community. Student internships take up the bulk of the program's resources, he noted. Interns Jacobo Baca, Sofia Sanchez, Karen Roybal Montoya and Salima Padilla all introduced themselves and briefly described the projects they are working on. Tony Lucero of the San Antonio de las Huertas Land Grant suggested that a speakers program be established to come to communities like Placitas to educate locals. Senator Bernadette Sanchez moved to have the Public Education Department attend the next meeting of the committee to explain what the elementary and secondary school requirements for New Mexico history are. The motion was adopted without objections.

Tour of UNM Library Archives Related to Land Grants

The committee recessed for lunch and then toured the Center for Southwest Research. Mr. Baca and the library staff described the extensive resources available in the library for research of land grant histories.

Risk Management Division Proposed Legislation to Allow Liability Coverage of Land Grants

Al Duran and Patrick Simpson, attorneys for the Risk Management Division (RMD) of the General Services Department, presented a draft bill to the committee that would allow land grants that are political subdivisions of the state to obtain liability coverage through the RMD as do other state agencies. Mr. Simpson said the RMD currently covers more than 151 separate state entities, with premiums ranging from \$1,000 per year to \$15 million per year. He explained that rates for any particular land grant would depend on the specific conditions of that grant, but that in general it would be cheaper to go through the RMD than to purchase insurance on the open market. In answer to a question about what coverage is available, Mr. Duran replied that the RMD will not cover commercial enterprises, zoning or land-use issues, but that it will cover the board of trustees and property of a land grant.

State Auditor's Task Force on Rural Accountability

Hector Balderas, state auditor, Evan Blackstone, general counsel for the Office of the State Auditor, and Arturo Archuleta, task force member, presented task force recommendations on how the Audit Act should be amended to make accountability affordable for small governmental entities. Mr. Balderas explained that the task force gathered information on more than 600 entities, held four meetings and received testimony on the budget process from a number of agencies. He noted that although the final report was not yet done, he could present the task force's recommendations today and hoped to have draft legislation prepared before the committee's next meeting.

Mr. Blackstone outlined the recommendations, which he said would create a tiered system of audit requirements based on the actual revenues of any entity that expends public money. Those entities with less than \$10,000 in revenues, he explained, would not be required to report to the state auditor unless they have received and spent capital outlay funds. Other tiers would require progressively more detailed reports as revenues increased, with entities

having over \$500,000 in revenues subject to the same audit requirements as any other state agency. Mr. Blackstone also noted that the state auditor would issue rules that would allow more certified public accountants to be eligible to conduct the work required for those entities with less than \$500,000 in revenues. Mr. Archuleta added that the proposed changes would be a big help with the capital outlay process, in which many projects are currently held up because of compliance issues with the current requirements of the Audit Act.

Uranium Mining Leases — Cebolleta Land Grant and Juan Tafoya Land Corporation

Jerry Pohl, Cebolleta Land Grant (CLG), and James Martinez, Juan Tafoya Land Corporation (JTLC), outlined plans for uranium mining and milling in their communities and explained that both the CLG and the JTLC had entered into lease agreements about three years ago to begin the process. Mr. Martinez expressed his concern that there have been delays in the state permitting process for exploratory drilling in the Marquez Canyon area and noted that Neutron Energy had applied for a permit from the Energy, Minerals and Natural Resources Department nine months ago, in January. He explained that area had already been extensively explored more than 30 years ago and, thus, the company only needed to drill approximately 50 holes to validate the existing data on the area. Both he and Mr. Pohl said the local communities supported bringing back mining to the area and cited a New Mexico State University study that reported that over a 30-year period, 8,000 new jobs would be created and \$1 billion in revenue could be brought into the state from uranium mining. They asked the committee for its support in their efforts, and the committee moved without objection to write a letter to the Energy, Minerals and Natural Resources Department urging the department to expedite the permitting process for Neutron Energy's exploratory wells.

Recess

The committee recessed at 4:30 p.m.

Tuesday, September 30

Attorney General Response to the 2004 General Accounting Office (GAO) Report

David Thomson and Stephen Vigil, Office of the Attorney General, and David Benavides and Ryan Golten, New Mexico Legal Aid, presented the attorney general's response to the 2004 GAO report "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico".

(See the attached executive summary of the report set out in full.)

Asked if the state could pursue litigation to return lands or use rights as was done in Colorado, the presenters cautioned that the judicial remedies in the Sangre de Cristo case in Colorado were not based on the Treaty of Guadalupe Hidalgo, and that most judicial avenues for questioning the confirmation process were closed off by the *Tameling* decision. Mr. Archuleta and Mr. Vigil stressed that the importance of the attorney general's response was in correcting the GAO's findings and conclusions and making it clear that a congressional response is in order. The committee moved without objection for the attorney general to identify any potential cases where litigation could still be pursued, and it requested that a

memorial be drafted asking that the attorney general's response be made part of the Congressional Record. It was also suggested that the Land Grant Forum be asked how it would like to proceed. Another motion was adopted without objection to have a bill drafted to require all state agencies holding property that is formerly part of a community land grant to include that land grant in the planning process for any use of that land.

Bureau of Land Management (BLM) — Rio Puerco Resources Management Plan Revision Process

Joe Blackmon, Danita Burns, Tom Gow and Sabrina Flores appeared on behalf of the BLM's Rio Puerco Field Office. Mr. Blackmon described the BLM's resource management plan (RMP) revision process, noting that the current Rio Puerco RMP was originally approved in 1986. He said that the revision is largely needed because of population growth in the region, and that nearly half the population of the state lives in the Rio Puerco management area. The process will cost approximately \$3.5 million. The office has been collecting comments for 200 days, he said, and he has met with representatives from the San Antonio de las Huertas Land Grant to discuss their concerns.

Mr. Gow said he has been advocating for an update to the 1986 plan for nine years and that the plan will affect one million acres of land in six counties. The process requires six environmental impact statements to be conducted, he explained, with one on wind energy siting already completed. The RMP should be completed by early spring of 2012, he said.

Committee members urged the BLM to take into consideration the San Antonio de las Huertas request to set aside lands within its historic boundaries and put a moratorium on the disposal of any land grant lands until Congress has a chance to consider the issue.

