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Oliver Perea, San Miguel del Vado Land Grant
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INTRODUCTION

In 2004 many Community Land Grants-Mercedes received status as officially recognized units of government in the State of New Mexico. Land grants-mercedes affected by the status change were those that fell under the General Provisions §§ 49-1-1 through 49-1-22 NMSA 1978. Since that time other land grants-mercedes falling under other statutes in Chapter 49 have also opted to become political subdivisions of the State.

In 2007, the Land Grant Governance Guidebook was put together by the North Central New Mexico Economic Development District with the support, input and contributions from various individuals and State entities. The guidebook was funded through a legislative appropriation supported by Governor Bill Richardson. In 2010 the Land Grant Council, an executive branch agency created by the State Legislature, funded this update to the guidebook.

The updated guidebook is intended to help community land grant-merced boards of trustees understand and navigate through all the laws, regulations and requirements that community land grants-mercedes are subject to as government entities. Compliance with laws such as the Open Meetings Act, and the Inspection of Public Records Act, as well as requirements to produce annual budgets and receive annual financial reviews.

The guidebook is divided into sections that are separated by alphabetic tabs. Each section covers a specific area of governance as it relates to community land grants-mercedes. Accompanying this guidebook is a flash-drive that contains an electronic version of all the material that appears in the guidebook update. In addition, the flash-drive also contains sample forms, resolutions, and certificates and other materials that are referenced throughout the guidebook. Other materials include copies of laws, regulations and other compliance manuals that are applicable to land grants-mercedes.

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SECTION A – LAND GRANT STATUTES & ANALYSIS

COMMENTARIES ON THE GENERAL PROVISIONS

(Sections 49-1-1 through 49-1-18 NMSA 1978)

49-1-1. Management of Spanish and Mexican grants.

All land grants-mercedes in the state or land grants-mercedes described in Section 49-1-2 NMSA 1978 shall be managed, controlled and governed by their bylaws, by the Treaty of Guadalupe Hidalgo and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978 as political subdivisions of the state.

Comment: This statute reclassifies land grants-mercedes covered in the general provisions, §§ 49-1-1 through 49-1-18, as “political subdivisions of the state. Land grants-mercedes under the general provisions are now a recognized division of local government under the State similar to a municipality, county or other special district. The 2004 general provisions also provide that these land grants-mercedes are to be governed by their bylaws, by the Treaty of Guadalupe Hidalgo and by the general provision statutes. A sample set of by-laws has been provided in Section B of this guidebook.

Recommendation: In drafting the bylaws for a general provision land grant-merced, the drafters should freely quote, incorporate or repeat the language of the general provisions in order to assure that the bylaws are in conformity with these statutes to the greatest extent possible. Where it is necessary to draft new language in the bylaws to give effect to the general provisions, care should be taken to adhere to the intent of the statute. If there is a conflict between a bylaw and the underlying statute, the interpretation of the statute will control over the interpretation of the bylaw. In the event of litigation the offending bylaw can be set aside or cancelled. Where there is doubt about the legality of a proposed bylaw, legal review of the proposed bylaw should be sought before it is presented to the membership and Board of Trustees for adoption.

49-1-1.1. Definitions.

As used in Chapter 49 NMSA 1978:

A. "heir" means a person who is a descendent of the original grantees and has an interest in the common land of a land grant-merced through inheritance, gift or purchase;

Comment: This statute describes the requirements that an individual must meet in order to be considered an “heir” of a land grant-merced. The qualification process of “heirs” for newly formed or newly reorganized land grants-mercedes is initially the most critical process the individual land grant must undergo in order to give effect to its constituents.

B. "land grant-merced" means a grant of land made by the government of Spain or by the government of Mexico to a community, town, colony or pueblo or to a person for the purpose of founding or establishing a community, town, colony or pueblo; and

Comment: The essential requirement of this definition of the historical land grants-mercedes in New Mexico is that there had to be a “community, town, colony or pueblo” founded or established, regardless of whom received the grant from the sovereign. The intent of granting land for the establishment of a community typically appears in the original grant documentation issued from the Spanish or Mexican government. The definition of “land grant-merced” could be extended to “former” communities or communities no longer in existence, provided that all the other criteria of the General Provisions are met, beginning with the determination of “heirs”.

C. “qualified voting member” means an heir who is registered to vote in a land grant-merced as prescribed in the land grant-merced bylaws.

Comment: The land grant-merced is required to state in its bylaws who is a “qualified voting member” of the land grant. For example, a land grant-merced through its bylaws can determine if heirs must own property within the existing or historic boundaries, must reside within a land grant community, etc in order to be eligible to become a qualified voting member. Since qualified voting members are the only individuals that can vote in any election held by the land grant-merced it is critical that all land grant-merced bylaws clearly spell out who is eligible to be a qualified voting member.

Recommendation: It is recommended that all land grants-mercedes have a specific section within the bylaws that defines who is eligible and the process for becoming a qualified voting member of the land grant-merced.

49-1-2. Application.

A. Sections 49-1-1 through 49-1-18 NMSA 1978 shall apply to all land grants-mercedes confirmed by the congress of the United States or by the court of private land claims or designated as land grants-mercedes in any report or list of land grants prepared by the surveyor general and confirmed by congress, but shall not apply to any land grant that is now managed or controlled in any manner, other than as provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of any general or special act.

Comment: This statute distinguishes which land grant-mercedes fall under these laws and can be considered local government entities. This statute specifically excludes those land grants that have their own specific statutes, those that are organized as corporations and those that have not been confirmed by the United States Congress.

B. If a majority of the members of the board of trustees of a land grant-merced covered by specific legislation determines that the specific legislation is no longer beneficial to the land grant-merced, the board has the authority to petition the legislature to repeal the legislation and to be governed by its bylaws and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978.

Comment: This statute allows those land grants-mercedes that are currently not recognized as political subdivisions under any other existing statutes to request that the legislature repeal those

existing statutes in order to be governed by their bylaws and as provided for in the general provisions for land grants-mercedes governance found in Chapter 49-1-1 through 49-1-18.

C. *The town of Tome land grant-merced, situated in Valencia County, confirmed by congress in 1858 and patented by the United States to the town of Tome, shall be governed by the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978.*

Comment: This statute demonstrates how the town of Tomé land grant that was governed by a separate statute was pulled into the general provisions, in order to be recognized as a political sub-division of the state.

D. *The town of Atrisco land grant-merced, situated in Bernalillo county, confirmed by the court of private land claims in 1894 and patented by the United States to the town of Atrisco in 1905, shall be governed by the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978; provided that the board of trustees shall not have regulatory jurisdiction over, and the provisions of Chapter 49, Article 1 NMSA 1978 shall not apply to or govern, any lands or interests in real property the title to which is held by any other person, including a public or private corporation, partnership or limited liability company.*

Comment: This statute is another example of how a land grant that was governed by a separate statute, was pulled into the general provisions, in order to be recognized as a political sub-division of the state.

49-1-3. Board of trustees; management of grant; powers.

The management and control of all land grants-mercedes and tracts of land to which Sections 49-1-1 through 49-1-18 NMSA 1978 are applicable is vested in a board of trustees, to be known as the "board of trustees of the land grant-merced del pueblo de _____" (designating the name of the town, colony, pueblo or community), and the board shall have the power to:

Comment: This statute vests management and control of the land grant-merced in the board of trustees of each land grant-merced and it also provides the board of trustees with certain enumerated powers. Significantly, this statute also appears to require a certain form and style of name for the board of trustees that includes the name “pueblo”. The use of “pueblo” is consistent with the historical requirement that a “community, town, colony or pueblo” must have been in existence in order to fall under the general provisions. Historically, certain land grants-mercedes were designated by Spain as “villas”, including present day Albuquerque, Santa Fe and Santa Cruz de la Canada. It would appear that “Villa” could be used in the name of the Santa Cruz Land Grant, rather than “pueblo”, based on its historical veracity.

A. *control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with applicable statutes for the government thereof;*

Comment: This statute gives land grants-mercedes the power to control, care for and manage the common lands of the land grant and prescribe the terms and conditions for their use and enjoyment. The land grant-merced board of trustees is empowered to also make all necessary and proper bylaws, rules and regulations for the governance over the common lands. However, any and all bylaws, rules and regulations approved by the land grant-merced board of trustees must comply with any applicable laws related to land grants found in the general provisions of Chapter 49-1-1 through 49-1-23 as well as any other statutory chapters in the law that relate to land grants or political sub-divisions of the state in general. For example, land grant-merced bylaws cannot violate anything the Chapter 49 or in other laws like the Audit Act §12-6-1 NMSA 1978 or the Open Meetings Act §10-15-1 NMSA 1978.

It would appear from this statute that the land grant-merced boards of trustees have an affirmative duty to protect the common lands from losses of any nature. Land grant-merced boards of trustees are like other elected officials in that they may be sued for the breach of these expressed duties or responsibilities.

Recommendation: In addition to the “bylaws” required under the general provisions, the Land Grant-Merced has the power to adopt “rules” and “regulations” for the use of the common lands. The difference between “rules” and “regulations” and the “bylaws” is that typically “rules and regulations” go into greater detail about the matter being governed and can be changed by a majority vote of the board of trustees. Whereas “bylaws” generally can only be changed by a vote of the membership of the land grant-merced. This distinction is important to note as the board of trustees develops its “rules” and “regulations” after it has organized itself through its “bylaws” as a political subdivision of the State.

B. sue and be sued under the title as set forth in this section;

Comment: This enables land grant-merced board of trustees to sue individuals or other entities which can be sued as well as to get sued by individuals or other entities that can sue. Any suits by or against a land grant-merced must be done so under the name of “board of trustees of the land grant-merced del pueblo de _____ (name of land grant-merced)” as called for in the first paragraph of this Section.

C. convey, lease or mortgage the common lands of the land grant-merced in accordance with the land grant-merced bylaws;

Comment: This enables each land grant-merced to outline in their bylaws how the board of trustees may go about conveying, leasing or mortgaging portions of the common land. For example, an individual land grant-merced concerned about loss of the common lands could create a bylaw which only allows for the leasing of common land but does not allow for any common lands to be sold or mortgaged. In this instance, the terms and conditions for “leasing” would then be defined in the “rules” or “regulations” of the Land Grant-Merced.

It is important to note that there are restrictions, found in Chapter 49-1-11, for the sale or mortgage of common lands that must adhered to in both the bylaws and actions of the board of

trustees in order for the sale to mortgage to be valid. For more information about these restrictions see the section on 49-1-11 below and Section P – Conveyance of Common Land.

Recommendation: The acquisition, control, management and use of the “common” lands of the Land Grant-Merced are among the most important policy decisions facing the board of trustees. Bylaws should address whether or not “common” lands can be conveyed, mortgaged or leased. Once the bylaw is adopted on these issues, the board of trustees should develop rules and regulations outlining under what “terms and conditions” the common lands can be “conveyed”, “mortgaged” or “leased”, if at all.

D. determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;

Comment: This provides the board of trustees of each land grant-merced the authority to determine how many livestock can be grazed on the common lands. It also gives the board of trustees the authority to determine what other uses can take place on the common lands, such as wood cutting, hauling sand, gravel, rock and minerals off the common land, as well as recreational uses.

Recommendation: Here also, the terms and conditions for managing all uses of the common lands should be carefully defined in the rules and regulations of the land grant-merced.

E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

Comment: This statute gives the board of trustees the right to determine the charges, fees and rents to be paid by anyone using the common lands for grazing or for any other purpose allowed in the bylaws or rules and regulations of the land grant-merced. It also gives the board of trustees the right to deny use of the common lands to anyone who does not pay the fee(s) required for each specific use. Finally, the amount of the charges shall be in proportion to the numbers and kinds of livestock, this provision can be met by setting a fee schedule similar to that generated by the U.S. Forest Service and U.S. Bureau of Land Management for similar grazing and or other activities.

F. adopt and use an official seal;

Comment: This statute requires that the board of trustees adopt and use a seal for the land grant-merced. This seal would be used for placement on official land grant-merced documents recorded and unrecorded, letterhead, envelopes, signs, buildings, etc.

Recommendation: Given the importance of the “seal”, care should be given to all the practical considerations of developing one, which conveys the necessary information but that also has symbolic meaning for the land grant-merced.

G. appoint judges and clerks of election at all elections provided for in Sections 49-1-1 through 49-1-18 NMSA 1978, subsequent to the first, and canvass the votes cast in those elections;

Comment: The board of trustees has the duty to appoint the judges and clerks to oversee all elections of the board of trustees. The appointments and elections must be done in accordance with the general provision statutes found in 49-1-5 and 49-1-7 and the election code found in Chapter 1-1-1 NMSA 1978. Also, the board of trustees must canvass the votes that are cast in each election. Canvassing the vote's means going over the election results and ensuring that everything is valid. This includes the voting roster to ensure the number of votes is equal to the number of people who voted; rechecking to ensure that the number of votes cast is accurate and that all necessary paperwork has been properly completed. The canvassing process must happen no later than seven (7) days after the day of the election. For more information on election procedures see Section M – Land Grant Elections.

H. make bylaws, rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico as may be necessary for the protection, improvement and management of the common lands and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;

Comment: The board of trustees has the power and authority to make and approve all bylaws, rules and regulations needed to protect, improve and manage the common lands, real estate and common waters under the control of the land grant-merced. The land grant-merced's bylaws, rules or regulations cannot conflict with the Constitutions of the United States or New Mexico or with any Federal or State Laws. In the case of conflict with higher law, the bylaw, rule or regulation can be set aside by a court of competent jurisdiction.

This statute refers to “common lands” and “real estate” which are related concepts but with distinctions. Both deal with “real property” as opposed to “personal” property. The phrase “common lands” refers to real property in which more than one individual shares an undivided interest in the land, while “real estate”, as a broader term, would include all real property and its various forms of ownership. The implication is that the Land Grant-Merced may be allowed to hold land in other forms of ownership in addition to the ownership of “common” lands. For example, the ownership of a land grant hall or property located outside of the existing or historical boundaries of the land grant-merced.

I. determine land use, local infrastructure and economic development of the common lands of the land grant-merced; and

Comment: This statute enables the board of trustees to determine the appropriate use, the local infrastructure and the economic development of the common lands. For example, the board can set aside portions of the common land for residential housing or commercial use. The board also has the ability to provide infrastructure such as community water and sewer systems, roads, communications etc, on the common lands. As political sub-divisions they also have the ability to seek State and Federal funding for any infrastructure improvements. For more information on

planning and funding of infrastructure projects see Section J - Infrastructure Capital Improvement Planning, and Section K - Legislative & Capital Outlay Process.

Under this statute the board of trustees also has the power to decide what economic development activities will occur on the common lands to generate revenues for the land grant-merced. Examples of economic development could include the leasing of common land for various uses such as cellular towers, billboard, renewable energy projects or for the development of businesses associated with the land grant-merced.

J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the local government division of the department of finance and administration that considers the health, safety and general welfare of the residents. The department of finance and administration shall act as arbitrator for zoning conflicts between land grants-mercedes and neighboring municipalities and counties.

Comment: This statute enables the board of trustees to zone land uses on the land grant-merced common lands. This is similar to the authority of a county or municipality to zone land for agricultural, residential, commercial, industrial, miscellaneous or mixed uses. This means that once an area is zoned as a specific category, only uses that are allowed under that category are permitted to take place within that given zone. For example, an area zoned for residential use would only allow for housing and related uses but not for manufacturing.

In order for the boards of trustees to be able to zone the common lands it must first complete a comprehensive plan that is approved by Department of Finance and Administration Local Government Division (“DFA-LGD”). A comprehensive plan is a document that is created by a community for the purpose of guiding future development for the next 10 to 20 years. A good comprehensive plan looks at existing conditions and determines a community’s goals and objectives based on the community’s vision of the future. It does this for a variety of areas, including by not limited to, land use, housing, transportation, infrastructure, economic development, water, hazards and community services. The comprehensive plans must provide for the health, safety and general welfare of the community. DFA-LGD has set criteria that must be included in a comprehensive plan in order for it to meet their requirements for approval. For more information on those requirements contact DFA-LGD at (505) 827-4950 and see Section I – Planning and Zoning.

Once a comprehensive plan is approved by DFA-LGD and the land grant-merced enacts zoning for the common lands, there is an obvious potential for conflicts in zoning classifications over the same lands by a county or municipality. This being the case land grants-mercedes should consider working collaboratively with their respective county or municipality to resolve zoning conflicts before they occur. This could be done through the Joint Powers Agreement.

If a conflict arises between a land grant-merced and a County or Municipality regarding a zoned land use, this statute mandates that the DFA-Local Government Division “shall act as arbitrator”. By law, arbitration proceeds differently from mediation or settlement conferences. An arbitrator is charged with the authority to decide the conflict one way or another, after hearing from opposing sides. Since this statute requires arbitration and not “mediation” or “settlement

conferences” that means that the governmental parties to a zoning conflict have to accept the result of the arbitrator, probably without recourse to appeal at district court or the appellate level.

Recommendation: In zoning matters, the land grant-merced should carefully review any existing zoning enacted over the common lands by a County of Municipality and should consider the value of proceeding collaboratively with the existing zoning authority. For more information on Zoning see Section I - Planning & Zoning.

K. enter into memoranda of understanding, contracts and other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources.

Comment: This Statute gives the board of trustees of a land grant-merced the authority to enter into MOU’s, agreements and contracts with other units of government, including Tribes. The scope of such agreements can include anything to which the parties involved can legal agree to including agreements concerning the protection and maintenance of cultural resources. Agreements concerning the protection and maintenance of cultural resources can be between a land grant-merced and another government entity that owns, manages or controls former common lands of the land grant-merced, such as the U.S. Forest Service, or between another government entity, such as a tribe or pueblo and the land grant relating to cultural resources located on the common lands still owned, managed and controlled by the land grant-merced.

Recommendation: Before entering into any MOU’s, agreements or contracts with another government entity, specifically if it related to access, use or restrictions on the existing common lands owned by the land grant-merced, it is a good idea to have an attorney review and/or prepare the documentation so as to fully protect the rights and interests of the land grant-merced.

49-1-4. Board of trustees; qualifications.

The board of trustees shall consist of five members. In land grants-mercedes where there is more than one precinct, no more than three members shall be residents of the same precinct. A person shall be qualified to be a member of the board if the person is a qualified voting member and is not in default of any dues, rent or other payment for the use of any of the common lands of the land grant-merced.

Comment: This statute sets the number of trustees to be elected to the governing board of the land grant-merced. That number has been set at five (5). The mention of precincts is related to the designated voting precincts within a given county. Only three of the five trustees can be residents of any one precinct in land grants-mercedes that have more than one precinct. The other two trustees would have to come from the other precinct(s) within the land grant-merced. It appears that in land grants-mercedes that have three or more precincts you could have three trustees coming from one precinct, two from a second precinct and none from the third or remaining precincts.

Under the Election Code Chapter 1, Section 1-1-11 NMSA 1978, the precinct is defined as a designated division of a county for election purposes which is entitled to a polling place and a precinct board. It further states that for municipal and school district elections, precincts can be the same boundary as the municipality and/or school district.

A land grant-merced must follow the existing county precincts designated in their area. County and precinct maps can be found at the County Clerk's office or the Secretary of State's Office.

In addition to meeting the precincts requirements, the land grant-merced must ensure that all candidates running for the board of trustees are qualified voting members of the land grant-merced in accordance with its bylaws, and that the candidates do not owe any money to the land grant-merced for dues, rent or any other payment obligation. If the candidate meets these criteria then he or she is eligible to run for the board of trustees.

More information about elections can be found in Section M – Land Grant Elections.

49-1-5. Election of members of board of trustees; voters' qualifications; registration.

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

Comment: This statute sets the requirements for the time of election of the board of trustees. The law allows each land grant-merced to set the date of their election in its bylaws. However, if no election date is set in the bylaws then the election of the board of trustees must take place on the first Monday in April, either every two or every four years. A land grant-merced wishing to change the election date in its bylaws must note that the Election Code, § 1-4-10 NMSA 1978, prohibits local governments from holding any election within forty-two (42) days prior to any state-wide election. Therefore, the land grant-merced must plan for an election date that is not in conflict with this law. All state-wide elections are currently held on the first Tuesdays in either June or November in even numbered years, although a special election may be called by the Governor, if necessary. To be safe, land grants-mercedes should not plan to hold elections anytime between the third Tuesday in April through the first Tuesday in June or between the third Tuesday in September through the first Tuesday in November in all even numbered years.

Each land grant-merced must also designate the length of terms for service on the board of trustees in its by-laws. Terms should be for either 2 or 4 years and therefore elections should be held accordingly. Land grants-mercedes can choose to stagger the terms for trustees so that an entire board is not replaced at every election cycle.

For more information on election procedures please refer to Section M – Land Grant Elections of this Guidebook.

Recommendation: How terms will be staggered should be defined in the bylaws before the initial election of trustees. This will enable the proper rotation of trustees from the beginning. If

an land grant-merced wishes to stagger terms where this has not been done in the past it is recommended that the by-laws be amended to reflect during what specific election the staggering will begin and how the designation of which trustee position(s) (either 2 or 3 trustee positions) will have to run for re-election within 1 year for 2 year term limits and in 2 years for 4 year term limits. Typically this is done through the drawing of lots, or straws after the conclusion of the first election where staggered terms are to begin.

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

Comment: This statute requires that all qualified voting members of the land grant-merced must be allowed to vote if they present themselves at the voting location(s). That means that the land grant-merced must have an up-to-date roster or registration book of all qualified and registered voting members of the land grant-merced before the election, as outlined in sub paragraphs C and D below.

C. The registration of qualified voting members shall be conducted in the manner prescribed in the land grant-merced bylaws. The secretary of the board of trustees shall maintain the registration books. Registration shall be closed beginning fifteen days before an election and reopened on the Monday following the election.

Comment: This statute requires that the land grant-merced “shall” register qualified voting members in a registration book as called for in the land grant-merced bylaws. Therefore all land grant-merced bylaws are now required to have a specific section that outlines how qualified voting members are to be registered.

This statute further requires that the secretary of the board of trustees is responsible for maintaining the registration books for the land grant-merced.

This statute also states that the registration of qualified voting members of the land grant-merced must be closed fifteen (15) days prior to any land grant-merced election and shall reopen on the Monday following the election. Closing of the registration means that no individual shall be allowed to become a qualified voting member of the land grant for the period beginning 15 days prior to an election and ending on the first Monday that follows the scheduled election. Therefore, any individual wishing to become a qualified voting member must do so outside of this time period. Any individual who is seeking to be a qualified voting member of the land grant-merced, in accordance with the procedures set forth in the bylaws, but whose name does not appear in the official land grant registration of qualified voting members prior to the close of the registration books shall not be allowed to vote in the election associated with the closing of those books.

Recommendation: It is recommended that the land grant-merced bylaws have a section that outlines the duties of the officers of the board of trustees and in that section it be clearly stated that the secretary must keep the registration books of all qualified voting members of land grant-merced.

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

Comment: This statute is referring to registration books that are required to be compiled and kept by the secretary of the board of trustees in accordance with the process outlined in the land grant-merced bylaws. Essentially, a book of qualified registered voters must be compiled prior to each election. Only voters listed in that book will be able to cast an official vote during the election for which the book was compiled.

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

Comment: This statute requires that any individual interested in being elected to serve on the board of trustees of a land grant-merced must file a declaration of candidacy with the secretary of the board of trustees.

This statute also requires that the declaration of candidacy may be filled beginning on the day that the proclamation calling for the election is published (as called for in sub-paragraph G of this statute section) and must remain open for at least ten (10) days following that publication. A land grant-merced can choose to keep the declaration of candidacy open for more than ten days. The specific amount of time open for the declaration of candidacy should be stated in the bylaws under election procedures as called for in sub-paragraph I of this statute section.

Although the declaration of candidacy must remain open for at least 10 days it does not require that declarations be filed openly during that period. Instead a land grant-merced may opt to have all declaration of candidacy filed on the same date and time so long as that date and time is at least 10 days from the date that the proclamation calling for the election is published. Again these procedures must be spelled out in the bylaws of the land grant-merced.

A sample declaration of candidacy form can be found on the flash drive that accompanies this guidebook in Section M – Land Grant Elections under the Sample Election Documents folder.

Recommendation: The secretary of the board of trustees must keep standard declaration of candidacy forms available for all interest candidates. Again this specific duty called for in the statutes should be reflected in the bylaws as a requirement for the secretary.

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

- (1) the date on which the election will be held;***
- (2) the purpose for which the election is held***
- (3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;***

- (4) if a question is to be voted upon, the text of that question;*
- (5) the location of each polling place in the land grant-merced;*
- (6) the hours that each polling place will be open; and*
- (7) the date and time of the closing of registration books.*

Comment: This section requires that the board of trustees of a land grant/merced, prior to each and every election, must pass a resolution issuing a public proclamation calling for that election. The proclamation must include all of the seven (7) above listed items in order to comply with the law. The resolution issuing the proclamation must be passed in a meeting of the board of trustees that has been properly advertised in accordance with 49-1-9 NMSA 1978 and the Open Meetings Act.

The seven elements required in the proclamation are for the most part self-explanatory however below are additional details for each.

- (1) the date on which the election will be held** – State the date of the election as determined by the bylaws or the board of trustees. This should be the actual date i.e. April 4, 2011 and not a generic date as stated in the bylaws such as the 1st Monday in April.
- (2) the purpose for which the election is held** – For example: State that the purpose of the election is to elect (insert # of board positions to be filled) members to the board of trustees to the (insert name of land grant-merced) land grant-merced. Typically elections are for board of trustees to serve but they can also be an opportunity to have the membership vote to approve certain items such as changes to bylaws or policy decisions for use of common lands. In this case include a statement that the purpose of the election is also to approve amendments to the bylaws or determine a specific policy related to use of common lands, etc.
- (3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed** – This date must be at least 10 days after the date that the proclamation is published.
- (4) if a question is to be voted upon, the text of that question** – If any question such as an amendment to the bylaws or a policy related to use of the common lands, etc is to be voted on then the exact question to be voted on as it will appear on the ballot must be included on the proclamation.
- (5) the location of each polling place in the land grant-merced** – State the place(s) where a qualified voting member can cast their vote on the day of the election.
- (6) the hours that each polling place will be open** – State the time that the voting location(s) will open and close.
- (7) the date and time of the closing of registration books** – State the exact date when the registration books will be closed, this date must be 15 days prior to the election date. Must also state the exact time that the books close, for example: the registration books for the land grant-merced shall close on March 16, 2011 at 5:00 pm.

As per the following the section (Subparagraph G, below) the proclamation must be in both English and Spanish.

A sample election proclamation resolution and notice can be found on the flash drive that accompanies this guidebook in Section M – Land Grant Elections under the Sample Election Documents folder.

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

Comment: This section requires that the board of trustees publish the above mentioned election proclamation, in both English and Spanish. If the notice is given in only one language, Spanish or English, the election could be subject to challenge and possible nullification. The statute also requires that the election proclamation be published at least 30 days prior to the scheduled election date. Also the election proclamation cannot be published more than 45 days prior to the election. Again if the election proclamation is published more than 45 days or less than 30 days prior to the election date the election could be subject to challenge and possible nullification.

The statute also requires that the election proclamation be published in a newspaper of general circulation available within the boundaries of the land grant-merced as well as posted in at least five (5) public places within the land grant-merced. If no such newspaper exists within the boundaries of the Land Grant-Merced, then there is no requirement that a notice be published in a newspaper of general circulation outside the land grant boundaries. However, while publishing a notice in a newspaper of general circulation outside the land grant boundaries is not required, it is also not prohibited. A Land Grant may decide to publish in a newspaper of general circulation outside its boundaries if voter participation will be served. The posting of the election proclamation in at least 5 public places within the land grant can include but is not limited to the land grant hall, local churches, local post office(s), local community center(s), community billboards or any other public gathering place.

Recommendation: It is recommended that the board of trustees pass their election proclamation in the a properly advertised public meeting at least 2 to 3 months prior to the scheduled election date to insure that they are able to meet all publication and posting requirements. It is important to remember that each newspaper has deadline requirements for publishing legal notices. Often times, these deadlines are anywhere from 1 to 2 weeks in advance of the publication date, depending on how often the paper is printed.

It is also recommended for record keeping purposes that, if no local newspaper of general circulation is available within the land grant that the land grant publishes in a newspaper of general circulation within the region. Also a land grant may choose to publish in the Albuquerque Journal as it is the considered the newspaper of general circulation for the entire state. Also be sure to get an affidavit from the newspaper showing it has been published or save a copy of the actual publication including proof of date.

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

Comment: This section requires that the board of trustees appoint an election judge and at least 2 clerks to oversee the election process at any and all polling places. It requires that the election judge(s) also be present at the canvassing of the votes conducted by the board of trustees to ensure that everything is done properly. According to the law the canvassing must take place within seven (7) days of the election. Also no person who is a spouse, parent, child, brother or sister of any candidate up for election can be an election judge or clerk.

Recommendation: It is important to be sure and explain the requirement of the election judge(s) to serve at both the election and the canvassing to insure that the individual(s) can attend both events. It is also important to note that election judges and clerks do not have to be members or heirs of the land grant-merced. A board of trustees may want to consider asking folks from other land grants that are familiar with the election process to serve in their elections and vice versa. This helps to ensure that fairness in the election process.

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

Comment: This section requires that the board of trustees spell out the procedures for conducting a land grant-merced election in the bylaws. It also requires that the board of trustees include samples of the forms used in an election in the bylaws. A sample set of bylaws containing the election procedures can be found in Section B – Sample Bylaws and on the flash drive accompanying this guidebook under the same section name. Sample election forms can be found on the flash drive that accompanies this guidebook in Section M – Land Grant Elections under the Sample Election Documents folder.

This section of the law also provides the board of trustees with the option of conducting early and/or absentee voting for a land grant-merced election. In order to do both or either the board of trustees must first include procedures for how to conduct early and absentee voting in the bylaws. Early voting means that a polling location would be open for a period of time prior to the actual Election Day. Absentee voting means a qualified voting member who cannot attend on the date of the official scheduled election has an opportunity to cast their vote on an absentee ballot that will be counted on Election Day.

Recommendation: Both types of extended voting options would require set procedures and timelines in order to ensure proper application. If a land grant chooses to conduct either form of alternative voting it must be sure and set specific procedures for doing so. This should include:

For early voting: The date on which the polls open (must not open until after the date for declaration of candidacy has expired and the ballots are prepared). The period for which open

voting is allowed, i.e. include both a starting and an ending date (Can be up until the day before the actual election date). Also those allowed to vote early should be active qualified voting members already on the land grants registration books as of the day the early voting started. It is recommended that early voting not open until after the registration books have closed, which is 15 days prior to the day of the election in accordance with 49-1-5C.

For absentee voting: The date on which absentee ballots may be requested/picked up (must not open until after the date for declaration of candidacy has expired and the ballots are prepared). The date by which absentee ballots must be submitted to the land grant (typically can be submitted up election day at the polls). Absentee ballots are not counted until the election day after the polls have closed. The requirements for being eligible to vote via an absentee ballot, for example: will be out of town or state on the day of the election, cannot physically get out to the polls on day of the election, etc. Also those allowed to vote by absentee ballot must be active qualified voting members already on the land grants registration books as of the day the registration books closed, which is 15 days prior to the election in accordance with 49-1-5C.

49-1-6. Repealed.

49-1-7. Election; canvassing votes

A. The candidates receiving the most votes cast for the open seats on the board of trustees shall be elected to the board.

Comment: This statute requires that the candidates elected to the board of trustees are those that receive the highest number of votes and is limited to the number of seats up for election. That is if only 2 board positions are up for election but there are a total of 4 candidates than only the 2 candidates that receive the most votes are elected to the board.

B. The election judges and board of trustees shall meet not later than seven days following the election and canvass the votes cast and issue to each candidate duly elected to a seat on the board a certificate of election.

Comment: This statute requires that the Board of Trustees and the election judge(s) meet within 7 days after the election to verify the results. Once results have been verified the current board of trustees will issue a certificate of election to each individual candidate that has been elected, as per subparagraph A of this statute. Canvassing the votes involves checking the voter register to confirm that it includes only qualified voters and that the number of ballots cast is equal to the number of voters who signed the registration roster on the day of the election.

A sample Certificate of Election can be found on the flash drive that accompanies this guidebook in Section M – Land Grant Elections under the Sample Election Documents folder.

49-1-8. Organization of board; bonds; vacancies

A. All members of the newly elected board of trustees shall meet no later than seven days after the votes are canvassed and organize themselves by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required by the board and shall furnish to the board a good and sufficient surety bond in a sum as set forth in this section, to be conditioned as are the bonds of other public officials handling public money. It is the duty of the treasurer to deposit all the money coming into his hands as treasurer in a bank organized and doing business in New Mexico.

Comment: This statute requires that after every election of new members to the board of trustees, the new board must meet no later than seven days after the votes are canvassed to organize themselves there election of officers. It is prudent for a newly elected board of trustees to schedule and meet as early as possible within the seven-day period.

Upon meeting the trustees must elect from among themselves a president, treasurer and a secretary. This requirement changes the election procedure of some land grants-mercedes that conduct elections for specific offices and allow the voters to place trustees into specific offices. The land grant can set additional officer positions such as vice-president and land manager in its bylaws but is not required to.

This statute authorizes the board of trustees to set the duties of the treasurer. The duties of the treasurer are best described or set in the bylaws in advance of the election. The treasurer is mandated by this statute to perform the duties as set by the board of trustees. This statute requires that the treasurer “shall furnish to the board a good and sufficient surety bond” and this surety bond should be furnished to the board of trustees before the Treasurer begins to handle any financial transaction for the Land Grant.

Obtaining a surety bond may be difficult for a treasurer as many insurance companies will not provide this type of bond for a land grant-merced. In the past the State’s Risk Management Division would provide surety bonds for elected officials but they no longer provide this service. There is a National Association of Surety Bond Producers that can help locate surety bond providers in New Mexico. Their web address is www.nasbp.org. On this site one can find a listing of all surety bond providers in New Mexico that belong to this association. The list of providers in New Mexico can be found by placing your mouse over the Directories tab near the top of the home page and clicking on Find a Producer. Once on the Find a Producer page simply select New Mexico under the location and click Find Producers. This will provide a list of companies in New Mexico that provide surety bonds. As of the time of this publication there were 6 active surety bond providers listed on their website.

The last duty required of the treasurer is the duty to deposit all money that he or she receives on behalf of the land grant-merced into a bank that is organized and doing business in New Mexico. Therefore, a treasurer cannot deposit money into a bank that is not organized and doing business in New Mexico.

Recommendation: The land grant-merced should adopt a Bylaw providing for the continuance of the out-going treasurer until the in-coming treasurer furnishes the surety bond required by law.

The surety bond protects the land grant-merced in the event that the money in the possession of the Treasurer is lost or stolen. The bond must be set up with the same coverage as any bond would be for a public official handling public monies.

B. In the event of the death or resignation of the treasurer, the board shall fill the vacancy by appointing one of the members of the board as treasurer, who shall, before entering into the performance of his duties as treasurer, execute and furnish to the board a good and sufficient surety bond, similar to the bond entered into by his predecessor.

Comment: This statute requires that the board of trustees fill a vacancy in the treasurer's position by appointing one of the existing members of the board of trustees to that position. The general vacancy that has been created must then be filled by the remaining members of the board at a regular meeting in accordance with 49-1-13 NMSA 1978.

Recommendation: The board of trustees should adopt a bylaw that reads exactly like this statute or one substantially similar to it.

C. The amount of the bond required of the treasurer and his successor shall at all times be for a sum of at least double the amount received by and deposited in the bank by the treasurer.

Comment: A bond "double the amount" simply mean double the amount of money the treasurer routinely receives, but actually double the amount of any money that the treasurer has access to. This includes any money deposited in the bank or any grant or loan amounts received by the land grant for which the treasurer has access. As a practical matter, a land grant-merced should consider a bond amount that is at least three times more than the total amounts being handled by the land grant-merced. If a land grant-merced is obtaining a surety bond for the first time, it should determine the amount of the bond based on the cash in the bank as well as historic account balances for at least the past 3 years and the projected future income. That is to say, if a land grant-merced has applied for grant or loan funds that will increase the total amounts it has in the bank above normal account balance levels. It is very important that the surety bond never dips below the "double amount" requirement of the statute.

