

LAND GRANT COMMITTEE

2009 INTERIM
FINAL REPORT
to the
FORTY-NINTH LEGISLATURE
SECOND SESSION



New Mexico Legislative Council Service
Santa Fe, New Mexico
December 2009

LAND GRANT COMMITTEE

2009
REPORT

Santa Fe, New Mexico
December 2009
File No. 205.207-09

LEGISLATIVE INTERIM LAND GRANT COMMITTEE SUMMARY OF COMMITTEE WORK

The legislative interim Land Grant Committee held five meetings during the 2009 interim. Meetings were held in Santa Fe, Taos, La Joya and Placitas.

During the 2009 session, the legislature established a new state agency, the Land Grant Council, that will act as the official liaison between community land grants-mercedes and other local, state and federal government agencies and deal with land grant issues on a full-time basis. Since the appointment process for the five members of the council was completed in December, the council will soon be able to begin its work.

In October 2009, the State Records Center and Archives submitted a major report on its research of former community land grant lands that are currently owned by the state. The report includes title abstracts of seven state properties, along with a synopsis of findings by Malcolm Ebright, the author of the report.

Representatives of New Mexico's congressional delegation met with the committee in October and November concerning various land grant issues and committed to meeting with board members of the Town of Abiquiu Land Grant and the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant regarding boundary disputes with federal agencies and with the San Antonio de las Huertas Land Grant regarding the administration or possible transfer to the land grant of some lands bordering the land grant.

The inclusion of more than 19,000 acres of the Cebolleta Land Grant in the Mt. Taylor area that was designated as a traditional cultural property raised serious concerns about the status of the common lands of all community land grants and about the ability of community land grants to control the use of their common lands. The committee endorsed legislation designed to make it clear that making community land grants political subdivisions of the state did not alter the property rights of heirs in the common lands and that these lands are not state lands.

Also endorsed by the committee were a bill allowing community land grants-mercedes to purchase tort liability coverage through the Public Liability Fund and a bill providing for notification procedures of surveys of certain statute-specific land grants.

Total expenditures for voting members during the interim were \$17,850. Expenditures for advisory members totaled \$3,968.

2009 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
LAND GRANT COMMITTEE

Members

Rep. Miguel P. Garcia, Chair	Rep. Thomas A. Garcia
Sen. Richard C. Martinez, Vice Chair	Rep. Jimmie C. Hall
Sen. Rod Adair	Sen. Gerald Ortiz y Pino
Rep. Paul C. Bandy	Rep. Debbie A. Rodella
Rep. Andrew J. Barreras	Sen. Sander Rue
Rep. Eleanor Chavez	Sen. Bernadette M. Sanchez

Advisory Members

Rep. Eliseo Lee Alcon	Rep. Brian F. Egolf, Jr.
Sen. Carlos R. Cisneros	Rep. Ben Lujan
Sen. Dianna J. Duran	Rep. Richard D. Vigil

Work Plan

The Land Grant Committee proposes to focus on the following topics:

- (1) appointment of the newly created Land Grant Council, plans for implementing the Land Grant Support Act and the Guadalupe Hidalgo Treaty Division mission and its relationship to the newly established Land Grant Council;
- (2) conversion of land grants governed by their own statutes to Chapter 49, Article 1 NMSA 1978 governance;
- (3) property tax classifications of land used for agricultural, grazing, commercial and other uses and their application to the common lands of land grants;
- (4) the Land Grant *Consejo* proposal on how to address boundary disputes with federal agencies and how to restore use rights on certain federal lands;
- (5) University of New Mexico Land Grant Studies Program progress report;
- (6) Cristobal de la Serna Land Grant issues;
- (7) report by the State Records Center and Archives on the chain of title abstracts of former land grant property now owned by the state;
- (8) state historian web site publication of community land grant documents;
- (9) discussion of the Atrisco Land Grant and the Atrisco Heritage Foundation;
- (10) whether the common lands of community land grants may be designated as traditional cultural properties; and
- (11) follow-up on legislation from the 2009 legislative session (including tort liability coverage of land grants through the Risk Management Division, land grant eligibility for conservation tax credits and new audit requirements for small political subdivisions).

2009 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 9 (actual)	Santa Fe
July 30-31	Taos
September 3-4	La Joya; Tome
October 29-30	San Antonio de las Huertas (Placitas)
November 25	Santa Fe

AGENDAS

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

**Tuesday, June 9, 2009
Room 309, State Capitol
Santa Fe**

Tuesday, June 9

- 10:00 a.m. **Call to Order**
—Representative Miguel P. Garcia, Chair
- 10:05 a.m. **Interim Committee Protocols**
—Paula Tackett, Director, Legislative Council Service (LCS)
- 10:30 a.m. **Report on 2009 Legislative Session**
—Jon Boller, Staff Attorney, LCS
- 11:00 a.m. **Discussion of Work Plan and Itinerary for the 2009 Interim**
—Committee Members and Members of the Public
- 12:30 p.m. **Adjourn**

Revised: July 29, 2009

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

**July 30-31, 2009
Rio Grande Hall, Taos Convention Center
120 Civic Plaza Drive, Taos**

Thursday, July 30

- 10:00 a.m. **Call to Order**
—Representative Miguel P. Garcia, Chair
- 10:05 a.m. **Welcoming Remarks**
—Darren Cordova, Mayor, Taos
—Daniel R. Barone, Chair, Taos County Commission (invited)
- 10:30 a.m. **Cristobal de la Serna Land Grant History and Current Issues**
—Joe Romero, President, Cristobal de la Serna Land Grant
- 11:15 a.m. **Land Conservation Incentives Tax Credit—Senate Bill 32 (2009)**
—Joanna Prukop, Secretary of Energy, Minerals and Natural Resources
- 12:15 p.m. **Lunch**
- 1:30 p.m. **Land Grant Tort Liability Coverage—Senate Bill 59 (2009)**
—Al Duran, General Counsel, Risk Management Division (RMD),
General Services Department
—Paula Ganz, Staff Attorney, RMD
- 2:30 p.m. **Implementation of the Tiered Financial Reporting System**
—Hector Balderas, State Auditor
—Natalie Cordova, Audit Supervisor, Office of the State Auditor
—Evan Blackstone, General Counsel, Office of the State Auditor
- 3:15 p.m. **Rio Costilla Cooperative Livestock Association Operations and Programs (invited)**
—TBA
- 4:00 p.m. **Arroyo Hondo Arriba Land Grant History and Issues**
—Elias Espinoza, Arroyo Hondo Arriba Land Grant

4:45 p.m. **Status of Land Grant Council Nominating Process**
—Juan Sanchez, President, Chilili Land Grant

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

Friday, July 31

9:00 a.m. **Tour of Arroyo Hondo Arriba Land Grant**

12:00 noon **Adjourn**

Revised: September 2, 2009

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

**September 3-4, 2009
The SERF Building, UNM Sevilleta Field Station
Sevilleta National Wildlife Refuge
Exit 169, I-25
La Joya**

Thursday, September 3

- 10:00 a.m. **Call to Order**
—Representative Miguel P. Garcia, Chair, Land Grant Committee
- 10:05 a.m. **Welcoming Remarks**
—William T. Pockman, Associate Chair, Department of Biology,
University of New Mexico
- 10:15 a.m. **Sevilleta de la Joya Land Grant History**
—Ben Rivera, Past President, La Joya Education and Charitable
Assistance Organization, Inc.
- 11:00 a.m. **La Joya Community Current Affairs and Acequia Improvements**
—Marcel Abeyta, La Joya
- 11:45 a.m. **Town of Tome Land Grant Update**
—Lawrence Sanchez, President, Town of Tome Land Grant Board of
Trustees
—Rita Padilla-Gutierrez, Town of Tome Land Grant Board of Trustees
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Manzano Land Grant Update**
—Daniel Herrera, Vice President, Manzano Land Grant Board of Trustees
- 2:15 p.m. **Property Tax Classification and Valuation of Agricultural Lands and
Common Lands**
—Rick Silva, Director, Property Tax Division, Taxation and Revenue
Department (TRD)
—Michael O'Melia, Deputy Director, Property Tax Division, TRD

3:15 p.m. **Land Grant Consejo Proposal on Land Grant Use Rights on State and Federal Lands**
—Juan Sanchez, President, Land Grant Consejo

3:45 p.m. **Public Comment**

4:30 p.m. **Recess**

Friday, September 4

9:00 a.m. **Tour of La Joya and Sevilleta**
—Meet in Parking Lot of Sevilleta National Wildlife Refuge Visitor Center

12:00 noon **Adjourn**

Revised: October 28, 2009

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

October 29-30, 2009

**San Antonio Mission Meeting Hall, Paseo de San Antonio Road
San Antonio Mission Catholic Church, San Antonio de las Huertas
Placitas**

Thursday, October 29

- 10:00 a.m. **Call to Order**
—Representative Miguel P. Garcia, Chair
- 10:05 a.m. **Welcoming Remarks**
—Orlando Lucero, Sandoval County Commissioner, District 1
- 10:15 a.m. **San Antonio de las Huertas Update**
—Tony Lucero, President, San Antonio de las Huertas Land Grant Board
of Trustees
- 10:45 a.m. **Traditional Cultural Properties Designation of Common Lands**
—Sarah Maestas Barnes, Cebolleta Land Grant
—Dick Minzner, Lobbyist
- 11:45 a.m. **Land Grant Studies Program Update**
—Manuel Garcia y Griego, Director, Southwest Hispanic Research
Institute, University of New Mexico
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Congressional Response to Land Grant Consejo Proposal on Federal
Lands**
—Antonio Sandoval, Office of Congressman Martin Heinrich
—Jennifer Manzanares, Office of Congressman Ben R. Lujan
—New Mexico Congressional Delegation (invited)
- 2:30 p.m. **Report on Chain of Title Research of State Lands**
—Sandra Jaramillo, Director, State Records Center and Archives
—Malcolm Ebright, President, Center for Land Grant Studies

3:30 p.m. **Representation of Land Grants that are not Governed as Political Subdivisions of the State**
—Wilfred Romero, President, Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees
—John Chavez, Secretary, Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees

4:00 p.m. **Atrisco Issues**
—Jerome Padilla, President, Town of Atrisco Land Grant Board of Trustees
—Carolyn Ortega, Program Director, Atrisco Heritage Foundation

4:45 p.m. **Public Comment**

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

Friday, October 30

9:00 a.m. **Tour of San Antonio de las Huertas Land Grant**

12:00 noon **Adjourn**

Revised: November 24, 2009

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

**November 25, 2009
Room 307, State Capitol
Santa Fe**

Wednesday, November 25

- 9:30 a.m. **Call to Order**
—Representative Miguel P. Garcia, Chair
- 9:35 a.m. **Presentation to Congressional Delegation — Bureau of Land
Management Disposition of Property — San Antonio de las Huertas
Land Grant; Addressing Boundary Disputes — Abiquiu and Nuestra
Senora del Rosario, San Fernando y Santiago Land Grants**
—Tony Lucero, President, San Antonio de las Huertas Land Grant
—Wilfred Romero, President, Nuestra Senora del Rosario, San Fernando
y Santiago Land Grant Board of Trustees
—Adelido Torrez, Past Vice President, Nuestra Senora del Rosario, San
Fernando y Santiago Land Grant Board of Trustees
—John Chavez, Secretary, Nuestra Senora del Rosario, San
Fernando y Santiago Land Grant Board of Trustees
—Gilbert Ferran, President, Abiquiu Land Grant Board of Trustees
- 11:00 a.m. **Boundary Survey Process and Requirements**
—Edward Ytuarte, Executive Director, State Board of Licensure for
Professional Engineers and Professional Surveyors
- 12:00 noon **Working Lunch**
- 12:15 p.m. **Proposed Legislation**
—Tort Liability Coverage of Land Grants
—Land Grant Eligibility for Conservation Easement Tax Credit
—Notice of Boundary Surveys to Boards of Trustees of Certain Land
Grants
—Exclusion of Common Lands from State Land Designation
—Other Bills TBD

- 1:00 p.m. **Traditional Cultural Properties Designation of Common Lands**
—Stuart Ashman, Secretary of Cultural Affairs
—Jan V. Biella, Historic Preservation Division, Cultural Affairs
 Department
—Sam Cata, Historic Preservation Division, Cultural Affairs Department
—Sarah Maestas Barnes, Cebolleta Land Grant
- 2:00 p.m. **Department of Game and Fish Ownership of Property in the La Joya Area**
—Tod Stevenson, Director, Department of Game and Fish
- 2:30 p.m. **Public Comment**
- 3:00 p.m. **Adjourn**

MINUTES

**MINUTES
of the
FIRST MEETING IN 2009
of the
LAND GRANT COMMITTEE**

**Tuesday, June 9, 2009
Room 309, State Capitol
Santa Fe**

The first meeting of the interim Land Grant Committee (LGC) was called to order by Representative Miguel P. Garcia, chair, on Tuesday, June 9, 2009, at 10:10 a.m. in Room 309 of the State Capitol in Santa Fe.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Rod Adair
Rep. Andrew J. Barreras
Rep. Eleanor Chavez
Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Rep. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Rep. Paul C. Bandy

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Dianna J. Duran
Rep. Brian F. Egolf, Jr.
Rep. Ben Lujan
Rep. Richard D. Vigil

Staff

Jon Boller
Tamar Stieber

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Welcome and Introductions

Representative Miguel Garcia extended a welcome to all LGC members and staff and to the audience, which included visitors from land grants in Mora, Atrisco, Santa Fe and other areas in the state. Representative Garcia said he, too, is an heir to a land grant that was taken away from the heirs. Noting that the LGC is not created by statute, he listed some of the committee's accomplishments during the last interim, including brokering the return of 36 acres back to the Abiquiú land grant from the Department of Game and Fish and the Department of Transportation.