Atrisco Heritage Foundation Organization and Function

Peter Sanchez of the Atrisco Heritage Foundation presented a brief history of the foundation, which he said is dedicated to the promotion and preservation of the culture and history of the Atrisco Land Grant. The foundation has several programs, including an oral history project, an education scholarship program, a summer camp program, a project to identify all heirs to the grant, a newsletter and the creation of an endowment fund to ensure the foundation's continued existence. Also created at the time of Westland's sale to SunCal was El Campo Santo, which manages three historic cemeteries, and Atrisco Oil and Gas, LLC, which recently discovered water in a deep aquifer under the Atrisco area.

Land Grant Bureau for Coordination of Federal and State Programs Affecting Community Land Grants

Mr. Boller presented draft legislation on the creation of a land grant bureau in the Department of Finance and Administration. The bureau, he said, would be tasked, in part, with coordinating state and federal programs affecting land grants; acting as a liaison between land grants and federal, state and local governments; identifying those land grants that operate as political subdivisions of the state; acting as a fiscal agent for land grants in the capital outlay process when necessary; and reviewing and promoting federal legislation to address the failings in the confirmation process that are outlined in the attorney general's response to the 2004 GAO

report. Senator Sanchez said the bureau should be part of a Hispanic Affairs Department, if one were created. Asked if the \$250,000 funding included in the bill is a minimum or if it is just an estimate, Mr. Boller replied that it is merely an estimate and that a lesser amount would probably be appropriate for a bureau with less staff. The committee moved to endorse the bill without objection. Representative Rodella asked that a memorial based on House Bill 753 be drafted for the next meeting.

The committee adjourned at 3:00 p.m.

**MINUTES
of the
FIFTH MEETING
of the
LAND GRANT COMMITTEE**

**October 31, 2008
Room 309, State Capitol
Santa Fe**

The fifth meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:50 a.m. on Friday, October 31, 2008, in Room 309 of the State Capitol in Santa Fe.

Present

Sen. Richard C. Martinez, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph J. Carraro
Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella

Absent

Sen. Rod Adair
Sen. James G. Taylor

Advisory Members

Sen. Carlos R. Cisneros
Rep. Ben Lujan
Sen. Bernadette M. Sanchez

Rep. Justine Fox-Young
Sen. Phil A. Griego
Sen. William E. Sharer
Rep. Eric A. Youngberg

Staff

Jon Boller, Legislative Council Service (LCS)
Damian Lara, LCS
Tamar Stieber, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Friday, October 31 — Consideration and Endorsement of Legislation

Audit Provisions for Special Districts

Hector Balderas, state auditor, and Evan Blackstone, general counsel for the Office of the State Auditor (OSA), presented a draft bill creating a five-tiered financial reporting system, based on an entity's annual revenue, for political subdivisions of the state. Mr. Blackstone explained that this would relieve small, and often poor, entities such as land grants, mutual domestic water consumers associations and other special districts from undergoing a full compliance audit, as is currently required by law and that may cost a minimum of \$5,000 or \$10,000. Instead, he noted, political subdivisions with revenues less than \$10,000 would be exempt from filing quarterly reports or final budgets unless they received capital outlay and spent at least 50 percent, or the remainder, of a single capital outlay award, in which case they would have to submit a simple financial report to the state auditor that is not financially burdensome. The proposed requirements for the other tiers are as follows:

- entities with revenues between \$10,000 and \$50,000 would file quarterly reports and a final report with the Local Government Division of the Department of Finance and Administration;
- entities with revenues between \$50,000 and \$250,000 would submit, at a minimum, financial reports to the state auditor that include a schedule of cash basis comparison to ensure that their expenditures are in line with their budgets. If they spend capital outlay money, they must also submit a test sample of the expended funds;
- entities with revenues between \$250,000 and \$500,000 would file with the state auditor a compilation of financial statements and a financial report; and
- entities earning more than \$500,000 would undergo a thorough financial examination and a compliance audit.

Senator Martinez called the bill "pretty strong and good legislation". Representative Bandy thanked the OSA for providing accountability without putting a great burden on affected agencies. Other comments and questions included the following topics:

- whether any capital outlay expenditure, regardless of how small, would trigger the minimal reporting requirement for entities with revenues under \$10,000;
- the state auditor will direct the reporting requirements so that they are not financially burdensome to smaller organizations;
- acequia associations are special districts and must comply with the reporting requirements;
- the task force studying the change in the auditing requirements recommends that certified public accountant (CPA) firms apply to get on the state auditor's approved list to procure contracts to help agencies with their financial reporting requirements. Mr. Balderas said he would like to expand that list to include rural CPA firms to serve rural entities;
- entities with under \$10,000 in revenues that expend capital outlay money are not limited to using CPAs on the OSA's approved list; and
- there is unlikely to be a financial backlash on the state's bond rating as a result of the changes in reporting requirements.

On a motion by Representative Hall, seconded by Representative Rodella, the committee endorsed the proposed legislation in concept, with the understanding that the state auditor had not yet completed work on the bill and, therefore, it would not be an actual committee bill.

Audit Fund

In response to concerns that even minimal reporting requirements will cost money that land grants typically do not have, Mr. Balderas and Mr. Blackstone presented a draft bill creating an audit grant fund to help land grants and other cash-strapped political subdivisions of the state pay for financial reporting to the state, regardless of which tier applies. The bill does not currently name a revenue source.

Questions and comments included the following:

- there is unlikely to be any opposition to the bill because it will help bring entities into financial "sunlight" by guaranteeing that their financial reporting can be done in an affordable way;
- it is imperative to get the bill passed so that land grants can expend some \$2.3 million in capital outlay funds already authorized before the funds expire;
- using a fiscal agent to handle land grant money only works on a case-by-case basis and usually only with small amounts of money; and
- money for the land grant audit fund should not necessarily come from the "junior" appropriation bill because that money is nonrecurring.