As land grants-mercedes begin to participate in the annual budget process of the Department of Finance and Administration / Local Government Division they will be able to develop a better idea of what their cash projection will look like for the coming fiscal year.

See Section E - Budgets of this guidebook for additional budget requirements and information.

D. In the event the board of trustees delegates any other of its members to collect money due the land grant-merced, that person shall be bonded in the same manner as is provided in this section for the bonding of the treasurer.

Comment: This statute requires a board of trustees to bond all of the members of the board who are authorized to handle money on behalf of the land grant-merced. These members should be bonded to the same amount as the treasurer.

It is not clear from the face of this statute whether “member” could also refer to a “qualified voting member” of the land grant-merced in addition to another “member” of the board of trustees. In this respect the statute is ambiguous on this point. However, an argument could be made that the land grant-merced has “implied powers”, similar to those exercised by counties and municipalities. These implied powers would enable the land grant-merced to also bond both “qualified voting members” as well as non-members of the land grant who are hired to perform work for the land grant-merced under the proper exercise of any one of its statutory powers.

Recommendation: Although not mandated under the statutes it is a good idea to have more trustees than just the treasurer with signatory authority for the receipt and expenditure of land grant-merced funds. This is important in the event that the treasurer quits or is unable to fulfill their duties. It is also strongly recommended that all financial transactions require at the signature of at least two members of the board of trustees. This helps prevent the misuse or embezzlement of funds.

For more information on additional financial considerations for land grants-mercedes please see Section F – Financial Reports & Audits.

E. Those authorized to collect money shall give receipts for the money collected, which receipts shall be in the form prescribed by the board of trustees in the bylaws as an official receipt.

Comment: This requirement calls for any individual that has the right to collect money on behalf of the Land Grant-Merced to give a receipt for any monies they receive. The receipts will be provided in the manner called for in the bylaws of the land grant-merced. Therefore, all land grants-mercedes need to include a section explaining what their official receipt policy is as well as what the receipt must look like. The purpose of the official receipt is to protect against the unauthorized collections of monies from land grant-merced members and other individuals doing business with the land grant-merced.

49-1-9. Meetings

Regular meetings of the board of trustees shall be held no less than quarterly and in a public place as the board may determine in accordance with the bylaws. The time and place of regular meetings shall be posted in Spanish and English in a public place within the land grant-merced at least ten days prior to the meeting. Special meetings may be held at any time on call of the president, with five days' notice being given to each member.

Comment: This statute sets the minimum requirements that must be met in order for a land grant-merced to have a proper public meeting that is in accordance with state law. It requires that the board of trustees of a land grant-merced meet at least once every 3 months. A land grant-merced board of trustees may choose to meet more often than quarterly and may do so as

long as they provide at least 10 days advance notice for a regular meeting and 5 days advance notice for special meeting. Emergency meetings may also be held but only for certain circumstances as outlined in the Open Meetings Act 10-15-1 NMSA 1978.

Advance notice as per this statute requires posting a notice in a public place within the land grant at least 10 days prior to the meeting date for a regular meeting and at least 5 days prior a special meeting. This statutes only requires posting in one public place, however the Attorney General's office suggests either posting meeting notices in a paper of general circulation within the land grant-merced or in at least 3 public places within the land grant. Following these suggestions is recommended however the statute only requires that a posting be placed in a public place within the land grant-merced.

All public notices of any meeting of the land grant-merced must be done in both English and Spanish.

For more information on meeting notice requirements refer to Section C – Opening Meeting Act of this guidebook. A sample meeting notice has been provided on the flash drive that accompanies this guidebook in Section C – Open Meetings Act under the Sample Open Meetings Act Documents folder.

Recommendation: A sample of the public notice in English and Spanish could be included as part of the bylaws or the “regulations” of the land grant-merced. The regulations would serve to expand on the bylaws but in a manner, which would enable the board of trustees to make changes to the regulations without taking the matter to the land grant-merced membership for approval.

Under this statute, the president of the board of trustees may call special meetings as necessary provided that at least 5 days' notice is provided, in the same manner as given in the 10 day notice requirement. On its face, the statute is not clear whether “member” refers to the board of trustees or to the land grant-merced membership. If it is to each member of the “Board of Trustees”, then it appears that less notice is required for a Special Meeting than for a regular meeting and this does not make good sense in the context of the Open Meetings Act, Chapter 10, Article 15 NMSA 1978. If it is to each member of the land grant-merced itself, then the burden of giving the required public notice increases sharply because the notices would have to be physically delivered to each member of the land grant-merced in order to meet the 5 day requirement, or mailed with enough time that the notice would arrive no later than 5 days before the scheduled Special Meeting.

The land grant-merced should address its interpretation of the 5-day notice requirement in its bylaws in conformity with the Open Meetings Act, which provides that “reasonable notice to the public” be provided. This means that the board of trustees is in a position to make a preliminary determination of which interpretation of the 5-day notice requirement is reasonable in the context of the resource limitations of the land grant-merced. In this instance posting in the same public place(s) as in done for regular meeting such suffice for meeting the public notice requirements for special meetings.

As political sub-divisions of the State of New Mexico all general provision land grants-mercedes are now subject to compliance with the Open Meetings Act, Section 10-15-1 NMSA 1978. This means that there are specific requirements aside from just the language in this statute that land grants-mercedes must follow. This includes refraining from conducting meetings behind closed doors unless certain exceptions and procedures are observed, as well as other issues relating to the conduct of meetings.

For more information on open meeting requirements please see Section C – Open Meetings Act.

49-1-10. Quorum

A majority of the board of trustees shall constitute a quorum for the transaction of business, and the land grant-merced and its inhabitants shall be bound by the acts of the board done pursuant to the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978 and the land grant-merced bylaws.

Comment: In this statute the definition of a quorum is a majority of the board of trustees. Since the general provisions call for 5 members on the board of trustees, a majority would then be considered three (3) or more members. Therefore, if at least three (3) members of the board are present at a meeting noticed or broadcast in accordance with the 49-1-9 and the Open Meetings Act, Chapter 10 Article 15, NMSA 1978, then they may legally conduct the business of the land grant-merced.

In order to comply with the Open Meetings Act a quorum of the land grant-merced board of trustees cannot meet outside of a properly advertised meeting and discuss or conduct official land grant-merced business. This means that if a land grant-merced needs to meet with a State agency or another government entity to discuss an issue, no more than two (2) trustees from the land grant-merced board can attend that meeting on behalf of the land grant-merced, unless the meeting was first advertised and open to the public.

For more information on the Open Meetings Act see Section C of this guidebook.

49-1-11. Sale or mortgage of common lands; restrictions

A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:

Comment: This statute sets out the procedure and limitations for the conveyance of the common lands from the land grant's-merced's ownership to another person or entity. "Conveyance" generally means by gift, sale, mortgage, transfer or other method in which the change of ownership is or could be permanent. Following are the requirements that must be met in order to validate a conveyance of common land.

(1) the conveyance is made in accordance with the land grant-merced bylaws and this section;

Comment: Any and all conveyances of common land must be done in accordance with the bylaws governing each land grant-merced as well as with the laws stated herein. Thus, the bylaws of a land grant-merced should identify those conveyances that are allowed and those that are prohibited. For example, the bylaws of a land grant-merced could allow the gifting or sale of the common lands only to heirs and no other conveyances to non-members of the land grant-merced. Or, the bylaws could prohibit any conveyances of common lands whatsoever, including to its members, and allow only the leasing of the common lands.

Recommendation: The development of bylaws regarding conveyance of the common lands should be carefully considered and approved by the land grant-merced membership in terms of the long-range plan, goals and objectives of the land grant-merced.

(2) the conveyance is made for the benefit of the land grant-merced;

Comment: This means that the land grant-merced as a whole benefits from the conveyance of common property, not just one or a few individuals. Benefit to the land grant-merced is not restricted to just a monetary benefit. For example, if a land grant-merced were to lease common land for the construction of affordable housing for land grant-merced heirs, this could be considered an overall benefit to the land grant-merced since it provides heirs with an opportunity to reside within the land grant-merced.

(3) the board of trustees of the land grant-merced has approved a resolution to make the conveyance at a regular meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978;

Comment: Before the conveyance of common land, the board of trustees must take action during a land grant-merced meeting for which public notice has been provided in English & Spanish and in accordance with the Open Meetings Act, §10-15-1.1 NMSA 1978 and with the 10 day public notice requirement in 49-1-9. The meeting must be held in a public place. The resolution should state what type of conveyance is to take place and how it is authorized by the bylaws and the relevant statutes. The resolution should be given a reference number usually chronological by year (for example Resolution #2011-001). The land grant-merced board of trustees must keep good minutes of the meeting which reference the passage of any resolution and both the minutes and the resolution should be kept in a safe location for ready retrieval when necessary.

See Section P of this guidebook for more information on conveyance of common lands. A sample conveyance resolution has been provided in the flash drive that accompanies this guidebook under Section P – Conveyance of Common Land in the Sample Common Land Conveyance Documents folder.

(4) the board of trustees has petitioned for an order affirming the board's resolution from the district court of the district in which the property is located; and

Comment: Once a resolution has been passed in accordance with the previous requirement, the board of trustees must petition the state district court, with jurisdiction over the region where the common land to be conveyed is located, and request an order from the court affirming the resolution as being a legal and valid action of the board of trustees.

Once the resolution is passed the land grant-merced board of trustees must wait thirty (30) days to allow for protest, prior to petitioning the state district court, for an order affirming the resolution approving the conveyance of property. The board of trustees can act pro se (without an attorney) in filing the petition with the district court. The board of trustees shall file the petition along with a copy of the resolution, meeting minutes and conveyance documents (i.e. deed or mortgage), and a court order to be signed by the judge.

A sample court order has been provided on the flashdrive that accompanies this guidebook under Section P – Conveyance of Common Land in the Sample Common Land Conveyance Documents folder.

(5) the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection E of this section.

Comment: The district court can issue its order affirming or denying the board of trustees' resolution after a hearing on the petition or after hearing of the protests and appeals from heirs, if any. Only upon entry of the final order from the district court can the conveyance of the common land by the board of trustees take place.

B. An heir may file a written protest of a conveyance with the board of trustees of the land grant-merced and the district court within thirty days of the date that the resolution approving the conveyance is passed by the board. The board shall address and make a decision on the protest at a special meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978 within thirty days of receiving the protest.

Comment: Any heir to a land grant-merced may file a written protest of the conveyance of common land with both the board of trustees of the land grant-merced and with the state district court having jurisdiction over the common land in question. The protest must be filed within thirty (30) days of the date that the board of trustees has passed the resolution approving the conveyance of common lands. If a protest is filed the board of trustee must address and make a decision regarding the protest, during a public meeting held in accordance with state law, both the Open Meetings Act, §10-15-1.1 NMSA 1978, and 49-1-9 and 49-1-12 NMSA 1978, within thirty (30) days of the protest being filed.

It is important to note that a person recognized as an “heir” does not also have to be a “qualified voting member” for the purposes of protest under this statute. For example, an “heir” could also include out-of-state residents, (with no voting rights in New Mexico), by virtue of being a

descendant of an original grantee and by having an interest in the common land of the land grant-merced through inheritance, gift or purchase.

C. *An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:*

Comment: If an heir is not satisfied with the decision made by the board of trustees at the special meeting held to address the protest, the heir may appeal the board's decision to the state district court of the county where the property is located. In order for the appeal to be valid it must be done as outlined below:

(1) appeals to the district court shall be taken by serving a notice of appeal upon the board within thirty days of the decision. If an appeal is not timely taken, the action of the board is conclusive;

Comment: To effect a proper appeal at district court, the heir must file a "Notice of Appeal" with the district court and serve the notice of appeal to the board of trustees within thirty (30) days of the decision reached at the special meeting regarding the protest. If an appeal is not filed in the district court and served upon the board of trustees within those thirty (30) days then the action taken by the board is conclusive and is not subject to appeal.

(2) the notice of appeal may be served in the same manner as a summons in civil actions brought before the district court or by publication in a newspaper printed in the county in which the property is located, once per week for four consecutive weeks. The last publication shall be at least twenty days prior to the date the appeal may be heard. Proof of service of the notice of appeal shall be made in the same manner as in actions brought in the district court and shall be filed in the district court within thirty days after service is complete. At the time of filing the proof of service and upon payment by the appellant of the civil docket fee, the clerk of the district court shall docket the appeal;

Comment: At the time an heir files a Notice of Appeal with the district court, the district court clerk will issue a court summons. It is then the responsibility of the heir to serve the land grant-merced board of trustees with the summons. The summons and the Notice of Appeal can be served in several different ways.

Recommendation: First, it can be served in person on the President, or if the President is not available, on the Secretary of the board of trustees. The persons eligible to serve the land grant-merced board of trustees are the sheriff or his deputy of the county where the board of trustees is located or by a person over the age of eighteen (18) that is not a party to the action.

Second, the summons and notice may also be serviced by mail. In this case the heir must mail a copy of the summons and the notice by first-class mail to the President of the land grant-merced at the board of trustees' official address. Also enclosed in the mailing must be two (2) copies of a notice of acknowledgement with a return envelope, with postage paid addressed to the heir sending the summons. If the heir does not receive the returned acknowledgement of service within twenty (20) days after mailing it, the land grant-merced board must be served in person by

the procedure stated above. If served by mail the heir must provide to the court proof of service by filing with the Court the returned acknowledgement with the date and place of mailing.

Third, the heir may also serve the land grant-merced the summons and notice of appeal by publishing a copy of the summons and the notice of appeal in a newspaper that is printed in the county in which the property is located once a week for four consecutive weeks. The last publication must be printed at least twenty (20) days prior to the date the appeal may be heard. The proof of service shall be an affidavit from the newspaper showing that the publications were made.

Once the board of trustees has been properly served, the heir will have thirty (30) days to file the proof of service to the district court as called for by each type of service. Once served, the land grant-merced board of trustees will have thirty (30) days to file a responsive pleading with the district court. Once the proof of service is filed and the heir pays the required docket fees, the clerk of the district court will docket the appeal.

(3) costs shall be taxed in the same manner as in cases brought in the district court and bond for costs may be required upon proper application; and

Comment: The district court will determine whether a bond will be required of the heir based on the application, if any, from the land grant-merced, and after a decision is made by the court, it will determine the proper taxing of the costs on the parties.

(4) the proceeding upon appeal shall be de novo as cases originally docketed in the district court. Evidence taken in a hearing before the board may be considered as original evidence subject to legal objection, the same as if the evidence was originally offered in the district court. The court shall allow all amendments that may be necessary in furtherance of justice and may submit any question of fact to a jury or to one or more referees at its discretion.

Comment: As a “de novo” preceding the parties may present all and any relevant evidence and argument as if the matter were being heard for the first time. Submittal of any question of fact to jury or referees is at the discretion of the court, and is not a right of the parties. Notwithstanding the discretion of the court, either party can request that the matter be submitted to a jury or referees.

D. If the district court finds that all requirements of this section have been satisfied and that all protests and appeals are concluded, the court shall issue its order affirming the board of trustees' resolution conveying the property.

Comment: If the district court determines that the land grant-merced board of trustees has met all of the requirements of the general provision statutes controlling the conveyance of common lands, and that all protests and appeals are completed, the court shall issue its order affirming the board of trustees' resolution authorizing the conveyance of the subject common land.

E. After the district court issues its order, the board of trustees shall execute the necessary documents in the name and under the seal of the land grant-merced, and all heirs shall be bound by the board's conveyance.

Comment: The effect of the final conveyance of common land by the board of trustees is to make “private” property of what was once “common” land. Whether the new owner of the “private” property would have any rights of use of the remaining common lands, would depend on whether the new owner is an “heir” of the land grant-merced. Once the board of trustees executes the conveyance in accordance with the district court order all heirs must recognize the privatization of the former common land.

49-1-11.1. Rights of lessees and purchasers

A. A person who is not an heir and who has purchased or leased property within the limits of a land grant-merced shall only have a right to the lands acquired through the purchase or lease but not to any common lands within the land grant-merced.

Comment: Any person that is not an heir to a land grant but purchases or leases property within the boundaries of the land grant is not entitled to any use or rights to the common lands of the land grant-merced. If the person who purchases property within the land grant-merced is an “heir” of the land grant-merced, then it appears that he may also qualify for use of the common lands.

B. The provisions of Chapter 49, Article 1 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of a land grant-merced or be construed to grant the board of trustees of a land grant-merced regulatory authority over such property interests or lands other than the common lands. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced.

Comment: This statute protects the rights of individuals or corporations holding “private property interests” within the land grant-merced boundaries. In addition to outright ownership of land, these “private property interests” also include any “valid” easements or rights of way. Whether an easement or right of way is “valid” is a matter for the determination of the district court in the event of a dispute between the land grant-merced and the private owner. The regulatory authority of the land grant-merced only reaches the common lands of the land grant-merced and not the private lands within.

C. The designation of land grants-mercedes as political subdivisions of the state shall not alter the property rights of the heirs in the common lands. The common lands owned or controlled by a land grant-merced shall not be considered to be, designated or treated as state land.

Comment: This statute makes clear that the designation of land grants-mercedes as units of government in no way alters the property rights of heirs with relation to the common lands. The

also clarifies that common land owned and controlled by a land grant-merced is not state lands and such not be considered as such for other purposes.

49-1-11.2. Adverse possession

A land grant-merced, controlled and governed as a political subdivision pursuant to Chapter 49 NMSA 1978 shall not be subject to adverse possession claims to or defenses against the common lands administered by the political subdivision, provided that those claims or defenses have not vested prior to the effective date of this section.

Comment: This law protects land grants-mercedes that are political sub-divisions of the State under the General Provision of Chapter 49 from adverse possession claims brought against it by private claimants for its common lands. Therefore, private owners can no longer make a claim of adverse possession for any part of the common lands based on their adverse use of the land. The law is limited to claims that have not vested prior to the effective date of the new law, which took effect in July 1st of 2007. Therefore, any adverse claims against a land grant are limited to those claims, which can make a prima facie showing that the required 10 year vesting period was completed before July 1, 2007.

49-1-12. Meetings to be public; annual report

A. All meetings of the board of trustees shall be held in accordance with the Open Meetings Act [10-15-1.1 NMSA 1978]. Executive sessions shall not be held except in accordance with the Open Meetings Act. All heirs of the land grant-merced shall have the right to be present at all times when the board is in session and to be heard on all matters in which they may be interested.

Comment: In addition to making board of trustee meetings subject to the Open Meetings Act, this statute distinguishes a higher level of protection and participation for “heirs” at these meetings. In effect, the general public, including non-heirs of the land grant-merced have a right to sit in and listen to the proceedings. However, there is no automatic right of participation by the general public to be heard, unless they are recognized by the president, in accordance with the agenda. The “heirs” on the other hand have a right to be “present” and “to be heard on all matters” during the meeting. The category of “heirs” includes both those heirs who are “qualified voting members” and those heirs who are not qualified voting members.

See Section C - Open Meetings Act for more information.

Recommendation: It is a good idea for a land grant-merced to adopt procedures for allowing heirs to make comments and address the board of trustees during a regular meeting. This can be done by placing an item on the agenda for comments from heirs. In addition, a land grant can set a time limit for how long an heir may present comments. It is also a good idea to require heirs wishing to make comments sign up in advance at the start of the meeting up until prior to the comment period on the agenda begins. This same procedure can be applied to general members of the public if the land grant-merced chooses but is it not required. In general members of the

public who are not heirs have the right to attend the meetings but have no given right to voice their comments to the board of trustees.

B. The board of trustees shall annually make public a report of all its transactions for that year. The report shall include agendas, minutes, actions taken and all financial transactions. The report shall be maintained in a public place and available for public review.

Comment: This statute requires that land grant board of trustees produce an annual report which compiles all the business conducted by a land grant-merced within the year. The report must include all meeting agendas, minutes, actions taken and all financial transactions that took place within the fiscal year being reported. The report must be kept in a public place, such as the land grant hall, or other public location. Under the Inspection of Public Records Act, (IPRA), the report, as well as all documents generated by the land grant-merced and its board of trustees in their capacity as a government entity must be made available to “public” review, which includes any person, both heir and non-heir alike.

See Section C - Open Meetings Act; and Section D - Inspection of Public Records Act for more information.

C. The secretary of the board shall reduce to writing, in a book kept for that purpose, minutes of the business transacted at each meeting of the board.

Comment: This requirement calls for the secretary of the board of trustees to document in writing the minutes of each and every board meeting and to keep those minutes in a book with all other board minutes for future reference. The secretary must ensure that all past minutes are taken and stored properly as it may be necessary to review them later, either by the board of trustees, an auditor, for legal manners or in response to a inspection of public records request.

See Section C - Open Meetings Act; and Section D - Inspection of Public Records Act for more information.

49-1-13. Vacancies

If a vacancy occurs on the board, the remaining members shall fill the vacancy by appointment made at a regular meeting. The person appointed shall hold office until the next regular election.

Comment: This statute provides the manner in which a vacancy on the board of trustees shall be filled. It grants the remaining members of the board of trustees the authority to appoint a new trustee to fill the vacancy. The person appointed must meet the qualifications required in Chapter 49-1-4 NMSA 1978. That is to say they must be a qualified voting member of the land grant-merced and not be in default of any dues, rent or other payment for the use of any of the common lands. The person appointed shall serve until the next regular election. This means that an individual appointed to fill a vacancy does not necessarily get to serve out the remainder of the term for which the vacancy was created but only until the next regularly scheduled election. For example if a trustee whose is elected to serve for 4 years vacates their position in their 1st year of

service the appointee will only serve the entire length of the remaining 3 years if there is not election scheduled before the term expires. However, if the land grant has election every 2 years allowing for staggered 4-year terms, then the position must be filled by election during the next election cycle in year 2 even though the original trustee elected would not have been running for another 3 years.

Recommendation: The board of trustees should adopt a bylaw that reads like this statute or one substantially similar to it.

49-1-14. Salaries of trustees; records; expenditures.

A. The board of trustees may fix in the land grant-merced bylaws and pay to its members a salary not to exceed two hundred dollars (\$200) to any member in one month. The salary as fixed shall be in full as compensation for the duties performed by the board or the individual members within the exterior boundaries of the land grant-merced and for attendance at regularly scheduled meetings. The secretary of the board may be allowed a salary not to exceed two hundred twenty-five dollars (\$225) in one month.

Comment: This statute authorizes the land grants-mercedes to adopt a bylaw setting a salary to be paid to trustees as compensation for the duties they are required to perform as a member of the board of trustees and to ensure regular attendance at meetings. Under this statute, the salary can be up to \$200.00 per month but it cannot be more than that amount. The secretary may be allowed to receive a salary not to exceed \$225.00 in any month.

Recommendation: Land Grants wanting to provide salaries to board members may want to consider placing, in their bylaws, a requirement for board members to attend meeting in order to receive any payment. Board members would then fill out a voucher for payment at each regularly scheduled board meeting. This voucher would serve both as an invoice for payment as well as documentation of attendance for each meeting. A cap of \$200.00 or lesser amount per month could be set, regardless of the number of meetings held in a month. Vouchers should be kept with the board minutes held by the secretary.

A Sample Voucher has been provided on the flash drive that accompanies this guidebook in Section F – Financial Reports & Audits under the Sample Financial Documents folder.

B. Board members may be authorized Per Diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].

Comment: Board members may be authorized to receive per diem, or a fixed daily amount for travel that is directly related to land grant-merced business. Board members may also be authorized to receive a mileage reimbursement while utilizing their own personal vehicle for the purpose of conducting official land grant-merced business. Application of these policies through the adoption of a bylaw, rule or regulation of the land grant-merced must be in accordance with the New Mexico Per Diem and Mileage Act.

See Section H – Per Diem & Mileage Act for more information.

C The board of trustees and the treasurer shall keep permanent and legible records capable of audit, and no money or funds shall be paid by the board of trustees or by any person authorized to expend money except by written check drawn upon vouchers.

Comment: This statute requires that the board of trustees and the treasurer of the board forever keep legible and auditable accounting information and documentation of any and all financial transactions approved and taken by the board on behalf of the land grant. These records should be in accordance with sound accounting practices and should be capable of being audited by an independent certified public accountant as called for in the State Audit Act.

This law also requires that all financial transactions that take place by either trustees or any one designated by the board of trustees must be done in the form of a written check that is accompanied with a written voucher.

A Sample Voucher has been provided on the flash drive that accompanies this guidebook in Section F – Financial Reports & Audits under the Sample Financial Documents folder.

49-1-15. Removal from land grant-merced; delinquency; forfeiture.

A. If a person holds in possession or claims in private ownership, within the exterior boundaries of a land grant-merced, any tract, piece or parcel of land to which, in the opinion of the board of trustees, the person has no right or title, the board may institute an action of ejectment in district court against the person. If upon the trial it is determined that such possession is without right, judgment shall be rendered in favor of the board for possession of the tract, piece or parcel of land and for such damages as it may have proved for the wrongful detention.

Comment: This provision outlines the procedures that a board of trustees must follow in order to regain a parcel of land that it believes should rightfully belong to the land grant-merced. The process outlined calls for a board of trustees to file an action of ejectment in district court against the person alleged to be in wrongful possession of land grant-merced common land.

Recommendation: Before a land grant pursues an action in ejectment, the board of trustees should take formal action at a regular, special or emergency board meeting wherein by resolution the board of trustees approves the action, based on a sound legal review of the issues. The resolution to file a lawsuit may be accompanied by a board decision to hire an attorney to represent the land grant-merced in this action.

B. Any delinquent heir shall lose all right that the heir may have had to use the common lands of the land grant-merced unless the heir pays in full all legal assessments or dues due by the heir.

Comment: This statute authorizes the board of trustees the power to deny access and/or use rights to the common lands to any heir that is behind on any and all dues or assessments that they owe the land grant-merced. This statute omits any mention of the private lands that an heir may

own within the exterior boundaries of the land grant-merced, which are not subject to this delinquency enforcement action by the board.

Recommendation: The board of trustees should develop bylaws, rules or regulations that address the step-by-step process by which the board will enforce the forfeiture of all right that a delinquent heir may have to use the common lands. The alleged “delinquent” heir is entitled to “due process” of the law before a property right can be removed. The land grant must exercise care in providing the required “due process” to the “delinquent” heir in light of the seriousness of the forfeiture of “all right”.

49-1-16. Trespass on common lands or waters; injunctions.

The courts of this state shall entertain bills of complaint filed by the board of trustees of a land grant-merced to enjoin persons from trespassing upon the common lands or using the common waters within the land grant-merced if it appears that the complainant is without a plain, speedy and adequate remedy at law or that the persons committing trespass are insolvent or unable to respond in damages.

Comment: This statute confers jurisdiction on the “courts of this state” to act on complaints of trespass filed by a board of trustees. It appears that the land grant-merced has its choice of bringing its complaint of trespass in magistrate court or district court. In order to bring the complaint to enjoin the trespasser, the land grant-merced must allege sufficient facts that it is without a plain, speedy and adequate remedy at law or that the persons committing the trespass are insolvent or unable to respond in damages. If the person committing the trespass is solvent and able to respond in damages, it appears that the complaint must be in ejectment and for damages, and not in trespass with a count to enjoin the offending individual. Enjoin means to prohibit by judicial order an individual from trespassing onto the common lands or using the common waters within the land grant-merced.

49-1-17. Process; how served on board.

Process in all actions or suits against a board of trustees of a land grant-merced shall be served upon the president or, in his absence, upon the secretary.

Comment: This section requires that service of process for any lawsuit against the board of trustees of a land grant-merced must be given to the president, or in his absence, to the secretary of the board of trustees. No other individual board member is allowed to accept service of process. The methods of service of process on the two eligible land grant officials can be obtained in accordance with the rules of civil procedure for magistrate or district courts.

49-1-18. Construction.

Sections 49-1-1 through 49-1-18 NMSA 1978 shall not be construed as applying to any land grant-merced that is managed or controlled in any manner other than that provided in Section 49-1-2 NMSA 1978.

Comment: The purpose of this provision is to explicitly exclude any statute specific land grants and land grants governed by Sections 49-2-1 through 49-2-19 NMSA 1978 from the application of the 2004 General Provisions, and that all such land grants are not considered to be political sub-divisions of the state unless otherwise stated in their governing statutes.

49-1-19. Failure of trustee to perform duties; penalty.

Any member of the board of trustees who fails or refuses to perform any of the duties required to be performed by the board of trustees of the land grant-merced or any member of the board pursuant to Sections 49-1-1 through 49-1-18 NMSA 1978 or by any other law of New Mexico is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or both.

Comment: This statute provides for misdemeanor charges in instances where a member of the board of trustees fails or refuses to perform any of his duties under the 2004 General Provisions and other laws of New Mexico, and upon conviction of same, for monetary penalties and imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or both.

49-1-20. Servilleta de La Joya grant; provisions applicable.

The court having held that the trustees elected under the provisions of Sec. 828 of the special act for the management and control of the Sevilleta de La Joya grant are without authority, the provisions of the general law for the management and control of all Mexican and Spanish grants contained in Sections 49-1-1 to 49-1-18 NMSA 1978 are hereby made applicable for the management and control of the Sevilleta de La Joya grant.

Comment: This statute specifically applies the General Provisions to the management and control of the Sevilleta de La Joya Grant. With the 2004 update of the provisions the Sevilleta de La Joya Grant became a political subdivision of the state.

49-1-21. Anton Chico grant; rights of lessees and purchasers.

Any person or persons or corporation who through purchase or lease may come to live within the limits of the Anton Chico land grant shall only have a right to the lands he or they may acquire through said lease or purchase but not to the common lands in said land grant.

Comment: This statute specifically excludes rights to the common lands of the Anton Chico Land Grant for those persons or corporations who through purchase or lease have come to live

within the limits of the land grant. These persons or corporations only have a right to the lands acquired through lease or purchase.

49-1-22. Rights of lessees and purchasers.

History: 1978 Comp. § 49-1-22, enacted by Laws 2004, ch. 124, § 2, amended and recompiled as 1978 Comp., § 49-1-11.1 by Laws 2005, ch. 75, § 1.

Comment: This statute has been recompiled at § 49-1-11.1 above, where it is discussed in detail.

49-1-23. Community land grant registry established; reporting requirements.

A. The secretary of state shall establish the "New Mexico community land grant registry".

Comment: This statute requires that the Secretary of State establish the official New Mexico community land grant registry.

B. A community land grant organized and governed pursuant to Chapter 49, Article 1 NMSA 1978 and operating as a political subdivision of the state shall register its bylaws and a list of current officers with the secretary of state. The board of trustees of that land grant shall notify the secretary of state of the names and positions of the land grant's elected or appointed officers upon their election or appointment.

Comment: This statute requires that all community land grants-mercedes operating as political subdivisions under the General Provisions, discussed in this commentary, register with the Secretary of State both its bylaws and a list of current elected officials. The board of trustees must notify the Secretary of State of any changes to the board of trustees following an election or vacancy filled by appointment.

Recommendation: Land grants-mercedes should give effect to this important requirement in its own bylaws, rules and regulations in order to assure its compliance. Each time the bylaws are amended or a new board of trustee is changed following an election or vacancy, it is imperative that this information is registered with the Secretary of State as soon as possible after a change occurs. Failure to register and keep current the information required by this statute can lead to certain consequences in the land grant's legal standing with various governmental and nongovernmental entities and agencies.

C. Community land grants organized and operating pursuant to special statutes or other general statutes may also register their bylaws and lists of officers with the secretary of state.

Comment: This provision allows statute specific land grants-mercedes to register their by-laws and elected officials with the Secretary of State. For those land grants that are considering a request to the legislative for inclusion in the 2004 General Provisions in order to become political subdivisions of the state, this voluntary practice of registering their bylaws and lists of officers may help in realizing the new status.

D. A community land grant that registers in accordance with Subsections B or C of this section may request the secretary of state to keep on file copies of current or historical documents or maps submitted by the board of trustees to the secretary of state; provided that the secretary of state may store such documents and maps in the state archives and records center.

Comment: This statute enables land grants-mercedes that are registered with the Secretary of State's office, to request that the Secretary of State keep on file copies of any current or historic documents or maps the board of trustees would like to protect and perpetuate. If necessary the Secretary of State may store all documents received from a land grant-merced with the state archives and records center. The advantage of this filing arrangement is that the land grant can assure the perpetuation of its important records in the event of an unforeseen loss while in its own care.

Recommendation: Those land grants-mercedes that are willing to take advantage of the additional safeguarding of their valuable and often times irreplaceable documents, should adopt a bylaw, rule or regulation spelling out the procedures for using the Secretary of State to file duplicate copies of all such documentation.

For more information about the Official Land Grant Registry see Section L of this guidebook.

ADDITIONAL LAND GRANT RELATED LEGISLATION

Since the 2004 amendment of the General Provisions to Chapter 49 of the New Mexico Statutes, the Land Grant Legislative Interim Committee has continued to work with land grant communities and advocates to pass laws that enhance the sustainability of land grants-mercedes. Specifically, there have been 5 bills that have passed which increase the authority of land grants-mercedes. They include laws pertaining to: giving land grants the right of first refusal for the purchase of surplus state lands that were former land grant common lands; creating provisions for land grants to purchase tax delinquent properties that are former common lands at delinquent tax auctions; creation of a executive branch agency tasked with providing support for land grants-mercedes; making land grant-mercedes that are political sub-divisions of the state eligible to receive tort liability coverage through the State Risk Management Division; and requiring surveyors to give notice of survey to certain statute specific land grants. Copies of the all bills outlined below can be found on the flash drive that accompanies this guidebook in Section A – Land Grant Statutes & Analysis in the Land Grant Related Laws folder.

Establishment of Guadalupe Hidalgo Treaty Day as a Public Holiday

In 1997 the Legislature passed a law that designate February 2 of every year as Guadalupe-Hidalgo Treaty day in recognition of the signing of the Treaty between the United State & Mexico. This day is commemorated every year during the legislative session at the State Capitol.

Land Grant Legislative Interim Committee

In 2003 the Legislature passed a law creating the Land Grant Committee. The committee is comprised of members of both the NM House of Representatives and the NM Senate and meets during the Interim Session (Typically between the months of June through November). The Land Grant Committee studies existing laws regarding land grants and develops legislation to improve existing laws or create new ones. As well the Committee gathers testimony from land grant boards of trustees and heirs from across the state to understand the issues of concern facing land grant communities. Also the committee gathers testimony form other community groups and state agencies to understand the relationship between land grants and other property owners in New Mexico.

Guadalupe Hidalgo Treaty Division

In 2003 the Legislature passed a law that created the Guadalupe Hidalgo Treaty Division as a part of the Office of the Attorney General. The purpose the division is to review, oversee and address concerns relating to the provisions of the Treaty of Guadalupe Hidalgo that have not been implemented or observed in the spirit of Article 2, Section 5 of the Constitution of New Mexico.

Repurchase of Common Lands at Delinquent Tax Auctions

In 2005 the Legislature passed a law that amends Section 7-38-67 of the New Mexico Statutes, entitled “REAL PROPERTY SALE REQUIREMENTS,” to include language that allows land grants to match the highest bid at delinquent tax auctions for lands that were formerly part of the commons. The bill specifically states that the board of trustees of a land grant, that falls under Chapter 49, Article 1 or any statute specific to an individual land grant, shall be allowed to match

the highest bid at a public and in doing so will entitle the land grant to purchase the property if the following conditions are met: 1) The property falls within the original patented boundaries of the land grant; 2) The matching bid covers all past taxes, penalties, interest and costs due on the property; 3) The land becomes part of the common lands of the land grant.

Right of First Refusal for Purchase of State Lands

In 2005 the Legislature passed a law amends Chapter 13, Article 6 of the New Mexico Statutes Annotated to include a new section entitled “SALE OF REAL PROPERTY BY STATE AGENCY - - LAND GRANT RIGHT OF FIRST REFUSAL.” This new section provides any land grants governed under Chapter 49 the right for the board of trustees to have first refusal to purchase State lands that are being disposed of that are located within the original patented boundaries of the land grant/merced. What this means is the land grant Board of Trustees has the first option to purchase those lands prior to the State putting it up for sale to another governmental entity or the general public. If a land grant chooses not to purchase the property or does not response to the notice of sale within 45 days of receiving the notice, then the State land will be sold in accordance with any applicable laws. The law specifically excludes State lands held in trust pursuant to the Enabling Act as well as the conveyance or transfer of state highways to local government entities.