Representative Garcia thanked Speaker of the House Ben Lujan for keeping the committee alive, saying that without Speaker Lujan, the committee would have dissolved years ago.

Interim Committee Protocols

Paula Tackett, director, Legislative Council Service (LCS), briefed the committee on interim protocols, including quorums, voting, resignations, blocking provision, sound system, seating, chairing, calendar and conflicts, per diem and mileage, preferred method of contact and conferences.

Acknowledging Ms. Tackett's reminder that only voting members can vote, Representative Miguel Garcia urged advisory members to express themselves freely during discussions. Ms. Tackett said that she, too, encourages advisory members to participate actively.

Report on 2009 Legislative Session

Jon Boller, LCS staff attorney, summarized the fate of LGC-endorsed bills in the 2009 legislative session:

- Passed
 - land grant election procedures (House Bill 458, Chapter 131);
 - a tiered audit system (Senate Bill 336, Chapter 283);
 - the Land Grant Support Act (House Bill 85, Chapter 94), which creates a state Land Grant Council that will act as a liaison between land grants and local, state and federal governments; and
 - adding into the Congressional Record the state attorney general's response to the U.S. General Accounting Office's report on the Treaty of Guadalupe Hidalgo and requesting that Congress address land grant claims (Senate Joint Memorial 5).
- Failed
 - consulting land grants in the land use planning process of state agencies when state land lies within traditional boundaries of a land grant (House Bill 39);
 - making land grants eligible for tax credits for conservation and preservation easements (Senate Bill 32);
 - allowing for liability coverage for land grants to be purchased through the

Risk Management Division of the General Services Department (Senate Bill 59); and

- requesting that Tierra Amarilla land heirs be granted traditional-use rights to land within the boundaries of the original grant (House Joint Memorial 15).

Work Plan and Itinerary

The committee voted unanimously to approve the following work plan and itinerary for the interim:

- Work Plan Topics
 - implementing the Land Grant Support Act, including the appointment of members to the newly created Land Grant Council and the relationship of the attorney general's Guadalupe Hidalgo Treaty Division to the council;
 - converting land grants governed by their own statutes to political subdivision status as per Chapter 49, Article 1 NMSA 1978;
 - classifying agricultural, commercial and other types of land within land grants for property tax purposes;
 - considering a proposal by the Land Grant *Consejo* for dealing with boundary disputes between land grants and federal agencies, including restoring traditional-use rights on federal properties that formerly were common lands;
 - designating certain land grant holdings as "traditional cultural properties";
 - hearing updates on a land grant abstract project by the State Records Center and Archives and the state historian's interactive web site project;
 - following up on the Land Grant Studies Program at the University of New Mexico; and
 - discussing Cristobal de La Serna and Atrisco land grant issues.
- Itinerary
 - July 30-31: Ranchos de Taos, Cristobal de la Serna;
 - Sept. 3-4: La Joya, Tomé;
 - October 29-30: San Antonio de Las Huertas (Placitas); and
 - November 25: Santa Fe.

The committee agreed to request from the New Mexico Legislative Council an out-of-town meeting in October and a Santa Fe meeting in November.

Adjourn

The committee adjourned at 12:35 p.m.

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

**July 30-31, 2009
Rio Grande Hall
Taos Convention Center
Taos, New Mexico**

The second meeting of the interim Land Grant Committee was called to order at 10:20 a.m. on Thursday, July 30, 2009, by Representative Miguel P. Garcia, chair, in the Rio Grande Hall at the Taos Convention Center in Taos, New Mexico.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Rod Adair
Rep. Paul C. Bandy
Rep. Andrew J. Barreras (7/30)
Rep. Eleanor Chavez (7/31)
Rep. Thomas A. Garcia (7/30)
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Rep. Debbie A. Rodella

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Brian F. Egolf, Jr. (7/30)

Sen. Dianna J. Duran
Rep. Ben Lujan
Rep. Richard D. Vigil

Guest Legislators

Rep. Roberto "Bobby" J. Gonzales (7/31)
Sen. Cisco McSorley (7/30)

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

Staff

Jon Boller
Tamar Stieber

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, July 30

Welcoming Remarks and Introductions

Representative Miguel Garcia invited Francisco "El Comanche" Gonzales to open the meeting with a prayer. After a brief explanation of the agenda, Representative Garcia asked committee members and staff to introduce themselves. Taos Mayor Darren Cordova welcomed the committee to Taos and thanked members for holding the meeting there. He said it behooves the state to invest in northern New Mexico and especially in Taos, which he said is a tourist hub and the "jewel of northern New Mexico".

Representative Garcia asked audience members to introduce themselves.

Cristobal de la Serna Land Grant

Joe Romero, president, Cristobal de la Serna Land Grant, described what he believes is encroachment on the land grant's property. He said that non-heirs are not only intervening in the land grant's affairs, but they are trying to claim ownership of land. The rightful owners are paying taxes but are being left out of decisions, he said. He discussed a 1984 quiet title suit involving The Weimer Properties (TWP), which he said claims ownership of 6,400 acres on the land grant. Mr. Romero said "it's not that way", noting that Cristobal de la Serna is registered as a community land grant with New Mexico's secretary of state and in Washington, D.C.

Tod Barbee, a representative of TWP, submitted a record of the court decisions referred to by Mr. Romero. In 1998, TWP sued the Cristobal de la Serna Land Grant Association for trespass, among other allegations, claiming that the association blocked access to land that TWP owns by virtue of the 1984 quiet title suit. In the quiet title suit, the court had ruled that Cristobal de la Serna is a private, rather than a community, land grant and that it has no rights to TWP property. Between 1998 and 2004, the court issued various orders that granted relief to TWP, confirmed the findings of the 1984 decision and prohibited the land grant from blocking access to TWP property or interfering with TWP's use of the property.

Mr. Romero said the association decided to fence land at the base of Picuris Mountain because TWP had put up gates, closing off open land that land grant heirs have traditionally used for grazing animals and harvesting wood. He said that the association closed the gates at one time for security reasons, so that the association could know who was in there and why. He said that the heirs' *lineas* (strips of land) end at the top of the mountain and claimed that TWP has no right to close the land and that the heirs are the rightful owners of the land grant. He asked the Land Grant Committee for help in investigating the chain of title to the land and questioned how the county assessors can assess property taxes when they do not have good records of the boundaries of the *lineas*. He criticized decisions by a Taos County commissioner and a district judge that sided with TWP. "We put them into office to help protect the land... not benefit themselves", Mr. Romero said.

Mr. Gonzales said he agrees with his *primo* (cousin) but wanted to take another approach. He said he wanted to go back in time to when the Cristobal land grant was first awarded in the early eighteenth century to a soldier named Cristobal de la Serna; sold to Don Diego Romero; divided into *solares de casa* (small tracts of land for a dwelling), *suertes* (plots of farmland) and common lands; and patented in the late nineteenth century with the help of Alexander Gusdorf, who had begun buying parcels of the land grant in the late nineteenth century. Referring to Gusdorf as "one of the first hippies" in New Mexico, Mr. Gonzales claimed that Mr. Gusdorf swindled heirs to the land grant by getting them to sign over deeds to him that they did not understand because they did not read English.

The State of New Mexico's decision to levy property taxes on the land grant in the 1940s forced heirs to sell more land to pay the taxes, further decimating the land grant, according to Mr. Gonzales. Adding to the complications was a 1984 district court decision that Cristobal de la Serna is a private, rather than community, land grant and that the original heirs do not have the right to challenge the Gusdorf heirs for title. However, said Mr. Gonzales, the Treaty of Guadalupe Hidalgo guarantees original heirs the right to their land grants.

Mr. Gonzales added that because many descendants of the original heirs, through intermarriage, are *genizaros*, some have considered claiming the land as a Native American community. That idea was rejected because Native Americans have historically had even fewer rights than Hispanics, he said.

Mr. Gonzales asked the committee for its help and thanked members for endorsing a law prohibiting adverse possession on land grants, calling it a good piece of legislation.

Representative Miguel Garcia proposed that the committee recommend funding for an abstract of the Cristobal de la Serna Land Grant. Senator Sanchez so moved, and Representative Hall seconded. The motion passed without discussion.

Land Conservation Incentives Tax Credit (Senate Bill 32)

Joanna Prukop, secretary of energy, minerals and natural resources, briefed the committee on conservation easements and land conservation tax credits and discussed their application to land grants, as per Senate Bill 32 (2009). Sponsored by Senator Cisneros, the bill would have made land grants operating as political subdivisions eligible for tax credits for granting a conservation easement. The bill did not pass during the 2009 legislative session.

Secretary Prukop's presentation included the following points:

- conservation easements are voluntary restrictions placed on property to protect man-made or natural resources by limiting further development of the property;
- the Land Conservation Incentives Act offers tax credits of up to \$250,000 for conservation easements and other donations of land;
- only a landowner can grant an easement to an eligible government or nonprofit agency;
- easements do not reduce property taxes; and

- easements exist in perpetuity; they cannot be undone.

Secretary Prukop provided details about who qualifies to give an easement and who qualifies to accept one. She explained the requirements for the landowner, the recipient and the property. She said that between 2004 and 2008, landowners donated 32,536 acres of land appraised at \$23,841,318, and they received tax credits totaling \$4,978,784.

The committee had questions and comments that included the following:

- Landowners can sell tax easements; an industry has grown up around marketing tax credits.
- How do conservation easements affect the property value? Who determines the subsequent taxes and who pays them? (Conservation easements reduce the value of the property because the owner gives up development rights. The tax credit compensates the owner for that decrease in value. Property taxes are re-assessed based on the new, lower property value, and the landowner, not the easement holder, pays the taxes.)
- Is there a requirement that forestry easements be managed so that they do not fall prey to insect infestations and fire? (The forest legacy program requires that holders of forest easements work with the Forestry Division of the Energy, Minerals and Natural Resources Department (EMNRD) to design and adhere to a forest management plan.)
- Are many people participating in the program? (The EMNRD did not get the landslide of applications it was expecting after the law went into effect. The first year, it received 13 applications; last year, 24 landowners applied; so far this year, the department has received between 16 and 18 applications. The department expects the numbers to grow.)
- Have there been any applications for transfers of tax credits and would it benefit a local government to transfer credits? (There are several deals in the works right now. The benefits depend on what the entities agree to in their dealings.)
- Is there a prohibition against subsurface mining and drilling? (There is no statutory prohibition; the secretary of energy, minerals and natural resources determines if mining and drilling will have a negative impact on open space, wildlife habitat or cultural resources that the easement is supposed to protect.)
- The Santa Fe Railyard is an example of a well-considered and well-executed conservation easement that could be a model for land grants.

The committee recessed for lunch at 12:45 p.m. and reconvened at 1:50 p.m.

Land Grant Tort Liability Coverage

Al Duran, Risk Management Division (RMD), General Services Department (GSD), and Paula Ganz, RMD staff attorney, updated the committee on tort liability coverage for land grants following the failure of Senate Bill 59 in the 2009 session. Sponsored by Senator Martinez, Senate Bill 59 would have amended the Tort Claims Act to extend to land grants governed as political subdivisions the same eligibility for liability insurance coverage and the same exclusions from the waiver of immunity that acequia associations have.

Mr. Duran noted that this was the RMD's third appearance before the committee and said he was disappointed that Senate Bill 59 did not pass. He explained that the bill was amended to take out the provisions that excluded most of the waivers of immunity, which made the bill more acceptable to trial attorneys, but came too late in the session to get on the calendar for a final vote in the house.

Ms. Ganz said that, as political subdivisions of the state, land grants are covered by the Tort Claims Act, which provides, with certain exceptions, immunity from tort liability to governmental entities and public employees acting within the scope of their duties. Ms. Ganz said the RMD is already authorized to provide coverage to land grants because they are political subdivisions of the state. This coverage only covers tort claims, however, and must be paid for by the covered entity. Such things as contracts, leases and property disputes are not covered.

Mr. Duran said that land grants may pay for additional limited coverage from the RMD, though that coverage could be expensive, depending upon the amount of risk to which the land grant is exposed. He said that the RMD cannot cover commercial enterprises.

Juan Sanchez, president, Chililí Land Grant, said the reason that Senate Bill 59 was introduced was because the Cebolleta and Cañon de Carnuel land grants applied to the RMD for coverage and were told that they would not be eligible unless the law was changed. Manuel Garcia y Griego, director, Southwest Hispanic Research Institute, University of New Mexico (UNM), associate professor of history at UNM and a member of the Cañon de Carnuel Land Grant, asked, "As a member of a land grant that sought to get this coverage but could not, I take it, Ms. Ganz, that you're inviting us to submit an application?". Ms. Ganz answered yes.