Representative Miguel Garcia suggested creating a "land grant pool" with annual funding and its own pool of CPAs to help land grants pay for financial reporting that is burdensome. Mr. Balderas called that a "great idea" and suggested that the funding could be generated through licensing fees from CPAs that register with the state. He said that the OSA manages between \$13 million and \$14 million in CPA contracts. He said that he would "fast-track" a discussion on the subject and reach out to the CPA society. Representative Rodella said that she thinks it is a good idea but wondered whether it is constitutional to tack on an extra fee for CPAs who work for the state.

Land Grant Election Procedures

Juan Sanchez of the New Mexico Land Grant Council/Consejo presented a bill that would allow land grants to provide for early or absentee voting if they cannot afford, or do not have sufficient membership to justify, a formal election on a specific day in a specific place. The legislation would also allow land grants to waive the election process entirely if there is no opposition for open positions on their boards and, instead, elect the candidates by a majority vote of heirs at a special board meeting called for that purpose. Representative Rodella, who is a member of the standing House Voters and Elections Committee, is concerned that such a law would require land grants to rewrite their bylaws. Mr. Sanchez said that most of the land grants that belong to the council want to change the procedures because, even if it means rewriting their bylaws, that would be less financially and logistically burdensome than trying to adhere to the Election Code in its entirety. It would also offer more accountability by boards of trustees, he said. Other questions and comments included the following:

- those running for open positions or close relatives should not be appointed as election judges;
- notifying heirs could be problematic;
- absentee and early voting for land grants are options, not requirements; and
- the director of the Bureau of Elections should review the bill and make recommendations on it prior to the beginning of the legislative session.

Mr. Sanchez said that he would address these and other concerns at the New Mexico Land Grant Council's next meeting. Mr. Boller said that he would arrange a meeting with Bureau of Elections Director Gerald Gonzales for his input after the general election. The committee voted to endorse the bill once the Bureau of Elections director has reviewed its final form.

Other Legislation

The committee also voted unanimously to endorse the following legislation:

- a bill that would allow the boards of trustees of land grants that are political subdivisions to purchase tort liability coverage through the Risk Management Division of the General Services Department;
- a bill to provide land grants with tax credits for conservation easements;
- a bill to include land grants in state agency planning processes affecting property within land grant boundaries;
- a joint memorial requesting that New Mexico's congressional delegation introduce federal legislation addressing the inequities arising from the land grant confirmation process following the signing of the Treaty of Guadalupe Hidalgo that the Office of the Attorney General discusses in its response to a 2004 Government Accountability Office report;
- a joint memorial requesting that the State Game Commission grant traditional use rights to the heirs of the Tierra Amarilla Land Grant-Merced; and
- a bill to create a bureau of land grant affairs.

The committee agreed to table a bill giving land grants the right of first refusal for former land grant property put up for sale at delinquent property tax auctions. The committee also agreed to endorse a proposal to make the Tecolote Land Grant a political subdivision of the state if its board of trustees decides to endorse such legislation.

The committee adjourned at 12:30 p.m.

**ENDORSED
LEGISLATION**

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO PUBLIC LANDS; REQUIRING STATE AGENCIES TO INCLUDE
LAND GRANTS IN THE PLANNING PROCESS FOR THE USE OF CERTAIN
LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. STATE AGENCY LAND USE PLANNING--FORMER LAND
GRANT LANDS.--A state agency that owns any interest in real
property that is located within the boundaries of a land grant-
merced shall include the board of trustees of that land grant-
merced in the planning process for the use of the interest in
real property if:

A. the location of the property is within the
boundaries of the grant as shown in the United States patent to
that land grant-merced; and

B. the land grant-merced is governed as a political

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1 subdivision of the state pursuant to the provisions of Chapter
2 49, Article 1 NMSA 1978 or statutes specific to the named land
3 grant-merced.

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SENATE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO TAXATION; ALLOWING LAND GRANTS OPERATING AS
POLITICAL SUBDIVISIONS OF THE STATE TO BE ELIGIBLE FOR TAX
CREDITS AVAILABLE FOR CERTAIN CONVEYANCES OF REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.10 NMSA 1978 (being Laws 2003,
Chapter 331, Section 7, as amended) is amended to read:

"7-2-18.10. TAX CREDIT--CERTAIN CONVEYANCES OF REAL
PROPERTY.--

A. There shall be allowed as a credit against the
tax liability imposed by the Income Tax Act an amount equal to
fifty percent of the fair market value of land or interest in
land that is conveyed for the purpose of open space, natural
resource or biodiversity conservation, agricultural
preservation or watershed or historic preservation as an

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1 unconditional donation in perpetuity by the landowner or
2 taxpayer to a public or private conservation agency eligible to
3 hold the land and interests therein for conservation or
4 preservation purposes. The fair market value of qualified
5 donations made pursuant to this section shall be substantiated
6 by a "qualified appraisal" prepared by a "qualified appraiser",
7 as those terms are defined under applicable federal laws and
8 regulations governing charitable contributions.

9 B. The amount of the credit that may be claimed by
10 a taxpayer shall not exceed one hundred thousand dollars
11 (\$100,000) for a conveyance made prior to January 1, 2008 and
12 shall not exceed two hundred fifty thousand dollars (\$250,000)
13 for a conveyance made on or after that date. In addition, in a
14 taxable year, the credit used may not exceed the amount of
15 individual income tax otherwise due. A portion of the credit
16 that is unused in a taxable year may be carried over for a
17 maximum of twenty consecutive taxable years following the
18 taxable year in which the credit originated until fully
19 expended. A taxpayer may claim only one tax credit per taxable
20 year.

21 C. Qualified donations shall include the conveyance
22 in perpetuity of a fee interest in real property or a less-
23 than-fee interest in real property, such as a conservation
24 restriction, preservation restriction, agricultural
25 preservation restriction or watershed preservation restriction,

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1 pursuant to the Land Use Easement Act and provided that the
2 less-than-fee interest qualifies as a charitable contribution
3 deduction under Section 170(h) of the Internal Revenue Code.
4 Dedications of land for open space for the purpose of
5 fulfilling density requirements to obtain subdivision or
6 building permits shall not be considered as qualified donations
7 pursuant to the Land Conservation Incentives Act.