Land Grant Support Act

In 2009 the Legislature enacted the Land Grant Support Act, which can be found in Chapter 49-11-1 NMSA 1978. The Act establishes the Land Grant Council, a five member council appointed by the Governor, tasked with establishing a land grant support program to provide advice and assistance to land grants and to serve as a liaison between land grants and the federal, state and local governments. The Land Grant Support Act outlines a variety of tasks and activities that the Land Grant Council must and can perform as part of its mission to provide assistance to land grants throughout the state.

Tort Liability Insurance Coverage

In 2009 the Legislature passed a law that added a new section to the Tort Claims Act, 41-4-25 NMSA 1978, that requires the Risk Management Division (RMD) of the State’s General Services Department to provide certain types of liability coverage for land grants that are governed as a political subdivision of the state. Coverage includes board of trustees’ liability coverage and other coverage for most civil causes of action. This includes liability coverage for employees of the land grant for incidents that occur while performing duties related to their employment. The tort liability coverage does not include property damage to land grant owned facilities or equipment. While RMD must provide coverage to any land grant that requests coverage and pays their annual premium assessment, land grants are not required by law to obtain the coverage.

For more information on RMD tort liability coverage see Section Q - Tort Claims of this Guidebook.

Notice of Survey

In 2009 the Legislature passed a law that added a new section to the Engineering and Surveying Practice Act, 61-23-1 NMSA 1978, which requires that if a survey is conducted within or bordering the common lands of the Las Vegas, Manzano, Nuestra Senora del Rosario San Fernando y Santiago, or Tecolote land grants then the survey must give written notice by certified mail to the board of trustees/commissioners of the affected land grant prior to recording the boundary survey or plat with the county clerk. The notice is to indicate where and when the boundary survey will or was conducted. The law also requires that the board of trustees/commissioners of these land grants to record with the county clerk(s) of the county(ies), where the common land is located, the address and contact information of the appropriate officer of the land grant to which notice must be given. Failure to record this information will in essence relieve the surveyor of their duty to notify the land grant of a boundary survey.

SECTION B - SAMPLE LAND GRANT BYLAWS

BYLAWS
FOR
LAND GRANT - MERCED DEL PUEBLO DE

(Organized Under the General Provisions of Chapter 49 NMSA 1978)

ARTICLE I

Enabling Legislation for the Organization of the Land Grant-Merced

The Land Grant-Merced del Pueblo de _____ is enabled as a land grant-merced, which is a political subdivision of the State of New Mexico, pursuant to the General Provisions, §§ 49-1-1 to 49-1-22, NMSA 1978.

ARTICLE II

Names, Objects, Purposes and Principal Place of Business

The official name of the land grant-merced shall be the "Land Grant-Merced del Pueblo de _____" (also "_____ Land Grant" and "Land Grant-Merced" or "Land Grant" or "Merced"). Its objects and purposes shall be to identify, determine, acquire and secure the common lands and common waters of the land grant-merced; to control, care and manage its properties and resources; to promote the economic development and local infrastructure of its communities; to conduct the comprehensive planning of its properties; to determine the land uses and zoning of the common lands in accordance with the requirements of the State of New Mexico; and to provide for the health, safety and general welfare of the residents of the land grant-merced. The principal place of business of the Land Grant-Merced del Pueblo de _____ will be the offices of the _____ in _____, New Mexico, or such other places as designated by the Board of Trustees.

ARTICLE III

Description of the Boundaries and Historic Communities of the Land Grant-Merced

The historic boundaries of the Land Grant-Merced as per the original Spanish/Mexican documentation are as follows: _____

_____. The boundaries of the Land Grant-Merced as patented by the U.S. Government are as follows: _____

The historic communities, towns, colonies, pueblos, alcaldias or villas of the Land-Merced established before or after the Treaty of Guadalupe Hidalgo are as follows:

ARTICLE IV

Seal of the Land Grant-Merced

The Seal of the Land Grant-Merced will have inscribed in it the full name of "Land Grant-Merced del Pueblo de _____" and the words "Est. _____(Insert Year)". The Secretary of the Land Grant-Merced shall have custody of the seal.

ARTICLE V

Fiscal Year

The fiscal year of the Land Grant-Merced shall begin on the 1st day of July of each year and end on June 30 of the following year.

ARTICLE VI

Acquisition of Common Lands

Section 1. Acquisition of Lands from within Historic Boundaries

It is the policy of the Land Grant-Merced del Pueblo de _____ to re-acquire lands that become available within the historic boundaries of the Land Grant-Merced, and which were lost or removed from the common lands of the Land-Grant-Merced since the Treaty of Guadalupe Hidalgo for any reason whatsoever.

Section 2. Acquisition of Lands within Patented Boundaries

It is the policy of the Land Grant-Merced del Pueblo de _____ to re-acquire patented lands that become available within the patented boundaries of the Land Grant-Merced, and which were lost or removed from the common lands of the Land-Grant-Merced since being patented by the United States Federal government for any reason whatsoever.

Section 3. Promotion, Re-establishment and Protection of Historic Land Grant Communities

It is the policy of the Land Grant-Merced del Pueblo de _____ to promote and protect existing historic land grant communities and to re-establish and protect

former historic land grant communities which have survived within or have been lost from the Land-Grant Merced since the Treaty of Guadalupe Hidalgo.

ARTICLE VII

Control, Care and Management of the Common Lands and Common Waters

It is the policy of the Land Grant-Merced del Pueblo de _____ to control, care and manage the common lands in a sustainable manner so that future generations of land grant members can enjoy, use and protect these lands in perpetuity.

The common lands of the Land Grant-Merced include those historic, traditional and customary uses of land allowed by the laws of the State of New Mexico, including those identified in the Kearny Code and subject to the protection of the Constitution of the State of New Mexico, Article II, Bill of Rights, Section 5, "Rights under Treaty of Guadalupe Hidalgo preserved".

It is the policy of the Land Grant-Merced del Pueblo de _____ to control, care and manage the common waters in a sustainable manner so that future generations of land grant members can enjoy, use and protect these waters in perpetuity.

The common waters of the Land Grant-Merced include those historic, traditional and customary uses of waters allowed by the laws of the State of New Mexico, including those identified in the Kearny Code and subject to the protection of the Constitution of the State of New Mexico, Article II, Bill of Rights, Section 5, "Rights under Treaty of Guadalupe Hidalgo preserved".

Section 1. Conveyance of Common Lands

Common lands generally cannot be conveyed except for emergency, critical or vital purposes that directly benefit the health, welfare or safety of the residents and members of the Land Grant-Merced. Conveyances of any type for the limited purpose of benefiting the health, welfare and safety of the residents and members of the land grant must be approved by the majority vote of a quorum of the qualified voting members of the land grant at a regular, special or annual meeting of the Land Grant-Merced. Any conveyance of the common land thereby approved shall follow the provisions prescribed in Land Grant General Provisions § 49-1-11 NMSA 1978.

Section 2. Mortgage of Common Lands

Common lands generally cannot be mortgaged except for emergency, critical or vital purposes that directly benefit the health, welfare or safety of the residents of the Land Grant-Merced. Mortgages, liens or encumbrances of any type for the limited purpose of benefiting the health, welfare and safety of the residents and members of the land grant must be approved by the majority vote of a quorum of the qualified voting members of the land grant at a regular, special or annual meeting of the Land Grant-Merced. Any mortgage of the common land thereby

approved shall follow the provisions prescribed in Land Grant General Provisions § 49-1-11 NMSA 1978.

Section 3. Lease of Common Lands

Leasing of the common lands is generally limited to those land grant members who can demonstrate capacity and performance to use the leased lands in a sustainable manner, which protects long term this vital resource of the Land Grant-Merced. Leasing to land grant members shall be in accordance with the terms and conditions of the rules and regulations promulgated by the Board of Trustees for that purpose. Leasing to land grant members must be approved by the majority vote of a quorum of the Board of Trustees of the land grant at a regular, special or annual meeting of the Land Grant-Merced.

Leasing of the common lands to non-members of the land grant is only allowed for emergency, critical, vital or community and economic development purposes that directly benefit the health, welfare, safety or socio-economic well-being of the residents and members of the Land Grant-Merced. Leasing to non-members of the land grant for any purpose must be approved by the majority vote of a quorum of the qualified voting members of the land grant at a regular, special or annual meeting of the Land Grant-Merced.

ARTICLE VIII

Planning and Zoning Authority over Common Lands

The Board of Trustees of the Land Grant-Merced shall exercise as necessary it's planning and zoning authority over the common lands of the land grant in order to promote improved long term management of the common lands for the benefit of its members, residents and communities.

Section 1. Comprehensive Management Plan

It is the policy of the Land Grant-Merced that a comprehensive management plan shall be developed before any zoning of the common lands is initiated. The plan shall address all issues which enable the Land Grant-Merced to meet its present and future challenges in protecting the common resources of its members.

Section 2. Zoning Development and Administration

Upon the adoption of the comprehensive management plan, the Land Grant-Merced may elect to develop and adopt zoning regulations or ordinances that enable the Land Grant-Merced to properly and effectively protect, develop and manage its land resources based on its present and long term goals.

ARTICLE IX

Membership

Section 1. Membership Application.

Prospective members of the Land Grant-Merced del Pueblo de _____ must comply, at the minimum, with the § 49-1-1.1 NMSA 1978 definition of "heir".

Section 2. Heir.

A member heir must be a "descendent" of an original grantee of the Land Grant-Merced and must have an interest in the common land of the Land Grant-Merced through inheritance, gift or purchase, as further defined by these Bylaws.

a) The "applicant heir" shall submit a Membership Application/Affidavit of Heirship, a verified Genealogy or other comparable documentation establishing his or her relationship to an original grantee of the Land Grant-Merced, who is identified by name.

b) The "applicant heir" shall submit proof of an interest in the common lands of the Land Grant-Merced, including but not limited to: ownership of patented or fee land within the historic boundaries of the land grant, (option: ownership of real property within the boundaries of the Land Grant-Merced, as those boundaries were confirmed by the Congress of the United States), entitlement to use of profits a prendre, (rights of use of grazing, timber, firewood, rock, sand, gravel, other minerals and surface resources), entitlement to easements of all purposes, water holes, springs, acequias, stock and irrigation tanks, and other tenements or hereditaments.

d) Upon receipt of the above-referenced application and proofs of heirship, the Board of Trustees shall review all documentation and upon finding it sufficient shall accept the heir as a provisional member of the Land Grant-Merced.

e) The provisional member shall be allowed to hold and exercise certain rights and privileges, subject to a final review, acceptance and approval of the application by the Board of Trustees at a future regular, special or annual meeting.

Section 3. Membership Voting.

Some member heirs may also become "qualified voting members" in their application for membership as provided by these Bylaws. A qualified voting member is an heir who has the fall of qualifications prescribed below.

a) *[STATE ANY REQUIREMENTS FOR BECOMING A QUALIFIED VOTING MEMBER HERE & BELOW. MAY INCLUDE BUT IS NOT LIMITED TO ATTENDANCE AT*

CERTAIN PERCENTAGE OF MEETINGS; PAYMENT OF MEMBERSHIP DUES; PARTICIPATION IN COMMUNITY SERVICE PROJECTS; BEING CURRENT ON ALL RENTS, FEES, OR OTHER PRESCRIBED PAYMENTS FOR THE USE OF THE COMMON LANDS.]

b)

c)

Section 4. Membership Non-Voting.

Heirs that are not eligible to become qualified voting members, will remain non-voting members of the Land Grant-Merced, until such a time as they may qualify to become voting members as provided by these Bylaws.

Section 5. Membership Application Approval.

All provisional and permanent applications for membership shall be passed on by the Board of Trustees at separate regular, special or annual meetings. Applications for membership in this Land Grant-Merced will be in a form approved and provided by the Board of Trustees. Membership will not be denied because of the applicant's race, color, creed, national origin or sex.

Section 6. Rights, Privileges and Obligations of Members.

The rights, privileges and obligations of all members of this Land Grant-Merced will be equal, and non-exclusive to those of other members, except for the right to vote in land grant elections.

Section 7. Voting.

All voting in land grant elections shall be conducted in accordance with the requirements set forth in Article X of these Bylaws and in the General Provisions, §§ 49-1-1 to 49-1-22, NMSA 1978.

ARTICLE X

Elections

Section 1. Date.

The election for Board of Trustees shall be held in _____ (odd or even) numbered years on the _____ (first, second, third, fourth, etc) _____ (day of week) in _____ (month) every _____ (two or four) years.

Section 2. Election Proclamation & Notice.

At least two months prior to the election the Board of Trustees shall by resolution issue an Election Proclamation, which shall include the following seven elements and serve as the official notice of the election:

- (8) the date on which the election will be held;
- (9) the purpose for which the election is held;
- (10) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;
- (11) if a question is to be voted upon, the text of that question;
- (12) the location of each polling place in the land grant-merced;
- (13) the hours that each polling place will be open; and
- (14) the date and time of the closing of registration books

The election proclamation and notice shall be given, in Spanish and English, by publication in a newspaper of general circulation within the Land Grant-Merced and by posting of notice in at least 5 public places within the Land Grant-Merced. The Election notice shall be published and posted no more than 45 days and no less than 30 days prior to the election date as designated in the election proclamation.

Section 3. Declaration of Candidacy.

Declarations of Candidacy shall be accepted for a period of _____ (at least 10) days after the Election Proclamation has been published and posted. All declarations must be submitted on the _____ (tenth, eleventh, etc) day following the publication of the Election Proclamation to the Secretary of the Board of Trustees. The Board of Trustees shall establish the exact location and times when declarations are to be submitted. Declarations of Candidacy must be made on the form prescribed below in Section 4. Candidacy Forms. Once the period for declaration of candidacy ends the board of trustees must review all declarations submitted and verify which of those candidates are eligible to be placed on the ballot. Any candidate wishing to withdraw their candidacy must do so on or before _____ (number of days) days prior to the date of the election and through use of the Withdrawal of Candidacy Form as prescribed in Section 4. Candidacy Forms.

Section 4. Candidacy Forms.

The following 3 pages of these Bylaws contain the forms required for Declaration and Withdrawal of Candidacy for the Board of Trustees of the Land Grant-Merced.

MERCED DEL PUEBLO DE _____

DECLARATION OF CANDIDACY

I, _____, being first duly sworn upon my oath do hereby state for my affidavit that:

I, _____, hereby declare that I am a candidate for the office of Trustee for a _____ (two/four) year term to be elected at the regular election of the Merced del Pueblo de _____ to be held on _____ (insert date).

I affirm that I currently reside at _____ (Insert Address including city, state and zip code) and that my County designated voting precinct is # _____ (Insert precinct #)

I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my registration on file with the Merced del Pueblo de _____.

I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.

☐ I affirm that I have not been convicted of a felony.

-OR-

☐ I affirm that I have been convicted of a felony, and that my elective franchise has been restored, and, I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.

I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes receiving telephone notice: _____ or _____.

I affirm that this declaration of candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth degree felony under the laws of New Mexico.

Signature of Candidate

Subscribed and sworn to before me this _____ day of _____, 20____.

My Commission Expires:

Notary Public

Received by the Secretary of the Board of Trustees at _____ (A.M. /P.M.) on the
_____ day of _____, 20____.

Secretary of the Board of Trustees

MERCED DEL PUEBLO DE _____

AFFIDAVIT OF WITHDRAWAL OF CANDIDACY

I, _____, being first duly sworn upon my oath do hereby state for my affidavit that:

I, _____, hereby withdraw as a candidate for the office of Trustee for a two/four year term in the election scheduled for _____ (insert date), and that I hereby irrevocably revoke my Declaration of Candidacy filed with the Land Grant Board of Trustees on _____(insert date).

Signed _____

Subscribed and sworn to before me this _____ day of _____, 2000

Notary Public

My Commission Expires:

Received by the Secretary of the Board of Trustees at _____ (A.M. /P.M.) on the _____ day of _____, 20____.

Signed _____
Secretary of the Board of Trustees

Official Land Grant Seal:

Section 5. Closing of Registration.

Fifteen days prior to the election all registration of new members to the land grant-merced must cease. The registration must remain closed until the Monday following the election in accordance with General Provisions § 49-1-5(C) NMSA 1978. After the close of the registration the Secretary shall prepare the registration books to be used on the day of the election.

Section 6. Ballots.

Ballots must include the names of all eligible candidates as well as any questions to be voted on. Candidates will be elected at large or by district/precinct (choose one) and presented on the ballot accordingly. . All ballots shall be of the same size and weight of paper so that one cannot easily be distinguished from next. The total number of ballots produced shall be equal to total number of qualified voting members.

Section 7. Use of Provisional Ballots.

Provisional ballots shall be prepared every election of the Land Grant-Merced. Provisional ballots shall be used by any voter that shows up to the polls to vote but does not appear in the official Registration Book kept for the election. Provisional ballots shall be placed in an envelope and the envelope shall be signed by the individual casting the vote. The election judge and Board of Trustees shall investigate and determine whether or not the individual has the right to vote in the current election. If an individual provisional voter is determined to be eligible to vote their ballot shall be removed from the envelope, placed with other ballots cast and counted. The envelope shall be discarded. If an individual provisional voter is determined to be ineligible to vote the envelope containing their ballot shall not be open and shall be discarded.

Section 8. Write-in Candidates.

Only candidates that declare their candidacy in accordance with section 3 of this article shall be considered official valid candidates for an election to the board of trustees. There is no process for write-in candidates. Any votes cast for individuals that are not official valid candidates shall be discarded and shall not be counted.

Section 9. Ballot Box.

The ballot box to be used for elections held by Land Grant-Merced shall be of sufficient size to hold the expected number of votes to be cast and it shall be locked or closed in a manner that will not allow for any tampering or removal of ballots until the ballots are to be counted.

Section 10. Election Judge & Clerk.

The board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge who is a spouse,

parent, child, brother or sister of any candidate to be voted for at the election.

Section 11. Conduct of Election.

All elections held by the Land Grant-Merced shall be conducted in the following manner:

1. Opening the polls: The polls shall be opened for voters at the time and location(s) designated in the election proclamation. Election judges, clerks, the Secretary and the President shall arrive at least 15 minutes prior to opening of the polls.

2. Checking in Voters: Voters shall be checked in before they are given a ballot. Voters shall present their name to the clerk so that they may be located in the official registration book. The voter shall sign next to their name in the registration book. Voter shall then be given a ballot. No person shall vote at the election unless duly registered in the books, and no ballot of any unregistered person shall be counted or canvassed. If a voter does not appear in the official registration book they shall be given a provisional ballot in accordance with Article X, Section 7 of these Bylaws.

3. Casting of ballots: Voters shall place their completed ballot the ballot box. No person shall vote at the election unless duly registered in the books, and no ballot of any unregistered person shall be counted or canvassed.

4. Closing of the polls: Polls shall be closed at the time designated in the election proclamation. No voter shall be allowed to vote after the polls have closed.

5. Counting of Votes: The Election Judge and Clerks shall begin counting votes immediately after the polls have been closed. Prior to counting the ballots in the ballot box the clerks shall count the total number of voters that signed the registration book. Any provisional voters whose vote is determined allowable should be added to the total voters that signed the registration. The election judge shall verify the total number of voters that signed in. Next the total number of ballots cast shall to be counted, including eligible provisional ballots. The total number of ballots cast shall be equal to the total number of voters that signed the official registration plus the total number of any eligible provisional voters. The election judge shall verify to total number of voters cast. Upon verification of ballots cast, votes shall be tabulated. The election judge shall verify the tabulation results. An affidavit of election results shall be produced which includes total number of eligible voters checked in, total number of ballots cast, and tabulation results. The election judge and clerk(s) shall verify and sign the affidavit of election results. The election judge shall deliver the affidavit of election, plus all of the ballots counted, and the signed registration book to the board of trustees.

Section 12. Affidavit of Election Results Form.

The following page contains the affidavit of elections results form to be used for tabulation of election results.

AFFIDAVIT OF ELECTION RESULTS FORM

Number of voters verified at polls on election day: _____

Number of qualified provisional voters: _____

Number of early voters: _____

Number of absentee voters: _____

Total number of voters: _____

Number of regular ballots casts at polls on election day: _____

Number of qualified provisional ballots cast: _____

Number of early voter ballots: _____

Number of absentee ballots: _____

Total number of ballots cast: _____

Tabulation of votes:

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Results for any questions being voted on (insert text of question):

For: _____ Against: _____

By signing below, I hereby certify that the above voter count, ballot count and tabulation of election results have been verified and are true and correct.

Election Clerk

Election Clerk

Election Judge

Section 13. Canvassing the Votes.

The election judge(s) and Board of Trustees shall meet not later than seven days following the election and canvass the votes cast. The Board of Trustees shall certify the canvassing of votes in writing using the Canvassing of Votes Certification Form.

Section 14. Canvassing of Votes Certification Form.

The following page contains the Canvassing of Votes Certification Form.

CANVASSING OF VOTES CERTIFICATION FORM

Number of voters verified at polls on election day: _____

Number of qualified provisional voters: _____

Number of early voters: _____

Number of absentee voters: _____

Total number of voters: _____

Number of regular ballots casts at polls on election day: _____

Number of qualified provisional ballots cast: _____

Number of early voter ballots: _____

Number of absentee ballots: _____

Total number of ballots cast: _____

Tabulation of votes:

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Total votes for _____:
(insert candidate's name) _____

Results for any questions being voted on (insert text of question):

For: _____ Against: _____

By signing below, I hereby certify that the above voter count, ballot count and tabulation of election results have been verified and are true and correct.

Trustees: _____

Election Judge

Section 15. Issuance of Certificates of Election.

Upon completion of canvassing the votes and verifying the election results the board of trustees shall issue certificates to the persons receiving the highest number of votes (by precinct/district if necessary) certifying that those individuals have been duly elected. The number of certificates issued shall be equal to the number of board positions up for election.

Section 16. Certificate of Election Form.

The following page contains the Certificate of Election Form to be issued to the persons receiving the highest number of votes.

CERTIFICATE OF ELECTION TO THE BOARD OF TRUSTEES

The Board of Trustees of the Land Grant-Merced del Pueblo de _____
on this _____(insert day) day of _____ (insert month), 20____ (insert year) does
hereby certify that _____(insert name of candidate),
a candidate for the position of member of the Board of Trustees of the Land Grant-Merced del
Pueblo de _____, whose address is
_____,
having received the necessary amount of votes in the election held on _____
(insert date), has been duly elected to the Board of Trustees of the Land Grant-Merced del
Pueblo de _____. The term of office for the position is
for 2/4 (choose one) years and service on the board shall begin on _____
(insert date must be within 7 days of issuing canvassing the votes).

Adopted, Approved and Certified by the Board of Trustees of the Land Grant-Merced del Pueblo
de _____.

By: _____
President

Attest: _____
Secretary

ARTICLE XI

Board of Trustees

Section 1. Management and Powers.

The powers of management and control of the Land Grant-Merced and tracts of land under §§ 49-1-1 to 49-1-22, NMSA 1978 are vested in a Board of Trustees, known as "The Board of Trustees of the Land Grant-Merced del Pueblo de _____". The Board of Trustees has the power to control, care for and manage the Land Grant-Merced and real estate, prescribe the terms and conditions under which the common lands may be used and enjoyed and make all necessary and proper Bylaws, subject to the approval of the membership, and the necessary Rules and Regulations in substantial compliance with all applicable state law.

Section 2. Number of Trustees and Qualifications.

The Board of Trustees shall consist of five members, who are qualified voting members of the Land Grant-Merced and who are not in default of any dues, rent or other payments for the use of the common lands of the Land Grant-Merced. No more than three members shall be residents of the same precinct from within the Land Grant-Merced Boundaries.

Section 3. Terms of Service.

The members of the Board of Trustees shall serve for (Two or Four) year terms. Terms shall be staggered so that at each two-year election cycle there shall only be either two or three board member positions up for election (staggering only applies if term lengths are for 4 years). In the first election where staggering is to occur members of the board of trustees shall draw lots to determine which two out of the five trustees will serve a two year so that subsequent elections can be held every two years.

Section 4. Vacancies.

If a vacancy occurs on the Board of Trustees for any position excluding the Treasurer, the remaining members shall fill the vacancy by appointment made at a regular meeting. The person appointed shall hold office until the next regular election. If the vacancy occurs as a result of the death or resignation of the treasurer, the board shall fill the vacancy by appointing one of the members of the board as treasurer, who shall, before entering into the performance of his duties as treasurer, execute and furnish to the board a good and sufficient surety bond, similar to the bond entered into by his predecessor. The board shall then fill the remaining vacancy as called for in the first sentence of this section.

Section 5. Board Meetings.

The Board of Trustees shall meet at least once every three months at the office of the _____, (or other designated public place). Meeting notice for all meetings of the Board of Trustees shall be posted in Spanish and English in a public place within

the Land-Grant Merced at least ten days prior to the meeting. All meeting notices must include the date, time and location of where the meeting is to take place. Also if no agenda is posted with the notice then information about where an agenda can be obtained must be included in the notice. Special meetings may be held at any time on call of the president, with five days' notice being given to each trustee and to the public in the same manner prescribed above. Emergency meetings may be held with 24 hours advance notice, if possible. Emergency meetings are those in which issues affecting the Land Grant-Merced arise that could not have been anticipated by the Board of Trustees and which if not addressed immediately by the Board will threaten the health, safety or property of Land Grant-Merced members or likely result in substantial financial loss to the Land Grant-Merced.

Section 6. Quorum.

A majority of the Board of Trustees shall constitute a quorum for the transaction of business, and the Land Grant-Merced and its membership shall be bound by the acts of the Board, pursuant to §§ 49-1-1 through 49-1-19 NMSA 1978 and these Bylaws. Quorum requirements can be met by telephone during a properly advertised public meeting under the following circumstances: 1) It is only done in limited circumstances where it is very difficult or impossible for the trustee to attend in person; 2) All trustees participating by telephone can be identified when speaking; 3) All trustees are able to hear each other at the same time, and; 4) all members of the public can hear all trustees when they speak during the meeting.

Section 7. Election of Officers of Trustees.

Within a 14 days of every Land Grant-Merced election the members of Board of Trustees, shall meet and elect among themselves a President, Vice-President, Secretary and Treasurer.

Section 8. Removal of Trustees and Officers.

Any Trustee or Officer of the Land Grant-Merced may be removed from the office with cause, by a vote of not less than a simple majority of the qualified voting members present at any annual meeting, or at any special meeting called for the purpose, provided that a quorum of the qualified voting membership is present. The trustee or officer shall be informed in writing of the charges or reasons against him/her at least ten (10) days before such meeting in person or by counsel, and to present witnesses in his/her behalf at the meeting in which the action is to be taken.

Section 9. Removal for Unauthorized Absences.

A trustee or official who has three consecutive absences from regular meetings without prior notice to the board shall be deemed to have resigned from the board effective upon his/her receipt of written notice of removal due to three consecutive absences as mailed and signed by the President or Vice-President.

Section 10. Salaries & Compensation.

The members Board of Trustees, excluding the Secretary shall be paid a salary of \$_____ (amount not to exceed \$200) per month. The Secretary of the Board of Trustees shall be paid a salary of \$_____ (amount not to exceed \$225) per month. The salaries as fixed shall be in full as compensation for the duties performed by the board or the individual members within the exterior boundaries of the land grant-merced and for attendance at regularly scheduled meetings.

Members of the Board of Trustees shall be authorized Per Diem and mileage pursuant to the Per Diem and Mileage Act [[10-8-1 NMSA 1978](#)].

ARTICLE XI

Duties of Officers

Section 1. Duties of the President.

The President shall preside over all meetings of the Land Grant-Merced and the Board of Trustees, shall call special meetings of the Board of Trustees and perform all acts and duties usually performed by an executive and presiding officer. He shall sign all membership certificates, notes, bonds, mortgages, contracts and other instruments on behalf of the Land Grant-Merced. He shall be an ex-officio member of all standing committees and shall have such powers and shall perform such other duties as may be properly required of him by the Board of Trustees.

Section 2. Duties of the Vice-President.

The Vice-President, in the absence or disability of the President, shall perform the duties of the President. However, in the case of death, resignation or disability of the President, the Board of Trustees shall declare a vacancy in the board of trustees, appoint a successor to fill the unexpired portion of the vacated term, and thereafter re-organize and elect from among themselves the new officers of the Land Grant.

Section 3. Duties of the Secretary.

Unless otherwise directed by the Board of Trustees, the Secretary shall:

- a) keep a complete record of all minutes of meetings, with attachments as reviewed, of the Land Grant-Merced and of the Board of Trustees. Meeting minutes shall be completed within 10 days follow any meeting of the Board of Trustees;
- b) have general charge and supervision of the books and records of the Land Grant-Merced except for the financial books which will be in charge of the treasurer;

- c) keep a proper membership registration or certificate record, showing the name of each member of the Land Grant-Merced and date of issuance, surrender, transfer, termination, cancellation or forfeiture;
- d) prepare mail or notices required by law and by these bylaws;
- e) serve, mail, or deliver all notices required by law and by these bylaws;
- f) attest the President's signature on all membership certificates and other papers pertaining to the Land Grant-Merced;
- g) keep the corporate seal, complete and attest all certificates issued and affix said association seal to all papers requiring seal;
- h) make a full report of all matters and business pertaining to his or her office to the members at the annual meeting, or at such other time or times as the Board of Trustees may require;
- i) be the official custodian of records for any freedom of information or inspection of public records requests;
- j) be the official recipient of all declarations of candidacy pertaining to any elections held by the Land Grant-Merced as called for in Article X of these Bylaws.
- k) prepare official registration books to be use during all Land Grant-Merced elections.

Upon the election of a successor, the Secretary shall turn over all books and other property belonging to the Land Grant-Merced that they may have in their possession.

Section 4. The Treasurer.

The Treasurer shall be covered in the performance of his or her duties by a surety bond in an amount to be determined by the Board of Trustees and which will at the minimum be a sum at least double the amount received by and deposited in the bank by the treasurer . The premium of such bond shall be paid by the Land Grant-Merced. Unless otherwise directed by the Board of Trustees, the treasurer shall:

- a) have general charge and supervision of the financial books and records of the Land Grant-Merced;
- b) make a full report of all matters and business pertaining to his or

her office to the members at the annual meeting, or at such other time or times as the Board of Trustees may require;

- c) collect all assessments and monies due the association and cause to be deposited same on a timely basis in the depository in the manner designated by the Board of Trustees in the Rules and Regulations;
- d) shall give receipts for all monies collected from all sources, which receipts shall be in the form prescribed Article XII Section 6;
- e) only disburse funds by written check drawn upon vouchers;
- f) keep the Land Grant-Merced current on all accounts payable and compliance reports including annual budget and/or financial reporting requirements as prescribed in the Audit Act, 12-6-1 NMSA 1978 and section 6-6-1 NMSA 1978.
- g) make a report on the business transacted by him or her on a monthly basis or as requested.

Upon the election of a successor, the Treasurer shall turn over all books and other property belonging to the Land Grant-Merced that they may have in their possession.

Section 6. Other Employees or Agents.

The Board of Trustees may appoint, in addition to the officers named above, other agents or employees which may be necessary to conduct the business of the Land Grant-Merced. Such agents or employees may be authorized by the Board of Trustees, under its direction and pursuant to its rules and regulations, to provide for the business and general welfare of the members of the Land Grant-Merced. Such agents or employees shall be paid a compensation for the performance of their duties in an amount to be determined by the Board of Trustees.

- a) those employees or agents authorized by the Board of Trustees to collect money due and owing to the Land Grant-Merced shall be bonded in the same manner as is provided in the bonding of the treasurer;
- b) those employees or agents authorized by the Board of Trustees to collect money due and owing to the Land Grant-Merced shall give receipts for the money collected, which receipts shall be the form prescribed by the Board of Trustees.

ARTICLE XII

Meetings of Members

Section 1. Date and Time of Membership Annual Meeting.

The annual membership meeting of the Land Grant-Merced will be held annually in a public place within the Land Grant-Merced, on the _____ (~~first, second, third, fourth~~) _____ (~~days of week~~) in _____ (~~month~~) of each year at a time and place as posted in Spanish and English in public places within the Land-Grant Merced at least ten days prior to the meeting. In the event that such meeting cannot be held on this day, the meeting will be rescheduled and held within thirty (30) days of the date specified above.

Section 2. Meetings to be Public; Annual Report.

All meetings of the Board of Trustees, including the annual membership meeting, shall be held in accordance with the Open Meetings Act, § 10-15-1.1 NMSA 1978 and the General Provisions § 49-1-9 NMSA 1978. Executive sessions shall not be held except in accordance with the Open Meetings Act. All heirs (voting and non-voting members) of the Land-Grant Merced shall have the right to be present at all times when the Board of Trustees is in session and to be heard on all matters in which they may be interested. The members of the public (non-heirs) may attend all meetings and participate in discussions at the invitation or with the approval of the Board of Trustees.

The Board of Trustees shall annually make public a report of all its transactions for that year. The report shall be based upon agendas, minutes, actions taken and include all financial transactions. The report shall be maintained in the office of the Land Grant-Merced and available for public review and inspection.

The Secretary of the Board of Trustees shall reduce to writing, in a book kept for that purpose, minutes of the business transacted at each meeting of the Board.

Section 3. Calling for Special Meetings.

Special meetings of the members of the Land Grant-Merced may be called at any time by the President, or upon resolution of the Board of Trustees upon a written petition to the President of the Board, signed by five (5%) percent of the members. The purpose of every special meeting will be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 4. Quorum.

Fifteen (15%) of the total qualified voting membership of the Land Grant-Merced will constitute a quorum at any annual or special meeting of the membership for the transaction of business. If no quorum is determined, another meeting will be held within thirty (30) days. At that meeting the qualified voting members present will constitute a quorum for the transaction of business. The arrangement for such meeting will be held within thirty (30) days. At that meeting the members present will constitute a quorum for the transaction of business.

Section 5. Meeting Agenda.

The order of business at the meeting of the members, and as far as possible at other meetings, shall be:

1. Call to Order and Proof of Quorum
2. Approval of Agenda
3. Approval of Minutes
4. Old Business
5. New Business
6. Reports of Officers and Committees
7. Comments from Heirs (limited to ____ minutes)
8. Public Comments
9. Announcements
10. Adjournment

ARTICLE XIII

Other

Section 1. Form of Registration or Certificate.

The Board of Trustees will determine the form of membership registration, which may include a certificate signed by the President and his or her signature attested by the Secretary, who shall impress thereon the Seal of the Land Grant-Merced, provided that the form of certificate, in addition to any other matters required by the Board of Trustees to appear therein, shall contain any statements required by the Laws of the State of New Mexico.

Section 2. Membership Book.

As a part of the records of the Land Grant-Merced, there shall be kept a Membership Book, which will contain a list of the members or a list of the certificates of membership which have been issued, noting the number of the certificate, the date thereof, and the name and address of the person to whom issued, and other information as required.

Section 3. Procurement.

Any and all purchases made by the Land Grant-Merced shall be done in accordance with Procurement Code §§13-1-28 through 13-1-119 NMSA 1978.

Section 4. Tort Liability Coverage.

The Land Grant-Merced shall cover every risk for which immunity has been waived under the provisions of the Tort Claims Act § 41-4-1 NMSA 1978 or any liability imposed under § 41-4-4 NMSA 1978 as prescribed in §41-4-20 NMSA 1978.

Section 5. Intergovernmental Agreements.

The Land Grant-Merced may enter into memoranda of understanding, contracts and other agreements with local, state or federal government or a federally recognized Indian nation, tribe or pueblo.

Section 6. Receipts.

All receipts issued by the Board of Trustees and shall, at the minimum: contain the printed or stamped name of the Land Grant-Merced; be sequentially numbered: be bound in a receipt book. The board of trustees shall issue original copy of receipt and maintain a duplicate copy for their records.

ARTICLE XIV

Rules and Regulations

The Board of Trustees of the Merced del Pueblo de _____ are authorized to promulgate all rules and regulations necessary to fulfill the purposes of the Land-Grant Merced, which are in conformity with the Constitution of the State of New Mexico, the Statutes Annotated of New Mexico and the Bylaws of the Land Grant-Merced.

Section 1. Proposed Rules and Regulations.

The Board of Trustees will develop the proposed rules or regulations and distribute the proposals to all members of the Land Grant-Merced before taking any formal action.