Mr. Duran said that 162 agencies that the RMD insures all have the same type of immunity that land grants have. For some, it is automatic, while others have to apply, he said, depending on what the RMD director decides. The current director of the RMD actively wants to cover land grants provided that they follow the application procedure, he said.

Former Lieutenant Governor Roberto Mondragon asked whether land grants that went to the RMD for coverage would participate in the same risk pool as the 162 other entities to which Mr. Duran referred, or if they would be in a different pool. Ms. Ganz said that all tort claims coverage is funded through the Public Liability Fund.

Representative Miguel Garcia asked where the committee stands in terms of the issue. Mr. Sanchez replied that nothing has changed; the best thing to do is to reintroduce the legislation, especially with an RMD director that is "pro-land grants and wants to help". He said it is important to get the legislation written so land grants do not have to come back when there is a change of administration asking for the same piece of legislation.

Mr. Sanchez asked why, if coverage is guaranteed in statute for land grants with political subdivision status, were some land grant applications refused? Mr. Duran said that past RMD directors did not have insurance experience; the current director does. Mr. Sanchez said the

policy should be based on statute, not on the director, and no matter who the director is, the director must uphold the law.

The committee voted to endorse the legislation in Senate Bill 59 for introduction next session.

Senator Sanchez made a motion to reintroduce the legislation in Senate Bill 32 regarding conservation easements for land grants. Representative Alcon seconded the motion. The committee adopted it unanimously.

The committee unanimously adopted the minutes of its June 9, 2009 meeting.

Tiered Financial Reporting System

State Auditor Hector Balderas updated the committee on implementation of Senate Bill 336 (2009), which provides for a tiered system of financial reporting rather than a full-scale audit for small political subdivisions such as land grants. The committee had endorsed the bill during the last interim, and the bill passed during the last regular legislative session. Mr. Balderas thanked the committee for being "out in front" in presenting a model of financial accountability for rural communities, in many cases for the first time. As a result, he said, a lot of communities can come out of the dark and submit a financial report so the legislature can be better informed as to how state money is being spent there. He said the committee is making history in providing a solution for self-government, and he thanked the committee for "scolding us when we needed it".

Evan Blackstone, general counsel, Office of the State Auditor (OSA), thanked the committee for well-prepared legislation that was vetted adequately, which he said was instrumental in getting unanimous approval for the bill from the legislature. He noted that a companion bill creating an audit grant fund for smaller governmental entities, including land grants, did not pass. However, the OSA received a \$10,000 appropriation last year specifically to audit land grants. He said that while that money does not go very far, the OSA has already begun looking at land grants' books to ensure that they comply with Department of Finance and Administration rules for financial reporting without creating an undue burden on them.

Natalie Cordova, audit supervisor, OSA, said the OSA has thus far met with 15 of the 22 land grants registered with the secretary of state as political subdivisions, and the agency is in the process of gathering relevant data from them, including historical and financial information, cash procedures, cash and capital assets and expenditures. Based on the information, the OSA is able to provide recommendations for stronger financial controls.

Arroyo Hondo Arriba Land Grant

David Fermin Arguello said he had a "show and tell" abstract of his land grant to share with the committee that includes a patent signed on October 11, 1910 by President Theodore Roosevelt. He explained that the Arroyo Hondo Arriba Land Grant was originally part of the larger Arroyo Hondo Land Grant. A 1904 court case separated the upper and lower parts of the land grant, despite laws prohibiting judges from separating land grants, he said. The Village of

Arroyo Hondo within the land grant was founded between 1750 and 1800, when it was named San Antonio.

Mr. Arguello said that in spite of having quiet title insurance and a land patent, the Arroyo Hondo Arriba Land Grant lost 70 percent of its land through legal maneuvering by Thomas Benton Catron and the Santa Fe Ring. Much was lost due to back taxes, forcing many heirs to sell their land to "fairly rich people", including the family of actress Elizabeth Taylor, he said.

Mr. Arguello said the land grant's major concerns include:

- maintaining the integrity and privacy of the *camposanto* (cemetery) and the *morada* (chapel), both of which abut noncontiguous pieces of former land grant property sold to private parties;
- keeping non-heirs from using land grant trails for horseback riding, all-terrain vehicles, hiking and mountain biking;
- encroachment by developers on land grant property;
- setting up fences and cameras to catch trespassers;
- heirs' access to old trails for grazing animals and harvesting wood; and
- that new roads are endangering the acequias.

Referring to previous presentations on financial reporting by and liability insurance for land grants, Mr. Arguello said the Arroyo Hondo Arriba Land Grant has a cumulative annual income of \$640 and cannot afford either of those things.

Noting that the Abiquiú Land Grant got 35 acres returned to it last year, Mr. Arguello said the Arroyo Hondo Arriba Land Grant has some major obstacles for land restoration, including some firmly established new settlements.

Representative Miguel Garcia suggested that the Arroyo Hondo Arriba Land Grant create its own zoning, as Cañon de Carnuel Land Grant did, so the county has no jurisdiction, and register with the secretary of state as a political subdivision so the land grant is entitled to the rights and privileges of a political subdivision, including liability coverage.

Mr. Arguello said that the land grant lost much of its land because it allegedly owed back taxes, even though it has records proving it paid land taxes since 1914. He wanted to know why the land grant has to pay taxes and municipalities do not. Mr. Boller explained that the Constitution of New Mexico exempts municipalities and counties from property taxes, but that land grants are not included in that exemption. Senator McSorley said the legislature ought to change the constitution to read that anyone who lives on a traditional land grant must pay taxes to the land grant, and then the land grant would have plenty of money.

Senator McSorley asked if anyone has endowed a chair at UNM solely for land grant issues. He said that it costs only \$1.5 million to endow a chair, that he has never seen a bill to that effect and that the legislature could give UNM an "offer it can't refuse" to endow a land grant chair. Representative Miguel Garcia said the Land Grant Committee is currently working

with UNM on similar initiatives, including a land grant clinic at the university. Regarding taxing non-heir residents on land grants, Representative Garcia said the Manzano Land Grant tried to do that, but "the courts shut them down". Senator McSorley asked whether the committee has considered amending the constitution to make land grants nontaxable entities. Representative Garcia said that was not a key priority for the committee.

Mr. Arguello said the larger Arroyo Hondo Land Grant is trying to reestablish the original land grant, as it was prior to the separation of the Arroyo Hondo Arriba Land Grant, with a new board of directors and new bylaws. Arroyo Hondo contends that the land grant was divided illegally, which Mr. Arguello described as a legal ambiguity the land grant still faces. In the meantime, he said, the situation is causing friction between neighbors and cousins.

Representative Miguel Garcia said the committee has a hard time grappling with partitioned land grants, such as Arroyo Hondo and Cebolleta. He said the committee is there to help work out solutions. He told Mr. Arguello to "keep up the faith and the good work you're doing".

Public Comment

Rosita Tijerina, daughter of the late land grant activist Reies Lopez Tijerina, told the committee she is trying to reestablish her father's organization, Alianza Federal de Mercedes, in reaction to "seeing how so many rich white ranchers came and took over so many of the land grants". She asked the committee to sign a letter she wrote to President Obama asking for help in getting back land stolen from land grant heirs. Co-signing the letter with Ms. Tijerina was Andres Valdez of New Mexico Vecinos Unidos, who said he would like feedback on the letter, even if committee members do not want to sign.

Senator Sanchez moved that the committee draft its own letter because it would have more weight. Representative Hall seconded the motion, which passed unanimously. Mr. Valdez said he will invite the committee when the Alianza goes to Washington, D.C., to meet with the president.

John Chavez of the Santa Cruz De La Cañada Land Grant asked to be put on the agenda for a future meeting to discuss encroachment by the U.S. Forest Service and the Bureau of Land Management on the land grant. He also said he wants to address the concerns of community land grants that are not political subdivisions of the state. The committee voted unanimously to add Mr. Chavez to the committee's next agenda.

Land Grant Council

Mr. Sanchez of Chililí briefed the committee on the Land Grant Support Act (Laws 2009, Chapter 94), sponsored by Representative Miguel Garcia, which passed during the last legislative session. The legislation creates the Land Grant Council to provide advice and assistance to land grants, serve as a liaison between land grants and the federal, state and local governments and suggest and review state and federal legislation affecting land grants. Mr. Sanchez explained that the bill also appropriated \$150,000 to the council through 2011. He thanked the committee for endorsing the legislation and said he will inform the committee when

all the council members have been appointed.

Dr. Garcia y Griego announced that the Land Grant Consejo, which is a different organization than the Land Grant Council, along with Congressman Ben Ray Lujan, organized and conducted a forum on land grant issues at UNM on April 18 and that the forum was recorded. He said he will provide a copy of the presentation to each committee member.

More Public Comment

Estevan Flores said his organizations have been participating in dialogue with the U.S. Forest Service, which he said has taken about 80 percent of land grant land since 1898. He said that land grant heirs would like some type of moratorium to stop the sale of land grant property and to stop levying taxes on land grants.

Senator Martinez made a motion that the committee look into whether land grants are being doubly taxed by county assessors throughout the state and that the New Mexico Association of Counties and the Land Grant Consejo appear before the committee to discuss the issue. Senator Ortiz y Pino seconded the motion, which passed unanimously.

Paul Martinez, representing the northern New Mexico portion of the Sangre de Cristo Land Grant, said the Alianza Federal de Mercedes has not received technical assistance that was provided to other land grants and that the committee should look into whether the state got any money for that purpose that was not expended. He also said that the district court decisions dividing the Arroyo Hondo Land Grant violated the Treaty of Guadalupe Hidalgo and that when people decide to take back their land, they have every right to do it "with a three-fifty-seven in their hand".

Shirley Otero, who represents the southern Colorado portion of the Sangre de Cristo Land Grant, said she feels like an outsider looking in because whatever the Land Grant Committee does in New Mexico may affect her land grant in Colorado. (She said, however, that she does not recognize the state line.) Ms. Otero said she is very concerned that the committee understand that land grants are as different from each other as individuals are. She said she thinks it may be a good thing that three different organizations are working on behalf of land grants, but worries about conflicts and whether mixed messages may be sent.

The committee recessed at 4:40 p.m.

Friday, July 31

Mr. Arguello led the committee on a tour of the Arroyo Hondo Arriba Community Land Grant. The land grant hosted lunch at its campsite. The committee adjourned at around 1:00 p.m.

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

**September 3-4, 2009
SERF Building, UNM Sevilleta Field Station
Sevilleta National Wildlife Refuge
La Joya**

The third meeting of the Land Grant Committee (LGC) was called to order at 10:15 a.m. on Thursday, September 3, 2009, by Representative Miguel P. Garcia, chair, at the SERF Building, University of New Mexico (UNM) Sevilleta Field Station, Sevilleta National Wildlife Refuge in La Joya.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Rod Adair
Rep. Paul C. Bandy
Rep. Andrew J. Barreras (9/3)
Rep. Eleanor Chavez
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Rep. Thomas A. Garcia

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros

Sen. Dianna J. Duran
Rep. Brian F. Egolf, Jr.
Sen. Eric G. Griego
Rep. Ben Lujan
Rep. Richard D. Vigil

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

Staff

Jon Boller
Tamar Stieber

Handouts

Handouts and written testimony are in the meeting files.

Thursday, September 3

Welcoming Remarks and Introductions

Representative Miguel Garcia asked Marcel Abeyta of the Sevilleta de la Joya Land Grant to open the meeting with a prayer. He then asked members of the committee, staff and audience to introduce themselves.

William T. Pockman, associate chair, Department of Biology, UNM, welcomed the committee and gave a brief history and description of the 230,000-acre wildlife refuge and the type of research scientists do there. He said the Campbell Family Foundation donated the land in 1973 to the Nature Conservancy, which conveyed the land to the United States Fish and Wildlife Service that same year. UNM took over stewardship of the wildlife refuge in the late 1980s. Since then, the university built the UNM Sevilleta Field Station, which is a research laboratory and meeting facility, and 10 residential buildings, including two brand new ones, to house people doing research at the refuge or who are attending meetings. Currently, UNM is renovating other facilities to provide additional housing, he said. In a pinch, he said, the facilities can house up to 100 people and are filled to capacity during the summer, when UNM students and researchers from around the world descend on the refuge.

The wildlife refuge is one of 26 such sites around the world — ranging from Alaska to Antarctica, going from north to south, and from the Caribbean to French Polynesia, going east to west — participating in a Long-Term Ecological Research (LTER) program funded by the National Science Foundation (NSF). The LTER network is a collaborative effort involving more than 1,800 scientists and students investigating ecological processes over long periods of time and over broad physical areas. The Sevilleta National Wildlife Refuge is 20 miles by 30 miles in area and is the locus of four major ecosystems. It touches two mountain ranges and is traversed by the Rio Grande.

The Sevilleta LTER program costs \$2 million to \$2.5 million a year to operate, Mr. Pockman said. Of that amount, \$800,000 comes from the NSF for infrastructure and research projects.