8 D. Qualified donations shall be eligible for the
9 tax credit if the donations are made to the state of New
10 Mexico, a political subdivision thereof or a charitable
11 organization described in Section 501(c)(3) of the Internal
12 Revenue Code and that meets the requirements of Section
13 170(h)(3) of that code.

14 E. To be eligible for treatment as qualified
15 donations under this section, land or interests in lands must
16 be certified by the secretary of energy, minerals and natural
17 resources as fulfilling the purposes as set forth in Section
18 75-9-2 NMSA 1978. The use and protection of the lands, or
19 interests therein, for open space, natural area protection,
20 biodiversity habitat conservation, land preservation,
21 agricultural preservation, historic preservation or similar use
22 or purpose of the property shall be assured in perpetuity.

23 F. A taxpayer may apply for certification of
24 eligibility for the tax credit provided by this section from
25 the energy, minerals and natural resources department. If the

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1 energy, minerals and natural resources department determines
2 that the application meets the requirements of this section and
3 that the property conveyed will not adversely affect the
4 property rights of contiguous landowners, it shall issue a
5 certificate of eligibility to the taxpayer, which shall include
6 a calculation of the maximum amount of tax credit for which the
7 taxpayer would be eligible. The energy, minerals and natural
8 resources department may issue rules governing the procedure
9 for administering the provisions of this subsection.

10 G. To receive a credit pursuant to this section, a
11 person shall apply to the taxation and revenue department on
12 forms and in the manner prescribed by the department. The
13 application shall include a certificate of eligibility issued
14 by the energy, minerals and natural resources department
15 pursuant to Subsection F of this section. If all of the
16 requirements of this section have been complied with, the
17 taxation and revenue department shall issue to the applicant a
18 document granting the tax credit. The document shall be
19 numbered for identification and declare its date of issuance
20 and the amount of the tax credit allowed for the qualified
21 donation made pursuant to this section.

22 H. The tax credit represented by a document issued
23 pursuant to Subsection G of this section for a conveyance made
24 on or after January 1, 2008, or an increment of that tax
25 credit, may be sold, exchanged or otherwise transferred and may

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1 be carried forward for a period of twenty taxable years
2 following the taxable year in which the credit originated until
3 fully expended. A tax credit or increment of a tax credit may
4 only be transferred once. The credit may be transferred to any
5 taxpayer. A taxpayer to whom a credit has been transferred may
6 use the credit for the taxable year in which the transfer
7 occurred and unused amounts may be carried forward to
8 succeeding taxable years, but in no event may the transferred
9 credit be used more than twenty years after it was originally
10 issued.

11 I. A tax credit issued pursuant to this section
12 shall be transferred through a qualified intermediary. The
13 qualified intermediary shall, by means of a sworn notarized
14 statement, notify the taxation and revenue department of the
15 transfer and of the date of the transfer within ten days of the
16 transfer. Credits shall only be transferred in increments of
17 ten thousand dollars (\$10,000) or more. The qualified
18 intermediary shall keep an account of the credits and have the
19 authority to issue sub-numbers registered with the taxation and
20 revenue department and traceable to the original credit.

21 J. If a charitable deduction is claimed on the
22 taxpayer's federal income tax for any contribution for which
23 the credit provided by this section is claimed, the taxpayer's
24 itemized deductions for New Mexico income tax shall be reduced
25 by the amount of the deduction for the contribution in order to

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1 determine the New Mexico taxable income of the taxpayer.

2 K. For the purposes of this section:

3 (1) "qualified intermediary" does not include
4 a person who has been previously convicted of a felony, who has
5 had a professional license revoked, who is engaged in the
6 practice defined in Section 61-28B-3 NMSA 1978 and who is
7 identified in Section 61-29-2 NMSA 1978, and does not include
8 any entity owned wholly or in part or employing any of the
9 foregoing persons; and

10 (2) "taxpayer" means a citizen or resident of
11 the United States, a domestic partnership, a limited liability
12 company, a domestic corporation, an estate, including a foreign
13 estate, a land grant-merced controlled and governed as a
14 political subdivision of the state or a trust."

15 Section 2. Section 7-2A-8.9 NMSA 1978 (being Laws 2003,
16 Chapter 331, Section 8, as amended) is amended to read:

17 "7-2A-8.9. TAX CREDIT--CERTAIN CONVEYANCES OF REAL
18 PROPERTY.--

19 A. There shall be allowed as a credit against the
20 tax liability imposed by the Corporate Income and Franchise Tax
21 Act an amount equal to fifty percent of the fair market value
22 of land or interest in land that is conveyed for the purpose of
23 open space, natural resource or biodiversity conservation,
24 agricultural preservation or watershed or historic preservation
25 as an unconditional donation in perpetuity by the landowner or

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1 taxpayer to a public or private conservation agency eligible to
2 hold the land and interests therein for conservation or
3 preservation purposes. The fair market value of qualified
4 donations made pursuant to this section shall be substantiated
5 by a "qualified appraisal" prepared by a "qualified appraiser",
6 as those terms are defined under applicable federal laws and
7 regulations governing charitable contributions.

8 B. The amount of the credit that may be claimed by
9 a taxpayer shall not exceed one hundred thousand dollars
10 (\$100,000) for a conveyance made prior to January 1, 2008 and
11 shall not exceed two hundred fifty thousand dollars (\$250,000)
12 for a conveyance made on or after that date. In addition, in a
13 taxable year, the credit used may not exceed the amount of
14 corporate income tax otherwise due. A portion of the credit
15 that is unused in a taxable year may be carried over for a
16 maximum of twenty consecutive taxable years following the
17 taxable year in which the credit originated until fully
18 expended. A taxpayer may claim only one tax credit per taxable
19 year.

20 C. Qualified donations shall include the conveyance
21 in perpetuity of a fee interest in real property or a less-
22 than-fee interest in real property, such as a conservation
23 restriction, preservation restriction, agricultural
24 preservation restriction or watershed preservation restriction,
25 pursuant to the Land Use Easement Act; provided that the less-

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1 than-fee interest qualifies as a charitable contribution
2 deduction under Section 170(h) of the Internal Revenue Code.
3 Dedications of land for open space for the purpose of
4 fulfilling density requirements to obtain subdivision or
5 building permits shall not be considered as qualified donations
6 pursuant to the Land Conservation Incentives Act.