Section 2. Comment Period.

The membership of the Land Grant-Merced shall have a minimum of 30 days to review and comment on the proposed rules or regulations before the Board of Trustees can act to modify, amend, adopt or approve same.

Section 3. Emergencies.

In the case of an emergency the Board of Trustees is authorized to make or promulgate emergency rules or regulations which shall take effect immediately. Copies of the emergency rules or regulations shall be distributed to the membership of the land grant which shall have a minimum of 30 days to review and comment on the emergency rules or regulations. At its next meeting, the Board of Trustees shall act to modify, amend, adopt, ratify, rescind or approve same.

ARTICLE XV

Amendments

These Bylaws may be modified, repealed or amended by a vote of the majority of the qualified voting members present at any annual meeting of the Land Grant-Merced, or at any

special meeting called for that purpose, so long as all such amendments are in conformity with consistent with the Constitution of the State of New Mexico, the Statutes Annotated of New Mexico and the Bylaws of the Land Grant-Merced.

.....

We, the undersigned President, Secretary and Trustees of the Board of Trustees for the Merced del Pueblo de _____ existing under the General Provisions, §§ 49-1-1 to 49-1-22, NMSA 1978, and other laws of the State of New Mexico, hereby certify that the above is a true and correct copy of the Bylaws, together with all amendments thereto, which were duly adopted on _____, 20__ by a majority vote of the quorum of qualified voting members of the _____ Land Grant-Merced.

By _____
[name] , President

By _____
[name] , Vice-President

By _____
[name] , Treasurer

By _____
[name] , Trustee

[SEAL]

ATTEST

By _____
[name] , Secretary

SECTION C – OPEN MEETINGS ACT

OPEN MEETINGS ACT OVERVIEW

WHAT IS THE OPEN MEETINGS ACT

The Open Meetings Act, found in Chapter 10-15-1 to 10-15-4 of the New Mexico Statutes Annotated 1978, is also known as the “sunshine law.” The law requires that all public bodies organized under the State of New Mexico conduct all business during open public meetings that have been properly advertised in accordance with the Act. The purpose of the law is to ensure that political sub-divisions, including land grants-mercedes, adopt good open government practices. Below is an outline of the basics regarding compliance with the Open Meetings Act. For more detailed information please see the official compliance guide on the Open Meetings Act, produced by the Attorney General’s Office it can be found online at the Attorney General’s website: <http://www.nmag.gov> also a copy of the 7th edition of compliance guide, issued in June of 2010, is located on the flash drive that accompanies this guidebook under Section C – Open Meetings Act in the AG’s Compliance Guide folder.

QUORUM

Violations of the Open Meetings Act occur when a quorum of the board of trustees (3 or more members) of a land grant-merced board meet outside of properly advertised meeting and do one of the following three things:

1. Formulate public policy
2. Take formal action
3. Discuss public business

It is okay for some or all members of the board of trustees to congregate outside of a public meeting so long as none of the above takes place. Aside from the Open Meetings Act barring illegal meetings of a quorum of trustees, it is also illegal to have rolling quorums. A rolling quorum is where one member of the board of trustees contacts another member to do any of the three above listed actions and then either of those two members contacts any other members of the board to continue the conversation about the same topic. For example, a trustee cannot call another trustee to sway them to vote on an action item a certain way and then later contact another trustee to do the same thing.

The Open Meetings Act applies to sub-committees appointed by the board if the total number of sub committee members equals a quorum (3 trustees or more for land grants-mercedes). If the sub-committee is made up of 2 trustees then the meeting does not have to be advertised or open to the public. All recommendations from a subcommittee must however, be approved by the full board in a properly advertised open public meeting.

Finally, quorum requirements can be met by telephone during a properly advertised public meeting under the following circumstances: 1) It is only done in limited circumstances where it is very difficult or impossible for the trustee to attend in person; 2) The land grant-merced has adopted a section in their by-laws that allows for members to telephone in to meetings; 3) All trustees participating by telephone can be identified when speaking; 4) All trustees are able to hear each other at the same time, and; 5) all members of the public can hear all trustees when they speak during the meeting.

PUBLIC NOTICE

The Open Meetings Act requires that land grants-mercedes give reasonable advanced public notice for meetings. The Act does not set specific advanced notice requirements however the general provisions in Chapter 49-1-9 (NMSA, 1978) do require the following public notice for all land grant-merced meetings.

- 10 days advance notice prior to meeting for all regular meetings of the board of trustees.
- 5 days advance notice prior to all special meetings of the board of trustees.

The General provisions do not speak about advance notice for emergency meetings but the Attorney General's office suggests the following time period for advance notice of an emergency meeting:

- 24 hours advance notice, if possible, prior to an emergency meeting.

The Attorney General's office defines emergency meetings as those in which issues affecting the land grant-merced arise that could not have been anticipated by the board of trustees and which if not addressed immediately by the board will threaten the health, safety or property of the land grant-merced or its members or will likely result in substantial financial loss to the land grant-merced.

All meeting notices (regular, special or emergency) must include the date, time and location of where the meeting is to take place. Also if no agenda is posted with the notice then information about where an agenda can be obtained must be included in the notice. Chapter 49-1-9 of the NMSA, 1978 also requires that all land grant/merced meeting notices be given in both Spanish and English. Sample meeting notices in both Spanish & English have been provided on the flash drive that accompanies this guidebook under Section C – Open Meetings Act in the Sample Open Meetings Act Documents folder.

The Open Meetings Act requires that land grants-mercedes make a determination of the notice will be posted on an annual basis. This, along with the advance notice requirements outlined above, must be adopted in the form of a resolution at the beginning of each year. A sample resolution has been provided on the flash drive that accompanies this guidebook under Section C – Open Meetings Act in the Sample Open Meetings Act Documents folder. Once the resolution is adopted the land grant-merced must follow those notice procedures for the rest of the year. Here the land grant-merced has flexibility as to how they will post the meetings. They can choose to post notices in the newspaper of general circulation for the area or in at least 3 public locations, such as the land grant hall, local post office(s), and any other public location where the general public may congregate. The posting requirements called for in the general provisions only require posting in at least one (1) public place within the land grant however the Office of the Attorney General recommends at least three (3) public postings.

AGENDA

The Open Meetings Act requires that all land grants-mercedes produce an official meeting agenda and make it available to the public at least 24 hours in advance of the meeting except in the cases of an emergency meeting. The agenda does not have to be posted with the meeting notice but it does need to be available to the public upon request. Only items that appear on this agenda can be acted on during the meeting. Additions to the agenda can be made at the start of the meeting but those items can only be discussed and no formal action can be taken until the next meeting where they appear on the 24-hour advance agenda. A sample agenda has been provided on the flash drive that accompanies this guidebook under Section C – Open Meetings Act in the Sample Open Meetings Act Documents folder.

MEETING MINUTES

The board of trustees are required to keep written minutes of all meetings. All meeting minutes must be completed within 10 days of meeting date. Minutes must include all of the following: Trustees present and absent from the meeting; the date, time and location of the meeting; substance of what took place; and any actions or votes taken during the meeting. In order, to make the minutes official they must be approved, disapproved or amended at the next public meeting where a quorum of the board of trustees is present. Approval of the past minutes should always appear as an agenda item for all regular meeting of the board of trustees. All meeting minutes must be kept in the official book of meeting minutes as prescribed in Chapter 49-1-12, subsection C, NMSA 1978.

RECESS AND RECONVENE OF PUBLIC MEETING

A land grant-merced may recess a meeting of the board of trustees, and reconvene at a later date, in the event that a quorum could not be reached or if the length of the meeting results in items on the agenda not being addressed. In order to do this the president of the board must state the date, time and location of when and where the meeting will reconvene. Also, immediately following the recessed meeting, the date, time and location of continuance meeting must be posted outside of the location where the recessed meeting was held. Once a recessed meeting is reconvened only items that appeared on the original agenda from the meeting that was recessed can be acted on.

CLOSING OF PUBLIC MEETING

It may at times be necessary for the board of trustees to close a meeting to the public so that the board may discuss or deliberate certain items. Meetings of the board of trustees can only be closed to the public for the following reasons:

- Licensing – deliberations pertaining to issuance, suspension, renewal or revocation of a license/permit. Section 10-15-1(H)(1), NMSA 1978.
- Limited personnel matters – discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Section 10-15-1(H)(2), NMSA 1978
- Collective Bargaining – meeting for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the board of trustees and the bargaining unit

representing the employees of the land grant and collective bargaining sessions. Section 10-15-1(H)(5) NMSA 1978

- Certain Purchases – the portion of meetings at which a decision concerning purchases in an amount exceeding \$2,500.00 that can be made only from one source and the portion of meetings at which contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. Section 10-15-1(H)(6) NMSA 1978
- Litigation – meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the land grant-merced is or may become a participant. Section 10-15-1(H)(7) NMSA 1978
- Real Property and Water Rights – meetings for the discussion of the purchase acquisition or disposal of real property or water rights by the public body. Section 10-15-1(H)(8) NMSA 1978

Closure of a public meeting is not a requirement for any of the above to take place but is only allowable should such items be under consideration. The closing of a public meeting is only for the purpose of discussion and deliberation and any and all actions resulting from a closed meeting must be done during the portion of the meeting open to the public or an a separate open public meeting.

If a land grant-merced meets any of the above criteria for closing a meeting then there are two ways in which it can be done.

- 1) The board of trustees can call a separately closed meeting apart from a regularly scheduled meeting of the board. If calling for a separately closed meeting, the board of trustees must give notice of the meeting in the same manner as all other land grant meetings, as outlined in Chapter 49-1-9 (NMSA, 1978) and their annual open meetings resolution. The notice must state the date, time and location of the closed meeting as well as the legal authority to close the meeting (from the above list of eligible activities to close a meeting) and the subject to be discussed. The legal authority and subject to be discussed must be listed with reasonable specificity. A sample notice could read as such:

- The Merced del Pueblo de _____ will hold a meeting of the board of trustees on July 20, 2011 at 10:00 am at the Land Grant Hall to discuss the purchase of land, the meeting shall be closed to the public pursuant to NMSA 1978, Section 10-15-1(H)(8). Only items listed in the notice will be discussed during the closed session.
- La Merced del Pueblo de _____ sostendrá una junta de los fideicomisarios el 20 de julio de 2011 en 10:00 de la mañana en la sala de la merced para hablar de la compra de tierra, la reunión estará cerrada al público de acuerdo con 1978 NMSA, la Sección 10-15-1 (H) (8). Sólo hablará de artículos puestos en el aviso durante la sesión cerrada.

Any actions on decisions made must take place at the next properly advertised public meeting. Also at the next properly advertised meeting, following the closed meeting, the president must state “the matters discussed by the board of trustees during the closed meeting on (insert date) were limited to those items contained in the meeting notice.” This statement is to be reflected in the meeting minutes.

- 2) The board of trustees can call for a closed executive session during a regularly advertised meeting. To do this a trustee must make a motion to have a closed executive session. The motion must state the legal authority and subject to be discussed (with reasonable specificity). For example a trustee can state “I make a motion to go into closed executive session of the board of trustees to discuss the acquisition of real property.” The motion must be passed by a roll call vote that must be reflected in the meeting minutes. Only items in the motion may be discussed in close session. Once the closed session is completed the meeting must be re-opened by the president, who will state “the matters that the board of trustees discussed were limited to those contained in the motion to close the meeting.” This statement must be reflected in the meeting minutes.

For more information about closing a public meeting refer to the “Open Meetings Act Compliance Guide” produced by the Attorney General’s office.

PUBLIC PARTICIPATION AT MEETINGS

Although the Open Meetings Act requires that all meeting be open to the general public it does not require that members of the public be entitled to speak, make presentations and/or participate in any discussion that may take place as part of the approved agenda for the meeting. General members of the public wishing to present or speak at a meeting of the board of trustees must get approval from the board and must be recognized by the president of the board prior to making a presentation. Members of the general public that have not been approved to talk and are disruptive to the meeting may be asked to leave.

Chapter 49-1-12 of the NMSA, 1978 does require that the board of trustees allow any heirs “*to be heard on all matters in which they may be interested*” at some point during any and all meetings of the board of trustees. This does not mean that heirs can be disruptive during the meeting, but rather that the board must have a process in place for receiving input from heirs. This can be accomplished by designating a specific portion of the agenda for comments and questions from heirs. The board may set up specifics such as time limits for comments by individual heirs and at what point on the agenda comments from heirs will be taken.

VIOLATIONS

Individual members of the public who believe there has been a violation of the Open Meetings Act must send a letter to the land grant-merced board of trustees citing their violation claim. Once a board of trustees has received a letter of complaint they have 15 days to respond. If there was no violation they must refute the claim in a letter back to the complainant. If there as a violation the board of trustees must redo a public meeting within 15 days and retake any actions taken in the illegal meeting. The land grant-merced must ensure that the redo meeting is properly advertised in accordance with their standard practice for giving proper notice.

Should a Board of Trustees not comply with the Open Meetings Act; the penalties could include criminal prosecution of the trustees resulting in the possible conviction of a misdemeanor and up to a \$500 dollar fine per violation. Violations of the Open Meetings Act are investigated and prosecuted by the Attorney General's Office.

For questions or more information on Open Meetings Compliance contact the Attorney General's Office at (505) 827-6000.

[SAMPLE OPEN MEETINGS RESOLUTION]

LAND GRANT-MERCED DEL PUEBLO DE _____ RESOLUTION # 20____ - _____

A RESOLUTION CONCERNING BOARD OF TRUSTEE MEETINGS AND PUBLIC NOTICE REQUIRED.

WHEREAS, the Board of Trustees of the Land Grant-Merced del Pueblo de _____ met at its regular/special/annual (choose one) meeting at _____ (location) New Mexico, on the _____ (day) of _____ (month) in _____ (year) at _____ (time), as required per law; and

WHEREAS, Section 10-15-1 (B) NMSA 1978 provides that “All meetings of a quorum of members of any board, commission administration adjudicatory body or other policy making body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such board, commission or other policymaking body, are declared to the public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act”; and

WHEREAS, Section 10-15-4 NMSA 1978 provides that “No resolution rule, regulation, ordinance or action of any board, commission, committee or other policy making body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978”; and

WHEREAS, Section 10-15-4 NMSA 1978 provides that “Any person violating any of the provisions of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense”; and,

WHEREAS, Section 10-15-1 (D) requires that “Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or a quorum of the body is in attendance, and any closed meetings shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to such body; and

WHEREAS, Section 49-1-9 NMSA 1978 requires that land grants give at least ten (10) advance public notice of regular meetings and five (5) days advance public notice of special meetings; and

WHEREAS, Section 49-1-9 calls for meetings notices to be in both English and Spanish.

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Land Grant-Merced del Pueblo de _____, New Mexico that:

1. Notice shall be given at least **ten (10) days** in advance of any **regular meeting** of a quorum of the members of the Board of Trustees held for the purpose of discussing public business or taking any formal action within the authority of the Board of Trustees. Notice for all regular meetings shall be given in both Spanish & English and shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda.
2. The regularly scheduled meetings of the Board of Trustees will be held at **6:30 P.M. on the second Monday of each month (amend as necessary)** at the _____ (name location). In the event the regular meeting falls on a legal holiday, the Board of Trustees shall designate an alternate meeting date and/or time to be posted as provided in this resolution.
3. Notice shall be given at least **five (5) days in advance of any special meeting** of a quorum of the members of the Board of Trustees held for the purpose for discussing public business or taking any formal action within the authority of such body. Notice for all special meetings shall be given in both Spanish & English. And shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda
4. The notice requirements of Section 1, 2, and 3 of this resolution are complied with if notice of the date, time, location and agenda or information about how the public may obtain a copy of the agenda of any regular or special meeting is posted **at the _____, at the _____, and at the _____.** **The Secretary of the Board of Trustees** shall maintain a copy of all such notices.
5. Notwithstanding any other provisions of Section 1 through 4 of this resolution, the Board of Trustees may establish such additional notice requirements as may be deemed proper and advisable to comply with the provisions of the Open Meetings Act.
6. If any meeting is closed pursuant to exclusions contained in Section 10-15-1 Subsection H, NMSA 1978, such closed meetings called by the Board of Trustees shall not be held until public notice, appropriate under the circumstance, and in compliance with Section 1 through 4 of this resolution, has been given. In addition, such notice shall state the exclusion or exclusions in Section 10-15-1, Subsection H, NMSA 1978 of the Open Meetings Act, under which such closed meeting is permitted.
7. If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of Board of Trustees taken during the open meeting. The authority for the closure and the subjects to be discussed shall be stated with reasonable specificity in the motion for closure and the votes of each individual member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting.

8. Notwithstanding any other provision of Section 1 through 7 of this resolution, the Board of Trustees of the Land Grant-Merced del Pueblo de _____ may call an **emergency meeting** within **twenty-four hours or, with whatever notice is possible** under the circumstances, a meeting of the Board of Trustees to consider or act on any emergency matter which appears to be a clear and immediate danger to the health, welfare or safety of the inhabitants of the Land Grant-Merced del Pueblo de _____. The Land Grant-Merced del Pueblo de _____ will avoid emergency meetings whenever possible. The notice for all emergency meetings shall be in both Spanish and English and shall if possible include an agenda for the meeting or at least the subject matter of the meeting.
9. A member of the Board of Trustees may participate in a meeting of the public body by means of a conference telephone when it is extremely difficult to attend the meeting, provided the public can hear that member and that member phoning in can hear all participants.
10. The provisions of Section 1 through 9 of this resolution shall also apply to all board, commissions or other bodies appointed by the Board of Trustees.

PASSED, ADOPTED AND APPROVED this _____ day of _____ 2010.

President of the Board of Trustees

Attest:

Secretary of the Board of Trustees

[SAMPLE AGENDA - ENGLISH]

LA MERCED DEL PUEBLO DE _____

REGULAR MEETING

_____ (Insert Date) - _____ (Insert Location)
_____ (Insert Time, include AM/PM)

MEETING AGENDA

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of Agenda**
- 4. Approval of Minutes**
- 5. New Business**
- 6. Old Business**
 - a. Heir Comment (limited to 3 minutes)**
- 7. Adjourn**

[SAMPLE AGENDA - SPANISH]

LA MERCED DEL PUEBLO DE _____

JUNTA REGULAR

_____ (Pone Fecha) - _____ (Pone Lugar)
_____ (Pone Tiempo, incluya de la mañana/de la tarde)

ORDEN DEL DÍA

- 1. Llamar para Pedir**
- 2. Acto de pasar lista**
- 3. Aprobación de Orden del día**
- 4. Aprobación de Minutos**
- 5. Nuevo Negocio**
- 6. Viejo Negocio**
 - a. Comentario de herederos (limitado con 3 minutos)**
- 7. Aplazar**

[SAMPLE NOTICE REGULAR MEETING - ENGLISH]

LA MERCED DEL PUEBLO DE _____

**OFFICIAL PUBLIC NOTICE
OF
THE MEETING OF THE BOARD OF TRUSTEES**

The Board of Trustees of the Merced del Pueblo de _____ shall have its regular scheduled monthly meeting(s) on the _____ (Insert date(s) such as 3rd Saturday of every month, etc). The meeting(s) shall commence at _____ (Insert time) and will be held at _____ (Insert location).

Copies of the advance agenda will be available 24 hours prior to each meeting and can be picked up at _____ (insert location) or by contacting _____ (insert name of secretary/president), the Secretary/President of the Board of Trustees at _____ (insert contact info).

[SAMPLE NOTICE REGULAR MEETING - SPANISH]

LA MERCED DEL PUEBLO DE _____

**ATENCIÓN PÚBLICA de OFFICAL
DE
LA JUNTA DE LOS FIDEICOMISARIOS**

Los Fideicomisarios del Merced del Pueblo de _____ va a tener las juntas regulares en el _____ (pone la fecha, como el 3r sábado de cada mes, etc.). Las juntas comenzará en _____ (pone el tiempo) y será sostenida en _____ (pone el lugar).

Las copias del orden del día de avance estarán disponibles 24 horas antes de cada junta y pueden ser recogidas en _____ (pone lugar) o por ponerse en contacto con _____ (pone el nombre del secretario/presidente), el Secretario/Presidente del Bordo de Fideicomisarios en _____ (pone la información de contacto).

[SAMPLE NOTICE SPECIAL MEETING - ENGLISH]

LA MERCED DEL PUEBLO DE _____

**OFFICIAL PUBLIC NOTICE
OF
A SPECIAL MEETING OF THE BOARD OF TRUSTEES**

The Board of Trustees of the Merced del Pueblo de _____ shall have A special meeting(s) on the _____ (Insert date). The meeting(s) shall commence at _____ (Insert time) and will be held at _____ (Insert location).

Copies of the advance agenda will be available 24 hours prior to the meeting and can be picked up at _____ (insert location) or by contacting _____ (insert name of secretary/president), the Secretary/President of the Board of Trustees at _____ (insert contact info).

[SAMPLE NOTICE SPECIAL MEETING - SPANISH]

LA MERCED DEL PUEBLO DE _____

**ATENCIÓN PÚBLICA de OFFICAL
DE
UNA JUNTA ESPECIAL DE LOS FIDEICOMISARIOS**

Los Fideicomisarios del Merced del Pueblo de _____ va a tener una junta especial en el _____ (pone la fecha). La junta comenzará en _____ (pone el tiempo) y será sostenida en _____ (pone el lugar).

Las copias del orden del día de avance estarán disponibles 24 horas antes de la junta y pueden ser recogidas en _____ (pone lugar) o por ponerse en contacto con _____ (pone el nombre del secretario/presidente), el Secretario/Presidente del Bordo de Fideicomisarios en _____ (pone la información de contacto).

[SAMPLE NOTICE EMERGENCY MEETING - ENGLISH]

LA MERCED DEL PUEBLO DE _____

**OFFICIAL PUBLIC NOTICE
OF
AN EMERGENCY MEETING OF THE BOARD OF TRUSTEES**

The Board of Trustees of the Merced del Pueblo de _____ shall have an emergency meeting(s) on the _____ (Insert date). The meeting(s) shall commence at _____ (Insert time) and will be held at _____ (Insert location).

The purpose of the meeting will be to address _____

_____ (insert emergency purpose).

[SAMPLE NOTICE EMERGENCY MEETING - SPANISH]

LA MERCED DEL PUEBLO DE _____

**ATENCIÓN PÚBLICA de OFFICAL
DE
UNA JUNTA DE EMERGENCIA DE LOS FIDEICOMISARIOS**

Los Fideicomisarios del Merced del Pueblo de _____ va a tener una junta de emergencia en el _____ (pone la fecha). La junta comenzará en _____ (pone el tiempo) y será sostenida en _____ (pone el lugar).

El objetivo de la junta sera _____

_____(pone la razon de la emergencia).

SECTION D – INSPECTION OF PUBLIC RECORDS ACT

INSPECTION OF PUBLIC RECORDS ACT OVERVIEW

THE LAW

The Inspection of Public Records Act (section 14-2-1 et seq, NMSA 1978) mandates that every individual has the right to inspect any public record of the State; this includes the records of those land grants-mercedes that operate as political subdivisions of the State. Below is an overview of the law, for more detailed information please see the official compliance guide on the Inspection of Public Records Act, produced by the Attorney General's Office it can be found online at the Attorney General's website: <http://www.nmag.gov> also a copy is located on the flash drive that accompanies this guidebook under Section D – Inspection of Public Records Act in the AG's Compliance Guide folder.

EXCEPTIONS

There are some exclusions to the law which are not open for public inspection. The exclusions that apply to land grants-mercedes are as follows:

- Medical Records – Should the land grant-merced have copies of any medical records in the files for members of the board of trustees or employees.
- Letters of Reference – on file given by the land grant-merced for any individual associated with the land grant-merced.
- Matters of opinion in personnel file – should a land grant-merced have employees they are not required to disclose any notes in the file that state opinions about individual employees performance, etc.
- Attorney client privileged information – letters or memos on file between the land grant-merced and their attorney regarding past or pending litigation.
- Tactical Response Plans – Should a land grant-merced ever develop response plans against acts of terrorism
- As otherwise provided by the law – If a law specifically excludes the need to share information from the public. For example, if the general provisions of Chapter 49 of the NMSA 1978 section 1 stated that land grants-mercedes did not have to provide the public information about their membership. At this time there are no specific exclusions from the inspection of public records found in the general provisions 49-1-1 NMSA 1978.

CUSTODIAN OF PUBLIC RECORDS

As a public body land grants-mercedes that are political subdivisions of the State must have a custodian of public records that is in charge of maintaining and storing official records and responding to inspection of public record requests. Typically the custodian would be the secretary or the president of the board of trustees. Once a custodian is designated they must post in a conspicuous place at the administrative office of the land grant-merced a notice describing: (1) the right of a person to inspect the land grant-merced's records; the procedures for requesting inspection of the land grant-merced records; procedures for requesting copies of public records;

reasonable fees for copying public records; and the responsibility of the land grant-merced to make available public records for inspection. The posted procedures must include the name and contact information of the land grant's custodian of public records. A model notice of procedures for the inspections of public records can be found in appendix III of the Attorney General's Compliance Guide located on the flash drive that accompanies this guidebook.

REQUESTS FOR INSPECTION OF RECORDS

Any notice to inspect the public records of the land grant-merced made by a member of the public must be oral or written and must include the name of the person requesting the information, their address, their telephone number and the information being requested. Once a land grant-merced has received a request to inspect their records they must respond immediately or as soon as possible within 15 days of the request. Compliance with the Act requires the custodian to compile the requested records and notify the requester of the time and location for when and where those records can be inspected. If the land grant-merced cannot comply with the request within 3 days of the request being received they must send a letter to the requester indicating when the records will be available for inspection, it can be no later than 15 days of the original request date (A sample 3-day letter can be found in appendix II of the Attorney General's Compliance Guide located on the flash drive that accompanies this guidebook). The custodian must be sure and delete anything required by law to be removed from the public record such as individual social security numbers and those items excluded above.

If an individual requests records that are not held by the land grant-merced, then the custodian of records must immediately forward the request to the proper custodian of records for the entity that does have the records (if known). They must also notify the requester in writing that the land grant-merced does not maintain the records requested and inform them that their request has (if possible) been forwarded to the proper entity. They must include name and contact info of correct custodian of records (if known). If the land grant does not know what entity has the records or who the custodian of records is they must inform the requester that they attempted to determine who might have the record but could not and therefore their request has not been forwarded and anyone. (A sample letter can be found in appendix II of the Attorney General's Compliance Guide located on the flash drive that accompanies this guidebook).

If an individual requests a copy of the records inspected the land grant-merced must provide them with a copy. The land grant-merced may charge a reasonable fee, of up to \$1.00 per page for pages 11 x 17 and smaller, to provide copies of the public record to a requester. This means that they cannot charge an excessive amount so as to discourage requests, but rather simply enough to cover the cost of the paper and the copy expense.

Should the request be excessively burdensome or a very broad request for information then the land grant-merced can be granted more than 15 days to comply with the request but they must still comply.

DENIAL OF REQUESTS

If a request for information is not met within 15 days than it is considered a denial of access to the records. If the denial is intentional because the land grant-merced believes the records are protected from public inspection then the board of trustees must send a letter to the requester that

describes the records sought, provides the name(s) and job title(s) of the person(s) responsible for the denial and the reason for why the request is being denied. The letter must be delivered within the 15 calendar days of the date the initial request was made. (A sample denial letter can be found in appendix II of the Attorney General's Compliance Guide located on the flash drive that accompanies this guidebook).

If there are no records or a denial letter produced within 15 days of a request for public records then the land grant-merced is subject to enforcement of the Inspection of Public Records Act through the courts. The requester may seek damages from the land grant-merced, which could total up to \$100 a day from the date of non-compliance. The funds would be paid from the land grant-merced's general fund. The Attorney General and District Attorneys are charged with enforcing the Act.

If a board of trustees has questions or needs help in determining exclusions to the Act please contact the Attorney General's Office at (505) 827-6000.

**[SAMPLE - INSPECTION OF PUBLIC RECORDS NOTICE
TO BE POSTED IN A PUBLIC LOCATION WITHIN THE
LAND GRANT-MERCED]**

NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

By law, under the Inspection of Public Records Act, every person has the right to inspect public records of the **Land Grant-Merced del Pueblo de** _____. The Act also makes compliance with requests to inspect public records an integral part of the routine duties of the officers and employees of the **Land Grant-Merced del Pueblo de** _____.

Procedures for Requesting Inspection. Requests to inspect public records should be submitted to the records custodian, located at (address, telephone number, fax number and e-mail address of record custodian).

A person desiring to inspect public records may submit a request to the records custodian orally or in writing. However, the procedures and penalties prescribed by the Act apply only to written requests. A written request must contain the name, address and telephone number of the person making the request. Written requests may be submitted in person or sent via US mail, email or facsimile. The request must describe the records sought in sufficient detail to enable the records custodian to identify and locate the requested records.

The records custodian must permit inspection immediately or as soon as practicable, but no later than 15 calendar days after the records custodian receives the inspection request. If inspection is not permitted within three business days, the person making the request will receive a written response explaining when the records will be available for inspection or when the public body will respond to the request. If any of the records sought are not available for public inspection, the person making the request is entitled to a written response from the records custodian explaining the reasons inspection has been denied. The written denial shall be delivered or mailed within 15 calendar days after the records custodian received the request for inspection.

Procedures for Requesting Copies and Fees. If a person requesting inspection would like a copy of a public record, a reasonable fee may be charged. The fee for documents eleven inches by 17 inches or smaller is (____) per page. The fee for larger documents is (____) per page. For records other than documents, the reasonable fee is (____). The records custodian may request that applicable fees for copying public records be paid in advance, before the copies are made. A receipt indicating that the fees have been paid for making copies of public records will be provided upon request to the person requesting the copies.

[SAMPLE – THREE DAY LETTER]

(Used if the public body cannot permit inspection within three business days after receiving a written request to inspect.)

[DATE]

[REQUESTER’S NAME]
[ADDRESS]

Re: Request to Inspect Public Records

Dear [REQUESTER’S NAME]:

On [DATE], we received your request to inspect certain records. We need additional time to respond, until [DATE].

Sincerely,

[SIGNATURE]
Records Custodian [or “For Records Custodian”]

[SAMPLE – WRONG CUSTODIAN LETTER]

(Used when a request is not made to the custodian with possession of or responsibility for the records requested.)

[DATE]

[REQUESTER'S NAME]

[ADDRESS]

Re: Request to Inspect Public Records

Dear [REQUESTER'S NAME]:

On [DATE], we received your request to inspect certain records. We do not have custody or control of the records you request because this land grant-merced is not responsible for maintaining those records.

The records may be maintained by [NAME OF AGENCY AND ADDRESS IF KNOWN]. We are forwarding your request to that agency's records custodian for response. To expedite your request, it would be advisable for you to write an additional letter requesting the records to the proper custodian at your earliest convenience.

Sincerely,

[SIGNATURE]

Records Custodian [or "For Records Custodian"]

[SAMPLE – EXCESSIVELY BURDENSOME LETTER]

(Used for excessively burdensome or broad requests and sent within 15 calendar days of receipt of an inspection request.)

[DATE]

[REQUESTER'S NAME]
[ADDRESS]

Re: Request to Inspect Public Records

Dear [REQUESTER'S NAME]:

On [DATE], we received your request to inspect certain records. We believe that your request is excessively burdensome or broad and we need additional time to respond, until [DATE].

Sincerely,

[SIGNATURE]
Records Custodian [or "For Records Custodian"]

[SAMPLE – DENIAL LETTER]

(Used when a request to inspect is denied. Sent within 15 calendar days after receipt of a written request.)

[DATE]

[REQUESTER'S NAME]

[ADDRESS]

Re: Request to Inspect Public Records

Dear [REQUESTER'S NAME]:

On [DATE], we received your request to review the following records:

[DESCRIPTION OF RECORDS SOUGHT]

We cannot permit inspection of these records because they are excepted from disclosure for the reason(s) described below.

_____ The records requested are medical records protected under Section 14-2-1(A)(1) of the Inspection of Public Records Act.

_____ The records requested are letters of reference concerning employment, licensing or permits protected under Section 14-2-1(A)(2) of the Inspection of Public Records Act.

_____ The records requested are letters or memoranda that are matters of opinion in personnel files or students' files protected under Section 14-2-1(A)(3) of the Inspection of Public Records Act.

_____ The records requested are deemed confidential under the Confidential Materials Act.

_____ The records requested are confidential law enforcement records protected under Section 14-2-1(A) (4) of the Inspection of Public Records Act.

_____ The records requested are [DESCRIBE SPECIFIC LEGAL BASIS FOR NONDISCLOSURE]

Sincerely,

[SIGNATURE]

Records Custodian [or "For Records Custodian"]

Additional person(s) responsible for this denial: [LIST NAMES AND TITLES OR POSITIONS OF EACH PERSON RESPONSIBLE FOR THE DENIAL]

SECTION E - BUDGETS

GUIDELINES FOR DEVELOPING BUDGETS

WHAT ARE BUDGETS

A budget is plan for how a land grant-merced will spend and receive income over the period of a year. Budgets require land grants-mercedes to categorize their income by funding source and expenses by type. State law (§ 6-6-2 NMSA, 1978) requires the submittal of an annual budget to the Department of Finance and Administration Local Government Division (DFA-LGD) by all political subdivisions of the State, including land grants-mercedes, that have annual revenues of \$10,000.00 or greater. Although, land grants-mercedes with annual revenues of less than \$10,000 are not require to submit a budget to DFA-LGD it is a good idea to keep budget that follows DFA-LGD requirements as practice in the event revenues are ever above the limit or a land grant-merced receives money from the State. If a land grant-merced is awarded state money such as legislative capital outlay or a grant from a state agency they will most likely be required to submit a budget to DFA-LGD prior to receiving the funds. Preparation and utilization of an annual budget is a sound financial management practice.

Land grants-mercedes with annual revenues of less than \$10,000 must pass a resolution certify their annual revenues are less than \$10,000 (A sample resolution has been provided in CD that accompanies this guidebook in the sections covering both budgets and financial reports and audits). The land grant-merced must then submit a copy of the resolution to both DFA-LGD Budget and Finance Bureau and to the Office of the State Auditor. DFA-LGD Budget and Finance Bureau also requires that the land grant submit a copy of their July bank statement showing their beginning fiscal year balance(s).

The DFA-LGD Budget & Finance Bureau reviews, approves and monitors all budgets submitted. Once a budget is approved, the law requires that land grants-mercedes operate within those budgets. It is the responsibility of the board of trustees to ensure that throughout the year money is expended in accordance with the approved budget. Any increases or transfers of funds from one budget item to another must be done through Budget Adjustment Requests (BARs) that are approved by the board of trustees and DFA-LGD. All Budgets and adjustments must be adopted by resolution and done so in an open public meeting that is in compliance with the Open Meetings Act. A sample budget resolution can be found on the flashdrive that accompanies this guidebook under Section E – Budgets in the Sample Budget Documents folder.

For more information on the Open Meetings Act please refer to Section C of this guidebook.

Budgets can be used as financial control, management and planning devices. The budget process itself can be broken down into the following four (4) stages: preparation; approval; execution; and review. The preparation stage involves forecasting income and expenses, cost analysis, capital improvement planning, servicing debts, funding personnel and assessing financial conditions and needs. The approval stage involves reviewing the information developed in the preparation stage of the budget followed by approval of an annual budget by both the board of trustees and DFA-LGD Budget and Finance Bureau. The execution stage involves the management of all the financial transactions that occur throughout the year, including: accounting, administering income and expenses, purchasing and managing cash and investments.

The review stage involves the financial review/audit process. More information about the financial review and reporting requirements can be found in Section F of this guidebook.

If at anytime a land grant-merced needs assistance or has additional questions not covered below please contact DFA-LGD Financial Management Bureau at 827-8051 or visit them on the web at <http://nmdfa.state.nm.us/>.

HOW ARE BUDGETS PREPARED?

As the law requires, DFA-LGD has developed the rules and regulations by which budgets are to be submitted for approval. In doing so, DFA-LGD has created a timeline for when budgets are due as well sample budget forms for local governments to use in preparing their annual budgets. DFA-LGD reviews and approves budgets, as well as assists with budget preparation if necessary. The following is a guide for how a land grant-merced can go about completing the budget process. Included are tips and instructions for filling out the budget forms required by DFA-LGD. If at any time a land grant has a question regarding budget preparation they should contact the DFA-LGD Financial Management Bureau at 827-8051.