Jennifer Johnson, a UNM research scientist, said she runs the undergraduate program at the Sevilleta Field Station. Her research is primarily related to global warming, she said. Senator Cisneros asked about the ethnic makeup of the students. Ms. Johnson said that of 11 students currently at the research center, nine are from minority groups. Mr. Pockman added that the research center employs a tremendous number of students who are New Mexico natives.

LGC History and Accomplishments

Representative Miguel Garcia said the LGC has worked with land grant communities since its inception in 2003. He listed some of the committee's accomplishments, including:

- getting political subdivision status for land grants;
- paving the way for land grants to create their own zoning by working with the Local

- Government Division of the Department of Finance and Administration;
- ensuring that land grant boards of trustees adhere to the Open Meetings Act;
- eliminating provisions in New Mexico's statutes that forbid women from serving on land grant boards;
- forbidding adverse possession lawsuits against land grants;
- giving land grants the right of first refusal on state property put up for sale within land grant boundaries;
- getting the Department of Game and Fish to return approximately 35 acres of valuable riverside land to the Abiquiú Land Grant; and
- restoring to land grants the prestige of being among the first local governments in New Mexico's history, thus helping to revive old cultural traditions and family values.

Sevilleta de la Joya Land Grant History

Ben Rivera, past president, La Joya Education and Charitable Assistance Organization, Inc., and his daughter, Teresa Rosales, vice president of La Joya Association, offered a historical and family perspective of the Sevilleta de la Joya Land Grant.

Mr. Rivera passed around the original Sevilleta de la Joya Land Grant patent, which he said was signed in 1907 by President Theodore Roosevelt and given to his grandfather's family. He said the land on which the wildlife refuge sits belongs to the land grant heirs. He asked where the heirs' land, cattle and culture are and even where the corpse of his father is if the United States truly had good intentions in signing the Treaty of Guadalupe Hidalgo. He said he used to visit his father's grave six times a year in the private cemetery where his father is buried on the land grant, but, since the wildlife refuge "stole" the land, he has had to obtain a permit to visit his father's grave. "To this day, I have not obtained a permit," he said. "Nobody is going to refuse me to see my family." He said La Joya was once a happy and exciting place for his family and other heirs and that "all of this hurts".

Mr. Rivera said that in 1934, retired U.S. Army General Thomas D. Campbell took possession of the Sevilleta de la Joya Land Grant, which he bought from Socorro County. The county obtained the land at a public auction after the heirs were unable to pay back taxes assessed on the land when New Mexico achieved statehood. Mr. Rivera said he was nine years old the day General Campbell rode into La Joya and took over the land grant. Weeping, he excused himself and passed his notes to his daughter to read.

Ms. Rosales said that La Joya residents were shocked to learn that the land grant now belonged to General Campbell and that they could no longer pasture their animals. She said her grandfather translated the information into Spanish for those heirs who spoke no English, but that he was unable to translate everything. Ms. Rosales questioned how the land grant could be lost to back taxes when the Treaty of Guadalupe Hidalgo forbade taxing land grants. She also questioned how a retired army general could afford taxes on more than 200,000 acres of land.

Ms. Rosales said that General Campbell moved to La Joya in 1938 to plant wheat, but his

crop was a total loss. Despite his never growing a pound of wheat, she said, General Campbell became a millionaire, and several people working in local public offices ended up with very large parcels of what had been land grant property. She said the small amount of acreage the Campbell foundation gave to the land grant heirs remains contentious because non-heirs continually try to claim it through quitclaim lawsuits. One family claims ownership of more than 300 acres, while another family of non-heirs is trying to sell a portion of land grant property for more than \$1.5 million. She asked the committee for assistance on helping the heirs keep what was returned to them.

Ms. Rosales said her father has a personal request: that he get back the right to visit his father's grave whenever he wants. She said tearfully that it would mean a lot to her elderly father, and she asked that the committee "at least start there" in terms of helping the land grant. She added that her father has no animosity toward anyone; he is simply venting his feelings of discontent.

"It will be a beautiful day when the people of La Joya give us back what is rightfully ours," she said. "Money and greed do not profit anyone."

Mr. Rivera provided the following information to the committee:

- General Campbell acquired 219,000 acres of land grant property.
- The *merced* was founded in 1819.
- The Indians that used to live across the river were called the Piros. Their pueblo was once called Acomillo.

Senator Rue said Mr. Rivera's comments about his father's grave site touched him a great deal, and he asked if Mr. Rivera's father is buried in a community cemetery. Mr. Rivera said it is a family cemetery, though other people are buried there, including World War II veterans. He said the cemetery was part of the sale to General Campbell, despite Mr. Rivera's family having a deed for it. Ms. Rosales said the U.S. Fish and Wildlife Service put a locked gate around the cemetery, and the agency requires that her father have a permit to enter. She said her father wrote to then-Congressman Steve Pearce about the issue, "but nothing ever came of it".

Representative Miguel Garcia said that land grant heirs along the Rio Chama have had similar problems. He suggested getting different federal agencies to the table to negotiate an access easement or other legal instrument, and he invited a motion to send a letter to the appropriate agency requesting legal access to the cemetery for Mr. Rivera and his family. Representative Hall noted that the heirs on the Rio Chama have been "stonewalled" on similar efforts. He suggested sending the same letter on their behalf.

Senator Ortiz y Pino asked Mr. Pockman if he knows the location of the cemetery and if there would be a "dilemma" in allowing land grant heirs free access to it. Mr. Pockman said he knows nothing of the cemetery, and he finds Mr. Rivera's situation "appalling". He stressed that there is "no dilemma whatsoever" in allowing land grant heirs free access to the cemetery.

Mr. Rivera said the cemetery is on the Alameda, across from San Acacio, which Mr. Pockman said is the southern end of the U.S. Fish and Wildlife Service portion of the refuge.

Representative Bandy suggested a letter requesting that the appropriate federal agency draft a memorandum of understanding (MOU) allowing access to the cemetery.

Senator Rue said he wants to make sure that Mr. Rivera and his family have free access to the cemetery at all times and that the land eventually be returned to the family. He asked if Mr. Rivera would be satisfied with a letter in the meantime. Mr. Rivera, holding up the patent, said, "We have died for that land."

On a motion by Representative Bandy, seconded by Senator Rue, the committee agreed to send letters requesting that the Land Grant Council and the appropriate federal agencies managing the cemeteries in La Sevilleta and Chama agree to MOUs to allow heirs free access to the cemeteries.

Representative Miguel Garcia said that when developers take over a religious site, they often desecrate it. In Spanish, he assured Mr. Rivera and other heirs at the meeting that the committee would work on getting permanent access to their *camposantos* so that they may inter family members there in the future.

Ms. Rosales asked that the committee stay in touch with her father on the cemetery issue. Representative Miguel Garcia assured her that it would, and he insisted that Mr. Rivera, who was about to turn 83, live to see the day where he can have unfettered access to his father's grave site.

La Joya Community Current Affairs and Acequia Improvements

La Joya residents and land grant heirs Mr. Abeyta and John Carangelo briefed the committee on current issues facing their community, including an update on recent and future renovations to its acequia system. Mr. Abeyta said the acequia was abandoned for many years. In the 1970s, Emilio Esquivel organized La Joya Community Development Association, which eventually got seed money to buy a backhoe and received funds from the now-defunct federal Comprehensive Employment and Training Act Program to make improvements to the acequia. Then the association declared the ditch a disaster area and got one-half million dollars from the state emergency department to put in new culverts across the arroyos, said Mr. Abeyta. The ditch association also got matching funds from the U.S. Army Corps of Engineers as well as some capital outlay funds from the state. Today, much of the nine miles of acequia is lined with cement and fitted with state-of-the-art electronic head gates. The acequia loses no water due to drainage, compared to 50 percent water loss before the improvements, he said. As a result, he added, much of La Joya's farmland is back in production after lying fallow for decades.

Mr. Abeyta said the acequia association got funds this year to reinforce and redo completely one of the largest arroyos crossing the acequia. During heavy rains, the arroyo can

wipe out culverts and cause flooding, he said.

Mr. Carangelo said La Joya has three associations, each with its own purpose:

1. La Joya Community Development Association, which helps maintain the history, culture and ecology of the area; helps keep the land, and the land grant, viable; and benefits the people in the community of La Joya;

2. La Joya Educational and Charitable Assistance Organization, which provides "bridge" scholarship to help college-bound La Joya graduates pay for tuition, books, gas and other necessities; and

3. La Joya Acequia Association, of which Mr. Abeyta and Mr. Carangelo are commissioners.

Among the accomplishments of the community association are:

- the founding of a state-accredited library;
- roads that are as good as any in the state;
- beginning renovation of the old high school gymnasium to use as a community hall; and
- donations to charities, including St. Vincent de Paul.

Responding to questions and comments from committee members, Mr. Abeyta and Mr. Carangelo provided the following information:

- La Joya's acequia is one of the oldest in the state, dating back to the 1700s.
- The acequia is incorporated into the Middle Rio Grande Conservancy District (MRGCD), but it maintains its own autonomy as a political subdivision of the state. The only connection to the MRGCD is at the point of diversion, which is less than a mile from the MRGCD canal.
- When the conservancy district was founded in 1926, La Joya was part of its jurisdiction and paid taxes to the district. But residents sued to sever itself from the conservancy district because the organization was not maintaining the ditches. By mutual agreement, the conservancy reimbursed residents for the back taxes and the "people took the ditch back".
- La Joya pays a conveyance fee for diverting water via the MRGCD and must renegotiate that fee every year, as per a perpetual contract.
- The relationship between the La Joya Acequia Association and the MRGCD is harmonious.

Senator Rue complimented Mr. Abeyta and Mr. Carangelo on what they and their organizations have accomplished. He asked whether communities like La Joya can get specialized legal help for land and water issues, such as those described in the morning's testimony. Representative Miguel Garcia said none exists at present, but one of the goals of the LGC is to create a land grant clinic at UNM to do pro bono legal work for just such issues.

Representative Barreras suggested that Mr. Abeyta and Mr. Carangelo document their

work and put a copy, including all relevant documents, in the State Library. He said his family lost many of his grandfather's old documents, "and it was a tragedy for us". Mr. Carangelo said they are in the process of doing just that.

Representative Miguel Garcia requested a motion to send a letter from the committee to Dr. Manuel Garcia y Griego, director of UNM's Southwest Hispanic Research Institute, requesting him to work with the La Joya Educational and Charitable Assistance Organization to compile land grant and acequia documentation and history for La Joya's library and UNM's Southwest Studies program. Representative Hall so moved, Representative Barreras seconded the motion, and the committee passed it unanimously.

Representative Miguel Garcia requested another motion for a letter to the Department of Game and Fish, requesting that it attend the committee's November meeting in Santa Fe and explain how it came in possession of property in the village of La Joya, how it uses the land, what its future plans for the property are and what it would entail to transfer it back to the land grant. Representative Garcia said it is his intent to transfer 2,000 acres back to La Joya Educational and Charitable Assistance Organization. Representative Hall made the motion; Senator Cisneros seconded it. It passed unanimously.

Representative Miguel Garcia requested a motion to draft capital outlay requests for La Joya's gymnasium to "bring that center back to the life and viability and vigor it once had". Senator Cisneros said he felt compelled to remind the committee and the audience that the state budget has a \$300 million to \$500 million shortfall that not only will preclude new capital outlay requests, but will probably require a reduction in existing capital projects. He said that while it is fine to come up with motions and initiate funding requests, it is equally important to recognize that it will be an "uphill battle" to get any money. Representative Garcia said he recognizes that the state is in a dire fiscal state, but it is important to address the needs of the community. "We may not be able to come up with one cent, but it's leverage," he said. The committee approved the motion without objection.

The committee recessed for lunch at 12:42 p.m. and reconvened at 1:54 p.m.

Town of Tomé Land Grant Update

Lawrence Sanchez, president of the board of trustees, Town of Tomé Land Grant, gave a brief history of the land grant, explaining that the king of Spain issued the 260,000-acre land grant in 1739 to 26 families. All the paperwork was in Spanish, he said, noting that every time someone translated the deed into English, "you lose a few acres. . . but that's just the way it goes". For example, he said, the U.S. survey of the land grant fixed its eastern border at the foot of the Manzano Mountains instead of at the crest, as was in the original grant, and permanently lost that land in 1906, when President Theodore Roosevelt gave the western slope of the Manzano Mountains to the U.S. Forest Service.

Mr. Sanchez said the land grant originally included Casa Colorado to the south, but in

1813, Casa Colorado residents asked to be a separate land grant so they would not have to make the long trip to Tomé to "deal with issues". In 1823, the king of Spain divided the land grant, giving Casa Colorado 132,000 acres while Tomé received 121,000 acres, he said. Eighty-four years later, the Town of Tomé Land Grant lost another 75,000 acres to back taxes, and, in 1968, a new board of trustees converted the land grant into a corporation, which, according to a subsequent state supreme court ruling, it was not authorized to do. Mr. Sanchez noted that the court did not void the sale of the remaining 37,000 acres of the land grant acreage to Horizon Corporation by the "nonexistent" land grant corporation. Original Land Grant heirs saw very little of the money from that sale, according to Mr. Sanchez. The Town of Tomé Land Grant retains approximately one-half acre of common land, is now a political subdivision of the state and is trying to get back some of its traditional lands, he said.

