

A JOINT MEMORIAL

REQUESTING THE DEPARTMENT OF TRANSPORTATION TO FULFILL ITS  
STATUTORY DUTY TO REPAIR AND MAINTAIN STATE PARK ROADS,  
BRIDGES AND PARKING AREAS.

WHEREAS, Section 67-3-19 NMSA 1978, enacted by Laws  
1967, Chapter 165, Section 1 and entitled "Duty to repair and  
maintain state park roads, bridges and parking areas", states:

"It is the duty of the state transportation commission  
to repair and maintain the public roads and highways  
that provide access to state park and recreation areas  
and to repair and maintain all roads, bridges and  
parking areas within the boundaries of the state park  
and recreation areas that will best serve the needs of  
the general public."; and

WHEREAS, in 1989, Section 67-3-14 NMSA 1978 was amended  
to provide that "the commission shall have no duty to maintain  
or supervise the maintenance of roads that are not designated  
state highways or bridges"; and

WHEREAS, in 2000, the state parks advisory committee  
sought an attorney general's opinion because the secretary of  
highway and transportation determined that the department did  
not have an obligation to maintain state park roads because of  
the apparent conflict in the statutes; and

WHEREAS, the attorney general determined:

"Thus, applying the above rules of construction, we believe that Section 67-3-19 remains a valid statement of law. It should not be deemed to have been implicitly repealed by the 1989 amendment to Section 67-3-14, especially because legislative repeals by implication are not favored in the law. If necessary, therefore, the specific directive in Section 67-3-10 [67-3-19], which applies to all public roads that provide access to state parks and recreation areas, should be read as a specific exception to the general statement in Section 67-3-14(B). This construction avoids an implied repeal. . . . and instead reads the two harmoniously and gives maximum effect to each. . . . we cannot find any justification in an implied repeal of Section 67-3-19. To the contrary, the repair and maintenance of "public roads and highways that provide access to state park and recreation areas . . . will best serve the needs of the general public," as Section 67-3-19 expressly directs. That responsibility should continue unless and until a properly enacted law unequivocally changes it."; and

WHEREAS, in apparent agreement with the opinion of the attorney general, the department of transportation has not

tried to amend the law and, in fact, entered into an agreement with the energy, minerals and natural resources department to spend five hundred thousand dollars (\$500,000) per year for fiscal years 2005 through 2008 to repair and maintain roads, bridges and parking areas located within the boundaries of state parks; and

WHEREAS, it appears that the department of transportation is now refusing to extend that agreement and has told the energy, minerals and natural resources department that it will not spend any money in the foreseeable future to carry out its statutory duty in this matter;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the state transportation commission be requested to require the department of transportation to fulfill its statutory duty to repair and maintain the public roads and highways that provide access to state park and recreation areas and to repair and maintain all roads, bridges and parking areas within the boundaries of the state park and recreation areas that will best serve the needs of the general public; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the chairman of the state transportation commission, the secretary of transportation, the director of the state parks division of the energy, minerals and natural resources department, the secretary of energy, minerals and

natural resources and the governor.