Budget Process Timeline

The following is the simplified timeline for land grant-merced budget preparation and should be used as guide. Outlined in the timeline are the specific tasks related to budget preparation, the suggested dates for accomplishing tasks as well as absolute deadlines, and the party responsible for each task. The responsible party for tasks that must be accomplished by the land grant-merced are only suggestions. Each land grant-merced must determine who the is most appropriate committee or individual that should complete each task in accordance with their by-laws.

Recommended Budget Calendar		
Task	Timing	Responsibility
1. Start projecting next year's income and expenses by using current and past year's financial transaction history.	February	Treasurer/Board of Trustees/Budget Sub-Committee
2. Prepare proposed budget based on projected income and expenses	March	Treasurer/Board of Trustees/Budget Sub-Committee
3. Hold public workshops for Board of Trustees and heirs to give input regarding the proposed budget.	April	Board of Trustees
4 Finalize budget and submit to governing body for review. Estimate ending cash balance as of June 30 and reflect on recap of budget.	Early May	Treasurer/Board of Trustees/Budget Sub-Committee
5. Review recommended budget and approve through adoption of budget resolution.	May	Board of Trustees

Recommended Budget Calendar		
Task	Timing	Responsibility
6. Submit preliminary budget forms and resolution to DFA/LGD for review and approval	By June 1	Treasurer/President
7. Close out books for fiscal year	June 30	Treasurer/President/Board of Trustees
8. Start of new fiscal year	July 1	Board of Trustees
9. Preliminary Budget approval granted	By July 1	DFA/LGD
10. Hold final budget hearing, submit final adjustments and year end financial reports as of June 30 to DFA/LGD	By July 31	Board of Trustees/Treasurer
11. Load budget into accounting system (if using system such as QuickBooks	Foy July processing	Treasurer
12. Review and certify budget	By 1 st Monday in September	DFA/LGD
13. Load final budget adjustments into accounting system	September	Treasurer
14. Preparation and Submission of quarterly and year end financial reports	Due within 30 days after the end of the months of September, December, March, June	Treasurer/President/Board of Trustees
15. Preparation, submission and approval of Budget Adjustment Requests	As necessary through out the year (no more often then quarterly). Final Budget Adjustment Request for previous fiscal year due by July 31 st .	Treasurer/Board of Trustees- Preparation & Approval DFA/LGD – Approval

Budget Preparation

STEP 1 – Understanding Current and Past Year's Revenues & Expenditures

In order to prepare a budget a land grant-merced must have an understanding of their current and past year's revenues and expenditures so they may project their earning and spending patterns into the next fiscal year. This can be done in several ways. If the land grant-merced has an accounting system they can simply run a statement of revenues and expenditures for the past fiscal year and year-to-date. If the land grant-merced has no accounting system they can either look at the treasurer's reports from the past year to the present, depending on the specificity of the reports, or they can simply look at their check register and go through all deposits and checks cut during the last year. If the check register is not kept up regularly then the land grant-merced can look at their monthly bank statements.

As an example, last fiscal year a typical land grant-merced may have earned a total of \$11,000 dollars throughout the year from membership dues, grazing fees, hall rental and leases, etc., and then they spent those earnings on various operating costs. These costs could include, for example, \$500 for electric, \$500 for propane, \$200 for supplies, \$2,500 for property taxes, \$400 for professional services such as accounting or legal assistance, \$300 on insurance premiums, and \$300 for mileage reimbursement to trustees for official business related travel. This means that last year the land grant brought in \$11,000 in income and spent \$4,700 on expenses. DFA-LGD requires that the income and expenses be broken up into categories as in the following example.

EXAMPLE:

	<u>Last Fiscal Year</u>	<u>This Fiscal Year</u>		
BEGINNING CASH	\$ 4,500			\$6,300
REVENUES		<u>Actual YTD + Projection (estimated)</u>		
Membership Due	\$3,000	\$3,000	+ 0 =	3,000
Grazing Fees	5,000	4,500	800	5,300
Hall Rentals & Leases	2,500	1,500	2,200	3,700
Misc.	<u>500</u>	<u>250</u>	<u>250</u>	<u>500</u>
TOTAL REVENUE	\$11,000	\$9,250	+ \$3,250 =	\$12,500
EXPENDITURES		<u>Actual YTD</u>	<u>Projected Expense</u>	
Electric	\$ 500	\$ 400	533	
Propane	500	550	550	
Supplies	200	150	200	
Property Taxes	2,500	2,625	2,625	
Professional Services	400	200	420	
Insurance Premiums	300	315	315	
Mileage Reimbursement	<u>300</u>	<u>200</u>	<u>350</u>	
TOTAL EXPEND	\$4,700	\$4,440	\$ 4,993	
ENDING CASH	\$ 6,300			\$13,807

STEP 2 – Determining Year-End Cash Balance

Once a land grant-merced has determined their prior fiscal year income and expenses, they can begin to make budget estimates for the coming year. In this step, the land grant-merced must estimate what their cash balance will be as of June 30th (the fiscal year end). In the example above, if we assume that the land grant started the year off with \$4,500 in the bank, then they would have ended their fiscal year with a cash balance of \$6,300 because they earned \$11,000 and spent \$4,700. Since land grants-mercedes begin preparing their budgets in April they have already earned and spent money for 9 months out of the fiscal year. They can estimate their total year-end revenues and expenditures in a variety of ways. First off they can estimate total revenues or expenditures within a specific line item based on past experience. For example if the land grant-merced rents the land grant hall an average of 20 times per year and so far they have rented it 15 times it is safe to assume they will rent it an additional 5 times before the year is out. Also they may already have the hall reserved for future dates but have not collected the revenue yet. This planned future revenue can be included in the projected revenue, as would be the case

with any potential revenue or expenditure that the board of trustees believes will most likely take place before the end of the fiscal year.

Another way to project revenues and expenditures is by annualizing their year-to-date (YTD) revenues and expenditures. This is done by taking the total revenues or expenditures, per line item, and dividing it by the total number of months for which revenues or expenditures have been recognized within that line item (for example 9 months). That number is then multiplied by 12 (number of months in a year) to give you an estimated year-end total revenue or expenditure for that line item. Line item revenues like membership dues, one-time income items such as a donation or grant and line item expenditures like insurance premiums or income taxes, that have already been paid in full within the 9 month year-to date period do not need to be annualized. Below is the formula and an example for annualizing year-to-date expenses:

Formula-

$$\text{YTD expense} / \text{total number of YTD months} = \text{per month expense}$$

$$\text{Per month expense} \times 12 (\text{number of months per year}) = \text{total expense per year}$$

Example- Suppose after 9 months your electric bill has cost a total of \$400. The total year-end expense would be calculated as follows:

$$400/9 = 44.44$$

$$44.44 \times 12 = \$533$$

Once all year-end revenue and expenditure projections for each budget line item are complete the land grant-merced can determine what their projected year-end cash balance will be. This is done by taking the beginning cash balance as of July 1 of the current fiscal year and adding the total amount of projected revenues through the end of the current fiscal year (June 30). This number is then subtracted by the total amount of projected expenditures through the end of the current fiscal year (June 30). The result is the projected cash balance for the end of the fiscal year. This balance is then used to as the starting point for the next fiscal year budget.

Formula -

$$\begin{array}{ccccccccc} \text{beginning} & + & \text{projected} & - & \text{projected} & = & \text{ending cash} \\ \text{cash balance} & & \text{revenues} & & \text{expenditures} & & \text{balance} \end{array}$$

[budget form tip - Once a land grant-merced has determined their estimated cash balance for June 30th, they will enter that amount as the un-audited beginning cash balance for July 1 on the DFA-LGD Budget Recapitulation form (column H).]

STEP 3 – Budget Forecasting

Next the land grant-merced must begin to determine their estimated revenues for the coming year. This is based on past revenues taking into account any potential increases in fees charged

by the land grant as well as any potential new revenues from sources not included in the current year. Revenues need to be categorized by type according to their source, such as membership fees, lease payments, grazing permits, hall rental etc. These different revenue types are all line items within the budget and should be reported separately and not totaled as one line item. **[budget form tip** - If a land grant has several funds these revenue totals must be transferred onto the DFA-LGD Budget Recapitulation form (column J) of the appropriate fund.]

A fund is an account classification that reflects revenue and expenditure transactions for a specific purpose or objective. The number of funds an entity operates is contingent upon the type of financial transactions associated with their operation as well as how they are required to account for those transactions. Funds for an organization are typically listed in their chart of accounts. A chart of accounts classifies funds by type in accordance with generally accepted accounting practices (GAAP). Although a fund is an account classification it does not require an entity to maintain a different bank account for every fund in their chart of accounts. Many small governmental entities such as land grants-mercedes utilize only one bank account, unless a specific funding source such as a federal grant requires the use of a separate account. At this time most land grants-mercedes do not require the use of multiple funds and typically do not currently have the need for a chart of accounts. However, DFA-LGD can provide assistance in developing a standard chart of accounts that land grants-mercedes may utilize if it becomes necessary to do so.

For now most land grants-mercedes will only need to utilize a general operating fund, often referred to simply as the general fund. The general fund accounts for all financial resources, except those required to be accounted for in another fund. Land grants-mercedes may also establish a capital projects fund, a debt service fund and an enterprise fund as necessary. A land grant-merced would be required to use a capital fund to account for any money received for and spend on capital improvements such as the construction or renovation of a community building, community infrastructure or large equipment and vehicle purchases. This would include capital outlay money received from a State legislative appropriation or from a federal grant program such as CDBG. A debt service fund would be required if a land grant-merced acquired a loan. This fund would account for the accumulation of resources for the payment of the principal and interest on a long-term debt. An enterprise (utility) fund would be required if a land grant-merced operates a public utility such as a water or wastewater treatment system that generates revenues from user fees that are reinvested into the operation and maintenance of the system. **[budget from tip** - Any funds utilized by a land grant-merced need to be recorded on the DFA-LGD Budget Recapitulation form (column F).]

After all budget revenues have been projected and recorded, the same process must take place for all projected expenditures (expenses). Expenditures are projected based on current and past expenses and a land grant must try and determine what future increases based on price changes may occur. In general, an estimated increase between 5 to 10 % in the cost of goods and services per year should reasonably account for any annual rises in inflation. Like revenues expenses must be categorized by type into individual line items, such as utilities, rent, supplies, insurance, professional services, taxes etc. Once categorized, they should be totaled. **[budget form tip** - If a land grant has several funds these expenditure totals must be transferred onto the DFA-LGD Budget Recapitulation form (column L) of the appropriate fund.]

STEP 4 – Filling out Budget Forms

As mentioned previously, DFA-LGD has created sample budget forms for special district government entities such as land grants-mercedes to use in preparing their annual budgets. Copies of revised budget forms specifically tailored for use by land grant-mercedes have been provided on the flashdrive that accompanies this guidebook under Section E – Budgets in the Sample Budget Documents folder. These forms include samples of possible Revenue and Expenditures. The necessary information includes: the name of land grant, and the fiscal year for which the budget request is being made.

Revenues Transfers and Expenditures Form– General Fund

The Revenues, Transfers and Expenditures form is used to record a land grant-merced's projected income and expenses divided into individual line items. DFA-LGD requests that all revenue and expenditures be listed, so if there are items that are not listed in the sample form, a land grant can alter the form to reflect the correct budget items.

Transfers are used to move money from one fund to another; transfers are only applicable to land grants-mercedes with more than one fund. If a transfer is required it should be listed in between the revenue and expenditure section of the Revenues, Transfers and Expenditures form as well as included on the Budget Recapitulation form. For example, if a land grant-merced has a capital fund that contains a legislative appropriation for construction of an administrative complex and they want to use some of their general (operating) fund monies generated throughout the year to put towards the project, they show a transfer from their general fund into the capital fund on both the Revenues, Transfers and Expenditures form and the Budget Recapitulation form (column K). Transfers out of a fund need to be entered in column K of the Budget Recap page as a negative number, whereas transfer in are positive numbers. Negative numbers are entered by placing a minus (-) in front of the figure, on the spreadsheet form the negative number will be shown as a figure in parenthesis (). Each transfer out must have a transfer in to another fund to balance out the form. So in the example used, a transfer of \$400 dollars out of the general fund would require a transfer of \$400 into another fund, in this case the capital fund.

Budget Recapitulation Form

The DFA-LGD Budget Recapitulation form reflects all Revenues, Transfers and Expenditures, as well as un-audited beginning cash balances for all funds as of July 1 and the estimated (projected) ending cash balance of the budgeted fiscal year. This form contains a section at the top for property taxes collected that does not apply to land grants-mercedes. This portion of the form can be ignored.

On this form The estimated (projected) ending cash balance (column M) for each fund number identified (column G) is determined by adding the un-audited beginning cash balance as of July 1 (column H) to the un-audited investment balances as of July 1 (column I) plus the budgeted revenues (column J), plus any budgeted transfers in or minus any budgeted transfers out (column K), minus the budgeted expenditures (column I).

Also included on the form is the local reserve requirements unavailable for budgeting column (N), which by state law does not apply to land grants-mercedes but can be utilized should a land

grant-merced, either by rule, practice or as called for in its bylaws be required to keep a cash reserve. A budgeted cash reserve ensures that a land grant-merced has extra cash budgeted in the event of an emergency. A good rule for establishing a cash reserve is to budget at least 5% of the total projected budgeted revenues in reserve. If a land grant-merced does not include a budgeted reserve then the estimated ending cash balance (column M) and the adjusted ending cash balance (column O) should be equal. If a land grant-merced chooses to budget a reserve then the adjusted ending cash balance is equal to the estimated ending cash balance minus the budgeted reserve.

Investments (reported in column I) include balances and earnings on Certificates of Deposit (CD's), stocks, bonds or real estate. It is important to note that some funding sources such as certain Federal Grants and State appropriations for capital improvements cannot be invested or deposited in interest bearing accounts for the purpose of drawing additional income through the interest earnings.

Capital Project Form CP-1

If a land grant-merced has received any funding for capital projects they are required to reflect all budget activity in a separate capital project fund. A Capital Project budget form must be completed and submitted to the Department. The form is similar to the one used for revenues, transfers and expenditure in the general fund. The necessary information includes: name of land grant-merced, and the fiscal year for which the budget request is being made. DFA-LGD requests that all revenue and expenditures be listed. If a land grant-merced encounters revenue or expenditure line items that are not contained on the DFA-LGD budget document, they consult with their respective DFA budget analyst in order make the proper alterations to the form. If a Capital Project Fund exists, a land grant must reflect revenues, expenditures and total transfers on the DFA-LGD Budget Recapitulation form. This form is used for both state and federal money for any capital project such as construction or renovation of a community facility or of community infrastructure. All funds whether State or Federal can be tracked in one fund and only one form is necessary provided each individual project is listed separately. Revenue sources can include CDBG, USDA, EDA or any other Federal funds as well as State Legislative Appropriations and any other state grant programs. Expenditures must be identified by type and this can include but is not limited to professional services, such as architecture or engineering work, as well as legal fees associated with right of way acquisition etc., actual construction costs, and operating costs.

Debt Service Fund Form DS-3

If a land grant-merced acquires a loan from either a private lender or as part of a state or federal funding program, they are required to budget and track any transactions related to the loan in a Debt Service Fund. They must also complete the Debt Service Fund form as a part of their annual budget submitted to the DFA-LGD. The necessary information on the form includes: name of land grant-merced, and the fiscal year for which the budget request is being made. DFA-LGD requests that all revenue and expenditures be reflected on this document. If a land grant-merced encounters revenue or expenditure line items that are not contained on the DFA-LGD budget document, they consult with their respective DFA budget analyst in order make the proper alterations to the form. If a transfer exists in or out of this fund, list this item between the revenue and expenditure section. If a Debt Service Fund exists, a land grant-merced must reflect revenues, expenditures and total transfers on the DFA-LGD Budget Recapitulation form. Data

to be captured on this form includes revenues dedicated to the payment of the loan, any transfers from fund to fund for the loan and the money spent on payment of principal, interest and any other fees associated with the loan. The revenue section should detail what income received by the land grant-merced is to be dedicated to the repayment of the loan. The transfer section records details about any transfer in or out of a fund and the expenditure section records information about actual payments being made.

Enterprise (Utility) Funds

If a land grant-merced operates a public utility such as water or a wastewater treatment system, all budget activity related to this operation must be reflected in a separate enterprise (utility) fund. An Enterprise Fund budget form must be completed and submitted to DFA-LGD. This form has not been supplied in the appendix, if your land grant-merced has a need for use of this form please contact you DFA-LGD Analyst. . The necessary information includes: name of land grant-merced, and the fiscal year for which the budget request is being made. DFA-LGD requests that all revenue and expenditures be listed, so if there are items that are not listed in the sample form, a land grant-merced can alter the form to reflect the correct budget items. If a transfer exists in or out of this fund, list this item between the revenue and expenditure section. If an Enterprise Fund exists, a land grant must reflect revenues, expenditures and total transfers on the DFA-LGD Budget Recapitulation form. Data captured on this form includes any assessment/service fees associated with providing the utility service, any donations received for the system or any proceeds earned from the sale of fixed assets derived from the system, such as an old water tank. Transfers in and out of this fund are recorded in the same manner as the other similar forms. Expenditures require detailed information about expenses based on their individual line items for costs associated with running a public utility. These can include supplies, contracted services, testing fees, property purchases, and salary information like wages, employee benefits, etc if the system should require an employee be hired to run it.

Supplemental Schedules: Loan, Insurance, Salary

Loan Schedule

If a land grant has identified a loan within their budget they are also required to submit a Schedule of Loans Form. The purpose of this form is to provide more detailed information about any active loans that a land grant might have. This includes both loans from private financial institutions such as a bank or loans from public bodies such as the United State Department of Agriculture (USDA) or the New Mexico Finance Authority (NMFA).

The various items required on this form include the following:

- Column A. The identification (purpose) of loans currently in the budget;
- Column B. The date of when the loan was made;
- Column C. The original amount of the loan;
- Column D. The amount of principal that has been retired;
- Column E. The amount of principal that will still be outstanding at the end of the current fiscal year;
- Column F. The interest rate that is being charged for the loan;
- Column G. Total amount of interest agreed to be paid over the entire life of the loan;
- Column H. Total amount of interest paid to date.

- Column I. The outstanding interest due;
- Column J. The total amount of Principal that will be paid in the upcoming fiscal year for which the budget request is being made;
- Column K. The total amount of interest that is to be paid during the upcoming fiscal year for which the budget request is being made.

Please note that the aforementioned loan information may be extracted from the amortization schedule that accompanied the loan. An amortization schedule provides total number of payments due in a loan and the principal and interest breakdown for each payment.

Insurance Schedule

If a land grant-merced has purchased insurance of any sort they are required to complete the Schedule of Insurance Form. The form requires general information about insurance policies held by the land grant-merced. This includes the type of coverage (column A), the fund number charged (column B), the name of the insurance company (column C), the name of the insurance agent (column D), the effective coverage dates (column E), the total coverage amount (column F) and the premium amount charged (column G). Information for all different insurance coverage type must be listed separately.

Salary Schedule

If a land grant-merced has any salaried employees, all required information must be listed on this schedule. Please list individual positions separately.

For assistance in filing out any of these required forms please contact DFA-LGD Budget & Finance Bureau at (505) 827-8051.

Step 5 – Hold Public Input Hearings

Once the land grant-merced has drafted the budget and completed all the necessary forms accordingly they are required to hold at least one public hearing in which the board of trustees reviews the budget and allows for public comment and input. The public hearing must be advertised in accordance with the Open Meetings Act. For more information on the advertisement of public meeting please refer to Section C of this guide book. The land grant-merced cannot take action on approving the budget at this time. This is since the purpose of the meeting is to review and take input on the proposed budget. The board can at this time decide on any necessary changes based on errors and omissions on the proposed budget or on suggestions from the members of the board or the heirs.

Step 6 – Approval and Submission of Budget

Once the land grant-merced has made all of the appropriate changes and revisions resulting from the public hearing they are ready to approve the budget. The budget must be approved during a meeting of the board of trustees that is advertised in accordance with the Open Meetings Act. The final budget is approved through the adoption of a budget resolution. A sample budget resolution is provided on the flash-drive that accompanies this guidebook under Section E – Budgets in the Sample Budget Documents folder. Budget resolutions require adoption by a quorum of the board and the signature of both the president and the secretary of the board.

Once the budget has been approved by resolution it must be submitted to the land grant-merced's budget analyst at the DFA-LGD Budget & Finance Bureau for approval on or before June 1. Land grants-mercedes must submit all budget forms and a signed original copy of the budget resolution. The land grant-merced should keep a copy all the required documentation for their file.

At the time of submittal of the budget to DFA-LGD it is a good idea for a land grant-merced that is using accounting software to keep their books, to enter the budget submitted into their accounting system.

The DFA-LGD Budget and Finance Bureau will review the budget submitted to them and will give a preliminary approval, along with any recommended adjustments to the land grant-merced by July 1. It is then up to the land grant-merced to hold a final budget hearing to make any necessary adjustments based on the actual year-end cash balances and submit those adjustments along with the year-end financial report (as covered below in Step 7 - Financial Reporting) to DFA-LGD Budget and Finance Bureau by July 31st. DFA-LGD will then review and certify the final adjusted budget by the first Monday in September. At this time a land grant-merced using accounting software should make any necessary adjustment in their system.

Quarterly Financial Reporting

State statute mandates that DFA-LGD require periodic financial reports from local government entities (§6-6-2 NMSA, 1978) that have annual revenue of \$10,000 or greater. These reports are due within 30 days of the end of the month for the following months, September, December, March, and June. Quarterly financial reports may include land grant-merced's treasurer's report and/or balance sheet, income statement and revenue & expenditure reports from software programs. Quarterly reports keep a running total of revenues and expenditures for line items that appear in a land grant-merced's approved operating budget. Preparing these reports gives the land grant-merced an opportunity compare their actual revenues and expenditures to those budgeted. If the actual revenues and expenditures deviate greatly from those budgeted it may be necessary for the land grant-merced to submit a Budget Adjustment Request to DFA-LGD (see section below for more information on budget adjustment requests). The most important quarterly report is the year-end report due within 30 days of the close of the fiscal year. This report is important because it contains the information necessary for the land grant-merced to make final adjustments to their next fiscal years budget. In particular the total ending cash balance as of June 30, to be carried into the next fiscal year. Sample quarterly report forms have been provided on the flash-drive that accompanies this guidebook under Section E – Budgets in the Sample Budget Documents folder.

Once all quarterly report forms are completed they should be reviewed by the board of trustees and then submitted to the DFA-LGD Budget & Finance Bureau.

Budget Adjustment Requests (B.A.R.)

As mentioned before DFA-LGD Budget and Finance Bureau approval is required to adjust the budget after it has already been adopted. Adjustments to the budget requiring DFA-LGD and board of trustee approval include any unbudgeted transfers of money between funds, and any total increases in the budget from a new revenue source not anticipated. Adjustments to the budget that only require board of trustee approval but not DFA-LGD approval are transfers of money from line item to line item within the same fund.

All budget adjustment requests must be approved by the board of trustee during a public meeting that has been advertised in compliance with the Open Meetings Act. It is necessary that budget adjustment requests (B.A.R.) are detailed on paper for the board to review, with detailed information about what the line items or funds will be affected by the adjustment, the total dollar amount of the adjustment and the available resources to fund the adjustment and the justification for why it is necessary. Once the board approves the request through a resolution the president of the board must sign and date the request and the secretary must attest to it. If the request is within the same fund and does not require DFA-LGD approval then the change can be made immediately upon approval and the signed B.A.R. should be filed properly for safe keeping and later reference during an audit. If the B.A.R. requires DFA-LGD approval then no changes to the budget can take place until that approval is granted. The board of trustees must submit the signed B.A.R. request on the DFA-LGD prescribed form to their analyst in as timely a manner as possible. B.A.R. forms can be found on flash-drive that accompanies this guidebook. DFA-LGD suggests filling B.A.R.'s no more than quarterly. That being the case they can be submitted at the same time as regularly required quarterly financial reports.

DFA-LGD recommends that land grant-merced boards conduct a comprehensive mid-year review of their budget. The review should include a comparison of the income and expenses to date as they relate to the approved budget. The board should also review the planned fiscal activities for the remainder of the year in the context of the approved budget. This review should allow the board to determine if there is a need for any adjustment to the budget. If there are adjustments necessary the board can act on them accordingly depending if they need DFA-LGD approval or not.

[SAMPLE BUDGET RESOLUTION]

State of New Mexico
Merced del Pueblo de _____
Resolution No. _____
FY 2011 Budget Adoption

WHEREAS, the Board of Trustees of the Merced del Pueblo de _____, State of New Mexico has developed a budget for fiscal year 2011, and

WHEREAS, said budget was developed on the basis of need and through cooperation with all elected officials, and

WHEREAS, the official meeting for the review of said document were duly advertised in compliance with the State Open Meetings Act, and

WHEREAS, it is the majority opinion of this Board that the proposed budget meets the requirements as currently determined for fiscal year 2011.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Trustees of the Merced del Pueblo de _____, State of New Mexico hereby adopts the budget hereinabove described and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

RESOLVED: In session this _____ day of _____, _____.

Board of Trustees of the Merced del Pueblo de
_____, New Mexico

President

ATTEST:

Secretary

[SAMPLE CERTIFICATION OF REVENUES RESOLUTION]

MERCED DEL PUEBLO DE _____
RESOLUTION # 20__ - ____

A RESOLUTION CONCERNING CERTIFICATION OF ANNUAL REVENUES FOR FISCAL YEAR 20__.

WHEREAS, the Board of Trustees of the Merced del Pueblo de _____ met at its regular/special/annual (choose one) meeting at _____ (location) New Mexico, on the ____ (day) of ____ (month) in ____ (year) at ____ (time), as required per law; and

WHEREAS, Section 12-6-3.B (1) NMSA 1978 provides that political subdivisions of the state with an annual revenue *less than ten thousand dollars (\$10,000) and does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor*; and

WHEREAS, State Auditor Office Rule 2.2.2.16.C NMAC requires that political subdivisions covered by Section 12-6-3.B(1) NMSA 1978, to submit certification that the body's annual revenue did not exceed \$10,000 nor did the body expend 50% or the remainder of any capital outlay award;

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Merced del Pueblo de _____, that:

1. The annual budget for the Merced del Pueblo de _____ for fiscal year _____, as calculated in accordance with State Auditor requirements, was \$_____.

2. The Merced del Pueblo de _____, for fiscal year _____ did not (Choose one of the following):

_____ expend 50% or the remainder of any legislative capital outlay appropriation.

_____ have any legislative capital outlay appropriation(s).

AND BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Office of the State Auditor and the Department of Finance and Administration, Local Government Division, Budget and Finance Bureau.

PASSED, ADOPTED, APPROVED and SIGNED this ____ day of _____ 20__.

By: _____
President of the Board of Trustees

Attest: _____
Secretary of the Board of Trustees

SECTION F – FINANCIAL REPORTING & AUDITS

FINANCIAL REPORTING & AUDIT GUIDELINES

AUDITS & FINANCIAL REPORTING REQUIREMENTS FOR LAND GRANTS-MERCEDES

The Audit Act (12-6-1 to 12-6-14 NMSA 1978) requires that all government entities in New Mexico, including land grants-mercedes provide different levels of annual financial reporting depending on their annual income. These requirements have recently changed as a result of the Audit Act being amended in 2009. In the past all government entities were required to complete a full financial audit on a yearly basis. This practice became burdensome as the cost for completing such audits increased to amounts that were often larger than the entire annual budget for some small units of government. Under the new law, financial review and reporting requirements are divided into 7 tiers. Each tier has its own set of review and reporting requirements. The tiers are determined based on two criteria. The first is the annual revenues, on a cash basis, of the entity, excluding certain type of revenue such as federal and private grants and state appropriated capital outlay. The second is whether an entity has received and expended any capital outlay appropriations from the State Legislature. The exact amounts and reporting requirements are outlined below under the section heading Tiered System of Financial Reporting.

The Office of the State Auditor, in accordance with the Audit Act (§12-6-12 NMSA, 1978, promulgates rules on an annual basis that determine local government requirements for contracting and conducting audits and other financial services. This is known as the Audit Rule. The Audit Rule can be found in Section 2.2.2 of the New Mexico Administrative Code (NMAC). A copy of the 2011 Audit Rule has been provided on the flash-drive accompanying this guidebook in Section F – Financial Reporting & Audits. The Audit Rule is updated annually and rules found within each specific Audit Rule may change from year to year. For the most updated copy of the audit contact the Office of the State Auditor or visit them online (contact info and website listed below).

Questions regarding audit and financial reporting requirements can be directed to the Office of the State Auditor at 2540 Camino Edward Ortiz, Suite A, Santa Fe, NM 87507, (505) 476-3800 or on the web at www.saonm.org.

TIERED SYSTEM OF FINANCIAL REPORTING

As mentioned above, there are seven different tiers for financial reporting. The tiers are based on annual income and expenditure of capital outlay appropriations from the State Legislature. Each tier has a different set of compliance requirements outlined below. In order for a land grant-merced to determine which tier they fall into they must utilize the State Auditor's Form for Determining Type of Reporting Requirements and Independent Public Accountant (IPA) Services Needed. The form can be found on the State Auditor's website at www.osanm.org, as well a copy has been provided in flash-drive that accompanies this guidebook in Section F – Financial Reporting & Audits. (forms may be updated annually and it is a good idea to check online for the most recent update).

The form is broken up into four steps (the following steps are based on the form referenced above, it may be helpful to review this section while looking at the form). The **first step** does not

apply to land grant-mercedes and is specifically for use by municipalities, therefore land grants-mercedes can skip to step two.

Step two is to determine if a land-grant-merced has spent or received any federal funds and may thereby be required to complete a full or program specific audit. There are three options to choose from. If a land grant-merced chooses the first option, it is because they are required by Federal law to complete a full financial audit and the regular contracting process and requirements will apply. The land grant-merced is done with the form and does not need to proceed with the form any further. If the land grant-merced chooses the second or third option then they still have to comply with financial reporting requirements under the tiered system and must continue filling out the form.

Step three is to determine the land grant-merced's revenue and capital outlay award expenditures, if any, for the fiscal year. Here the land grant-merced is asked to fill in the blanks on the form. The first blanks ask for the total revenues to be calculated on a cash basis, meaning actual cash that has been received by the end of the fiscal year and not anticipated income that has not yet been received. The process used to calculate total revenues for compliance with the tiered system of financial reporting is done by taking the total revenues earned by the land grant-merced minus any capital outlay funds received and minus any federal or private grant funding received during the fiscal year. The next blank that the land grant is required to fill is the fiscal year for which the form is being completed. The next blank that the land grant must fill in is the total amount of award for any and all capital outlay appropriations received by the state legislature. It is important that the land grant-merced report each capital outlay award separately and does not add them all together into one large sum. If the land grant has any capital outlay they must then fill in the next blank with the total amount of capital outlay that has been expended during the fiscal year being reported. Again this must be done for each capital outlay appropriation separately. The final blank to be filled out in this section is the fiscal year for which the form is being reported. This should be the same as the fiscal year end reported above under the calculation for total revenues. If a land-grant-merced is current on their financial reporting requirements then the fiscal year reported on this form should to the current fiscal year they are in.

Step four identifies which of the seven tiers the land grant-merced falls into based on their revenues and capital outlay expenditures calculated in step three. Below is detailed information about each tier including criteria for inclusion in each specific tier as well as their respective reporting requirements.

Tier 1- The land grant-merced has annual revenue that is less than \$10,000 and the land grant-merced did not directly expend at least 50% of, or the remainder of a single capital outlay award. The land grant-merced is exempt from submitting a financial report to the State Auditor and is not required to procure the services of an Independent Public Accountant (IPA). The land grant-merced is also exempt from having to submit an annual budget to the Department of Finance and Administration Local Government Division (DFA-LGD). Although, the land grant-merced is exempt they are still required to certify to the Office of the State Auditor and to DFA-LGD that it has less than \$10,000 in revenues and does not

have any capital outlay or has not expended at least 50% of a capital outlay award.

Tier 2- The land grant-merced has annual revenue that is \$10,000 or more but less than \$50,000. The land grant-merced does not have to submit a financial report to the State Auditor and is not required to procure the services of an IPA. However, the Office of the State Auditor requires that a certification form be sent to their office. This certification form can be downloaded at <http://osanm.org/> and can a copy of the 2011 form can also be found on the flash-drive that accompanies this guidebook in the Financial Reporting and Audits folder (forms may be updated annually and it is a good idea to check online for the most recent update). The land grant-merced is required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

Tier 3- Land grant-merced has annual revenue of less than \$50,000 and has expended at least 50% of, or the remainder of a capital outlay award. The land grant-merced is required to procure the services of an IPA for the performance of a Tier 3 agreed upon procedures engagement in accordance with the Tier 3 agreed upon procedures checklist developed by the State Auditor. The land grant-merced is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

Tier 4- The land grant-merced has annual revenue of \$50,000 or more but less than \$250,000. The land grant-merced is required to procure the services of an IPA for the performance of a Tier 4 agreed upon procedures engagement in accordance with the Tier 4 agreed upon procedures checklist developed by the State Auditor. The land grant-merced is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

Tier 5- The land grant-merced has annual revenue of \$50,000 or more but less than \$250,000 and the land grant-merced has expended any capital outlay funds. The land grant-merced is required to procure the services of an IPA for the performance of a Tier 5 agreed upon procedures engagement in accordance with the Tier 5 agreed upon procedures checklist developed by the State Auditor. The land grant-merced is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

Tier 6- The land grant-merced has annual revenue of \$250,000 or more but less than \$500,000. The land grant-merced is required to procure the services of an IPA for the performance of a Tier 6 agreed upon procedures engagement in accordance with the Tier 6 agreed upon procedures checklist developed by the State Auditor. The land grant-merced is also required to submit and annual budget

to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

Tier 7- The land grant-merced has annual revenue of \$500,000 or more. The Tiered system of reporting does not apply to the land grant-merced. The land grant-merced must procure the services of an IPA for the performance of a financial and compliance audit in accordance with the generally accepted auditing standards and rules issued by the State Auditor. The land grant-merced is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

HOW CAN A LAND GRANT-MERCED COMPLY WITH FINANCIAL REPORTING REQUIREMENTS UNDER THE AUDIT ACT?

Land Grants-mercedes will have different procedures for compliance with the Audit Act depending on what revenue tier they fall into. Compliance ranges from a simple certification to a complete financial and compliance audit. Below are more details and suggestions for how a land grant can comply with the Audit Act based on their revenue tier:

Tier 1 – For land grants that fall within this revenue tier there are very little compliance requirements. Because the total revenues of the land grant are so little the land grant-merced is only required to submit a certification to the State Auditor’s Office and the Department of Finance & Administration Local Government Division (DFA-LGD) stating that their revenues are below the \$10,000 cap and that they do not have or have not expended more that 50% of a legislative capital outlay appropriation. The certification must be completed on the form provide by the State Auditor. The certification is due to the State Auditor by May 15 and is due to DFA-LGD by June 1. This certification form can be downloaded at www.osanm.org and a copy of the 2011 form can also be found on the flash-drive that accompanies this guidebook in the Section F - Financial Reporting and Audits folder (forms may be updated annually and it is a good idea to check online for the most recent update). It is suggested that in addition to the certification form required by the State Auditor that the land grant-merced also pass a resolution that states what the total revenues were for the fiscal year being certified. The resolution needs to be passed at a regularly scheduled, properly advertised, meeting of the land grant-merced that has been held in accordance with the Open Meetings Act (10-15-1 NMSA 1978) and the Land Grant General Provisions (49-1-9 NMSA 1978). A sample resolution can be found on the flash-drive that accompanies this guidebook under Section F – Financial Reporting & Audits folder. In addition to the certification form and resolution, DFA-LGD Budget and Finance Bureau may also require that land grants-mercedes submit additional documentation such as a copy of their July bank statement showing their beginning fiscal year balance(s).

Although a land grant-merced that falls into tier 1 is not required to submit annual budget or quarterly budget reports to DFA-LGD it is strongly suggested that land grants-mercedes continue the practice of passing an annual budget and approving monthly or quarterly financial reports from the Treasurer. These documents will help the land grant-merced to comply with 49-1-12b NMSA 1978 of the Land Grant General Provisions which requires that the land grant board of trustees make public at their required annual meeting a report which outlays all transactions throughout the year including all financial transactions.