Mr. Sanchez introduced Rita Padilla-Gutierrez, a Town of Tomé Land Grant board member who recently was appointed to the Land Grant Council. Ms. Padilla-Gutierrez said the board learned in 2006 about \$20,000 in undistributed funds from the 1968 land sale to Horizon Corporation and took action to try get that money returned to the land grant. She said the issue remains in limbo because of continued delays. She said the board hired a new lawyer in 2008 who promised to expedite the case. He did, and the result is a two-page court order that has yet to be signed, in part because one of the lawyers in the case now lives out of state and has not signed the order. Ms. Padilla-Gutierrez called it "a little unacceptable" for the process to take three years. She said that the land grant will use the money to create a fellowship program or to buy back former land grant lands as they go up for sale, as per its legal right of first refusal.

The committee discussed its options regarding the lack of progress in getting the court order signed , and it agreed to wait until its November meeting to decide on the proper course of action.

Representative Miguel Garcia asked whether Cerro de Tomé was owned by the Tomé Neighborhood Association. Ms. Padilla-Gutierrez replied that the Valley Improvement Association (VIA) is the successor to Horizon Corporation. She said the land grant has been trying to work with the VIA board to have Cerro de Tomé returned to the land grant. However, she said, it has been difficult to determine who sits on the VIA board and, thus, to organize a meeting and talk constructively about getting the hill returned to the land grant, but that with the help of Representative Barreras, who represents that area, perhaps they can do it.

In response to a question from the committee, Mr. Sanchez said that the VIA sustains itself with annual fees from homeowners. He also noted that the county had forgiven \$1.6 million in tax liability the VIA owed at one point.

In response to questions from the committee, Mr. Sanchez responded as follows:

- Tomé learns of former land grant property that goes up for sale by checking the newspapers because attempts to get a list from the county assessor's office have been unsuccessful.

- The land grant is not having problems with livestock being fenced.
- Federal grazing allotments on the west slope are still active, with attendant problems such as fences and water tanks being cut, cattle being shot and windmills being shot at, as well as having one of his brothers shot in the back with an arrow.
- The Department of Game and Fish and the U.S. Forest Service are aware of the problems, but they have not done their job in stopping these problems.
- Although the land grant had only 206 heirs, when Horizon bought it, more than 10,000 people claimed to be heirs. The court approved 6,600 heirs.

Manzano Land Grant Update

Daniel Herrera, vice president, Manzano Land Grant board of trustees, said his land grant was established in 1823 by people from La Joya and Tomé, and, like many settlers on the eastern slope of the Manzano Mountains, they spent much of their energy guarding against raids by Comanche and Apache Indians.

Mr. Herrera said the land grant was originally 48,000 acres, according to an 1879 map — the earliest one on record. Today, the land grant has about 17,000 acres left after the "American government split us apart", he said.

Mr. Herrera passed around photographs of the old Manzano Land Grant, including pictures of churches, *torreones*, an old schoolhouse, etc. He said he grew up speaking Spanish, and the main objective of his schooling was to learn English. This was all part of what he called a "consolidation movement", which he said resulted in the loss of the land grant's culture, traditions and language.

Mr. Herrera said his great-grandfather went to Catholic school in St. Louis to learn English and to learn the law so he could protect his society and the land grant. He said many land grant heirs do not trust the government because "any time you go to the government, you wind up losing land". However, he said, thanks to the work of the LGC, the government is "treating us like human beings". Mr. Herrera also thanked the committee for its help in dealing with the U.S. Forest Service after last year's fires. He said the land grant is currently working on a forest-thinning project.

Property Tax Classification and Valuation of Agricultural and Common Lands

Rick Silva and Michael O'Melia, director and deputy director, respectively, of the Property Tax Division of the Taxation and Revenue Department (TRD), explained to the committee how the TRD classifies agricultural land, which they said generally falls into three categories: 1) irrigated farm land; 2) dry farming land; and 3) grazing land. The determination is usually made by assessors, and the complaints usually involve grazing allocations.

Mr. O'Melia said it is common to give assessors latitude in assessing rural land because they tend to be familiar with topography and climate in their own counties. Determining that an animal unit has to be 609 acres, for example, does not take into account the difference between

property that is mountainous rock and property that has a stream running through a valley, he said. But an assessor can speak to such things with authority, and the TRD does not have to commission an expensive study.

Juan Sanchez, president of the Land Grant *Consejo*, approached the speaker's table. He told the committee that land grant heirs understand the grazing laws and how to work with them. But they have concerns about how common lands are assessed and taxed. For example, he said, his own land grant, Chililí, pays \$4,000 a year in taxes for 8,000 acres of common land while Cañon de Carnuel pays \$12,000 a year for 500 acres, and both land grants use their common lands for the same purpose. Mr. Sanchez suggested drafting legislation that would level the tax rates.

Representative Miguel Garcia asked Mr. Silva and Mr. O'Melia about a special designation within the tax structure for common lands. Mr. Silva said he sees no other way to classify that type of land except as agricultural, and the tax rate is set based on the value of the property.

Mr. O'Melia said the Property Tax Division can address assessment issues, but it does not set tax rates. He advised people in the agriculture realm to be careful about how they are being taxed and to declare livestock and request an agricultural classification. He said he knows of land grants that have agricultural and grazing exemptions but do not declare livestock, including one land grant with close to 98,000 acres that has declared 80 cows. "Those are lonesome cows, wandering around for bovine companionship," he said. He added, "We saw a lot more cows than that." He further advised that if a land grant is dryland farming, be sure to call the assessor to make sure it is not being charged for irrigation.

Representative Miguel Garcia explained that Mr. Sanchez was asking about standardizing common lands for assessment purposes only and not about changing the mill rate. Mr. Sanchez said the rate for common land that does nothing but hold rocks should have a different tax rate than land with a \$2 million home.

Senator Rue said it sounds like Mr. Sanchez was asking about creating a special assessment district within the common areas of land grants, which would involve assessing those properties in some kind of separate classification.

Mr. O'Melia said that land should be taxed on the basis of its value. But the situation Mr. Sanchez described, whereby one acre is divided between four people, for example, could render the land unbuildable, which lowers its value and, therefore, its tax rate. He suggested that the owners file a protest and point out that the land is a "fractional interest that precludes building", and the market value is less.

Mr. Sanchez said he has gone the protest route before, and he has also tried changing the description of the common lands — all to no avail. "I think it's important to expand the law to make the common lands of land grants a special district," he said.

Representative Bandy said he sees a problem in making a special classification for common lands; people do not like it when their neighbors pay a special rate. He asked if it is possible for the TRD to issue some kind of guidelines and have a special directive to assessors for special drylands. Mr. Silva said assessors must go by what is on the books. Representative Bandy commented that the valuation of property is based largely on its development potential. If that potential is not there or if it is less, then the assessed valuation should be less, he said.

Mr. Sanchez pointed out that the Anton Chico Land Grant is being doubly assessed because there are private holdings within the land grant. The board of trustees pays taxes on all 107,000 acres on the land grant while private individuals who own land within the land grant are also paying property taxes. The reason that the board of trustees continues to pay the taxes on the whole land grant is because it does not want to risk losing its land again for back taxes, Mr. Sanchez said.

Mr. O'Melia said that private land ownership on land grants is "incredibly complex". If the development potential is diminished, the assessor should already be picking up the change in value. If a land grant is holding a valuable piece of land, then the land grant should be charged on that basis. "I always worry about the unintended consequences of good acts," he said. If the regulations are not clear and are liberalized to capture everyone whose ancestors might have had an agricultural use, he continued, "some wiseacres in Santa Fe will get a couple of goats for their million dollar homes and declare themselves agricultural. There are folks taking advantage, but we do our best."

Responding to questions from Representative Bandy, Mr. Silva said that when he was an assessor, he had ongoing communications with the New Mexico Cattlegrowers' Association and the New Mexico Livestock Board to see if their numbers matched his. Those two agencies know who has bought and sold cows, he said. But not all assessors do the same thing, said Representative Hall. Even today, he said, assessors do not apply the code uniformly across the state. Mr. Silva agreed, saying that urban assessors particularly do not recognize agricultural assessments.

Other questions and comments from the committee included the following topics:

- What are classes A and B? (Class A comprises the northern part of the state with sagebrush and rolling hills. Class B is prairie-type land and grassland, more common in the southern part of the state.)
- Do nonprofit entities pay property tax? (Yes. They are exempt only from income tax.)
- Why do cities not pay property tax? (The Constitution of New Mexico exempts cities from paying property tax.)

Mr. Silva said the Property Tax Division understands that land grants are unique and that the issues are complicated. As the statutes are currently written, he said, there is no way to define clearly a special method of taxation for land grants without enacting new laws. He said he would like to visit with Mr. Sanchez to discuss the matter further, especially as it pertains to the Chililí Land Grant.

Mr. Sanchez said that Chililí has no problem with taxes, but other land grants may have problems if they get federal lands returned to them. If they succeed, they will have to pay taxes on those returned lands, even though the federal government never did. For example, he said, the Cañon de Carnuel Land Grant lost 90,000 acres to the U.S. Forest Service. If the forest service returned 30,000 of those acres tomorrow, Carnuel would have to pay taxes on 30,000 acres instead of just on the 500 acres currently in its possession. There is no way the board can pay that, he said. So the land grant could once again lose that same land to back taxes, and the forest service could buy it at auction. Mr. Sanchez said he would like to work with the TRD to resolve this issue, perhaps by drafting legislation to make a special tax assessment for land grant common lands.

Land Grant *Consejo* Proposal on Land Grant Use Rights on State and Federal Land

Mr. Sanchez acknowledged that land grant heirs may never again own land that used to be theirs. The *consejo* is negotiating with state and federal agencies to grant heirs of land grants access rights, at least, on government land without their having to pay a fee to visit *camposantos*, for example; to gather wood, rocks, herbs, gravel and other natural resources; to graze cattle; etc. The agencies include the U.S. Forest Service and the U.S. Fish and Wildlife Service, the federal Bureau of Land Management and the state Department of Game and Fish.

Other issues on the council's agenda include:

- allowing land grant board members to be present when a government agency sells or trades land that used to belong, or is adjacent, to a land grant;
- compensating land grants for federal grazing leases on former land grant common lands; and
- working with the U.S. Forest Service on watershed restoration to avoid catastrophic fires such as the one in Manzano a few years back.

Representative Miguel Garcia proposed drafting an MOU with state and federal agencies to allow land grant heirs unfettered access for traditional uses to those federal lands that used to be common lands. He said this could pave the way for a "real clear-cut, viable, economic development success story". Representative Bandy suggested drafting a model MOU to be tailored for each individual agency because some agencies are harder to deal with than others. He said it would help to consult each agency about its land use plan and then see how the land grant fits into it. Representative Rodella commented that, unless an agency is presented with something tangible to which it agrees, it will not initiate negotiations. Mr. Sanchez said that is why it is important for the Land Grant Council to be involved.

Mr. Sanchez updated the committee on the membership of the Land Grant Council, saying that three appointments are completed, one is in process and a replacement is being sought for a fifth nominee who declined the appointment. He said he expects all members to be in place by the following week. He said the council is already backlogged on issues with which it should be proceeding, but the appointments are taking longer than expected.

Mr. Sanchez said land grants that are political subdivisions of the state are having trouble getting their capital outlay money because they are out of compliance with the Audit Act. The Audit Act requires all state entities to get a full audit — usually at a minimum cost of \$5,000, which is more than many land grants earn in a year. An amendment to the Audit Act that passed in last year's legislative session exempts some small state entities from a full audit, but the amendment does not go into effect until 2010. Until then, many land grants are in limbo in terms of getting their capital outlay money. Mr. Sanchez's own land grant, Chililí, was unable to get its appropriation to purchase a wood chipper because of this dilemma. He said the council is asking the state auditor to say that the land grants are in compliance with the new law.

Arturo Archuleta, director of planning for the North Central New Mexico Economic Development District, said he is concerned that land grants will lose their capital outlay money in the current sweeps to balance the budget because, until the amendment to the Audit Act takes effect in 2010, they do not have access to the money.

Upon a motion made, seconded and unanimously approved, the committee agreed to write a letter to the Legislative Finance Committee, with copies to the state auditor and the Department of Finance and Administration, requesting that land grant capital outlay money be reserved until land grants are allowed by law to use it.

Public Comment

Leonard Martinez, president of the San Joaquin del Rio de Chama Land Grant, introduced himself as the fourth member of the Land Grant Council board of directors. He said he hosted the LGC in Gallina several years ago. Since then, he said, all the grave markers in the Gallina cemetery have been stolen. The cemetery is located in a national wilderness area and should be pulled out of it, he said, especially because a lot of elderly people want to be buried there. He said the land grant is working with attorneys on the issue, which he said will be settled through the courts.