7 D. Qualified donations shall be eligible for the
8 tax credit if the donations are made to the state of New
9 Mexico, a political subdivision thereof or a charitable
10 organization described in Section 501(c)(3) of the Internal
11 Revenue Code and that meets the requirements of Section
12 170(h)(3) of that code.

13 E. To be eligible for treatment as qualified
14 donations under this section, land or interests in lands must
15 be certified by the secretary of energy, minerals and natural
16 resources as fulfilling the purposes as set forth in Section
17 [~~5-9-2~~] 75-9-2 NMSA 1978. The use and protection of the lands,
18 or interests therein, for open space, natural area protection,
19 biodiversity habitat conservation, land preservation,
20 agricultural preservation, historic preservation or similar use
21 or purpose of the property shall be assured in perpetuity.

22 F. A taxpayer may apply for certification of
23 eligibility for the tax credit provided by this section from
24 the energy, minerals and natural resources department. If the
25 energy, minerals and natural resources department determines

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1 that the application meets the requirements of this section and
2 that the property conveyed will not adversely affect the
3 property rights of contiguous landowners, it shall issue a
4 certificate of eligibility to the taxpayer, which shall include
5 a calculation of the maximum amount of tax credit for which the
6 taxpayer would be eligible. The energy, minerals and natural
7 resources department may issue rules governing the procedure
8 for administering the provisions of this subsection.

9 G. To receive a credit pursuant to this section, a
10 person shall apply to the taxation and revenue department on
11 forms and in the manner prescribed by the department. The
12 application shall include a certificate of eligibility issued
13 by the energy, minerals and natural resources department
14 pursuant to Subsection F of this section. If all of the
15 requirements of this section have been complied with, the
16 taxation and revenue department shall issue to the applicant a
17 document granting the tax credit. The document shall be
18 numbered for identification and declare its date of issuance
19 and the amount of the tax credit allowed for the qualified
20 donation made pursuant to this section.

21 H. The tax credit represented by a document issued
22 pursuant to Subsection G of this section for a conveyance made
23 on or after January 1, 2008, or an increment of that tax
24 credit, may be sold, exchanged or otherwise transferred and may
25 be carried forward for a period of twenty taxable years

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1 following the taxable year in which the credit originated until
2 fully expended. A tax credit or increment of a tax credit may
3 only be transferred once. The credit may be transferred to any
4 taxpayer. A taxpayer to whom a credit has been transferred may
5 use the credit for the taxable year in which the transfer
6 occurred and unused amounts may be carried forward to
7 succeeding taxable years, but in no event may the transferred
8 credit be used more than twenty years after it was originally
9 issued.

10 I. A tax credit issued pursuant to this section
11 shall be transferred through a qualified intermediary. The
12 qualified intermediary shall, by means of a sworn notarized
13 statement, notify the taxation and revenue department of the
14 transfer and of the date of the transfer within ten days of the
15 transfer. Credits shall only be transferred in increments of
16 ten thousand dollars (\$10,000) or more. The qualified
17 intermediary shall keep an account of the credits and have the
18 authority to issue sub-numbers registered with the taxation and
19 revenue department and traceable to the original credit.

20 J. If a charitable deduction is claimed on the
21 taxpayer's federal income tax for any contribution for which
22 the credit provided by this section is claimed, the taxpayer's
23 itemized deductions for New Mexico income tax shall be reduced
24 by the amount of the deduction for the contribution in order to
25 determine the New Mexico taxable income of the taxpayer.

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K. For the purposes of this section:

(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and

(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, a land grant-merced controlled and governed as a political subdivision of the state or a trust."

HOUSE JOINT MEMORIAL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

A JOINT MEMORIAL

REQUESTING THE STATE GAME COMMISSION TO GRANT TRADITIONAL USE RIGHTS TO THE HEIRS OF THE TIERRA AMARILLA LAND GRANT-MERCED FOR LANDS CONTROLLED BY THE COMMISSION THAT ARE LOCATED WITHIN THE HISTORIC BOUNDARIES OF THE TIERRA AMARILLA LAND GRANT-MERCED.

WHEREAS, the attorney general recently released his response to the government accountability office report entitled "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico"; and

WHEREAS, the attorney general's response makes it clear that there were grave deficiencies in the process by which community land grants were confirmed, which often resulted in the misconfirmation of land grants as tenancies-in-common or as

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1 private grants; and

2 WHEREAS, these misconfirmations have resulted in hundreds
3 of thousands of acres of common lands being lost by community
4 land grants; and

5 WHEREAS, the Tierra Amarilla land grant-merced is an
6 example of misconfirmation that resulted in the loss of all the
7 common lands of the grant; and

8 WHEREAS, there are few, if any, ways to address these
9 losses through the judicial system due to long-established
10 state and federal judicial precedent; and

11 WHEREAS, an equitable response from the state can begin
12 with state agencies that control former land grant lands to
13 find ways to grant the heirs of certain land grants traditional
14 use rights to those lands;

15 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
16 STATE OF NEW MEXICO that the state game commission be requested
17 to find a way to grant traditional use rights to the heirs of
18 the Tierra Amarilla land grant-merced for lands controlled by
19 the commission that are located within the historic boundaries
20 of the Tierra Amarilla land grant-merced; and

21 BE IT FURTHER RESOLVED that copies of this memorial be
22 transmitted to the state game commission and to the board of
23 trustees of the Tierra Amarilla land grant-merced.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; ENACTING THE LAND GRANT SUPPORT ACT;
CREATING THE LAND GRANT BUREAU; PROVIDING FOR POWERS AND
DUTIES; ESTABLISHING A LAND GRANT COUNCIL; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Land Grant Support Act".

Section 2. DEFINITIONS.--As used in the Land Grant
Support Act:

- A. "bureau" means the land grant bureau;
- B. "council" means the land grant council; and
- C. "land grant" means a patented community land
grant-merced organized and operating as a political subdivision
of the state.