Tier 2 – Land grants-mercedes that fall within tier 2 are required to submit a certification to the State Auditor’s Office stating that their revenues are below the \$10,000 cap and that they do not have or have not expended more than 50% of a legislative capital outlay appropriation. The certification must be completed on the form provided by the State Auditor. The certification is due to the State Auditor by May 15. The certification form can be downloaded at <http://osanm.org/> and a copy of the 2011 form can also be found on the flash-drive that accompanies this guidebook in the Financial Reporting and Audits folder (forms may be updated annually and it is a good idea to check online for the most recent update). It is also recommended that the certification also be passed as a resolution by the board of trustees at a properly advertised meeting of the board of trustees held in accordance with the Open Meetings Act (10-15-1 NMSA 1978) and the Land Grant General Provisions (49-1-9 NMSA 1978). A sample resolution can be found on the flash-drive that accompanies this guidebook under Section F – Financial Reporting & Audits folder.

In addition the land grant-merced must submit an annual budget for approval to the Department of Finance and Administration - Local Government Division - Budget and Finance Bureau in accordance with Section 6-6-2 NMSA 1978. The land grant-merced must also submit quarterly and year-end budget reports to the Bureau as well. For more information on the budget process including “how to” steps, please refer to Section E of this Guidebook.

Tier 3 – Land grants-mercedes that fall within tier 3 must procure services for a tier 3 engagement in accordance with the agreed upon procedures for tier 3. The State Auditor determines what agreed upon procedures shall be performed for tiers 3 through 6 and develops an agreed upon procedures checklist for each tier. Copies of the checklist for each tier can be found on the State audits website at www.osanm.org as well a copy of the 2011 checklists for all tiers can also be found on the flash-drive that accompanies this guidebook in the Financial Reporting and Audits folder (checklists may be updated annually and it is a good idea to check online for the most recent update). For more information on the process for procuring financial services please review the section below entitled Procuring Audit and Financial Services. The main purpose of the tier 3 agreed upon procedure is to ensure that the land grant-merced has complied with the expenditure of all revenues associated with any capital outlay appropriations where more than 50% of the total award has been spent. The Independent Public Accounting firm engaged by the land grant-merced will be required to complete the following tasks:

1. Test all state-funded capital outlay expenditures:

- a) Determine that the amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the purchase order, contract, vendor’s invoice and cancelled check, as appropriate.
- b) Determine that the cash disbursements were properly authorized and approved in accordance with the budget, legal requirements and established policies and procedures.
- c) Determine that the bid process (or request for proposal process if applicable), purchase

orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code and State Purchasing Regulations (Section 13-1-28 through 13-1-199 NMSA 1978 and 1.4.1 NMAC).

d) Determine the physical existence (by observation) of the capital asset based on expenditures to date.

e) Verify that status reports were submitted to the state agency per terms of agreement and amounts in the status report agree with the general ledger and other supporting documentation.

2. If the project was funded in advance, determine if the award balance (and cash balance) appropriately reflects the percentage of completion based on the project schedule and expenditures to date.

3. If the project is complete, determine if there is an unexpended balance and whether it was reverted per statute and agreement with the grantor.

4. Determine whether cash received for the award was accounted for in a separate fund or separate bank account that is non-interest bearing if so required by the capital outlay award agreement.

5. Determine whether reimbursement requests were properly supported by costs incurred by the recipient. Determine whether the costs were paid by the local public body prior to the request for reimbursement.

6. If information comes to the IPA's attention (regardless of materiality) indicating any fraud, illegal acts, non-compliance, or any internal control deficiencies, such instances must be disclosed in the report as required by Section 12-6-6 NMSA 1978. The findings must include the required content per Section 2.2.2.10(I) (3) (C) NMAC.

7. Prepare and submit to the Office of the State Auditor an agreed-upon procedures report that complies with AICPA SSAE, AT Section 201. At a minimum, the report shall include the following,

a) Table of Contents.

b) Official Roster.

c) The capital outlay amount awarded, amount received, amount expended, the remaining balance, and the actual legislation and effective dates for each capital outlay appropriation that meets the Tier 3 criteria.

d) The procedures performed and the results of those procedures.

e) Schedule of Findings and Responses.

f) Exit conference information (Section 2.2.2.10 (J) (1) NMAC).

The land grant-merced should do its best to ensure that they comply with everything in the above list. It is important that the land grant-merced review these requirements whenever they have a capital outlay appropriation and that they keep all records accordingly.

Land grants-mercedes that fall within tier 3 are also required to submit an annual budget for approval to the Department of Finance and Administration - Local Government Division - Budget and Finance Bureau. In addition the land grant-merced must also submit quarterly and year-end budget reports to the Bureau as well. For more information on the budget process including how to steps, please refer to Section E of this Guidebook.

Tier 4 – Land grants-mercedes that fall within tier 4 must procure services for tier 4 engagement in accordance with the agreed upon procedures for tier 4. The State Auditor determines what agreed upon procedures shall be performed for tiers 3 through 6 and develops an agreed upon procedures checklist for each tier. Copies of the checklist for each tier can be found on the State audits website at www.osanm.org as well a copy of the 2011 checklists for all tiers can also be found on the flash-drive that accompanies this guidebook in the Financial Reporting and Audits folder (checklists may be updated annually and it is a good idea to check online for the most recent update). For more information on the process for procuring financial services please review the section below entitled Procuring Audit and Financial Services. The purpose of the tier 4 agreed-upon procedures is to ensure that the land grant-merced is keeping financial records in accordance with applicable state laws and generally accepted accounting principles. The IPA firm engaged to perform the agreed-upon procedures will be required to accomplish the following tasks:

1. Cash

- a) Determine whether bank reconciliations are being performed in a timely manner and whether all bank and investment statements for the fiscal year are complete and on-hand.
- b) Perform a random test of bank reconciliations for accuracy. Also, trace ending balances to the general ledger, supporting documentation and the financial reports submitted to DFA-Local Government Division.
- c) Determine whether the local public body's financial institutions have provided it with the 50% of pledged collateral on all uninsured deposits as required by Section 6-10-17 NMSA 1978, NM Public Money Act, if applicable.

2. Capital Assets

Verify that the local public body is performing a yearly inventory as required by Section 12-6-10 NMSA 1978.

3. Revenue

Identify the nature and amount of revenue from sources by reviewing the budget, agreements, rate schedules, and underlying documentation.

- a) Perform an analytical review; test actual revenue compared to budgeted revenue for the year for each type of revenue.

Select a sample of revenues based on auditor judgment and test using following attributes:

- b) Amount recorded in the general ledger agrees to the supporting documentation and the bank statement.
- c) Proper recording of classification, amount, and period per review of supporting documentation and the general ledger. Perform this revenue work on the same accounting basis that the local public body keeps its accounting records on, cash basis, modified accrual basis, or accrual basis.

4. Expenditures

Select a sample of cash disbursements based on auditor judgment and test using the following attributes:

- a) Determine that amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the vendor's invoice, purchase order, contract and cancelled check, as appropriate.
- b) Determine that disbursements were properly authorized and approved in compliance with the budget, legal requirements and established policies and procedures.
- c) Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code (Section 13-1-28 through 13-1-199 NMSA 1978) and State Purchasing Regulations (1.4.1 NMAC) and Regulations Governing the Per Diem and Mileage Act (2.42.2 NMAC).

Note: The sample must be representative of the population.

5. Journal Entries

If non-routine journal entries, such as adjustments or reclassifications, are posted to the general ledger, a test significant item for the following attributes:

- a) Journal entries appear reasonable and have supporting documentation.
- b) The local public body has procedures that require journal entries to be reviewed and there is evidence the reviews are being performed.

6. Budget

Obtain the original fiscal year budget and all budget amendments made throughout the fiscal year and perform the following:

- a) Verify, through a review of the minutes and correspondence, that the original budget and

subsequent budget adjustments were approved by the local public body's governing body and DFA-LGD.

b) Determine if the total actual expenditures exceeded the final budget at the legal level of budgetary control; if so, report a compliance finding.

c) From the original and final approved budgets and general ledger, prepare a schedule of revenues and expenditures – budget and actual on the budgetary basis used by the local public body (cash, accrual or modified accrual basis) for each individual fund.

7. Other

If information comes to the IPA's attention (regardless of materiality) indicating any fraud, illegal acts, non-compliance, or any internal control deficiencies, such instances must be disclosed in the report as required by Section 12-6-6 NMSA 1978. The findings must include the required content per Section 2.2.2.10(I) (3) (C) NMAC.

8. Report

Prepare and submit to the Office of the State Auditor an agreed-upon procedures report that complies with AICPA SSAE, AT Section 201. At a minimum, the report shall include the following,

a) Table of Contents.

b) Official Roster.

c) The procedures performed and the results of those procedures.

d) For each individual fund, a Schedule of Revenues and Expenditures – Budget and Actual. Each budgetary comparison must show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and the actual amounts. The budgetary comparisons shall include the amount of prior-year cash balance required to balance the budget.

e) A copy of the year-end financial report submitted to DFA.

f) Schedule of Findings and Responses.

g) Exit conference information (Section 2.2.2.10(J) (1) NMAC).

It is important that a land grant-merced that falls in tier 4 review the above listed requirements for the financial reporting and do their best to ensure their financial records will stand the scrutiny of these financial requirements. The financial process should be viewed as an opportunity to improve how the land grant keeps their books.

Land grants-mercedes that fall within tier 4 are also required to submit an annual budget for approval to the Department of Finance and Administration - Local Government Division -

Budget and Finance Bureau. In addition the land grant-merced must also submit quarterly and year-end budget reports to the Bureau as well. For more information on the budget process including how to steps, please refer to Section E of this Guidebook.

Tier 5 - Land grants-mercedes that fall within tier 5 must procure services for a tier 5 engagement in accordance with the agreed upon procedures for tier 5. The State Auditor determines what agreed upon procedures shall be performed for tiers 3 through 6 and develops an agreed upon procedures checklist for each tier. Copies of the checklist for each tier can be found on the State audits website at www.osanm.org as well a copy of the 2011 checklists for all tiers can also be found on the flash-drive that accompanies this guidebook in the Financial Reporting and Audits folder (checklists may be updated annually and it is a good idea to check online for the most recent update). For more information on the process for procuring financial services please review the section below entitled Procuring Audit and Financial Services. The purpose of the tier 5 agreed-upon procedure is to ensure that the land grant-merced is keeping financial records in accordance with applicable state laws and generally accepted accounting principles as well as to verify that all capital outlay expenditures have been made appropriately. The IPA firm engaged to perform the agreed-upon procedure will be required to accomplish the following tasks:

1. Cash

- a) Determine whether bank reconciliations are being performed in a timely manner and whether all bank and investment statements for the fiscal year are complete and on-hand.
- b) Perform a random test of bank reconciliations for accuracy. Also, trace ending balances to the general ledger, supporting documentation and the financial reports submitted to DFA-Local Government Division.
- c) Determine whether the local public body's financial institutions have provided it with the 50% of pledged collateral on all uninsured deposits as required by Section 6-10-17 NMSA 1978, NM Public Money Act, if applicable.

2. Capital Assets

Verify that the local public body is performing a yearly inventory as required by Section 12-6-10 NMSA 1978.

3. Revenue

Identify the nature and amount of revenue from sources by reviewing the budget, agreements, rate schedules, and underlying documentation.

- a) Perform an analytical review; test actual revenue compared to budgeted revenue for the year for each type of revenue.

Select a sample of revenues based on auditor judgment and test using following attributes:

- b) Amount recorded in the general ledger agrees to the supporting documentation and the bank statement.

- c) Proper recording of classification, amount, and period per review of supporting documentation and the general ledger. Perform this revenue work on the same accounting basis that the local public body keeps its accounting records on, cash basis, modified accrual basis, or accrual basis.

4. Expenditures

Select a sample of cash disbursements based on auditor judgment and test using the following attributes:

- a) Determine that amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the vendor's invoice, purchase order, contract and cancelled check, as appropriate.
- b) Determine that disbursements were properly authorized and approved in compliance with the budget, legal requirements and established policies and procedures.
- c) Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code (Section 13-1-28 through 13-1-199 NMSA 1978) and State Purchasing Regulations (1.4.1 NMAC) and Regulations Governing the Per Diem and Mileage Act (2.42.2 NMAC).

Note: The sample must be representative of the population.

5. Journal Entries

If non-routine journal entries, such as adjustments or reclassifications, are posted to the general ledger, a test significant of items for the following attributes:

- a) Journal entries appear reasonable and have supporting documentation.
- b) The local public body has procedures that require journal entries to be reviewed and there is evidence the reviews are being performed.

6. Budget

Obtain the original fiscal year budget and all budget amendments made throughout the fiscal year and perform the following:

- a) Verify, through a review of the minutes and correspondence, that the original budget and subsequent budget adjustments were approved by the local public body's governing body and DFA-LGD.
- b) Determine if the total actual expenditures exceeded the final budget at the legal level of budgetary control; if so, report a compliance finding.
- c) From the original and final approved budgets and general ledger, prepare a schedule of revenues and expenditures – budget and actual on the budgetary basis used by the local

public body (cash, accrual or modified accrual basis) for each individual fund.

7. Capital Outlay Appropriations

Request and review all state-funded capital outlay awards, joint powers agreements, correspondence and other relevant documentation for any capital outlay award funds expended by the recipient during the fiscal year.

Test all capital outlay expenditures during the fiscal year to:

- a) Determine that the amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the purchase order, contract, vendor's invoice and cancelled check, as appropriate.
- b) Determine that the cash disbursements were properly authorized and approved in accordance with the budget, legal requirements and established policies and procedures.
- c) Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code and State Purchasing Regulations (Section 13-1-28 through 13-1-199 NMSA 1978 and 1.4.1 NMAC).
- d) Determine the physical existence (by observation) of the capital asset based on expenditures to date.
- e) Verify that status reports were submitted to the state agency per terms of agreement and amounts in the status report agree with the general ledger and other supporting documentation.
- f) If the project was funded in advance, determine if the award balance (and cash balance) appropriately reflects the percentage of completion based on the project schedule and expenditures to date.
- g) If the project is complete, determine if there is an unexpended balance and whether it was reverted per statute and agreement with the grantor.
- h) Determine whether cash received for the award was accounted for in a separate fund or separate bank account that is non-interest bearing if so required by the capital outlay award agreement.
- i) Determine whether reimbursement requests were properly supported by costs incurred by the recipient. Determine whether the costs were paid by the local public body prior to the request for reimbursement.

8. Other

If information comes to the IPA's attention (regardless of materiality) indicating any fraud, illegal acts, non-compliance, or any internal control deficiencies, such instances must be

disclosed in the report as required by Section 12-6-6 NMSA 1978. The findings must include the required content per Section 2.2.2.10(I) (3) (C) NMAC.

9. Report

Prepare and submit to the Office of the State Auditor an agreed-upon procedures report that complies with AICPA SSAE, AT Section 201. At a minimum, the report shall include the following:

- a) Table of Contents.
- b) Official Roster.
- c) The capital outlay amount awarded, amount received, amount expended, the remaining balance, and the actual legislation and effective dates for each capital outlay appropriation for which there were expenditures during the fiscal year.
- d) The procedures performed and the results of those procedures.
- e) For each individual fund, a Schedule of Revenues and Expenditures - Budget and Actual. Each budgetary comparison must show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and the actual amounts. The budgetary comparisons shall include the amount of prior-year cash balance required to balance the budget.
- f) A copy of the year-end financial report submitted to DFA.
- g) Schedule of Findings and Responses.
- h) Exit conference information (Section 2.2.2.10(J) (1) NMAC).

It is important that a land grant-merced that falls in tier 5 review the above listed requirements for the financial reporting and do their best to ensure their financial records will stand the scrutiny of these financial requirements. It is also important that the land grant-merced review these requirements with relation to any capital outlay appropriations they may have and keep all records for any appropriations accordingly. The financial review process should be viewed as an opportunity to improve how the land grant keeps their books.

Land grants-mercedes that fall within tier 5 are also required to submit an annual budget for approval to the Department of Finance and Administration - Local Government Division - Budget and Finance Bureau. In addition the land grant-merced must also submit quarterly and year-end budget reports to the Bureau as well. For more information on the budget process including how to steps, please refer to Section E of this Guidebook.

Tier 6 - Land grants-mercedes that fall within tier 6 must procure services for a tier 6 engagement in accordance with the agreed upon procedures for tier 6. The State Auditor determines what agreed upon procedures shall be performed for tiers 3 through 6 and develops

an agreed upon procedures checklist for each tier. Copies of the checklist for each tier can be found on the State audits website at www.osanm.org as well a copy of the 2011 checklists for all tiers can also be found on the flash-drive that accompanies this guidebook in the Financial Reporting and Audits folder (checklists may be updated annually and it is a good idea to check online for the most recent update). For more information on the process for procuring financial review services please review the section below entitled Procuring Audit and Financial Services. The purpose of the tier 6 agreed-upon procedure is to ensure that the land grant-merced is keeping financial records in accordance with applicable state laws and generally accepted accounting principles as well as to verify that all capital outlay expenditures have been made appropriately. The IPA firm engaged to perform the agreed-upon procedure will be required to accomplish the following tasks:

1. Cash

- a) Determine whether bank reconciliations are being performed in a timely manner and whether all bank and investment statements for the fiscal year are complete and on-hand.
- b) Perform a random test of bank reconciliations for accuracy. Also, trace ending balances to the general ledger, supporting documentation and the financial reports submitted to DFA-Local Government Division.
- c) Determine whether the local public body's financial institutions have provided it with the 50% of pledged collateral on all uninsured deposits as required by Section 6-10-17 NMSA 1978, NM Public Money Act, if applicable.

2. Capital Assets

Verify that the local public body is performing a yearly inventory as required by Section 12-6-10 NMSA 1978.

3. Debt

If the local public body has any debt, verify that the required payments were made during the year. If the debt agreement requires reserves, verify that the local public body is in compliance with those requirements.

4. Revenue

Identify the nature and amount of revenue from sources by reviewing the budget, agreements, rate schedules, and underlying documentation.

- a) Perform an analytical review; test actual revenue compared to budgeted revenue for the year for each type of revenue.

Select a sample of revenues based on auditor judgment and test using following attributes:

- b) Amount recorded in the general ledger agrees to the supporting documentation and the bank statement.
- c) Proper recording of classification, amount, and period per review of supporting

documentation and the general ledger. Perform this revenue work on the same accounting basis that the local public body keeps its accounting records on, cash basis, modified accrual basis, or accrual basis.

5. Expenditures

Select a sample of cash disbursements based on auditor judgment and test using the following attributes:

- a) Determine that amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the vendor's invoice, purchase order, contract and cancelled check, as appropriate.
- b) Determine that disbursements were properly authorized and approved in compliance with the budget, legal requirements and established policies and procedures.
- c) Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code (Section 13-1-28 through 13-1-199 NMSA 1978) and State Purchasing Regulations (1.4.1 NMAC) and Regulations Governing the Per Diem and Mileage Act (2.42.2 NMAC).

Note: The sample must be representative of the population.

6. Journal Entries

If non-routine journal entries, such as adjustments or reclassifications, are posted to the general ledger, a test of significant items for the following attributes:

- a) Journal entries appear reasonable and have supporting documentation.
- b) The local public body has procedures that require journal entries to be reviewed and there is evidence the reviews are being performed.

7. Budget

Obtain the original fiscal year budget and all budget amendments made throughout the fiscal year and perform the following:

- a) Verify, through a review of the minutes and correspondence, that the original budget and subsequent budget adjustments were approved by the local public body's governing body and DFA-LGD.
- b) Determine if the total actual expenditures exceeded the final budget at the legal level of budgetary control; if so, report a compliance finding.
- c) From the original and final approved budgets and general ledger, prepare a schedule of revenues and expenditures – budget and actual on the budgetary basis used by the local public body (cash, accrual or modified accrual basis) for each individual fund.

8. Capital Outlay Appropriations

Request and review all state-funded capital outlay awards, joint powers agreements, correspondence and other relevant documentation for any capital outlay award funds expended by the recipient during the fiscal year.

Test all capital outlay expenditures during the fiscal year to:

- a) Determine that the amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the purchase order, contract, vendor's invoice and cancelled check, as appropriate.
- b) Determine that the cash disbursements were properly authorized and approved in accordance with the budget, legal requirements and established policies and procedures.
- c) Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code and State Purchasing Regulations (Section 13-1-28 through 13-1-199 NMSA 1978 and 1.4.1 NMAC).
- d) Determine the physical existence (by observation) of the capital asset based on expenditures to date.
- e) Verify that status reports were submitted to the state agency per terms of agreement and amounts in the status report agree with the general ledger and other supporting documentation.
- f) If the project was funded in advance, determine if the award balance (and cash balance) appropriately reflects the percentage of completion based on the project schedule and expenditures to date.
- g) If the project is complete, determine if there is an unexpended balance and whether it was reverted per statute and agreement with the grantor.
- h) Determine whether cash received for the award was accounted for in a separate fund or separate bank account that is non-interest bearing if so required by the capital outlay award agreement.
- i) Determine whether reimbursement requests were properly supported by costs incurred by the recipient. Determine whether the costs were paid by the local public body prior to the request for reimbursement.

9. Other

If information comes to the IPA's attention (regardless of materiality) indicating any fraud, illegal acts, non-compliance, or any internal control deficiencies, such instances must be disclosed in the report as required by Section 12-6-6 NMSA 1978. The findings must include the required content per Section 2.2.2.10(I) (3) (C) NMAC.

10. Reports

Prepare and submit to the Office of the State Auditor an agreed-upon procedures report and a compilation report in accordance with GAAP that complies with AICPA SSAE, AT Section 201 and AICPA SSARS AR Section 100, respectively.

At a minimum, the compilation report shall include fund financial statements on the GAAP basis of accounting, for each individual fund (for all fund types) that the local public body has, consisting of:

- a) Balance Sheet or Statement of Net Assets or Statement of Fiduciary Net Assets - Fiduciary Fund.
- b) Statement of Revenues and Expenditures, and Changes in Fund Balances or Statement of Revenues, Expenses, and Changes in Fund Net Assets - Proprietary Fund or Statement of Changes in Fiduciary Net Assets-Fiduciary Funds.
- c) Notes related to the statements required in a) and b) above.
- d) An explanatory paragraph for the departure from GAAP for the omission of the Statement of Cash Flows. (AR Sec 100 ¶ 57).
- e) An explanatory paragraph for the departure from GAAP for the omission of government wide financial statements and some notes related to the government wide financial statements (AR Sec 100 ¶ 19 to 22 and 56).
- f) An explanatory paragraph for other departures from GAAP where modification of the standard report is considered adequate to disclose the departure AR Sec 100 ¶ 56, 57, and 58.

At a minimum, the agreed-upon procedures report shall include:

- a) Table of Contents.
- b) Official Roster.
- c) The capital outlay amount awarded, amount received, amount expended, the remaining balance, and the actual legislation and effective dates for each capital outlay appropriation for which there were expenditures during the fiscal year.
- d) The procedures performed and the results of those procedures.
- e) For each individual fund, a Schedule of Revenues and Expenditures - Budget and Actual. Each budgetary comparison must show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and the actual amounts. The budgetary

comparisons shall include the amount of prior-year cash balance required to balance the budget.

f) Schedule of Findings and Responses.

g) Exit conference information (Section 2.2.2.10(J) (1) NMAC).

It is important that a land grant-merced that falls in tier 6 review the above listed requirements for the financial reporting and do their best to ensure their financial records will stand the scrutiny of these financial review requirements. It is also important that the land grant-merced review these requirements with relation to any capital outlay appropriations they may have and keeps all records for any appropriations accordingly. The financial process should be viewed as an opportunity to improve how the land grant keeps their books.

Land grants-mercedes that fall within tier 6 are also required to submit an annual budget for approval to the Department of Finance and Administration - Local Government Division - Budget and Finance Bureau. In addition the land grant-merced must also submit quarterly and year-end budget reports to the Bureau as well. For more information on the budget process including how to steps, please refer to Section E of this Guidebook.

Tier 7 – Land grants-mercedes that fall within tier 7 are required to procure services for a full financial and compliance audit in accordance with State Auditor Rule 2.2.2 NMAC. An audit involves an examination of the financial records in order for the auditor to express an opinion on the fairness of the presentation of the financial statements (according to accounting principles generally accepted in the United States). In order to accomplish this, the auditor will perform tests of the financial records to determine that account balances are correct, transactions are processed in compliance with specific land grant-merced statutes, bylaws and regulations, the Procurement Code, the Per Diem and Mileage Act and any other state or federal requirements applicable to the particular land grant-merced. These tests will be performed in accordance with:

1. AICPA Generally Accepted Auditing Standards,
2. Generally Accepted Government Auditing Standards,
3. U.S. General Accounting Office rules and regulations in the Yellow Book,
4. State Auditor Rule 2.2.2 NMAC.

A land grant-merced should be prepared to provide the following information to the auditor (*this is only a partial list of the more common items - it is not intended to be all inclusive*):

1. Bylaws and other policies and procedures of the land grant-merced;
2. An official roster of the governing trustees, board members or officers;
3. Minutes of land grant-merced meetings;
4. A check register, or a more formal general ledger that the land grant-merced uses to document the financial transactions;
5. A list of all bank accounts, all bank statements and their monthly bank reconciliations. Also, a list of authorized signatories. This would include any CDs, or other investments the land grant-merced has ownership of;

6. A list of all dues, fees or other charges owed to the land grant-merced by members or other persons or organizations;
7. List of all capital assets, i.e., furniture and equipment, buildings, land and other tangible items that the land grant-merced owns;
8. Copies of any and all insurance policies on assets and any fidelity bonds on the officers of the land grant-merced;
9. Copies of all lease agreements or any other debt agreements the land grant-merced has;
10. Copies of any grant agreements from state, federal or private sources;
11. Supporting documents for all the transactions (i.e., invoices for payments made and transmittal letters or grant agreements for the monies received and deposited);
12. The annual operating budget, a copy of that budget would be needed in addition to any adjustments made to that budget during the year of audit;
13. The land grant-merced's annual report; and
14. Any other documents that requested by the auditor. The Auditor is required to prepare a written list of items they will need from the land grant-merced. This is called a PBC list and its purpose is to help the auditor and auditee prepare for the audit.

Financial Statements

Government financial statements follow the reporting model as prescribed under Government Accounting Standards Board Statement Number 34. The two (2) basic financial statements that a land grant-merced will utilize are the Statement of Net Assets and a Statement of Activities. The Statement of Net Assets details the assets and liabilities of a land grant-merced. Assets are items owned by a land grant-merced, for which a dollar value can be assessed. Typical assets for a land grant-merced could be cash; common lands; facilities, such as the meeting hall or community center; utilities, referred to as infrastructure, such as a water storage tanks or wastewater treatment systems; savings or investment accounts; long term lease holdings, heavy equipment or vehicles. Also considered assets are any prepaid liabilities such as insurance premiums. These are considered assets because they are paid in advance and until they are used up as a result of the term policy expiring the insurance company must pay back any portion unused if the policy is cancelled early.

Liabilities are debts owed to others and the difference between all assets and liabilities is the Net Assets. Debts can be categorized as either short-term or long-term. Short-term liabilities are debts that will be paid off within a year whereas long-term liabilities are debts, such as mortgages, which can sit on the books for many years. Monthly utility payments or other daily operating costs are not considered debts but operating expenses. These types of expenses don't show up on the balance sheet but rather on the Statement of Activities. Net Assets are the net worth controlled by the board of trustees, owned in common by the heirs, and which no other party has an interest in.

The Statement of Activities details the income and expenses for a land grant-merced during a specific time period, such as a month or a year. It lists all of the revenues earned during that period followed by all of the expenses. Both revenues and expenses are listed by source or type. At the bottom of the statement the total expenses are subtracted by the total income to determine the change in net assets. This statement is useful because it allows the land grant-merced to clearly see what monies are coming in and where that money is being spent. Understanding

these earning and spending patterns gives the land grant-merced an opportunity to plan future budgets accordingly.

Record Keeping

One of the most important things a land grant-merced can do in preparation for an audit is properly file and safeguard their records. It is necessary to save copies of all financial records including purchase receipts, bank statements, check registers, withdrawal and deposits receipts, reconciliation reports, approved budgets, budget adjustment requests and financial statements. Also it is important to keep on file copies of the meeting agendas, approved meeting minutes and resolutions passed throughout the fiscal year. All of these documents are what must be included in the annual report that is required by statute (Land Grant General Provision 49-1-12 NMSA 1978).

All of the above listed records should be categorized and placed in a folder or a binder for safekeeping and easy access by an auditor. All records should be filed in order by date. Bank Statements and reconciliations should be kept together in one binder. Along with this binder there should be a file kept with all the receipts for deposits and withdrawal from the bank as well as a file with any and all check registers used. All receipts for purchases should be filed by month throughout the fiscal year. The original approved budgets as well as any approved Budget Adjustment Requests should be all in one file or binder. The same goes for any monthly or quarterly financial statements produced throughout the fiscal year. The secretary of the board of trustees must also ensure that a binder is kept with all meeting agendas, approved minutes and resolutions. This is important because the minutes are a record of what actions the board took throughout the year. The resolutions as well as any actions documented in the minutes set the policies of the land grant-merced over time. They are the official record which the auditor must go by to ensure that an entity is in compliance with its own operating standards.

Once records have been properly filed it is important that they are stored in a safe place so that they may be utilized in the future by the board of trustees, an auditor or in order to comply with an Inspection of Public Records Act request from a member of the public. The New Mexico Administrative Code (NMAC) sets forth the requirements for how long certain types of records must be maintained by a government entity before they can dispose of them. The NMAC outlines these retention requirements in Title 1, Chapter 15 in various parts. They are known as General Records Retention and Disposition Schedules (GRRDS). The following is a guide for records maintenance which has been compiled from the various parts of the aforementioned NMAC, namely parts 2, 4 and 6. The list was compiled based on the typical records a land grant-merced might be required to keep, for a complete listing of the GRRDS please refer to the NMAC.

Sample Retention Schedule Timeline for Land Grants

Retention Schedule Based on NMAC Title 1, Chapter 15 Parts 2, 4 & 6

Storage group	File Description	NMAC Schedule #	File Description Per NM State Schedule	Retention Time
Accounting Records	Bank Statements	1.15.4.508	Bank Statements	six years after close of fiscal year
	Deposit Slips	1.15.4.204	Deposit Slips	three years after close of fiscal year in which created
	Cancelled checks	1.15.4.314	Checks	six years after close of fiscal year in which created
	Voided checks	1.15.4.314	Checks	until audit report released
	Journals	1.15.4.406	Journals	six years after close of fiscal year
	Ledgers, General	1.15.4.502	ledgers, general	six years after close of fiscal year
	Bank Reconciliations	1.15.4.504	Reconciliation of Cash Transactions	three years after close of fiscal year in which created
	Balance Sheet	1.15.4.507	Balance sheets	one year after audit report released
	Budgets	1.15.4.102	Appropriations Request and Operating Budget	three years after close of fiscal year
	Budget Adjustment Requests	1.15.4.109	Budget Adjustment Requests	three years after close of fiscal year
	Payment Voucher	1.15.4.312	Payment Voucher	three years after close of fiscal year in which created
	Purchase Orders	1.15.4.302	Purchase Document	three years after close of fiscal year in which created
	Invoices/Bills	1.15.4.305	Invoices(Vendor)	three years after close of fiscal year in which created
	Receipts	1.15.4.306	Receipts (Expenditure)	three years after close of fiscal year in which expenditure occurred
	Trip tickets			3 years after close of fiscal year in which created
	inventory	1.15.4.509	Inventory of Fixed Assets	six years after close of fiscal year
	audits	1.15.4.510	Audit Report	six years after audit report released
			Audit procurement docs	five years after selection of audit firm
Administrative	Administrative files	1.15.2.106	administrative files (executive Levels)	after five years transfer to archives for appraisal and final disposition

	Subject Files	1.15.2.102	Subject Files	until superseded or no longer need for reference
	Correspondence	1.15.2.108	General Correspondence files (executive levels)	two years after close of fiscal in which created then transfer to archives for appraisal and final disposal
	Board of Trustee Files	1.15.2.112	Governing Board File	five years then transfer to archives for appraisal and final disposition
	Sub Committee Files	1.15.2.113	Sub Committee files	five years then transfer to archives for appraisal and final disposition
	Minutes	1.15.2.119	Minutes of Meetings	Permanent
	Recording of Meetings		tapes/recordings	after minutes have been transcribed
	Statute/Grant Specific Reports	1.15.2.117	annual biennial and /or other periodic reports required by specific statute or contract	permanent
	Routine Progress Reports	1.15.2.117	routine interim or progress report	two years after close of fiscal year in which created
	Grant Files	1.15.4.208	Revenue Contracts and Grants	six years after termination of contract
	Contracts	1.15.4.307	Contract/Agreement Files	six years after termination of contract/agreement
	Capital Outlay	1.15.4.104	Capitol Project Request	Funded-Five years after audit report released for year in which completed
	RFP's	1.15.4.310	Request for Proposal	three years after close of fiscal year in which bid is awarded
	Studies/Plans	1.15.2.151	Feasibility Studies/Comprehensive Plans	requested or conducted by agency five years after completion or cancellation of study
	Maps	1.15.2.127	Survey/maps	until no longer needed for reference then transfer to archives for appraisal and final disposition
	Insurance	1.15.2.202	Group insurance policy file	10 years after expiration of policy provided no claims/suits pending
		1.15.2.203	liability certificates of coverage	10 years after expiration of policy provided no claims/suits pending
	telephone logs	1.15.2.132	telephone logs	three years after fiscal year in which created
Personnel	Personnel Files	1.15.6.101	Permanent	Permanent
	time sheets			3 years after close of calendar year in which

			created
workers comp	1.15.2.205	workers compensation file	10 years after expiration of policy provided no claims/suits pending
Applications	1.15.6.102	Applications for employment	three years after date rejected

PROCURING AUDIT AND FINANCIAL REVIEW SERVICES

The procurement process for an audit or financial review services is defined by the Office of the State Auditor in 2.2.2. NMAC commonly referred to as the “Audit Rule”. Prior to beginning the process for selecting an auditor/CPA the land grant-merced must first receive written notification from the Office of the State Auditor authorizing them to proceed with selecting an Independent Public Accountant (IPA) to perform either a financial compliance and control audit or agreed upon procedures in accordance with the relative tier. If your land grant-merced does not receive a letter or an e-mail from the State Auditor by April please contact the Office of the State Auditor at (505) 476-3800. Also keep in mind that during the months of March and April the Office of the State Auditor will host several workshops, on the Audit Rule, to go over the audit selection process as well as any revised regulations since the previous year.

Step 1 - Bids vs. Quotes

Once written notification is received, a land grant-merced may begin the selection process. If in need of a financial compliance and control audit the firm selected must be from the list of approved IPA on the State Auditor’s website. If in need of an agreed upon procedure then the land grant is encourage to utilize a firm from the approved list of IPA firms but may selection a firm that is not on the list provided that firm meets the following requirements: The firm has a New Mexico firm permit to practice; the firm has proof of current liability insurance; and the firm has had a current peer review, if applicable.

The selection of an IPA must be done in accordance with the State Procurement Code (13-1-28 NMSA 1978). The first step is to determine if a request for proposals is required or if the land grant-merced can obtain three written or oral quotations for financial compliance and control audit/agreed upon procedures services. The State Procurement Code provides the guidance as to which method for selection must be used. If the total cost for an audit/financial review will be more than \$50,000.00 (not including gross receipts taxes) then the land grant-merced must go out to bid for the contract. If the total cost for the audit is \$50,000 or less it is considered a small purchase (as per Audit Rule 2007 2.2.2. NMAC) and the land grant can simply get three written or oral quotes from an IPA firm. Please note that if a full financial compliance and control audit is to be preformed then the quotes must be from firms that are on the Office of the State Auditor’s approved list of audit firms. If a financial review is to be performed, land grant-mercedes are encouraged, though not required, to get at least one quote from an IPA firm listed and approved by the State Auditor.