Representative Miguel Garcia recalled a comment at the committee's previous meeting in Taos about different land grant organizations forming. He referred in particular to the re-establishment of the *Alianza Federal de Mercedes* by Rosita and Noe Tijerina, daughter and son of the late Reies Lopez Tijerina, who was one of the land grant movement's founders. He said that the LGC does not want to "meddle in the internal affairs" of the Land Grant *Consejo*, but he received calls from some members of the *consejo* who are concerned about disunity. He said the *Alianza's* approach is "real different — it's more media-focused, not working with the grass roots, muddying their hands and dirtying their work pants". He added that, until the July

meeting in Taos, the Tijerinas have never come to a LGC meeting. He stressed that the committee is not siding with any faction; it is just pursuing all issues to do with land grants.

Mr. Sanchez said the *Alianza* and the Land Grant *Consejo* have different views of what the *consejo* should do. The *Alianza* is more concerned with sovereignty while the *consejo* wants to concentrate on policy issues, he said. "They think there should be nothing else but the treaty [of Guadalupe Hidalgo]," Mr. Sanchez said. "I'm not against it, but there are certain ways of gaining respect and rights. There's a way to move forward positively or yip-yapping and then they go away. But that's just me talking."

The committee recessed at 5:15 p.m.

Friday, September 4

Tour of La Joya and Sevilleta

The committee toured La Joya Land Grant and the Sevilleta Wildlife Refuge.

The committee adjourned at approximately 1:00 p.m.

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

**October 29-30, 2009
San Antonio Mission Meeting Hall
Paseo de San Antonio Road
San Antonio de Las Huertas Land Grant
Placitas**

The fourth meeting of the Land Grant Committee for the 2009 interim was called to order by Representative Miguel P. Garcia, chair, on Thursday, October 29, at 10:20 a.m. at the San Antonio Mission Meeting Hall in Placitas, New Mexico.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Rod Adair (10/29)
Rep. Paul C. Bandy
Rep. Andrew J. Barreras (10/29)
Rep. Eleanor Chavez
Rep. Thomas A. Garcia (10/29)
Rep. Jimmie C. Hall
Rep. Debbie A. Rodella (10/29)
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Sen. Gerald Ortiz y Pino

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros

Sen. Dianna J. Duran
Rep. Brian F. Egolf, Jr.
Rep. Ben Lujan
Rep. Richard D. Vigil

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

Staff

Damian Lara
Tamar Stieber

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, October 29

Welcoming Remarks, Invocation and Introductions

Tony Lucero, president, San Antonio de las Huertas Land Grant Board of Trustees, welcomed the committee to the land grant and offered a brief invocation. Representative Miguel P. Garcia asked committee, staff and audience members to introduce themselves.

San Antonio de las Huertas Update

Mr. Lucero noted that this was the second time his land grant has hosted the Land Grant Committee. He said the 150 years since the signing of the Treaty of Guadalupe Hidalgo represents a long battle that land grants have had with the United States government. He attempted to explain his point with a recording of *Se ve triste el hombre* by New Mexico singer/composer Cipriano Vigil, but the CD player did not work. At the behest of the chair, Mr. Lucero explained that the song tells the story of a man who is sad because he is heir to a land grant that lost all its land and, along with the land, many of its land-based traditions such as wood cutting and cattle grazing in the forest. He said the song illustrates what land grant heirs have been up against for a very long time. He said he knows that the heirs will never get back the land and the traditions they lost, but they are working on getting justice on a small scale. He thanked the committee for the work it has done on behalf of land grants.

Mr. Lucero read a letter he wrote in May to the federal Bureau of Land Management (BLM) on behalf of the land grant. In it, he explains that the BLM has disposed of about 6,000 acres in the Placitas area, much of that in recent years. As a result, Placitas has seen an increase in development along with an influx of new residents who outnumber the long-time residents. This, he wrote, has placed the "original people...on the threshold of extinction". In addition, he said, prices and property taxes have increased greatly and young people find it difficult to remain in the area.

The letter quotes then-Attorney General Tom Udall, testifying before a subcommittee of the Senate Energy and Natural Resources Committee in 1998, as saying that "there clearly have been wrongs inflicted on New Mexico's land grantees and their successors that need to be readdressed". It also quotes former Senator Pete Domenici, who, in introducing the Guadalupe-Hidalgo Treaty Land Claims Equity Act of 1998, said the bill can address "what has too long been a tale of land loss and denial without creating new problems or injustices".

The letter describes an "erroneous taking by the USA Government" of the 12,801.46-acre Tejon tract that, according to a scholar quoted in the letter, the United States took from the land grant and gave away illegally. It asks the BLM to return to the land grant a 500-plus-acre tract north of the Village of Placitas and to preserve another 200 acres as open space for wildlife and hiking. In exchange, the land grant will relinquish its claim on the 1,500-acre Crest of Montezuma, which the Wilderness Alliance and other wildlife organizations want the BLM to transfer to the U.S. Forest Service to protect it from commercial development and off-road vehicles while preserving it for hiking, bicycling and horseback riding. Mr. Lucero said that the groups feel the U.S. Forest Service can protect the crest better than the BLM, but that he and

other heirs are not so sure about that. He said the smaller tract is more beneficial to the land grant than the Crest of Montezuma, so the land grant is willing to use the Crest of Montezuma as a bargaining chip.

The committee was unanimous and forceful in responding that the land grant should not cede any of its land to the federal government or to environmental groups — that it should demand the smaller tract as well as the Crest of Montezuma.

"I don't think this group (the Wilderness Alliance) should have any input", Senator Sanchez said. "I think it's an opportunity for you all to get your land back... Now that the BLM is letting it go, it's yours."

Stating that the land was stolen by Catron, Senator Sanchez said this is also an opportunity for Congress to honor the Treaty of Guadalupe Hidalgo by facilitating the return of the land to the San Antonio de las Huertas Land Grant. She said that the land grant should write to the New Mexico congressional delegation asking the members to support the return of both parcels, and the committee would support the land grant in its efforts.

Mr. Lucero responded that the land grant heirs have discussed this and decided that they would probably have more success negotiating a swap rather than trying to get both parcels back. "It's not that we're afraid", he said. "It's just that we're trying to be realistic."

Senator Sanchez said that the land grant should not settle; it should demand both parcels. Mr. Lucero said that would be wonderful.

Representative Hall made a motion to draft a memorial for the upcoming session and to write letters to the congressional delegation supporting the return of both parcels of land to the San Antonio de las Huertas Land Grant. Senator Sanchez suggested that the letters encourage face-to-face meetings with, in particular, Congressmen Ben R. Lujan and Martin T. Heinrich. She also suggested that the Land Grant *Consejo* get involved in the negotiations.

Juan Sanchez, president of the *consejo*, said it is already actively pursuing the issue with the congressional delegation, and the *consejo* hopes to meet with the congressional delegation in Washington, D.C.

Representative Miguel P. Garcia suggested splitting Representative Hall's motion into two separate motions — one motion to write letters to the congressional delegation and another motion to draft a memorial. Both passed without objection.

Traditional Cultural Property (TCP) Designation of Common Lands

Attorney Sarah Maestas Barnes, vice president of the Land Grant *Consejo* and a member of the Cebolleta Land Grant, and Dick Minzner, lobbyist, Neutron Energy, told the committee that the Cebolleta Land Grant is in a dire position. They explained that the Cultural Properties Review Committee (CPRC), which answers to the Historic Preservation Division of the Cultural Affairs Department, has designated land within the land grant as a TCP of importance to Native Americans. That means that the land grant must seek approval for any private or commercial

activities on those lands, which could mean delays that can last months or even years or can mean denial of approval. Ms. Barnes said that Cebolleta is not opposed to the TCP designation in concept, but it is opposed to private land being included in that designation.

Mr. Minzner told the committee that Neutron Energy was hoping to lease land on the Cebolleta Land Grant for uranium mining, but even with the land grant's agreement, it cannot do so without first going through the long CPRC approval process. He explained that the Cultural Properties Act limits its powers to state land, but that it defines state land as land owned or managed by a political subdivision of the state. That would include land grants, which only recently gained political subdivision status. He said it is ironic that land grants won a hard-fought battle for political subdivision status only to lose rights on their land. He added that it seems clear that it was not the committee's intent to impose this on land grants.

Mr. Minzner distributed a handout to the committee with two suggestions for amending the Cultural Properties Act, the Cultural Properties Protection Act, the Prehistoric and Historic Sites Preservation Act and the statutes governing land grants (Section 49, Article 1 NMSA 1978) to protect land grants from being restricted by a TCP designation.

Mr. Minzner said that, in his opinion, this is the most important issue to come before the Land Grant Committee during the interim. He said the TCP designation of Cebolleta Land Grant property is "driven pretty substantially by environmental groups interested in ceasing the use of Mt. Taylor for mineral exploration". He noted that the environmental groups have statutory support, which is why amending legislation is appropriate.

Questions and comments from the committee included the following:

- *Does the CPRC have public reviews, meetings or hearings?* After the CPRC voted in June to make permanent its temporary TCP designation on the Cebolleta Land Grant, there was no final review or proposed final review. The CPRC chair signed off on the designation, and the committee had a public comment period. Ms. Barnes and her father testified, but felt they were ignored. They only had two minutes each in which to comment.
- *How were you notified that the CPRC was holding a hearing and had the intention of declaring this land public?* When the process began in 2008, people were not notified. The attorney general determined that the committee violated the Open Meetings Act. The committee started the process again, approved the temporary TCP listing based on nomination by several Indian tribes, took "years" to make it permanent and waited only a month or two prior to its vote before opening it up to public comment.
- *Who nominated the land for TCP registration?* The five nominating tribes were the Pueblos of Acoma, Laguna and Zuni, the Navajo Nation and Hopi.
- *Have you discussed this with the governor?* Not yet. The presenters want to wait to see if this committee would be supportive of the proposed legislation.
- *How many acres of private land were included in the CPRC decision?* It included 19,000 acres in Cebolleta and a number of private landowners who were promised that their land would not be included.
- *Have you filed a freedom of information request?* The presenters have filed a request

for inspection of public records and obtained documentation but cannot locate documentation specifically related to land grants, which leads Cebolleta to believe the issues were not properly addressed.

- *Do traditional cultural properties extend to private land? Yes.*
- *How can the CPRC do that without violating the takings clause? It is not supposed to be appropriating private lands. However, due to negligence or an oversight, many private landowners have had their private lands incorporated into this designation — unlawfully, according to Ms. Barnes.*

Commenting that the makeup of the CPRC does not reflect that of the state and that the members have a lot of control, Senator Sanchez made a motion to draft two bills, each with one of Mr. Minzner's alternative amendments, for the upcoming legislative session, which is supposed to deal primarily with budgetary matters. She said the issue cannot wait another year for a 60-day session, when germaneness does not apply. She advised Ms. Barnes and Mr. Minzner to ask the governor to put it on his call for the 2010 session. Following a second by Representative Rodella, the motion passed unanimously.

Representative Miguel P. Garcia asked why Mr. Minzner did not include an alternative for "knocking out political subdivisions from the cultural properties end". Mr. Minzner said that is much more extensive than the two alternatives he proffered and that he would rather knock out land grants from the Cultural Properties Act than knock out political subdivisions completely.

Representative Rodella moved that the committee also draft a memorial in the event the governor does not put the issue on his call. A memorial, she said, would help the communities involved in the lawsuit "venture forward" in their litigation. Representative Hall seconded the motion and the committee passed it unanimously.

Representative Bandy suggested that the committee write a letter to the CPRC to say that it is overstepping its authority by including land grants and private property in the TCP and write to the attorney general (AG) to ask for an opinion on the matter. Representative Rodella asked that the CPRC be invited to the next Land Grant Committee meeting along with the secretary of cultural affairs and the AG. Senator Cisneros said the committee cannot request an AG opinion, but an individual legislator can. Representative Hall said he would make the request.

Dr. Manuel Garcia y Griego, director, Southwest Hispanic Research Institute, University of New Mexico (UNM), pointed out that the Cultural Properties Act was conceived as a way to protect populations and traditions considered to have prior rights, i.e., rights that predate the United States, which means Native Americans and land grant heirs. He said the committee's attempts to protect land grants through political subdivision status is the modern way of trying to protect those prior rights. "My humble opinion is that you approach it from that perspective", he said.

Land Grant Studies Program Update

Dr. Garcia y Griego thanked the committee for its "prescience" in helping to get the Land Grant Studies program established. He said it took two attempts to get the program started and it finally began in July 2008. He described it as an interdisciplinary program that supports student

internships and participation, community outreach and faculty involvement in land grants. In addition to having an academic component, the program is also a means for UNM to reach out to historic communities that he said have been neglected way too long. Through the program, students help land grants document their history, including loss of their land, and help them determine how much land grant land is currently owned by federal agencies.

These are questions that need to be answered succinctly and systematically and sometimes require legal knowledge, Dr. Garcia y Griego said, adding that the institute often solicits help from law students. Since the departure of Em Hall as a full-time faculty member, the law school does not have a lawyer dedicated principally to land grant issues, he said, and a land grant curriculum and courses would help address that. Students need to demand these things, he said. If they do, the school could probably get a grant for the courses and the professors. He noted that land grant legal issues are very complicated and encompass international law, self-executing treaties and common law, including property and water issues.