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1 Section 3. LAND GRANT BUREAU--CREATION--PURPOSE--LAND
2 GRANT COUNCIL.--

3 A. The "land grant bureau" is created in the local
4 government division of the department of finance and
5 administration. The general purposes of the bureau are to
6 establish a land grant support program to provide advice and
7 assistance to land grants and to serve as a liaison between
8 land grants and the federal, state and local governments.

9 B. As part of the land grant support program, the
10 bureau shall establish a "land grant council" to:

11 (1) advise the bureau on the land grant
12 support program and services to be provided to land grants; and

13 (2) serve as a liaison between land grants and
14 the bureau.

15 C. The council shall consist of five members
16 appointed by the governor from the boards of directors of land
17 grants for staggered terms of four years, with two members of
18 the initial council selected by lot to serve an initial term of
19 two years.

20 D. The council shall appoint a chairperson and may
21 appoint such other officers as it deems necessary.

22 E. The council shall meet at least quarterly.
23 Meetings of the council shall be called by the chairperson of
24 the council or at the request of at least three members of the
25 council.

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1 F. Members of the council are entitled to receive
2 per diem and mileage in accordance with the provisions of the
3 Per Diem and Mileage Act.

4 Section 4. LAND GRANT SUPPORT PROGRAM--BUREAU POWERS AND
5 DUTIES.--

6 A. The bureau may apply for and accept any public
7 or private grants, gifts or donations for the benefit of the
8 land grant support program, the council or land grants in
9 general or particular.

10 B. The bureau, on the advice of the council, may:

11 (1) assist land grants in all areas of land
12 grant fiscal and programmatic management, including planning,
13 economic development and infrastructure development;

14 (2) establish cooperative purchasing
15 capabilities for land grants;

16 (3) perform special studies and undertake
17 surveys of interest to land grants and report the findings;

18 (4) serve as fiscal agent and administrator
19 for federal and state grants-in-aid and other funding for a
20 land grant when necessary;

21 (5) facilitate or enter into agreements with
22 state and federal agencies on behalf of land grants; and

23 (6) provide other assistance to land grants.

24 C. The bureau shall:

25 (1) facilitate the exchange of experience and

1 advice among land grants;

2 (2) serve, in conjunction with the council,
3 as a liaison between land grants and federal, state and local
4 agencies;

5 (3) promote cooperation between land grants
6 and, by consultation and advice, assist in the coordination of
7 land grant programs;

8 (4) provide board development opportunities
9 and technical assistance to the governing boards of land
10 grants;

11 (5) provide short- and long-range planning
12 assistance to land grants;

13 (6) conduct training sessions for land grants
14 on topics of interest, such as:

15 (a) local, state and national zoning
16 trends and concerns and other land-use issues;

17 (b) state requirements for political
18 subdivisions on such topics as open meetings, public records,
19 procurement, risk management, tort claims and financial
20 accountability;

21 (c) techniques of historical research;

22 (d) grant writing;

23 (e) economic development strategies; and

24 (f) rangeland management and water
25 conservation;

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1 (7) disseminate information to relevant
2 federal, state and local agencies on land grant issues and
3 activities and, when requested, on the status of individual
4 land grants;

5 (8) on the advice of the council, develop and
6 promote federal legislation for an appropriate congressional
7 response to longstanding community land grant claims in New
8 Mexico; and

9 (9) review state and federal policies, plans
10 and legislation affecting land grants in New Mexico.

11 Section 5. REPORT TO GOVERNOR AND LEGISLATURE.--The
12 council and the bureau shall report to the governor and the
13 legislature by December 1 of each year on the state of land
14 grants in New Mexico and the activities of the council and the
15 bureau for that year.

16 Section 6. APPROPRIATION.--Two hundred thousand dollars
17 (\$200,000) is appropriated from the general fund to the local
18 government division of the department of finance and
19 administration for expenditure in fiscal year 2010 to establish
20 the land grant bureau and to provide technical assistance to
21 land grants pursuant to the Land Grant Support Act. Any
22 unexpended or unencumbered balance remaining at the end of
23 fiscal year 2010 shall revert to the general fund.

1 SENATE BILL
2 49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

3 INTRODUCED BY
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8 FOR THE LAND GRANT COMMITTEE
9

10 AN ACT

11 RELATING TO TORTS; PROVIDING CERTAIN EXCLUSIONS FROM THE WAIVER
12 OF IMMUNITY OF LIABILITY FOR COMMUNITY LAND GRANTS GOVERNED AS
13 POLITICAL SUBDIVISIONS OF THE STATE; EXTENDING ELIGIBILITY FOR
14 LIABILITY COVERAGE TO COMMUNITY LAND GRANTS GOVERNED AS
15 POLITICAL SUBDIVISIONS OF THE STATE.
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 Section 1. Section 41-4-13 NMSA 1978 (being Laws 1977,
19 Chapter 386, Section 10, as amended by Laws 2006, Chapter 54,
20 Section 1 and by Laws 2006, Chapter 55, Section 1) is amended
21 to read:

22 "41-4-13. EXCLUSIONS FROM WAIVER OF IMMUNITY--COMMUNITY
23 DITCHES OR ACEQUIAS--SANITARY PROJECTS ACT ASSOCIATIONS--
24 CERTAIN COMMUNITY LAND GRANTS.--All community land grants that
25 are governed as political subdivisions of the state and

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1 community ditches or acequias, and their public employees
2 acting lawfully and within the scope of their duties, and all
3 associations created pursuant to the Sanitary Projects Act are
4 excluded from the waiver of immunity of liability under
5 Sections 41-4-6 through 41-4-12 NMSA 1978."

6 Section 2. A new section of the Tort Claims Act is
7 enacted to read:

8 "[NEW MATERIAL] LIABILITY COVERAGE--CERTAIN COMMUNITY LAND
9 GRANTS.--Notwithstanding the provisions of Section 41-4-25 NMSA
10 1978 to the contrary, a community land grant governed as a
11 political subdivision of the state may upon application to the
12 risk management division of the general services department
13 obtain coverage for any risk for which immunity has been waived
14 under the Tort Claims Act through the public liability fund."