Whether receiving bids or quotations the land grant-merced must identify all elements or services to be solicited. In other words, price quotes or proposals must be given for each of these separate audit service components. In the case of a financial compliance and control audit elements may include: Financial Statement Audit; Federal Single Audit; Financial Statement

Preparation; Other non-audit services like depreciation schedule updates; and any other component units administratively linked to an entity such as charter schools, housing authority, etc. (typically will not apply to a land grant-merced). In the case of a tier 3, 4, 5 or 6 engagement the land grant-merced can use the agreed upon procedures required for their revenue tier to identify the services to be solicited. Copies of the tier requirements can be found on the State Auditor's website at www.oasnm.org (the tier requirements as of 2011 can be found also on the flash drive accompanying this guidebook).

Land grants-mercedes are allowed to do a multi-year contract with the same IPA firm for 3 consecutive years, however if doing so as a no bid small purchase, the land grant-merced must ensure that the cost for each of the three years does not exceed \$50,000. This mean the cost for year 1, year 2, and year 3 must all be less than \$50,000 per year. If any one year is \$50,000 or greater then the land grant-merced must either put out a request for proposals prior to awarding a contract or not select to not have a multi-year contract with the IPA firm. A land grant-merced can use the same IPA firm for up to ten years consecutively if the cost of services is not \$50,000 or more for any one of the ten years. If the cost in any one year is \$50,000 or greater then the can only use the same firm for up to six consecutive years. After the six or ten year period of consecutive use the land grant-merced must find a new firm for at least two years before they can rehire the old firm.

If getting quotes the land grant-merced must make a good faith effort to contact at least three firms and request quotes for services, either in written or verbal form. Written form is best as it provides a document trail. Quotes obtained must be recorded and placed in the procurement file. If quotes are verbal the land grant-merced must document the name of the firm contacted, the date and the amount of the quote. This must also be placed in the procurement file. The procurement file must be saved for least 5 years. State law now requires that prospective contractors must complete a standard campaign contribution disclosure form and submit it to the agency on the date the contractor signs the contract.

If going out to bid via a request for proposal process the land grant-merced must follow the State Procurement Code (13-1-1 to 13-1-99 NMSA 1978). This means advertising in the news papers and preparing a written scope of work from which firms can prepare a written proposal. For more information on compliance with the Procurement Code please see Section G of this guidebook.

Step 2 - Preparing the scope of work

Whether getting quotes or sealed bids, a land grant-merced must prepare a scope of work to ensure all their needs are met. Items to be included in that scope will vary depending on if it is a quote or a bid. For a quote the following is a guide for what to consider including:

- The name and address of your entity that is to be audited / reviewed.
- What services are required: Financial Statement Audit; Federal Single Audit; Financial Statement Preparation; Other non-audit services like depreciation schedule updates; and other administratively attached components; agreed upon procedures as per tier requirements.
- The time period to be audited / reviewed; (Example: July 1, 2010 to June 30, 2011).

- If you want a multi-year proposal include it with the period audited; (Such as July 1, 2010 to June 30, 2011; and may be negotiable for July 1, 2011 to June 30, 2012 and July 1, 2012 to June 30, 2013).
- The name and telephone number of a contact person at your organization.

Items in the scope of work can then be discussed with the IPA firms contacted and a copy may be provided for them in order to prepare their quote.

If the land grant-merced is preparing a Request for Proposals, the scope of work must be written out and ready to deliver to any firm that responding to the published RFP. Below are the items that should be included in that scope of work from which the firm will prepare their proposals.

- The name and address of your entity that is to be audited/reviewed;
- What services are required, and reports, etc.;
- The time period to be audited; (Example: July 1, 2010 to June 30, 2011)
- If you want a multi-year proposal include it with the period audited; (Such as July 1, 2010 to June 30, 2011; and may be negotiable for July 1, 2011 to June 30, 2012 and July 1, 2012 to June 30, 2013)
- The name and telephone number of a contact person at your organization;
- The format in which you want proposals to be prepared;
- The address to which proposals should be delivered;
- The date and time proposals are due;
- The number of proposal copies to be submitted;
- The criteria to be used in evaluating the bid and their relative importance to each other;
- The method and timing of payment; and
- Any other important points, including the consequences if due dates are missed or work does not meet audit standards.

Again land grants-mercedes must remember that only audit firms listed as approved firms by the State Auditor may be solicited for audit services. The list of approved audit firms can be obtained by contacting the Office of the State Auditor or on their website at www.osamn.org.

Step 3 - Proposal Evaluations

The land grant-merced must evaluate all quotations using a two-step evaluation process. The Office of the State Auditor prefers that entities utilize a selection committee to execute this process. Members of the board of trustees can comprise the selection committee, however if more that 3 members of the board are on the committee the selection process must be done in an open publicly advertised meeting so as not to violate the Open Meetings Act. Once the committee is selected the land grant-merced is encouraged to use the sample evaluation form provided on the flashdrive that accompanies this guidebook under Section F – Financial Reporting & Audits.

Each committee member will receive one form for every proposal submitted. The forms will be used to evaluate and assign points first on the basis of experience and qualifications and then on the basis of cost. If evaluating more that three firms only the three firms with the highest evaluation ranking form the experience and qualification section, in part one, need to be

evaluated based on cost in part two. Once cost evaluations are complete, add the total points from part one and part two of the evaluation form. Each committee member is to fill out and sign a separate evaluation form for each firm reviewed. Once all firms have been reviewed fill out a new evaluation form for each firm based on the average score for each section of the evaluation form. Do this by adding together all the individual evaluations for a single firm, evaluation item and then divide it by the total number of committee members. Once this is done the audit firm which receives the highest number of evaluation points should be selected as the land grant-merced's IPA firm. The final evaluation form is to be signed by all members of the committee and submitted to the State Auditor as part of the recommendation packet covered in the next section.

Step 4 – Recommendation of an IPA Firm

The recommendation process for an IPA is different depending on if it is for agreed upon procedures related to the tier system of financial reporting or if it is a financial compliance and control audit.

For agreed upon procedures the board of trustees will make a firm selection based on the evaluation criteria. They must then complete the required recommendation form and contract for their appropriate financial tier. The recommendation form must be placed on the land grant-merced's letterhead. The contract must be completely filled out and must be signed by both the audit firm and a representative from the board of trustees (president or treasurer). The contract will not be valid or executed until it is approved by the State Auditor. If the firm selected is not on the State Auditor's list of approved audit firms then the land grant-merced must also provide copies of the firm's New Mexico permit to practice, proof of current liability insurance, and current peer review (if applicable). In addition the land grant must submit an explanation as to why they chose a firm that is not on the approved list. Examples of justification can include the cost, the location of the firm, the familiarity of the firm with agreed upon procedures for land grants, etc. Lastly, the land grant must also submit a list of all professional service contracts (if any) that the land grant-merced has entered into with the selected firm apart from the contract for agreed upon procedures.

For a financial compliance and control audit the board of trustees will make a firm selection based on the evaluation criteria. The firm must be from the State Auditor's approved list of IPA firms. They must then complete the required recommendation form and contract for their appropriate financial tier. The recommendation form must be placed on the land grant-merced's letterhead. The contract must be completely filled out and must be signed by both the audit firm and a representative from the board of trustees (president or treasurer). The contract will not be valid or executed until it is approved by the State Auditor. Lastly, the land grant must also submit a list of all professional service contracts (if any) that the land grant-merced has entered into with the selected firm apart from the contract for the financial compliance and control audit. The recommendation of an IPA is due by May 15.

A copy of the recommendation forms and contracts for agreed upon procedures for all tiers and a financial compliance and control audit can be found on the Office of the State Auditor Website at www.osamn.org, also a copy of the forms as of 2011 has been provided on the flash drive that accompanies this guidebook.

Step 5 – Contract Approval

Once a land grant-merced submits a recommendation and contract for agreed upon procedures/audit services they must wait until they receive approval from the State Auditor before any work begins. If the State Auditor does not approve the recommended firm the land grant-merced must submit a different recommendation and contract until a firm is approved. If a land grant-merced does not meet the deadline for submission of an IPA firm recommendation then the State Auditor may either choose to conduct the audit/financial review or, if it is sixty days passed the deadline, may select the IPA for the land grant-merced. A land grant-merced must retain all procurement documentation related to the selection of an audit firm, including evaluation forms for five years.

Step 6 – Reports and Payments

Agreed upon procedures and financial compliance and control audit reports must be submitted on or before their due date. The due date for all land grant-merced agreed upon procedures/financial compliance and control audit reports is December 1. Prior to the submittal of the audit report the audit firm and the land grant-merced must have an exit conference at which time the audit firm reviews the report with the land grant-merced and points out any findings or procedural recommendations for future accounting. This is also a great opportunity for the land grant-merced to ask questions they may have of the auditor.

Once the State Auditor accepts the report it will be officially released by means of written notification from the State Auditor to the land grant-merced. Once the report is released by the Office of the State Auditor it is considered a public record and it may be distributed freely. Releasing the report prior to final approval from the State Auditor's Office is not allowed.

Payments made to IPA's for agreed upon procedures/audit services must comply with the laws and regulations set by New Mexico Statutes and the Audit Rule. No payments for agreed upon procedures/audit services can be made without a contract. Also IPA's cannot receive full payment for services until the Office of the State Auditor reviews and releases the agreed upon procedures/audit report. The IPA is entitled to receive partial progress payments for the completion of work during the life of the contract. Partial payments are subject to the requirement set forth by the State Auditor. The requirements vary for agreed upon procedures and financial compliance audits.

For agreed upon procedures the land grant-merced can pay an IPA firm up to 90% of the total contract award without approval from the State Auditor. The land grant cannot pay the remaining 10% until they received written notification from the State Auditor that the report has been released and final payment can be made.

For financial compliance and control audits the land grant-merced can only pay up to 69% of the total contract award without state auditor approval. The land grant-merced must ensure that the progress payments are equal to the amount of work completed for the audit. The land grant-merced must get approval from the State Auditor's office prior to making partial progress payments between 70% to 90% of the total contract award. The land grant cannot pay the

remaining 10% until they received written notification from the State Auditor that the report has been released and final payment can be made.

ADDITIONAL FINANCIAL CONTROL CONSIDERATIONS

Compliance with the Audit Act and state budgets requirements means that land grants-mercedes have to utilize a good system of accounting. This includes both the budget process as covered in Section E and financial statements as covered in Section F of this guidebook. Below are some additional areas land grants-mercedes should consider when determining how to operate their finances.

Bank Accounts

Establishing a bank account(s) is the first step in safeguarding monies controlled by a land grant-merced. There are two (2) basic types of bank accounts, savings and checking. Savings accounts allow a land grant-merced to place their money in the bank and earn interest while it is not in use. A checking account provides an account from which the land grant-merced can conduct financial transactions by being able to receive funds into checking and disburse funds out of it as well. Checking accounts are important for a several reasons. First, most federal and state agencies require a checking account so that and grant funding may be deposited directly the account. Second, the grant reimbursement process for many agencies requires that copies of all checks be made for services or capital purchases, prior to disbursement of funds. Third, the cancelled check is a receipt for payments made which is one of the most basic of financial documents. Bank accounts can be interest bearing or non-interest bearing accounts. Some federal and state grant programs require that money be deposited in non-interest bearing accounts. Be sure to inquire to your grantor if this provision applies to you.

Having either a savings or checking account provides an entity with the most basic form of financial accounting documentation. This is since the bank provides monthly bank statements which are a record of all transactions that occurred within an account for that month. Statements include dates and amounts for all deposits (credits) and withdrawals (debits). As well, bank statements provide copies of all checks that have cleared the bank or at least a listing of all cleared checks by number. The statement will even note if there is a gap in the check number sequence. All of this is important in tracking down funds received and/or paid out by a land grant.

Internal Controls

In dealing with the finances it is advisable that the land grant-merced consider a few internal controls listed below.

1) Chapter 49-1-14 subsection C requires that all payments made by the land grant-merced be made with a check that has been drawn down upon a voucher. Vouchers are an internal mechanism for authorizing payments for services or purchases acquired by the land grant-merced. Payment vouchers should only be made when a written invoice for payment has been received. Both the invoice and voucher along with a copy of the check should be saved for audit/financial review purposes. A sample voucher has been provided on the flash drive that accompanies this guidebook under Section F – Financial Reporting & Audits in the Sample Financial Documents folder.

2) Any and all accounts owned by the land grant-merced should require at least two (2) signatures on all checks or withdrawal slips. This decreases the chances of anyone attempting to embezzle or misuse funds from any accounts. Also the land grant-merced should consider designating at least three trustees as having signatory authority on all accounts. This is so that in the event that one trustee is unable to sign an alternate signature may be acquired to conduct necessary business. The most common signatory authorities would be the President and Treasurer the third can be any other trustee designated.

3) When receiving funding of any type, either cash or check, it is a necessary to deposit the funds in the bank on the day of receipt or within at least three (3) days of that date. The longer funds lay around un-deposited the more likely it is for them to either disappear or get lost.

4) Issue receipts for any payments made to the land grant-merced for membership dues, grazing fees, etc. Receipt books which are numbered sequentially and that have at least one carbon copy are the most ideal for keeping good records.

5) It is a good idea for a board of trustees to consider the separation of duties when it comes to handling monies. For example, if a land grant-merced is collecting membership dues they might want to consider having the Secretary collect and give receipts for the funds received, have another trustee total the amount collected and then turn all the money over to the Treasurer to make the bank deposit. This ensures accountability for everyone, if only one person is collecting money and making deposits it provides the opportunity to misreport actual funds collected especially if it is cash.

6) As the finances of a land grant-merced become increasingly more complex consider the use of accounting software or paid professional services to manage the books. If planning on utilizing software be sure and select something that is very user friendly as it will pass from one board of trustees to the next with election cycles. Getting a system that is too complex may be burdensome to maintain for an entity that is usually staffed by volunteers.

These are only a few examples of internal controls, both the Office of the State Auditor and/or an Certified Public Accountant can help each land grant-merced determine any other necessary internal controls that may be necessary or required by state law.

Reconciliation of Bank Accounts

In order to properly utilize bank statements for the purposes of good record keeping it is important that a land grant-merced reconcile their books to the bank statement on a monthly basis. Reconciling the books simply means checking your set of financial transactions, i.e. your general ledger, against those of the bank to ensure there are no accounting mistakes, internally or by the bank, that could affect the balance of funds. This is essentially the equivalent of balancing the land grant-merced's check book. This means determining what checks have cleared and what checks are still outstanding. This is important so as to not overdraw an account and bounce checks. Although an ATM or online account balance may show \$1,000 in the bank on a given day it does not necessarily mean that money has not already been spent on a check that is still outstanding.

In order to begin reconciling the books you must first ensure that the beginning account balance of the general ledger is the same as the beginning account balance on the bank statement. Once it is determined that the beginning balances are the same simply go through all of the transactions which you believe occurred during the period coinciding with the bank statement and determine if all the transactions have cleared the bank or if there are still some pending. If there are no transactions pending then the bank balance and the balance on the land grant-merced's general ledger should be equal and therefore they are reconciled. If there are transactions still pending they will show up until the bank statement of the following month. Since these transactions have not been recorded by the bank then the general ledger balance should be less than that on the bank statement. To ensure that you are reconciled with the bank, simply add up all the pending transactions and add the sum total to the balance on the general ledger. If done correctly the total should be equal to the account balance on the bank statement. If it is not equal first check your math, and if there is still a problem further investigation is necessary. Accounting software such as QuickBooks; does the math for you and makes the reconciliation process much simpler. Copies of bank reconciliations should be kept in a book for later reference or review from an IPA as required by law. It is primarily the Treasurer's responsibility to reconcile the bank statements and utilize them in the preparation of monthly and/or quarterly financial statements for the board of trustees.

[SAMPLE CERTIFICATION OF REVENUES RESOLUTION]

MERCED DEL PUEBLO DE _____
RESOLUTION # 20__ - ____

A RESOLUTION CONCERNING CERTIFICATION OF ANNUAL REVENUES FOR FISCAL YEAR 20____.

WHEREAS, the Board of Trustees of the Merced del Pueblo de _____ met at its regular/special/annual (choose one) meeting at _____ (location) New Mexico, on the _____ (day) of _____ (month) in _____ (year) at _____ (time), as required per law; and

WHEREAS, Section 12-6-3.B (1) NMSA 1978 provides that political subdivisions of the state with an annual revenue *less than ten thousand dollars (\$10,000) and does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor*; and

WHEREAS, State Auditor Office Rule 2.2.2.16.C NMAC requires that political subdivisions covered by Section 12-6-3.B(1) NMSA 1978, to submit certification that the body's annual revenue did not exceed \$10,000 nor did the body expend 50% or the remainder of any capital outlay award;

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Merced del Pueblo de _____, that:

1. The annual budget for the Merced del Pueblo de _____ for fiscal year _____, as calculated in accordance with State Auditor requirements, was \$_____.

2. The Merced del Pueblo de _____, for fiscal year _____ did not (Choose one of the following):

_____expend 50% or the remainder of any legislative capital outlay appropriation.

_____ have any legislative capital outlay appropriation(s).

AND BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Office of the State Auditor and the Department of Finance and Administration, Local Government Division, Budget and Finance Bureau.

PASSED, ADOPTED, APPROVED and SINGED this _____ day of _____ 20____.

By: _____
President of the Board of Trustees

Attest: _____
Secretary of the Board of Trustees

[SAMPLE PAYMENT VOUCHER]

Merced del Pueblo de _____			
Payment Voucher			
Request By: _____		Date: _____	
Amount : \$ _____			
Payable To: _____			
Address: _____			

City: _____		State: _____ Zip: _____	
Contact: _____		Phone (____) _____	
Payable For: _____			

Signed: _____		Date: _____	
Approved: _____		Date: _____	

Invoice Number: _____

Merced del Pueblo de _____			
Payment Voucher			
Request By: _____		Date: _____	
Amount : \$ _____			
Payable To: _____			
Address: _____			

City: _____		State: _____ Zip: _____	
Contact: _____		Phone (____) _____	
Payable For: _____			

Signed: _____		Date: _____	
Approved: _____		Date: _____	

Invoice Number: _____

SECTION G – PROCUREMENT CODE

PROCUREMENT CODE GUIDELINES

The purpose of this section is to assist land grants-mercedes in compliance with the NM State Procurement Code and the NM General Services Regulations. Those land grants-mercedes recognized as political subdivisions of the State are now required to adopt procurement regulations by resolution (See the sample resolution on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder), and to use procurement procedures in accordance with State law. The following is a purchasing guide for land grants-mercedes to better understand State Procurement Code.

SMALL PURCHASE (13-1-125 & 13-1-91 NMSA, 1978)

Small purchases usually consist of furniture, fixtures, equipment, materials, supplies, etc and also include contractual professional services and construction costs all within the set price limits. Section 13-1-125 NMSA 1978 sets the price limitations and requirements for small purchases. Below is a guide and recommendations for how a land grant-merced can comply with the procurement code as it relates to small purchases.

1. A land grant-merced can do a direct purchase of items, services and construction provided that the value of such a purchase does not exceed \$10,000.00. The land grant-merced should issue a purchase order for items under the expense limit based upon the best obtainable price. Any tangible items of personal property, services or construction valued above \$10,000 require that the land grant-merced put out a Request for Proposals (RFP) before purchasing an item or awarding a contract for services or construction. If a land grant-merced has adopted small purchase regulations then they are eligible to increase the small purchase cap from \$10,000 to \$20,000. The \$10,000 or \$20,000 cap does not apply to certain professional services (see item 2 below). For more information on the RFP process for items, services and construction please see the section on Competitive Sealed Bids below.
2. A land grant-merced can procure most professional services without going through a formal RFP process for professional services having a value not exceeding \$50,000. This cap is excluding applicable state and local gross receipts taxes. This cap does not apply to professional services for landscape architects or surveyors for local public works projects. Those services must not exceed a value of \$10,000 in order for no RFP to be required.

When procuring professional services where no RFP is required the land grant-merced shall obtain no fewer than three (3) written or oral quotes. All written quotes as well as documentation of oral quotes must be kept and in the procurement file. If three quotes cannot be obtained, document the reasons and include with the rest of the file. The procure file shall be kept for a period of at least 5 years.

When professional services are procured it is important that the land grant-merced prepare and execute a contract that includes the scope of work, delivery of service schedule and terms of compensation.

Any professional service valued at more than \$50,000 (\$10,000 for landscape architecture or surveyors) requires that a formal request for proposal process be conducted. For more information about RFP's for professional services please refer to the sections below on Competitive Sealed Proposals and Competitive Sealed Request for Qualification Proposals.

3. It is important to note that a land grant-merced cannot divide any purchase that is part of the same project into smaller purchases so as to constitute a small purchase. §13-1-125.D.
4. State law allows the for an entity to specify a brand name for a product they are wanting to procure if it is done so to indicate quality, performance, or description when obtaining a quote or issuing an RFP. If a brand name is specified provisions must be made to allow for substitution of items that are equal in quality and performance. For more information on use of brand names refer to NM Statutes 13-1-33 through 13-1-34 and 13-1-165 through 13-1-168 for definitions of equivalency.

SOLE SOURCE PURCHASES (13-1-126 NMSA, 1978)

Sole source purchases are defined as purchases for which there is only one known source for the required service, construction or item of tangible personal property regardless of the estimated cost. A land grant-merced can utilize a sole source purchase if the requirements are met:

1. The land grant-merced conducts a good-faith review of available sources, which finds that there is only one source for the required items of tangible personal property, construction or services. The land grant-merced should be completely sure that that there are no competitive sources available to be solicited. A written determination that there is only one source to procure from should be completed and filed with other procurement documents.
2. The land grant-merced must conduct negotiations, as appropriate, regarding the price, delivery and quantity for any and all sol source purchases so as to obtain the most advantageous price for the land grant-merced.
3. The land grant-merced must record the contractor's name and address; amount and term of the contract; listing of the services, construction, or items of tangible personal property procured under the sole source contract. As well the land grant-merced must document the justification for the sole source purchase with any written approval and/or determination. This documentation should be kept for a minimum of three (3) years in accordance with Section 13-1-128 NMSA 1978.

EMERGENCY PURCHASES (13-1-127 NMSA 1978)

Emergency purchases are valid only when there is a potential threat to public health, welfare, safety or property requiring procurement under emergency conditions. A land grant-merced can only utilize an emergency purchase if the following applies:

1. An emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:
 - a) Functioning of government
 - b) Preservation or protection of property
 - c) Health or safety of any person(s) (13-1-127 NMSA 1978 Comp)
2. Record the contractor's name and address; amount and term of the contract; listing of the services, construction, or items of tangible personal property procured under the contract; and the justification for the purchase with any written approval and/or determination. This document should be kept for a minimum of three (3) years (13-1-128 NMSA 1978 Comp)

Every effort should be made to purchase competitively (13-1-127 NMSA 1978), however if the situation does not allow, a written determination of the basis for the emergency procurement and for the selection of the particular contractor shall be included in the procurement file (13-1-128 NMSA 1978 Comp., 1997 Repl.).

COMPETITIVE SEALED BIDS (§13-1-102 - 13-1-110 NMSA 1978)

Competitive Sealed Bids are for purchases of items of tangible personal property; services and construction over the \$10,000 or \$20,000 small purchase limits (See small purchase requirements above). Bids for construction contractors or heavy equipment purchases are good examples of a competitive sealed bid. Below are the steps a land grant-merced must follow when procuring services or goods through a competitive sealed bid process:

1. The first step is to develop an "invitation to bid." The invitation for bids shall include the specifications for the services, construction or items of tangible personal property to be procured all contractual terms and conditions applicable to the procurement, the location where bids are to be received and the date, time and place of the bid opening (13-1-103 NMSA 1978). The invitation to Bid should be specific in requesting "Competitive Sealed Bids" and requiring the envelope with the bids be marked as "Competitive Sealed Bids."
2. Once the invitation to bid is completed the land grant-merced must publish a notice of the invitation to bid in at least one newspaper of general circulation in the area, such as the Albuquerque Journal, Santa Fe New Mexican etc. (13-1-104 NMSA 1978). The notice must be published not less than 10 calendar days prior to the date of when sealed bids received are to be opened (13-1-113 NMSA 1978). The notice of invitation to bid must include: a brief description of the services, construction or items of tangible personal property being sought in the invitation to bid; the name and contact information for the person responsible for distributing the invitation to bid packet as well as the location and time, if applicable, of where bid packets can be picked up; the time deadline for submitting bids.
3. When bids are received **do not open**; stamp or write the date, time and who received the bids and store in a secure place until the time and date set for the bid opening.

4. The bid opening shall be done publicly and in the presence of one or more witnesses at the time and date designated in the invitation for bids (13-1-107 NMSA 1978). Once opened the amount of each bid along with the name of each bidder shall be recorded and the record and each bid shall be open for public inspection.

5. If the bid is for a construction contractor:

The land grant-merced must determine that the contractor is not listed as an ineligible contractor on any State or Federal Lists. This can be done by contacting the New Mexico Regulation and Licensing Department Construction Industries Division at (505) 476-4700 or via the web at www.rld.state.nm.us/CID/. Be sure and document the outcome with the date, time, and the name of the person providing the information or print directly from the website.

- b. If the project is greater than \$50,000, the contractor must provide proof they registered with the NM Department of Workforce Solutions (NMDWS)). This registration fee is \$200. Any subcontractor(s) must also register; but may do so after they have been hired. A land grant-merced can verify that all contractors and subcontractors are registered by contacting the NMDWS at (505) 827-6875.
 - c. It is also important to verify that the contractor's bonding company is licensed to do business in New Mexico. A land grant-merced can do this by contacting the Company Licensing Section of the Public Regulation Commission at (505) 827-3978 or fax (505) 827-4734.
6. After reviewing all the bids the land grant-merced shall award the bid to the lowest bidder for purchases or if it is a bid for a construction contractor to the lowest bidder that meets all of the above covered requirements. The contract must be a firm fixed-price contract (lump sum or unit price). The award should be approved by the board of trustees and included in the minutes. The lowest bid shall be determined exclusive of any applicable state or local taxes. The award shall be by written notice to the lowest bidder with reasonable promptness. (13-1-108 NMSA 1978).

In the event that a land grant-merced receives two identical low bids then the land grant-merced can take any of the following actions (13-1-110 NMSA 1978):

- a. Award to a resident business if the identical low bids are submitted by a resident business and a non-resident business.
 - b. Award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a non-resident manufacturer.
 - c. Award by lottery to one of the identical bidders; or
 - d. Reject all bids and re-solicit bids or proposals.

In the event that the land grant-merced does not receive any bids or determines that it is in the best interest of the land grant-merced to not accept the bid received, the land grant-merced may cancel the solicitation of bids or reject in whole or in part all bids submitted. The land grant-merced must document the reasons for the cancellation or rejection and include that documentation as part of the procurement file. Once a solicitation is cancelled or all bids associated with a solicitation are rejected the land grant-merced must re-solicit a new invitation for bids. In the case where a land grant-merced did not receive any bids or the bids received are not acceptable in both the first or second solicitations of bids, the land grant-merced may purchase the tangible personal property, construction or services associated with the bid in the open market at the best obtainable price.

7. Once the notice of award has gone out the land grant-merced can prepare and execute a contract formalizing the scope of work, delivery of service schedule and terms of payment.
8. It is also important that the land grant-merced send written notice, by mail, within 15 days of award to all other respondents to the invitation for bid that they did not receive the bid award.

COMPETITIVE SEALED PROPOSALS (§13-1-111 to 117 NMSA 1978)

Competitive sealed proposals are used when price is not the sole factor in the selection. Competitive sealed proposals can be used to procure contracts for construction and facility maintenance, service and repairs. This procedure may also be used to select a consultant to provide administration of a project, appraisals or expert testimony, and community, economic and environmental planning services. In the federal regulations this request is known as qualification for administrative services. This procedure is not used to select architects, engineers, landscape architects or surveyors. These types of services require a competitive qualifications-based proposal as outline in the next section below. The procedures for utilizing a competitive sealed proposal process are as follows:

1. The land grant-merced needs to develop the Request for Proposals (RFP) (13-1-112 NMSA 1978). The RFP must include: the specifications for the services to be procured; all contractual terms and conditions applicable to the procurement; the form for disclosure of campaign contributions given by prospective contractors to applicable public officials; the location where proposals are to be received and the applicable deadline for receipt of proposals, the date, time and place where proposals are to be reviewed; and the factors that will be used to evaluate proposals and their relative weight (13-1-114 NMSA 1978). It is suggested that the land grant-merced include a requirement for at least 3 references as part of the factors for evaluation (a sample form for reference check form has been included on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder). The RFP should be specific in requesting “Competitive Sealed Proposals” and requiring the envelope with the proposal be marked as “Competitive Sealed Proposal”. Sample RFP’s have been provided on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder

Copies of the RFP must be made available to anyone responding to the notice described below in item 2. Copies can either be a hard copy or an electronic document that can be mailed, picked up or e-mailed to anyone interested in responding to the RFP.

2. Once the RFP has been developed the land grant-merced must give public notice of the request for proposals. This is done by publishing a notice of the RFP in at least one newspaper of general circulation in the area, such as the Albuquerque Journal, Santa Fe New Mexican etc. (13-1-104 NMSA 1978). The notice must be published not less than 10 calendar days prior to the date of when sealed proposals received are to be opened (13-1-113 NMSA 1978). The notice of RFP must include: a brief description of the services being sought in the RFP; the name and contact information for the person responsible for distributing the RFP packet as well as the location and time, if applicable, of where RFP packets can be picked up; and the time deadline for submitting a sealed proposal. A sample notice of proposal can be found on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder
3. When proposals are received **do not open**, stamp or write the date, time and who received the proposals and store in a secure place until the time and date set for the proposal opening. The proposals shall not be opened publicly and shall not be opened for public inspection until after the negotiation process is complete and an offeror has been selected for award of contract. A sample Proposal Receipt Log has been provided the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder
4. Once the deadline for receipt of proposals has passed and on the day indicated in the RFP, the land grant-merced can review and rank proposals in accordance with the RFP. Reviews and rankings should be in writing. Sample proposal evaluation forms can be found on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder.
5. Depending on the number of proposals received, the land grant-merced can narrow choices down to one or more offerors based on RFP rankings. The land grant-merced can then meet those selected to discuss the proposals and negotiate price. The land grant-merced may allow offerors the opportunity to revise proposals after such discussion and prior to award for the purpose of obtaining the best and final offers (13-1-115 NMSA 1978). At no time should the proposal or price offers of other competitors be disclosed to any other competitor during discussions and negotiations (13-1-116 NMSA 1978). A sample Interview Sheet can be found on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder
6. Once the land grant-merced is satisfied with all final proposals they may make the selection of award based on the most advantageous offer taking into consideration price and other criteria established in the RFP (13-1-117 NMSA 1978).

In the event that the land grant-merced does not receive any proposals or determines that it is in the best interest of the land grant-merced to not accept the proposals received, the land grant-merced may cancel the solicitation of proposals or reject in whole or in part all proposals submitted. The land grant-merced must document the reasons for the cancellation or rejection and include that documentation as part of the procurement file. Once a solicitation is cancelled or all proposals associated with a solicitation are rejected the land grant-merced must re-solicit a new RFP. In the case where a land grant-merced did not receive any proposals or the proposals received are not acceptable in both the first or second solicitations of proposals, the land grant-merced may purchase the services associated with the bid in the open market at the best obtainable price.

7. Once the land grant-merced has made its award selection the next step is to prepare and execute a contract that must include the scope of work, delivery of service schedule and terms of payment.
8. Lastly the land grant-merced needs to give written notification, by mail, within 15 days of award to all respondents to the RFP of land grant-merced's selection decision. A sample Memorandum for Notification of Firm Selection can be found on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder.

COMPETITIVE SEALED QUALIFICATION-BASED PROPOSAL (§13-1-119 - 124 NMSA 1978)

Competitive Sealed Qualification Proposals are used for professional services of architects and engineers in excess of \$50,000 and surveyors and landscape architects in excess of \$10,000 in base design fees, excluding any applicable state or local taxes. The competitive sealed qualification-based proposal process is designed so that a land grant-merced awards a service contract based on the expertise and experience of a firm rather than on price. Below are the steps and requirements for procuring professional services through the use of a competitive sealed qualification-based proposal process.

1. Any land grant-merced that is seeking to procure services for architecture, engineering, landscape architecture or surveying is required to request assistance from the Professional Technical Advisory Board (PTAB) in accordance with Section 13-1-117.2 NMSA 1978. PTAB will provide a licensed professional engineer, surveyor, architect or landscape architect to serve as an agent of the land grant-merced and will provide the following services:
 - a. advise the land grant-merced in the development of the Request for Qualification-based Proposals (RFQ) for professional services;
 - b. advise the land grant-merced in giving public notice for the RFQ;
 - c. advise the land grant-merced in the evaluation and selection of a firm to provided services outlined in RFQ.

- e. assist the land grant-merced in the contract negotiations.

PTAB assistance is free to the land grant-merced, although a land grant-merced may, if they so choose provide reimbursement for mileage and per diem in accordance with the Per Diem and Mileage Act 10-8-1 NMSA 1978 (for more info on Per Diem and Mileage Act see Section H of this guidebook). PTAB requests that a land grant-merced contact them at least 4 weeks prior the desired date for advertising an RFQ. PTAB can be contacted at (505) 888-6161 or via e-mail at PTAB@ACECNM.org. Included on the flash drive that accompanies this guidebook are the PTAB Manual for Qualification-Based Selection, a sample RFQ and Sample Evaluation Criteria all located in the PTAB folder.

2. Once PTAB has assigned a Professional Technical Advisor (PTA) that individual will work with the land grant-merced to develop the Request for Qualifications. The RFQ must include: the specifications for the services to be procured; all contractual terms and conditions applicable to the procurement; the form for disclosure of campaign contributions given by prospective contractors to applicable public officials; the location where proposals are to be received and the applicable deadline for receipt of proposals, the date, time and place where proposals are to be reviewed; and the factors that will be used to evaluate proposals and their relative weight. Section 13-1-20 NMSA 1978 provides a listing of all evaluation criteria that must be used as part of the RFQ process. The RFQ should be specific in requesting “Competitive Sealed Qualification-based Proposals” and requiring the envelope with the proposals be marked as “Competitive Sealed Proposal”.

Copies of the RFQ must be made available to anyone responding to the notice described below in item 3. Copies can either be a hard copy or an electronic document that can be mailed, picked up or e-mailed to anyone interested in responding to the RFQ.

3. Once the RFQ has been developed the land grant-merced must give public notice of the request for proposals. This is done by publishing a notice of the RFP in at least one newspaper of general circulation in the area, such as the Albuquerque Journal, Santa Fe New Mexican etc. (13-1-104 NMSA 1978). The notice must be published not less than 10 calendar days prior to the date of when sealed proposals received are to be opened (13-1-113 NMSA 1978). The notice of RFP must include: a brief description of the services being sought in the RFP; the name and contact information for the person responsible for distributing the RFP packet as well as the location and time, if applicable, of where RFP packets can be picked up; and the time deadline for submitting a sealed proposal. A sample notice of proposal can be found on the flash drive accompanying this guidebook under Section G – Procurement Code in Procurement Supporting Documents Folder
4. When bids are received **Do Not Open** until time and date publish for qualification opening; stamp or write the date, time and who received the bids.

5. Once opened the land grant-merced along with their PTAB appointed PTA will review and rank proposals according to the criteria in the RFQ. The land grant-merced will then choose at least the top 3 offerors to conduct interviews with regard to their qualifications, approach to the project and their ability to furnish the required services. The land grant-merced may also require that any offerors chosen for interviews be required to do a public presentation of materials covered in the interview. The names of all businesses submitting proposals and the names of all business selected for an interview shall be public information (13-1-120 NMSA 1978).

If there are less than 3 proposals submitted for consideration then the land grant-merced can either rank in order of qualifications those proposals submitted for consideration of award or can terminate the selection process and re-solicit via a new notice of RFQ for more proposals. Proposals received in response to a terminated RFQ are not considered public information and shall not be made available to competing offerors.

In the event that the land grant-merced does not receive any proposals or determines that it is in the best interest of the land grant-merced to not accept the proposals received, the land grant-merced may cancel the solicitation of proposals or reject in whole or in part all proposals submitted. The land grant-merced must document the reasons for the cancellation or rejection and include that documentation as part of the procurement file. Once a solicitation is cancelled or all proposals associated with a solicitation are rejected the land grant-merced must re-solicit a new RFP. In the case where a land grant-merced did not receive any proposals or the proposals received are not acceptable in both the first or second solicitations of proposals, the land grant-merced may purchase the services associated with the bid in the open market at the best obtainable price (13-1-131 NMSA 1978).