Senator Sanchez encouraged the committee to set up a meeting with UNM's new dean of law and ask about setting up a land grant program at the law school.

Dr. Garcia y Griego said that the ongoing land grant studies program activities include:

- placing student interns, many of whom are land grant heirs, with community land grants and preparing them to be leaders;
- monthly seminars at UNM with roundtable discussions;
- setting up web sites, including photography, for community land grants, which pay only domain and service fees;
- responding to the U.S. General Accounting Office "Report to Congressional Requesters on the Treaty of Guadalupe Hidalgo"; and
- offering pre-doctoral fellowships in which Ph.D. or master's degree candidates can do cutting-edge, path-breaking work on behalf of land grants.

Dr. Garcia y Griego said one pre-doctoral fellow is doing "amazing" documentation on land grant rituals and is donating her archive of materials to the land grant program. He said it will be available online. He said the web sites are important because they help advocate for the return of land grant land and help get the message out to heirs and other stakeholders. He stressed, however, that the institute does not dictate the content of the web sites; its students simply help set them up, including editing them, and the land grants review all content before it goes online.

Questions and comments from the committee included the following:

- *Is it hard to get applicants?* Dr. Garcia y Griego said he is having a harder time recruiting students than he expected. As a result, the program has expanded to include all UNM campuses.
- *What is the status of the land grant law clinic?* The clinic requires professors and/or staff members who are knowledgeable about land grant issues. With a few exceptions — e.g. a Tecolote Land Grant case that went all the way to the U.S. Supreme Court — there is not a big market for experts in land grant issues.
- *Describe a typical student that might be attracted to the Land Grant Studies program.*

- The students are incredibly varied with majors that include history, planning, sociology, Chicano studies and undeclared.
- *Is the program mostly field work?* It is all field work. The only classroom time is a monthly meeting to share experiences.
 - *How many students have gone through the program?* About 15 students went through the program last year.
 - *Why are so many land grants named for San Antonio? What is the relevance of San Antonio to the settlement of communities?* Many of the saint names are associated with places and churches in New Mexico. It has to do with a particular time period when Spanish settlers arrived. One of the most common names among them was Antonio San Antonio.
 - *Have you had any encouragement from the Hispano Chamber of Commerce?* It needs to be reminded of earlier conversations the institute has had with it about land grants.
 - *Have you had any contact with New Mexico State University?* Just emails and some conversations.

Congressional Response to Land Grant Consejo Proposal on Federal Lands

Representative Miguel P. Garcia asked Mr. Sanchez of the Land Grant *Consejo* to summarize its proposal on land use rights for former common lands now controlled by state and federal agencies. The *consejo* proposes the following:

Federal and State Land Disposal

- Community land grants shall have a priority right to federal and state lands that used to be common lands and that are to be sold, traded or otherwise transferred.
- Federal and state agencies shall return former common lands to the boards of trustees of land grants when those lands will have an immediate positive impact on the land grants.

Federal and State Land Management Practices on Former Common Land

- Community land grants shall have priority rights to leases.
- Leases to non-eligible descendants shall include compensation to their respective land grants.
- Priority rights to new leases shall be effective immediately.
- A land grant's board of trustees shall be included in the management of former common lands, including forest and watershed restoration.
- Land grant heirs shall maintain traditional use rights on former common lands.

Affirmation of Priority Rights

The proposal affirms land grant priority rights for land, water, minerals and other natural resources.

Antonio Sandoval, representing Congressman Heinrich, read a prepared statement from the congressman that included the following points:

- Congressman Heinrich acknowledges the dedicated work of the New Mexico Land Grant Council/*Consejo* and honors the deep-rooted history of many land grant

- descendants to land in New Mexico. That connection is an innate part of the state's heritage and must always be respected.
- Regardless of how the land stewardship has shifted over time, the current agencies and mechanisms are in place to ensure the highest and best use of public lands across the country.
 - Agencies like the BLM and the U.S. Forest Service sometimes fail to recognize the historical and cultural significance of lands that were at one time part of traditional land grant communities.
 - It is possible to respect land grants' historical ties to the land and to improve the interaction between the land management agencies.
 - He supports the right of first refusal of transfer of land ownership if those lands are identified as surplus by the agency process and Indian tribes' consultation rights are maintained.
 - Land grants should have the first opportunity to acquire grazing leases on public lands that are not renewed by their current holders.
 - Land grants should have every opportunity to provide comment and consultation on former community lands. Congressman Heinrich is encouraged about the existing forest and watershed restoration programs already under way.
 - The congressman looks forward to advancing the extension of these principles and programs in the future, and he offers his office's full assistance in doing so.

Representative Hall objected to Congressman Heinrich's using the term "traditional uses" and suggested that he address specifics, i.e., livestock grazing, firewood gathering, hunting, etc. Senator Cisneros added acequias to the list. Representative Miguel P. Garcia said the congressional delegation needs to make an effort to address land claims that are "real clear cut in terms of the violations", especially violations by the BLM and the U.S. Forest Service.

Jennifer Manzanares, speaking for Congressman Lujan, told the committee that the congressman entered into the congressional record the AG's response to the GAO report on the Treaty of Guadalupe Hidalgo so that it can be referenced officially. The congressman intends to use the response as an official reference while he works to move land grant legislation forward. She told the committee that the congressman's office would like to work with the members to revise the language to legislation that was introduced earlier this year addressing their concerns.

Representative Miguel P. Garcia requested that Congressmen Lujan and Heinrich make a point of having representatives at all land grant meetings, such as Senator Tom Udall has been doing.

Chain of Title Research of State Lands

Sandra Jaramillo, director, State Records Center and Archives, updated the committee on a project that started in 2004 with Senate Joint Memorial 10, which directed the archives to conduct a survey of state-owned properties that were once part of the common lands of land grants. The archives contracted with former State Historian Robert Torres to do the survey, she said, and he identified some of those properties as belonging to the Department of Game and Fish, the Energy, Minerals and Natural Resources Department and the General Services

Department. Mr. Torres concluded that the study requires researching chains of title and abstracts to determine how the properties changed hands and how they wound up with the state.

Ms. Jaramillo said that in fiscal year 2008, the archives received additional funding to do abstracts of seven properties: 1) Coyote Creek State Park; 2) El Vado Lake State Park; 3) the Humphries Wildlife Management Area; 4) Villanueva State Park; 5) Storrie Lake State Park; 6) New Mexico State Hospital; and 7) Manzano Mountain State Park. The abstracts by themselves did not provide much information, Ms. Jaramillo said, so the archives contracted last year with Professor Malcolm Ebright, president of the Center for Land Grant Studies, to research the background and history of each of the seven properties.

Mr. Ebright said that while some of the abstracts were thick with detail, they did not provide much valuable information. He supplemented the information by working with abstract companies, he said. Most of the work he has done on land grant histories starts with either the acceptance or rejection of a land grant claim in the old court of land claims and determining whether they are clear-cut claims. In El Vado, for example, the state park owned fewer than 100 acres of former land grant land, which he said is not much land to justify the park's giving it back. New Mexico State Hospital is in the same category, he said, explaining that none of it was part of the common lands of the Las Vegas Land Grant.

Mr. Ebright said that he finds it fascinating that the board of trustees of the San Miguel del Vado Land Grant gave away land for the Villanueva State Park with a provision that if the land were used for anything other than a state park, it would revert back to the land grant.

Questions and comments from the committee included the following:

- *Where did you find records to verify the abstract on Coyote Creek?* Mr. Ebright, who is an attorney, filed quite a few title suits in the area of the Mora and Guadalupita land grants and has survey plats, maps, land grant records, etc. He said he could make copies available to the committee.
- *Regarding El Vado, even the return of one or two acres is important, as per the Abiquiú Land Grant, to which the state Department of Game and Fish returned 33 acres.* El Vado is confusing because the abstracts and El Vado is like "no man's land". The railroad did not own it; Catron did not own it; and it is unclear when it became a state park and which part, if any, might have been common land.
- *Did the state parks grant land grants any of the traditional uses of the land, including cattle grazing, harvesting wood, etc., or was it just a straight transfer of land?* It was a straight transfer of land. There was no reservation of rights. But in the Humphries, heirs asserted their rights by putting sheep on the land in direct contravention of the law.
- *Will the reports be available to the public?* The archives wanted to make the reports available to the committee first, and it will publish them on its digital web site. The reports will be available to libraries and other institutions, probably on CD.
- *Is there anything out of the ordinary that land grants can use to pursue legitimate claims on former common lands?* Mr. Ebright thought the Manzano State Park is the best candidate for reversion back to a land grant.

Representation of Land Grants Not Governed As Political Subdivisions

Wilfred Romero, president, and John Chavez, secretary, Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees, described a problem their land grant is having with surveyors, who they said are randomly doing second surveys at the direction of landowners and extending private landowners' boundaries onto land grant property. They directed the committee's attention to a map that showed a land grant survey followed by a new survey done at the behest of a family that wanted to subdivide its property in order to put in a mobile home. The boundaries on the new survey encroach on land grant property. They said surveyors are performing surveys without deeds and the county is registering them without color of title. Among the problems is that a landowner can register a new survey with different borders, say nothing about it for 10 years and then sue for adverse possession. They requested that the committee endorse new legislation requiring that:

- surveyors notify a land grant board of trustees prior to entering the land grant to do a survey;
- surveyors provide to the board of trustees a deed showing why they are doing a survey; and
- counties, prior to accepting a new survey, must inform land grant boards of trustees that a new survey is being registered.

Representative Miguel P. Garcia called this an important issue and invited discussion by the committee. Senator Martinez noted that last year, the legislature passed a similar bill for Indian land, which he said zipped through the committees.

Other questions and comments included the following:

- *Is it the same surveyor doing all the surveys?* No, there are about three different surveyors involved in this type of practice.
- *Are the landowners land grantees?* Some are, some are not.
- *Is there a surveyor's board?* Yes, its members often appear before the House Business and Industry Committee.
- *You can dispute a survey and win, but it can cost thousands of dollars.*
- *The ambiguity lies in the adverse possession statute. It is in a landowner's best interest not to let anyone know about a new survey, because if anyone challenges it within 10 years, the action is reversed. While it is not illegal, it is devious, at best.*
- *Can legislation be drafted to protect private landowners as well as land grants?* That would require repealing the statutes for abandoned property and adverse possession, which would garner a lot of opposition. If it is limited to land grants, it would not be as difficult to gain support.

The committee agreed to invite the chair of the state board of licensure for professional engineers and professional surveyors to its next, and last, meeting of the interim. Upon a motion by Representative Hall and seconded by Representative Rodella, the committee voted to draft legislation requiring that surveyors who survey property within or adjacent to the boundaries of a land grant must provide notice to the land grant's board of trustees. Representatives Bandy and Thomas Garcia voted no.

In answer to Senator Cisneros' question about the popularity of the name "San Antonio", Mr. Chavez said it stems from the time the Spanish settlers put likenesses of San Antonio above the Aztec feathered serpent god, Cuauhtemoc, to indicate that San Antonio was more powerful.

Atrisco Issues

Jerome Padilla and Joe Garcia, president and vice president, respectively, of the Town of Atrisco Board of Trustees, appeared before the committee to request its support in reconstituting the Atrisco Land Grant. They passed out a packet containing letters and legal opinions about reconstituting the land grant, including a letter of support from the Atrisco Heritage Foundation, which has not always been in favor of reconstitution. Carolyn Ortega, Atrisco Heritage Foundation program director, was seated at the witness table to voice her organization's support.

A September 26, 2008 AG opinion said the land grant cannot reconstitute, because it converted into a domestic corporation, Westland Development Corporation, which then sold the land grant to SunCal Corporation. However, attorney Richard Rosenstock joins Mr. Padilla and other land grant board members in contending that the land grant incorporated against the wishes of many of the original heirs. These are stakeholders who had no say in the outcome of the sale of assets, especially after the 1967 incorporation, which Mr. Padilla described as a hostile takeover.

Mr. Padilla said Westland Development Corporation did not recognize land grant issues; it only concerned itself with corporate issues. He said it is important to have a democratic process to elect trustees and allow the heirs to benefit as a political subdivision.

Ms. Ortega said it is "imperative" for the Atrisco Heritage Foundation not only to communicate with former shareholders but also with the heirs, whose effort to reconstitute has the full support of the foundation.

Representative Miguel P. Garcia, who is an heir to the original Atrisco Land Grant, asked Mr. Padilla if what the board is wanting to do is to recreate itself as a political subdivision of the state. He said that would be the "cleanest" way to do it in statute rather than drafting a "masterpiece document of 100 pages".

Senator Sanchez, whose district includes Atrisco, asked for a history of how the board developed and who was at that meeting. She asked to what kind of agreement the various factions have come and said she wants to be sure all parties are communicating before the board comes to the Senate Conservation Committee, on which she sits, during the legislative session. She also stressed that Atrisco's situation is very different from that of Tomé because the law allowing land grants to incorporate did not exist when Tomé became a corporation. She said she is in favor of the reconstitution, but she wants to be sure that all parties are in agreement.