1 SENATE JOINT MEMORIAL

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

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8 FOR THE LAND GRANT COMMITTEE

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10 A JOINT MEMORIAL

11 REQUESTING THAT NEW MEXICO'S CONGRESSIONAL DELEGATION INTRODUCE
12 LEGISLATION TO ADDRESS THE NEW MEXICO ATTORNEY GENERAL'S REPORT
13 ON HISTORICAL INEQUITIES ARISING FROM THE LAND GRANT
14 CONFIRMATION PROCESS FOLLOWING THE SIGNING OF THE TREATY OF
15 GUADALUPE HIDALGO.

16
17 WHEREAS, from the end of the seventeenth century to the
18 mid-nineteenth century, the sovereigns of Spain and Mexico made
19 land grants to individuals, groups and towns in New Mexico; and

20 WHEREAS, the Treaty of Guadalupe Hidalgo was signed on
21 February 2, 1848 between the United States and Mexico, and
22 Article VIII of the treaty guaranteed that the private property
23 rights of the inhabitants in the ceded territories as well as
24 the rights of their heirs would be respected; and

25 WHEREAS, Article VI of the United States constitution

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1 affirms that treaties are the supreme law of the land; and

2 WHEREAS, Article 2, Section 5 of the New Mexico
3 constitution states that the rights guaranteed to the people of
4 New Mexico under the Treaty of Guadalupe Hidalgo shall be
5 preserved inviolate; and

6 WHEREAS, in 2001, United States Representative Tom Udall
7 introduced H.R. 1823, which would establish a presidential
8 commission to determine and evaluate the validity of certain
9 land claims arising out of the Treaty of Guadalupe Hidalgo; and

10 WHEREAS, New Mexico Senators Pete V. Domenici and Jeff
11 Bingaman and Representative Tom Udall requested that the United
12 States general accounting office study how the United States
13 has implemented the provisions of the Treaty of Guadalupe
14 Hidalgo that pertain to the protection of community land grant
15 claims in New Mexico; and

16 WHEREAS, in 2001, the general accounting office identified
17 lands in New Mexico that it considered to be community land
18 grants, and in 2004, it issued a final report concluding that
19 the treaty was "implemented in compliance with all applicable
20 U.S. legal requirements"; and

21 WHEREAS, the report identified options the United States
22 congress could consider in response to concerns regarding New
23 Mexico community land grants, including: (1) taking no
24 additional action; (2) acknowledging difficulties in evaluating
25 the original claims; (3) establishing a commission or other

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1 entity to evaluate and resolve concerns about individual claims
2 or categories of claims; (4) considering transferring federal
3 land to communities; and (5) considering making financial
4 payments to claimants' heirs or other entities for the nonuse
5 of land originally claimed but not awarded; and

6 WHEREAS, following the issuance of the 2004 general
7 accounting office report, the New Mexico legislature in House
8 Joint Memorial 41 requested that the United States congress
9 support legislation to implement the options suggested by the
10 general accounting office report; and

11 WHEREAS, in 2003, the New Mexico legislature created a
12 Guadalupe Hidalgo treaty division in the state attorney
13 general's office; and

14 WHEREAS, the division commissioned an independent response
15 to the 2004 general accounting office report, which was
16 prepared by New Mexico legal aid; and

17 WHEREAS, having received the report from the attorney
18 general, the legislature believes it to be an excellent and
19 well-researched piece of historical and legal scholarship that
20 raises serious questions and concerns about the general
21 accounting office's legal conclusions, the basis for its
22 reasoning and inequities affecting the historical treatment of
23 land grants in New Mexico; and

24 WHEREAS, the evidence presented by the attorney general's
25 report raises serious doubts about the historical fairness of

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1 the land grant confirmation process as well as the lack of due
2 process and a misunderstanding by the general accounting office
3 of Spanish and Mexican law;

4 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
5 STATE OF NEW MEXICO that the attorney general's report be
6 entered into the United States Congressional Record by New
7 Mexico's congressional delegation; and

8 BE IT FURTHER RESOLVED that, since the ability of the
9 judicial branch of government to address land grant claims has
10 been severely limited by United States supreme court
11 jurisprudence, as made very clear in both the general
12 accounting office report and the attorney general's report, the
13 United States congress should consider all its legislative
14 options to address this important matter; and

15 BE IT FURTHER RESOLVED that the New Mexico legislature
16 call on New Mexico's congressional delegation to take a
17 leadership role in addressing concerns raised in the attorney
18 general's report and to consider fully all appropriate remedies
19 to address the historical treatment of land grant claims in New
20 Mexico; and

21 BE IT FURTHER RESOLVED that copies of this memorial be
22 transmitted to the members of New Mexico's congressional
23 delegation.

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BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO LAND GRANTS; AUTHORIZING LAND GRANTS TO PROVIDE FOR
EARLY OR ABSENTEE VOTING; PROVIDING FOR ELECTION PROCEDURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 49-1-5 NMSA 1978 (being Laws 1907,
Chapter 42, Section 5, as amended) is amended to read:

"49-1-5. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--
VOTERS' QUALIFICATIONS--REGISTRATION.--

A. Elections for the board of trustees shall be
held on the first Monday in April or on a day designated in the
bylaws, either every two or every four years as specified in
the bylaws of the land grant-merced.

B. All qualified voting members of the land
grant-merced are qualified to vote and may vote for trustees as
specified in the land grant-merced bylaws.

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1 C. The registration of qualified voting members
2 shall be conducted in the manner prescribed in the [~~Election~~
3 ~~Code, substituting the words "board of trustees" and~~
4 ~~"secretary" wherever the words "county commission" and "county~~
5 ~~clerk" are used in that code]~~ land grant-merced bylaws. The
6 secretary of the board of trustees shall maintain the
7 registration books. Registration shall be closed beginning
8 fifteen days before an election and reopened on the Monday
9 following the election.

10 D. The registration books compiled before each
11 election shall be used at that election. No person shall vote
12 at the election unless duly registered in the books, and no
13 ballot of any unregistered person shall be counted or
14 canvassed.

15 ~~E. The board of trustees of each land grant-merced~~
16 ~~shall give public notice in Spanish and English of the time of~~
17 ~~the election and fix and give notice of the polling places in~~
18 ~~each precinct by handbills posted in at least five public~~
19 ~~places in each precinct at least fifteen days prior to the~~
20 ~~election. Notice shall also be given by publication fifteen~~
21 ~~days prior to the election in a newspaper in general~~
22 ~~circulation within the land grant-merced if there is one.~~

23 ~~F. Elections shall be conducted, as nearly as is~~
24 ~~practicable, in the same manner as provided by law for the~~
25 ~~holding of general elections in this state. The judges and~~

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1 ~~clerks of elections shall be appointed and the votes canvassed~~
2 ~~by the board of trustees.]~~

3 E. A candidate for the board of trustees shall file
4 a declaration of candidacy with the secretary of the board of
5 trustees at least fifteen days before election day. The period
6 when declarations of candidacy may be filed shall begin on the
7 day the proclamation calling the election is published and
8 shall remain open for at least ten days.

9 F. Whenever an election is to be called or is
10 required by law, the board of trustees shall by resolution
11 issue a public proclamation calling the election. The
12 proclamation shall specify:

13 (1) the date on which the election will be
14 held;

15 (2) the purpose for which the election is
16 called;

17 (3) if positions on the board of trustees are
18 to be filled, the date and time by which declarations of
19 candidacy are to be filed;

20 (4) if a question is to be voted upon, the
21 test of that question;

22 (5) the location of each polling place in the
23 land grant-merced;

24 (6) the hours that each polling place will be
25 open; and

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1 (7) the date and time of the closing of the
2 registration books.

3 G. Not less than thirty days nor more than forty-
4 five days before the date of the election, the board of
5 trustees shall publish in Spanish and English the proclamation
6 in a local newspaper of general circulation available within
7 the boundaries of the land grant-merced and post the
8 proclamation in at least five public places within the land
9 grant-merced.

10 H. The board of trustees shall appoint one election
11 judge and at least two election clerks for each polling place.
12 The election judge shall also be present for the canvass of the
13 vote. No person shall be qualified for appointment or service
14 as an election clerk or judge who is a spouse, parent, child,
15 brother or sister of any candidate to be voted for at the
16 election.

17 I. The board of trustees shall provide in the
18 bylaws for the forms and procedures by which the land grant-
19 merced elections are conducted. If the board of trustees
20 chooses to provide for early or absentee voting, it shall
21 specify in its bylaws the procedures by which early or absentee
22 voting shall be conducted."

23 Section 2. Section 49-4-7 NMSA 1978 (being Laws 2007,
24 Chapter 145, Section 6) is amended to read:

25 "49-4-7. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--

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1 VOTERS' QUALIFICATIONS--REGISTRATION.--

2 A. Elections for the board of trustees shall be
3 held on the first Monday in April or on a day designated in the
4 bylaws, either every two or every four years as specified in
5 the bylaws of the land grant-merced.

6 B. All qualified voting members of the land grant-
7 merced are qualified to vote and may vote for trustees as
8 specified in the land grant-merced bylaws.

9 C. The registration of qualified voting members
10 shall be conducted in the manner prescribed in the [~~Election~~
11 ~~Code, substituting the words "board of trustees" and~~
12 ~~"secretary" wherever the words "county commission" and "county~~
13 ~~clerk" are used in that code]~~ land grant-merced bylaws. The
14 secretary of the board of trustees shall maintain the
15 registration books. Registration shall be closed beginning
16 fifteen days before an election and reopened on the Monday
17 following the election.

18 D. The registration books compiled before each
19 election shall be used at that election. A person shall not
20 vote at the election unless duly registered in the books, and a
21 ballot of any unregistered person shall not be counted or
22 canvassed.

23 [~~E. The board of trustees shall give public notice~~
24 ~~in Spanish and English of the time of the election and fix and~~
25 ~~give notice of the polling places in each precinct by handbills~~

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1 ~~posted in at least five public places in each precinct at least~~
2 ~~fifteen days prior to the election. Notice shall also be given~~
3 ~~by publication fifteen days prior to the election in a~~
4 ~~newspaper in general circulation within the land grant-merced~~
5 ~~if there is one.~~

6 ~~F. Elections shall be conducted, as nearly as is~~
7 ~~practicable, in the same manner as provided by law for the~~
8 ~~holding of general elections in this state. The judges and~~
9 ~~clerks of elections shall be appointed and the votes canvassed~~
10 ~~by the board of trustees.]~~

11 E. A candidate for the board of trustees shall file
12 a declaration of candidacy with the secretary of the board of
13 trustees at least fifteen days before election day. The period
14 when declarations of candidacy may be filed shall begin on the
15 day the proclamation calling the election is published and
16 shall remain open for at least ten days.

17 F. Whenever an election is to be called or is
18 required by law, the board of trustees shall by resolution
19 issue a public proclamation calling the election. The
20 proclamation shall specify:

21 (1) the date on which the election will be
22 held;

23 (2) the purpose for which the election is
24 called;

25 (3) if positions on the board of trustees are

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2 candidacy are to be filed;

3 (4) if a question is to be voted upon, the
4 test of that question;

5 (5) the location of each polling place in the
6 land grant-merced;

7 (6) the hours that each polling place will be
8 open; and

9 (7) the date and time of the closing of the
10 registration books.

11 G. Not less than thirty days nor more than forty-
12 five days before the date of the election, the board of
13 trustees shall publish in Spanish and English the proclamation
14 in a local newspaper of general circulation available within
15 the boundaries of the land grant-merced and post the
16 proclamation in at least five public places within the land
17 grant-merced.

18 H. The board of trustees shall appoint one election
19 judge and at least two election clerks for each polling place.
20 The election judge shall also be present for the canvass of the
21 vote. No person shall be qualified for appointment or service
22 as an election clerk or judge who is a spouse, parent, child,
23 brother or sister of any candidate to be voted for at the
24 election.

25 I. The board of trustees shall provide in the

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1 bylaws for the forms and procedures by which the land grant-
2 merced elections are conducted. If the board of trustees
3 chooses to provide for early or absentee voting, it shall
4 specify in its bylaws the procedures by which early or absentee
5 voting shall be conducted."

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