Senator Cisneros asked if the board has spoken to Governor Richardson about putting the issue on the governor's call. Mr. Padilla said he was waiting to get an endorsement from the committee.

Representative Eleanor Chavez moved that the committee consider the Atrisco

reconstitution effort as a piece of legislation during the upcoming legislative session. Senator Sanchez said the committee's consideration should be contingent upon an memorandum of understanding or, at the very least, a letter of intent among the parties. The motion was seconded, and the committee voted in favor.

Public Comment

Arturo Archuleta of the North Central New Mexico Economic Development District said that the Cebolleta Land Grant wants to invest money in accordance with state law, but that the law is vague as to whether and how land grants can do this. He asked that, in anticipation of the 60-day session in 2011, the committee look at the specific language in Chapter 49 NMSA 1978 regarding how land grants can invest money. He said Cebolleta has a scholarship fund from Neutron Energy, but giving that money directly to heirs might violate the state's anti-donation laws.

Andres Valdez of the *Alianza Federal de Mercedes* reminded the committee that it voted unanimously in an earlier meeting to write a letter to President Barack Obama urging him to meet with the *alianza* to discuss land grant issues.

Carmen Quintana, founder of *La Herencia* in Santa Fe and president of the Lovato Land Grant in Santa Fe, thanked the committee for working with her to recognize land grants within Santa Fe.

Recess

The committee recessed at 5:06 p.m.

Friday, October 30

Tour

The committee toured the San Antonio de las Huertas Land Grant. It adjourned at about 12:30 p.m.

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

**November 25, 2009
Room 307, State Capitol**

The fifth meeting of the interim Land Grant Committee was called to order at 9:00 a.m. on Wednesday, November 25, 2009, by Representative Miguel P. Garcia, chair, in Room 307 of the State Capitol.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Rod Adair
Rep. Paul C. Bandy
Rep. Andrew J. Barreras
Rep. Eleanor Chavez
Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Rep. Debbie A. Rodella
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Sen. Gerald Ortiz y Pino

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Brian F. Egolf, Jr.

Sen. Carlos R. Cisneros
Sen. Dianna J. Duran
Rep. Ben Lujan
Rep. Richard D. Vigil

Staff

Jon Boller
Peter Kovnat

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Wednesday, November 25

Presentation to Congressional Delegation Staff and Committee Members

Pablo Sedillo from Senator Jeff Bingaman's office, Heather Brewer and Antonio Sandoval from Congressman Martin T. Heinrich's office and Jennifer Manzanares from Congressman Ben Ray Lujan's office were seated with the committee to take testimony from representatives of three land grants concerning federal agency policies and practices.

Tony Lucero, president of the Board of Trustees of the San Antonio de las Huertas Land Grant, gave a brief history of the land grant and noted that a large portion of the common lands of the grant are now controlled by the federal Bureau of Land Management (BLM). He explained that the Federal Land Policy and Management Act (FLPMA), which governs federal land use decisions, requires meaningful participation of state and local governments in the planning process for the use and disposition of federal lands. The San Antonio de las Huertas Land Grant, which is now a political subdivision of the state, he explained, is in the process of negotiating a memorandum of understanding with the BLM on planning issues affecting the land grant. Mr. Lucero said he thought that some provisions in the FLPMA may be useful in helping land grants retrieve some of the common lands they have lost over the years. Asked whether additional legislation may be needed to address these issues, he replied that more direct legislation would be most helpful, but that better application of existing law could also be useful in gaining back some control over former common lands of the grant. Mr. Lucero said he hoped that approximately 500 acres of BLM land adjoining the land grant could be returned; he said that he also hoped that the land grant would have a role to play in the use of a tract of land that the BLM may be about to transfer to the United States Forest Service (USFS).

Wilfred Romero, president of the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees; and Adelido Torrez and John Chavez, members of the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees, presented testimony on a boundary dispute the land grant is having with the USFS. Mr. Chavez explained that the USFS had constructed a 15-mile fence on the land grant that was anywhere from 20 feet to 1.3 miles north of the actual southern boundary of the land grant and USFS land. Mr. Torrez went on to describe how the boundaries of the land grant as patented had been surveyed by Albert Easley in 1895 and marked with rock piles called *mojoneras*. He added that these *mojoneras* still exist and are located along the heights adjoining the Rio Quemado. Repeated attempts to get the USFS to move the fence to the legal boundary have not been successful. The board of trustees members said that as a result of now having more than 400 pages of notes from Albert Easley's survey, they have better documentation of the original boundaries, which may help their case. Mr. Sedillo offered the services of Senator Bingaman's office to set up a meeting with the USFS.

Gilbert Ferran, president of the Board of Trustees of the Town of Abiquiu Land Grant, and David Lopez, historian for the land grant, described the boundaries of the grant and explained that the current incorrect boundaries deprive the grant of approximately 2,000 acres on

the south, roughly 2,000 acres on the east and about 1,000 acres on the west. Mr. Lopez said that the *mojonares* had been located and that the board of trustees would like to have the current boundaries of the grant adjusted to reflect the real boundaries.

Chairman Garcia and other committee members asked the representatives from the congressional delegation to work with the presenters to address their respective issues and include the newly appointed Land Grant Council (scheduled to hold its first meeting this December) in the process, if possible. Mr. Sedillo offered to take the lead in following up on the presenters' issues. Ms. Brewer, Mr. Sandoval and Ms. Manzanares also agreed to work with the parties.

Boundary Survey Process and Requirements; Consideration of Legislation

Representatives from the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees briefly summarized their testimony from the October meeting regarding the problem of adverse possession suits, whereby common lands were being claimed based on boundary surveys that had been conducted without notice to the board of trustees. The committee reviewed legislation requiring that proof of notice to the board of trustees of certain land grants be filed when surveys of property within those grants are recorded.

Edward Ytuarte, executive director of the State Board of Licensure for Professional Engineers and Professional Surveyors, and Fred Sanchez, a member of the State Board of Licensure for Professional Engineers and Professional Surveyors, summarized the procedures by which surveys are conducted. Mr. Ytuarte explained that surveyors must follow the direction of the persons hiring them but must also follow statutory requirements to find all the recorded documents of all the surrounding properties as well as of the land being surveyed. Anyone has the right to file a complaint that a survey has been done incorrectly, he said. Once the complaint is filed, the board will conduct an investigation to see if the public has been harmed. Noting that a surveyor has the right to access all land necessary to do the surveyor's job, Mr. Ytuarte said that he thought that the proposed legislation before the committee would prevent the surveyor from carrying out the surveyor's job as required by statute. Commenting on the proposed legislation, Mr. Sanchez expressed concern that giving notice to the boards of trustees of land grants would greatly increase the cost of surveys because there are so many land grants and no one knows whom to contact.

Committee members urged the presenters to recommend changes in rules that would require surveyors to talk to the owners of property neighboring the property being surveyed. Committee members also explained the narrow focus of the bill being considered by the committee. Members noted that the bill only requires notice to the boards of trustees of four community land grants, each of which is governed by specific statutes and all of which are registered with the state. The committee also pointed out that the bill does not affect access to property but rather only requires that proof of notice be filed when a survey is recorded for property located within the boundaries of one of the named land grants.

On motion by Representative Rodella, seconded by Senator Rue, the committee adopted an amendment to the proposed bill requiring that notice be given by certified mail. The committee endorsed the bill as amended without objection. Senators Rue and Sanchez agreed to co-sponsor the bill.

The committee also approved without objection the minutes from the previous three meetings.

Additional Proposed Legislation

The committee added two amendments to a proposed bill allowing land grants to purchase tort liability coverage from the Risk Management Division of the General Services Department: one to make clear that the division is required to allow land grants that are governed as political subdivisions of the state to purchase coverage, and one to ensure that the division would issue rules on how to determine if a land grant is running any type of business enterprise. The committee endorsed the bill, as amended, with three members voting against endorsement. Senator Martinez will carry the bill.

The committee voted without objection to table the bill making land grants eligible for conservation easement tax credits, with the proviso that the bill be brought back next year for the long session.

Jaime Chavez and Richard Griego, representing the Town of Atrisco Land Grant, and Ray Mares and Charlie Pena, representing the Atrisco Heritage Foundation, informed the committee that they have been working on a memorandum of understanding regarding the recognition of the Town of Atrisco land grant as a political subdivision of the state. The presenters said that they hope to come to an agreement by January but have not yet reached a final decision on terms. After discussion, the committee voted to table the bill recognizing the Town of Atrisco land grant as a political subdivision of the state, with Chairman Garcia and Representative Chavez voting in the negative.

Traditional Cultural Properties Designation of Common Lands

The committee discussed a bill that explicitly excludes the common lands of land grants from being treated as state land and that prohibits the designation of common lands as historic property without the permission of the affected land grant. The committee had requested the drafting of the bill following the October meeting. The request came in response to the Cultural Properties Review Committee's designation of approximately 500,000 acres in the Mt. Taylor region as a traditional cultural property (TCP), which included some 19,000 acres of common lands of the Cebolleta Land Grant.

Stuart Ashman, secretary of cultural affairs, said he had not seen, and therefore was not prepared to discuss, the draft legislation, but that he would be happy to answer any questions about the TCP process. Several committee members noted that when legislation passed making community land grants political subdivisions of the state, the intent of the legislature was not to

make the common lands of land grants state lands. Mr. Ashman said that private lands within Cebolleta are not included in the TCP designated area, but that under statute the rest fell into what is considered to be state land. Representative Rodella commented that there has been a real injustice in the interpretation of the legislative intent. Unintended consequences have been a real problem, she explained, and she pointed out that the intent of this legislation is clarified on Page 4, Line 13 of the bill. Members also expressed concern about how much land was designated, how quickly the process moved and whether the Cultural Properties Review Committee had overstepped its authority. Allan "Mac" Watson, Chairman of the Cultural Properties Review Committee, noted that the current litigation on the Mt. Taylor TCP makes it difficult to respond to some questions without tainting the legal process, but that the legal process is important and will test the validity of the law.

Chairman Garcia asked if Mr. Ashman would request that the governor give a message and support the bill this session. Mr. Ashman replied that he would be happy to go to the Office of the Governor with Chairman Garcia. Chairman Garcia thanked Mr. Ashman for appearing before the committee and offering to work with the committee to protect land grants and common lands in the state.

The members of the committee endorsed the bill without objection. The committee also endorsed without objection a joint memorial making clear that the legislature never intended to change the status of the common lands of land grants to state land when it made land grants political subdivisions of the state. Chairman Garcia said he will carry the bill, while Senator Sanchez will carry the memorial.

The committee also asked staff to send a letter to the Legislative Finance Committee, the House Appropriations and Finance Committee and the Office of the Attorney General expressing the committee's belief that the litigation over the TCP designation should be settled out of court.

Department of Game and Fish Ownership of Property in La Joya Area

Tod Stevenson, director of the Department of Game and Fish, presented a map of properties owned by the department that lie within the boundaries of the Sevilleta de la Joya Land Grant. He said that in the late 1930s and early 1940s, the state purchased several small plots of land in the area at tax sales, totaling about 112 acres. Jim Karp, general counsel for the department, said that the department also owned about 3,550 acres in the areas that are part of a waterfowl management area.

Sally Chavira explained that 13 acres of the land (tracts 3 and 4 of map 141) in the area had been passed from her grandparents to her parents and then to her. She said that her father, who just died this year at the age of 102, had been paying taxes on the property for more than 40 years, and that she had been paying taxes on the property for the past 28 years. Mr. Stevenson said that the department was willing to sell the small tracts but had to follow statutory requirements in doing so, and that the appraisals of the tracts that Ms. Chavira submitted had not been approved by the Taxation and Revenue Department. Asked why she had been paying the

taxes on the land for the past 28 years, Ms. Chavira answered that the county kept sending invoices. Mr. Karp said that she might be able to get the taxes back, because it was the state's obligation to tell the assessor not to tax the land, as it was state-owned land, and the state failed to do that. Mr. Stevenson noted that the property had been subject to a quiet title suit, in which Ms. Chavira had not prevailed. Senator Rue requested that Mr. Stevenson supply the committee with documentation of that suit; Mr. Stevenson agreed to send the documents to committee staff.

Public Comment

Mr. Lucero thanked the committee for its support and requested that a memorial be drafted supporting the San Antonio de las Huertas Land Grant's efforts to obtain land from the BLM.

Juan Sanchez announced that the first meeting of the Land Grant Council was scheduled to meet on December 18, 2009. He also asked if the Department of Finance and Administration had responded to the committee's request that capital outlay authorizations to land grants not be taken away if the land grants had not yet been audited.

Carmen Quintana brought the committee's attention to the United States Supreme Court decision *U.S. v. City of Santa Fe*, 165 U.S. 675 (1897), which she said confirms water rights to the people of Santa Fe. She also claims that her family is the rightful owner of land occupied by the Santa Fe Indian School and Saint Catherine's and would like help in getting that land back.

Representative Barreras announced that the Valencia County Commission will be hearing a proposal to transfer a community center to the Tome Land Grant at its December 2, 2009 meeting.

The committee adjourned at 4:20 p.m.

**ENDORSED
LEGISLATION**