6. Once interviews and public presentations from at least the 3 top firms are completed the land grant-merced with assistance from their PTA shall select a firm for award. After award has been made the final rankings and evaluation scores for all proposals shall become public information.
7. The PTA will assist in the negotiation of costs related to the service indicated in the RFQ.
8. Once negotiations are completed the land grant-merced shall prepare and execute a contract formalizing the scope of work, delivery of service schedule and terms of compensation.
9. The land grant-merced shall notify in writing, within 15 days after the award is made, all other firms responding to the RFQ that they have not be selected (13-1-120 NMSA 1978).

[SAMPLE PROCUREMENT RESOLUTION]

MERCED DEL PUEBLO DE _____
Resolution # _____

PROCUREMENT CODE

A RESOLUTION ESTABLISHING GUIDELINES AND PROCEDURES FOR UTILIZING THE PROCUREMENT PROCESS FOR THE LAND GRANT-MERCED DEL PUEBLO DE _____ PURSUANT TO THE REQUIREMENTS OF THE NM PROCUREMENT CODE AND THE NM GENERAL SERVICES REGULATIONS.

WHEREAS, the purpose of this resolution is to adopt regulation to translate or define the general and specific requirements of the Procurement Code; and

WHEREAS, the purposes of the Procurement Code are to provide fair and equitable treatment of all persons involved in public procurement to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity; and

WHEREAS, the board of trustees may adopt through resolution or ordinance regulations pertaining to the procurement of items of tangible personal property, construction or services;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE Land Grant-Merced del Pueblo de _____ **that any and all purchases and/or procurement of tangible personal property, construction and services made on behalf of the Land Grant-Merced de Pueblo de _____, through any of its officers, offices or employees, shall be done through central purchasing in accordance with the Procurement Code Sections 13-1-1 through 13-1-199 NMSA 1978 and Section 1.4.1.1 NMAC 09-30-05; and**

PASSED, APPROVED AND ADOPTED by the Board of Trustees of the Land Grant-Merced del Pueblo de _____ in a properly advertised open meeting this _____ day of _____, 20____.

By:

President

Attest:

Secretary

[SAMPLE REQUEST FOR PROPOSAL PUBLIC NOTICE]

NOTICE OF REQUEST FOR PROPOSAL

The LAND GRANT-MERCED DEL PUEBLO DE _____ is requesting Qualified-Based Competitive Sealed Proposals for professional (architectural services, surveying services, planning services, engineering services or land architectural services) for (Project name and location)

Proposals will be received at _____ on _____ until _____ a.m. /p.m.

Copies of the Request for Proposals can be obtained in person at the office of the _____ at Address or will be mailed upon written or telephone request to Person designated at Telephone number.

A Pre-Proposal Conference will or will not be held on _____ (date), 20____ at _____, _____ (a.m. /p.m).

Proposals will be opened on _____ (date), 20____ at _____ (location) at _____ (time)

NAME OF PERSON IN CHARGE OF SUBMITTING

SIGNATURE

DATE

SECTION H – PER DIEM AND MILEAGE ACT

MILEAGE AND PER DIEM GUIDELINES

The purpose of this section is to assist land grants-mercedes with determining appropriate compensation to the members of the board of trustees and employees for attendance at meetings and for travel reimbursement incurred during official business. The rates are established under the Per Diem and Mileage Act §10-8-1 to 10-8-8 NMSA 1978, Department of Finance and Administration Regulations Governing the Per Diem and Mileage Act 2.42.2.1 NMAC - N, 07/01/0 and the Land Grant General Provision 49-1-14 NMSA 1978.

Any and all compensation or reimbursement to members of the board of trustees or employees of a land grant/merced must be by written check and drawn upon vouchers. A Sample voucher has been provided on the flash drive that accompanies this guidebook in Section F – Financial Reporting & Audits under the Sample Financial Documents folder.

SALARIES FOR BOARD OF TRUSTEES

Section 49-1-14 NMSA 1978 allows the board of trustees to receive a salary not to exceed \$200 per month to any one member, except for the secretary who may receive no more that \$225 per month as compensation for their official duties and for attendance at regularly scheduled meetings. The law also states that board members may be authorized per deim and mileage pursuant to the Per Diem and Mileage Act 10-8-1 NMSA 1978. If a land grant wishes to provide salaries for members of the board of trustees they must set provisions for such compensation in their bylaws.

PER DIEM

The members of the board of trustees are eligible to receive per diem for each board meeting attended and for each day spent in discharge of official duties for travel within the state but at least 35 miles away from the officer's home. The per diem rate varies depending on whether or not the members of the board of trustees receive a salary in accordance with 49-1-14 NMSA 1978. If the members of the board do not receive a salary then they are entitled to \$95 per diem for every meeting attended and for each day (not exceeding 8 hours in a 9 hour period) spent in discharge of official duties for travel within the state but at least 35 miles away from the officer's home. If the members of the board of trustees do receive a salary then they are entitled \$85 per diem for every meeting attended and for each day (not exceeding 8 hours in a 9 hour period) spent in discharge of official duties for travel within the state but at least 35 miles away from the officer's home. If a member of the board of trustees spends more than a normal 8 hour work day in discharge of official duties for travel within the state but at least 35 miles away from the officer's home and does not require overnight lodging, then they are entitled to receive additional per diem at the based on the rates below set by the Department of Finance and Administration:

- (a) for less than 2 hours of travel beyond normal work day, none;
- (b) for 2 hours, but less than 6 hours beyond the normal work day, \$12.00;
- (c) for 6 six hours, but less than 12 hours beyond the normal work day, \$20.00;
- (d) for 12 hours or more beyond the normal work day, \$30.00;

For any official business that requires travel outside of the state members of the board of trustees are entitled to receive \$115 per diem for each day spent in discharge of official duties.

Members of the board of trustees can also choose to be reimbursed for actual expenditures related to lodging and meals for any travel related to the discharge of official duties. If a member of the board of trustees is reimbursed for actual expenses incurred they do not receive the per diem amounts listed above. Reimbursement of actual expenditures are limited to no more than \$215 total per day for out-of-state travel, and no more than \$30 per day for meals for in-state travel and \$45 per day for meals for out-of-state travel. Also no reimbursement can be made for the purchase of alcoholic beverages.

The board of trustees has the right to completely eliminate or reduce any of the rates associated with compensation for per diem and mileage. The bylaws of the land grant-merced should clearly state procedures for compensation related to per diem and mileage.

MILEAGE REIMBURSEMENT FOR PRIVATELY OWNED VEHICLES AND AIRPLANES

Members of the board of trustees and any employees of a land grant-merced are entitled to receive reimburse for miles traveled in their privately owned vehicle when in the discharge of official duties. The rate for reimbursement for miles traveled can be set by the board of trustees but shall not exceed the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled. IRS standard mileage rates can be found at www.irs.gov. The current IRS standard rate of mileage reimbursement, as of 2011, is 50 cents per mile the current mileage rate used by the State of New Mexico, as of 2011, is 40 cents per mile.

Mileage can be calculated by logging the actual mileage as per the odometer reading, by use of an official state map published by the State Highway and Transportation for the distances in New Mexico, or by use of the most recent edition of the Rand-McNally road atlas for distance.

Members of the board of trustees and employees of the land grant are also entitle to receive 88 cents per mile for each mile traveled in a privately owned airplane if the travel is necessary to the discharge of official duties and if the private conveyance is not a common carrier (commercial airline). If travel is by a common carrier then members of the board of trustee and or employees may be reimbursed for the actual cost of the plane ticket.

As with the per diem rate the board of trustees may choose to eliminate completely or set the rate for mileage reimbursement as they see fit. The board of trustees is encouraged to adopt official procedures for reimbursement of mileage traveled in privately owned vehicles. These procedures can be included in the bylaws.

REIMBURSEMENT OF MISCELLANEOUS EXPENSES

Members of the Board of Trustees and employees of a land grant-merced may be reimbursed for certain actual expenses in addition to per diem rates as set forth below:

A. Non-Required Receipts for Certain Expenses

Public Officers and employees may be reimbursed without receipts for the following expenses in an amount of \$6.00 per day not to exceed a total of \$30.00 per trip:

- a) Taxi or other transportation fares at the destination of the traveler;
- b) Gratuities as allowed by the designee;
- c) Parking fees;
- d) If more than the amount allowed above, the entire amount of reimbursement expense must be accompanied by receipts.

B. Receipts Required for Certain Expenses

Public Officers and employees may be reimbursed for the following expenses provided that receipts for all these expenses are attached to the reimbursement voucher:

- a) Actual costs for travel by common carrier, provided it is the most economical and practical;
- b) Rental cars if it is the least expensive public transportation;
- c) Registration fees for educational programs or conferences, if this fee includes lodging or meals, then no per diem shall be paid;
- d) Professional fees or dues that is beneficial to the land grant-merced's operations or mission.
- e) Under circumstances where the loss of receipts would deny reimbursement and create a hardship, an affidavit from the member of the board of trustees or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the approval signature of the board of trustees; a sample affidavit has been provided on the flashdrive that accompanies this guidebook under Section D – Per Diem & Mileage Act in the Sample Per Diem & Mileage Documents folder.

C. Travel Vouchers

Members of the board of trustees and/or employees of the land grant are required to fill a travel voucher supporting schedules and documents and keep it on file with payment voucher. A sample travel voucher has been provided on the flashdrive that accompanies this guidebook under Section D – Per Diem & Mileage Act in the Sample Per Diem & Mileage Documents folder.

[SAMPLE VOUCHER]

Land Grant-Merced del Pueblo de _____

**VOUCHER FOR ATTENDANCE ALLOWANCE
BOARD OF TRUSTEES**

Attendance Allowance for Board of Trustees.

Board of Trustees Meeting (s) of _____ (date)

Amount of Voucher: \$_____

Board/ Member

Address

City, State Zip

Signature

Date

Approved

President/Secretary

Date

[SAMPLE REIMBURSEMENT REQUEST]

LAND GRANT - MERCED DEL PUEBLO DE _____

IN-STATE AND OUT-OF-STATE TRAVEL REIMBURSEMENT REQUEST

Name of Traveler: _____	Address: _____ City: _____	
Departure From: _____ Date: _____ Time: _____	Type of Training or Conference: _____	
Anticipated Return: _____ Date _____ Time: _____	Location of Training or Conference _____	
Beginning Odometer Reading: _____	Ending Odometer Reading: _____	
Vehicle License No.: _____	Model : _____	Year: _____
TRAVEL COST ITEMS	ANTICIPATED COST	ACTUAL COST
TRANSPORTATION		
1) Mileage: Private Vehicle (____cents per mile _____Miles)		
2) In-state Commercial Transportation (Bus, Taxi, Limo, Shuttle)		
3) In-state Commercial Airplane Fare		
PER DIEM (normal work day for computation 8:00 am to 5:00 pm)		
1) For travel beyond the normal work day with no overnight lodging required: a) < 2 hrs = \$0.00 b) 2 to 6hrs = \$12.00 c) 6 to 12 hrs = \$20.00 d) 12 or more hrs = \$30.00		
2) For in-state travel or each 24 hr period where overnight lodging is Required: a) In State = \$85.00 b) In-State Special Area = \$135.00 c) Out-of State=\$115.00 d)Out-of-State Special Area= \$215.00		
3) For a partial day in-state travel following a normal workday when per diem is used. a) 6 to 12 hrs = \$10.00 b) 12 to 18 hrs = \$20.00 c) 18 to 24 hrs = \$30.00 Out-of-State Meal expenses - \$45.00 per day (24 hr. period)		
OTHER COSTS: This section is to be used for Reimbursements. (Attach receipts & documentation)		
1) Tips/Transportation		
2) Meal expenses		
3) Motel		
TOTAL COST OF TRIP		
AMOUNT OF ADVANCE REQUESTED (For per diem expenses only.		
AMOUNT DUE TO/FROM EMPLOYEE		
Public Official or Employee: _____ Date: _____ Approval: _____ Date: _____		

[SAMPLE AFFIDAVIT FOR LOST RECEIPTS]

LAND GRANT - MERCED DEL PUEBLO DE _____

AFFIDAVIT FOR LOST RECEIPTS

Travel and Per Diem

I, _____ a member of the board of trustees/employee (choose one) of the Land Grant-Merced del Pueblo de _____ certify that actual receipts for expenses in the amount of \$ _____ incurred while in the conduct of business for the Merced del Pueblo de _____, were lost.

Travel Dates	Lodging Expenses	Meal Expenses	Other Expenses

Signature

Date

Signature of approving official

Date

SECTION I – PLANNING AND ZONING

LAND USE PLANNING & ZONING

The Purpose of Planning and Zoning

In 2004 the General Provisions Statutes for New Mexico Land Grants-Mercedes were updated to improve the ability of community land grants-mercedes to better manage the common lands. Under the updated statutes community land grants-mercedes were granted zoning authority over the common lands provided that they develop a comprehensive plan that is approved by the Department of Finance and Administration Local Government Division (DFA-LGD). Zoning authority allows the land grant-merced to establish the appropriate land use for the development of the common lands apart from any land use restrictions established by the local county government. For example, if a land grant-merced were to develop a comprehensive plan that called for the development of a commercial/retail center on a portion of the common lands, the land grant-merced could then zone those portions of the common land accordingly even if the county had previously zoned those common lands as agricultural.

Comprehensive Plan

A comprehensive plan is a long-range strategic planning document created to help a land grant-merced utilize, manage and develop the common lands in the future. Comprehensive plans typically cover a period of 20 years and are updated every 5 years. Comprehensive plans inventory and evaluate the existing conditions within a land grant –merced including natural resources, infrastructure, demographics, housing, and community and economic develop needs. The plan then establishes goals, objectives and policy statements for addressing issues facing the land grant-merced. The plan should provide strategies for managing and utilizing the natural resources owned by the land grant-merced to help realize goals developed in the plan. For example, if a land grant community identifies a need to provide relief to an area that has been extensively grazed; then the plan might recommend relocation of livestock, cross-fencing and rotational grazing on the common lands. The plan should also identify all types of land uses desired by the land grant-merced community and where they believe those types of uses would be most appropriately located on the common lands. This information can be used to create a desired land use map and both the map and the desired uses can be utilized as the starting point for developing a zoning ordinance and land use map for the common lands. A sample land use zoning map can be found on the flash drive that accompanies this guidebook in Section I – Planning & Zoning under the Sample Zoning Ordinance & Maps folder.

DFA-LGD requires certain elements be included in a comprehensive plan. It is important to understand what those elements are, since a land grant-merced must get approval of their comprehensive plan from DFA-LGD prior to enacting their authority to zone the common lands. The following is a list comprehensive planning elements required by DFA-LGD:

1. **Land Use** – including (1) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (2) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (3) goals, objectives, and policies that address maintaining a broad variety of

land uses, including the range of uses existing when the plan is adopted or amended; and (4) specific actions and incentives that the local government entity may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged.

2. **Housing** – including (1) an analysis of existing housing supply and demand, analysis of greenhouse gas emissions from the housing sector, and forecasted housing needs; (2) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; (3) a description of the actions that will be taken to implement housing goals, objectives and policies; and (4) the element must meet minimum standards of the Affordable Housing Act.
3. **Transportation** – including (1) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, mass transit, arterial and collector streets or other modes of transportation as may be appropriate, and analysis of greenhouse gas emissions from the transportation sector; (2) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and a description of proposed levels of service and funding mechanisms; and (3) a description and assessment of the proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements.
4. **Infrastructure** – including (1) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (2) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (3) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies.
5. **Economic Development** – including (1) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the local government entity, and analysis of greenhouse gas emissions from the commercial and industrial sectors; (2) goals, objectives and policies for promoting economic

development, and for reduction of greenhouse gas emissions; and (3) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies.

6. **Water** – including (1) description and assessment of the sources of water supply; (2) the demand for water by residential commercial , institutional, industrial and recreational sectors; (3) assessment of the unaccounted for water losses due to leaks, theft or other reasons; (4) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (5) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse, or a plan to obtain additional water supplies or increase water use efficiencies.
7. **Hazards** – including (1) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (2) goals, objectives and policies for hazard mitigation; and (3) a description of the actions that will be taken to mitigate hazards; and
8. **Implementation** – a compilation of the plan’s goals, objectives, policies, standards, and/or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance.

A land grant-merced comprehensive plan can include more elements then those listed above, such as community development, natural resource management and capital needs, but it must at a minimum include the elements required by DFA-LGD.

Zoning

Once a community land grant-merced has adopted a comprehensive plan and that plan has been approved by DFA-LGD, then the land grant-merced may choose to adopt zoning regulations that correspond to the land use recommendations in the comprehensive plan. For example, a land grant-merced may want to protect agricultural lands from encroachment of residential structures and decide to zone the land agricultural open space which would then restrict any housing development on the historic agricultural lands. A zoning ordinance defines what types of activities can take place on a piece of land and what types of activities are not allowed. A zoning ordinance should to try to separate incompatible uses such as industrial and residential, or commercial and agricultural. A sample land grant zoning ordinance can be found on the flash drive that accompanies this guidebook in Section I – Planning & Zoning under the Sample Zoning Ordinance & Maps folder.

SECTION J – INFRASTRUCTURE CAPITAL IMPROVEMENT PLANNING

INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN GUIDELINES

As political sub-divisions of the State, land grants-mercedes are encouraged to participate in the Infrastructure Capital Improvement Plan (ICIP) process administered by the Department of Finance and Administration Local Government Division (DFA-LGD). The ICIP is a community's plan for capital infrastructure project development over the next 5 years. Capital projects are defined as projects costing \$25,000 or more, with a life cycle of at least 10 years and that are not a part of annual operating expenses. Capital projects can include construction or renovation of community infrastructure systems (water & wastewater), buildings, heavy equipment and vehicles. DFA-LGD administers the ICIP program through the use of an online database, where entities are able to input data about their planning process, current asset inventory, and infrastructure project needs. Projects listed on the ICIP, from entities across the state, are compiled and placed in a book that is distributed to Legislators, the Governor and all State Agencies. The ICIP online database is typically completed in the summer starting in June and all plans must be submitted by the end of September.

The ICIP is the start of the capital outlay process for obtaining State, Federal and other funding for infrastructure projects. Although the ICIP is a voluntary process legislative capital outlay requests, which are listed on the ICIP are given a more favorable recommendation by State agencies, including the Governor's Office. As well capital projects listed on the ICIP can receive additional points on other funding applications like CDBG and Water Trust Board.

Below are instructions as to how the ICIP process is completed and how to fill out the required online forms.

PREPARING FOR THE ICIP

A land grant-merced may start to prepare for the ICIP at the same time they are preparing their next fiscal year's annual budget in the spring. As part of determining their budget needs for the coming year the board of trustees should also be considering their capital infrastructure and equipment needs for the land grant-merced. Infrastructure includes all facilities owned by a land grant-merced, including, roads, water systems, wastewater systems, buildings, cemeteries, etc. Capital equipment is other hard assets including heavy equipment, vehicles, and large purchases of furniture, fixtures, computers, etc that would coincide with equipping a newly constructed or renovated facility.

Public hearings may be held in conjunction with budget hearings to get community input on what heirs feel the land grant-merced needs. When planning for infrastructure and capital improvements the board of trustees must consider the period over the next five years. Doing so will allow the land grant-merced to plan ahead and anticipate future needs rather than only react when infrastructure or equipment breaks. In order to do this the land grant-merced needs to determine what assets they have and what condition those assets are in. This can be done through the use of a capital assets inventory. The ICIP requires an inventory be submitted as part of the plan. More information about completing an inventory can be found below in the Inventory Section.

If a land grant-merced has completed a comprehensive plan they can utilize it in determining what their infrastructure and capital needs will be for the future. Understanding how a land grant-merced wants their community to be in the next 20 years will help them to determine what infrastructure needs to be put into place to make this a reality.

Once a land grant-merced has received comments from heirs, reviewed their current inventory and consulted their comprehensive plan they should create a list of their infrastructure and capital improvement needs and then prioritize project needs by importance. Once they are prioritized they can be planned out across the next 5 years. It is a good idea to prioritize no more than 5 projects per year since obtaining the funding to complete each project as well as the construction and or purchase process can take several years. Once this is done the land grant may begin to fill out the ICIP form online.

FILLING OUT ICIP ONLINE

The ICIP database can be accessed online at <http://www.state.nm.us/capitalprojects/>. In order to access the online forms a land grant-merced must login to the website using their DFA-LGD assigned entity code and password. If a land grant-merced has never completed an ICIP or is not sure what their entity code or password is they can contact DFA – Local Government Division at 827-4950. The login area is at the upper right hand corner. Enter the entity code and then the password and click login.

The online ICIP database is composed of 3 sections, Entity Information, Inventory, and Projects. Sections are accessed by clicking on the corresponding button at the top of the webpage. Always use either the blue selection buttons at the top or the buttons within each form to navigate through the website. Use of the internet browser back button could result in the loss of data.

Below are detailed instructions for what information is required and how to fill it out. The items are listed in the order that they appear on the online forms. Each item is filled out by either direct input of information into the textbox provided or by choosing options from a drop down list of items.

Entity Information

The entity information section requires a land grant-merced to fill out general contact information as well as data regarding their planning process. To begin the land grant must select the EDIT ENTITY button located below the blue selection buttons at the top. Once the land grant has completed the form they must hit the SAVE button prior to exiting the screen. Failure to do so will result in the loss of data. Next the land grant-merced should hit the PRINT REPORT button to generate a hard copy to be saved in their files. This is important in the event information in the database is lost. Below are a listing and explanation of items that appear on the entity information page.

- **Agency/Local Government:** The Agency/Local Government refers to the local government entity; this item will already be filled in as will the entity code. The land grant must insure that the name is correct. If there are any problems please contact DFA-LGD at 827-4950.

- **Entity Code:** The Code is the entity number assigned by DFA. If your entity has never completed an ICIP you will not have an entity code, to obtain a code and password contact DFA-LGD at 827-4950. This will automatically be filled.
- **COG District:** COG District refers to the Council of Government or Economic Development District Boundaries in which the land grant-merced is located. The online form should already have the appropriate cog district designated. There are 7 COG Districts of throughout the State, but only 5 COG districts where land grants-mercedes are located within their boundaries. All currently organized land grants-mercedes are within the North Central EDD, Mid-Region COG, Northwest COG, Eastern Plains COG and South Central COG. COG's are divided up by County. If the land grant-merced falls within more than one COG district the land grant-merced may choose the COG, which seems most appropriate. Below is a list of the counties covered by each COG.
 - **North Central EDD** – Rio Arriba, Taos, Santa Fe, San Miguel, Mora, Colfax and Los Alamos counties.
 - **Northwest COG** – San Juan, McKinley and Cibola counties.
 - **Mid Region COG** – Sandoval, Bernalillo, Valencia and Torrance counties.
 - **Eastern Plains COG** – Guadalupe, Harding, Union, Quay, DeBaca, Curry and Roosevelt counties.
 - **South Central COG** – Dona Ana, Sierra and Socorro counties.
- **Entity Type:** Refers to the kind of entity. For example: county, municipality, land grant etc. A drop down menu is used to select the appropriate type of governance structure.
- **ICIP Coordinator/Contact:** Contact person should be the individual responsible for the completion of the ICIP.
- **Address:** Mailing address information for the land grant and/or contact person,
- **E-mail:** E-mail address for contact person that is responsible for completion of ICIP.
- **Phone Number:** Daytime phone number for contact person. Both this and e-mail address are important so that the land grant may be contacted if there are any necessary changes that must be made to the ICIP.
- **Fax Number:** Fax number for contact person.
- **Process:** Should contain information about the process or the specific steps that the land grant-merced followed to identify capital projects and assign priorities. Describe how the board of trustees selected and prioritized the projects to be requested in the next 5 fiscal years. Describe the public participation process.
- **Goals:** List the goals concerning capital improvements, in order of importance, which the land grant-merced intends to accomplish during the next five years. These goals should address issues related to current needs, future programs and facility deficiencies.

- **Factors/Responses:** Name and describe social, political, economic, legal or other factors affecting future demands for program services, resource availability, or capacity. Will the effects of the factors on the land grant-merced increase or decrease the demand for services, resource availability, etc? Discuss alternative options to address the effects of the trends, for example, shifting program emphasis or delivery mechanism, creating or terminating programs, doing nothing, etc. Describe and justify the alternative chosen. To the extent the selected approach involves capital investment; explain why a non-capital alternative was not feasible or less cost-effective. If examination of factors and their future effects indicates that you will encounter new demands, which cannot be met by existing infrastructure which will ultimately require development of capital outlay improvements, describe the new improvements. For example, the development of affordable housing on the common lands might require the need for a community water or wastewater treatment system.

Inventory

The inventory section requires that a land grant-merced create a list of all capital assets and requires information about each asset. To begin inserting new inventory, the land grant-merced must first select the blue Inventory button then once redirected to the inventory page select INSERT NEW INVENTORY. Once new inventory is entered the SAVE button must be selected prior to move out of the screen, otherwise all data will be lost. Once saved the land grant-merced may go on to enter other inventory. If the land grant-merced wishes to edit existing inventory then they may do so by double clicking on the entity code (in blue) that is next to the inventory item they wish to edit. Once done hit the SAVE button to save any changes. Once the inventory is complete the land grant-merced can hit the PRINT REPORT button to print an inventory list. It is a good idea to save a hard copy of the inventory list in the files in the event that information in database is ever lost. Below are a listing and explanation of items that appear on the inventory page.

- **Code:** This is the entity number assigned to the land grant by DFA. This field will self populate so there is no need for any data entry.
- **Agency/Local Government:** This refers to the name of the specific land grant-merced. This field will also self populate.
- **Sub Code:** If a land grant-merced chooses to they can assign sub-codes that correlate to their inventory tracking or accounting system. This allows for a further breakdown when prioritizing projects. For example, an entity may define each department as a separate sub-code and be able to sort by departments on a report. Most land grants-mercedes will not have the need to use sub-codes.
- **Inventory Title:** Here the land grant-merced will identify the type of inventory by title, for example, common lands, meeting hall, water tank, etc.

- **Location:** List site location (not mailing address) of all facilities and capital inventory currently owned and operated by the land grant-merced. Provide the best physical description possible.
- **Year Acquired:** If the land grant-merced owns the facility, enter the year it was built or acquired. If the facility is being rented or leased, enter the first year of the lease.
- **Owner Code:** Indicate whether the facility is owned by the land grant-merced; leased or rented from the private sector; leased or rented from the federal government or leased or rented from the state government. There is no standardized code to place in this field. This field is for local use only. You can create your own code for this field. Example codes are owned, leased, rented etc.
- **Latest Improvement:** Enter the type of the latest major improvement made to the facility. Be specific in identifying the type of improvement, for example: land acquisition, new construction, addition to existing facility, renovation or repairs, site development, equipment or furniture purchase, planning and design or study.
- **Year last improved:** List year latest improvement was completed.
- **Condition:** Use the drop down box to enter "Adequate" if the physical condition of the facility is meeting needs of the land grant. Enter "Inadequate" if the physical condition of the facility is not meeting needs of the land grant-merced.
- **Utilization:** Use the drop down box to enter "Adequate" if the facility is meeting the space needs, i.e., office space, meeting rooms, parking, etc. Enter "Inadequate" if the facility is not meeting the space needs and then explain the inadequacies in the description section.
- **Any Code Deficiencies:** Use the drop down menu to select either yes or no. Select the word "No" if the facility complies with all known code requirements and has no known deficiencies. Enter the word "Yes" if the facility has any code deficiencies. Deficiencies include shortcomings in handicapped accessibility, fire code, parking code requirements, etc.
- **Future Improvements/Description/Year:** If future capital improvements will be needed for this facility, enter the anticipated year along with one of the following terms which will identify the type of the improvement: land acquisition, new construction, addition, renovation/repair, equipment/furniture purchase, planning/design, or study.

Projects

The projects section is used to insert information about new capital projects as well as edit existing projects from past ICIP's. To access the project section, click the blue Projects button at the top. To edit an existing project the land grant-merced simply double clicks the entity code (in blue) next to the project they wish to edit. From here the land grant-merced can select to print the project, edit the project or delete the project complete. Once edits are complete the land grant-merced must hit the SAVE CHANGES BUTTON to update the project info. To insert a new project the land grant-merced will select the INSERT NEW PROJECT button and fill out the form. Once the form is complete they must hit the SAVE button to update the project. All projects can be printed individually with all the details and as a report, which list individual projects by name and gives total cost for each. Specific information about filling out individual project forms is below.

- **Entity Code:** This refers to the 5 number entity code assigned by DFA. This field self populates.
- **Agency/Entity:** This refers to the name of the land grant-merced. The field self populates based on the entity login information.
- **Project Title:** Enter the name of the project such as Land Grant Hall Renovations, Water System Improvements, Road Construction, Heavy Equipment Purchase, etc.
- **Sub code:** If a land grant-merced chooses they can assign sub code that correlates to their inventory tracking or accounting system. This allows for a further breakdown when prioritizing projects. For example, an entity may define each department as a separate sub code and be able to sort by departments on a report. Most land grants will not have the need to use sub-codes.
- **Year:** The land grant-merced will use the drop down menu to select the year in which they hope to start the project. Number each project request by year. The year reflects the first year that funding is anticipated (not necessarily the year that construction begins).
- **Plan Project Priority Rank:** Begin each number with the year in which the request will be made; i.e., the highest priority request in 2012 will be number 01, the second priority will be 02, etc.

- **Category Code:** Use the drop down menu to choose appropriate category for the project. Select the category that best fits the project. Category codes land grants can chose from are as follows:

ACQ- Acequias
 ADM-Administrative service Facilities
 ART- Arts (other and Museums)
 CE – Clean energy
 CF – Cultural facilities
 CNV – Convention facilities
 DV- Domestic Violence Facility
 ENC – Economic Development
 FIR – Fire Equipment/Buildings
 HLT – Health
 HOU – Housing
 LDF- Landfill
 LGT-Lighting
 LIB-Libraries
 MED-Medians
 MUS-Museums
 OTH – Other
 OVR-Overpasses
 PRK – Parks (local)
 PS1-Public Safety
 equipment/building
 PS2 – Public Safety vehicles
 RST –Rest Area
 SR – Senior Community
 facility/equipment/vehicles
 SW – Solid Waste
 TR1 – Roads/streets/bridges
 TR2 – Transit
 TR3 – Airports
 TR4 – Storm/Surface water
 UT – Utilities (publicly owned)
 WTR – Water rights
 WTS – Water supply
 WWT- Wastewater

- **Colonias:** Indicate with a check mark if this project falls within any boundary or definition of a colonia. Leave the field blank if the project does not. Most Land grants-Mercedes will never select the colonia designation. Only a land grant-merced within 150 miles of the US Mexican Border is eligible for a Colonia designation.
- **Capital Outlay Rank:** The land grant-merced must rank the project between 1 and 5. This is the priority ranking for the project within the year it is due to begin. If a land grant-merced has more than 5 projects listed within any given year then projects ranked above 5 will be left blank. The top 5 ranked projects within the upcoming fiscal year will require additional information as explained later.
- **Description/Justification and Benefits:** Give a brief description of the project listing all segments to be a part of this project e.g., "construct dining room addition", "acquire right-of-way," "purchase storage equipment," "complete plan and design." Terms to always use so as to keep the project language general enough to utilize capital outlay money received for the project are: acquire property, plan design/engineer, construct/renovate, furnish and equip. Also give a brief description of the benefits of this project. State how the project speaks to the goals of the plan and how it specifically benefits the area where work is to be done.
- **Location:** Give a brief physical description of where the project will be located. For example, on the land grant common lands adjacent to the land grant hall.
- **Implementation Action Plan (task/responsible person or position/timeframe):** Give a brief description of the tasks involved in developing this project (funding, planning, designing, constructing, etc. as well as other tasks such as public hearings), the person/position responsible for seeing that the task is completed, and the timeframe for the task.
- **Estimated Cost not yet funded:** Complete the cost breakdown portion of the form by placing the appropriate amount in the year the project will take place and in the correct cost category. If the project is going to be developed in phases, place the cost of each phase of the project in the appropriate year that the phase will be funded. These costs reflect costs not yet funded.
- **Has the local government accepted the Project:** Here the land grant-merced must answer yes or no as to whether or not the board of trustees has accepted the project. If answer is no an explanation as to why must be given.
- **Annual Operating Expenses Plus Debt Service:** Here the land grant-merced must estimate the operating costs plus any debt service requires starting with the year the project will become operational. If a project will be completed in 2009 the operating expense will not begin until 2010. Operating expenses should include utility, maintenance and personnel costs and should be increased over time by at least 5% per year.

- **Annual Operating Revenue:** Here the land grant-merced will insert the estimated annual revenues from the operation of the project. This would include user fees, etc.
- **Current Funding Status:**
 - **Committed Funding Sources:** Here the land grant-merced names the funding source for funds already committed to a project. This includes matching funds that come from the land grant general fund as well.
 - **Amount Already Funded:** The actual dollar amount committed from each source named under Committed Funding Sources.
- **Potential Future Funding Sources:** Choosing from the drop down menu the land grant-merced selects up to 5 future potential funding sources. Choices for include Community Development Block Grants, Federal Grants, Federal Loans, Legislative Grants, Local Funds, None, Other, State Grants and Sate Loans.
- **Districts:** House, Senate and County - Under the Districts box, the land grant-merced designates the district representatives from the House and the Senate, along with the respective county, by selecting from the drop-down list. Land grants-mercedes with multiple Representatives or Senators; can only choose one but late will be able to list more for their top 5 legislative priority projects. Note that in the county popup, a selection for multiple counties appears at the beginning of the list, land grant that are in multiple counties may choose to utilize this or choose the county where the project will be located in.

Capital Outlay Legislative Priorities

If a land grant-merced ranks any of there projects within the top 5 of their capital outlay priorities for the next fiscal year they will be required to give additional information about the project. The additional form will pop up once the land grant-merced has completed the Project form and clicks on the save button. The additional questions are to assist with making recommendations to the Governor for legislative funding. The additional information can help the land grant-merced fill out the capital outlay request forms as well. Below are instructions for how to fill out the additional information requested.

- **Description/Justification & Benefit:** This field will self populate with the same information provided on the individual Project form page.
- **Determine of these three criteria, which describes your project:** Here the land grant-merced must determine if the term, critical, necessary or desirable best fits their project.
- **Explain:** Here the land grant-merced must explain why there project is critical, necessary or desirable.

- **Project Contact Person:** The person listed here is the individual most involved with the project. This person does not have to be the same as the contact person for the ICIP itself. It is important to name the individual closest to the project as they might be called upon to answer questions related to the project from various state agencies that may be interested in funding the project. This person should be a member of the Board and not the project engineer.
- **Phone Number:** This should be the phone number for the project contact person.
- **Address:** This should be the address of the land grant-merced or the project contact person.
- **E-mail:** This should be the e-mail for the project contact person.
- **Total Project Cost:** This should be the total cost of the project including any funds already secured for the project.
- **Requested Amount:** This is the minimum amount needed to complete either a usable part of the project or the entire project.
- **Project Phase:** This is the number of the phase if the project can be phased over time. For example, phase 1 or 4 or phase 2 of 3, etc. If the project can not be phased indicate this by putting phase 1 of 1.
- **When can the project phase begin:** This is the approximate date when the project can start if the land grant-merced were to receive enough funds to begin. Things to consider are if all design and engineer work has been done, if all land and right of ways have been acquired and if any necessary legal work has been completed.
- **Identify the local government that will own and administer this project:** In most cases this will be the land grant-merced itself, unless the land grant-merced is partnering with another government entity such as a county or municipality that will own and operate the project when it is complete.
- **Has the local government agreed to administer, maintain and operate the capital project:** The land grant-merced must select yes or no. In most cases the land grant-merced itself will own the project in some instances they will partner with another government entity in which case they must have a written agreement in place prior to the release of funds.
- **Will the funds be expended within four (4) years from the time the funding is made available:** Again the land grant-merced must select yes or no. All capital outlay money for construction projects must be spent within 5 year of being appropriated. Money not spent must be reauthorized or it will be reverred back to the State. Equipment purchases from capital outlay money must be made within 1 year of the appropriation.

- **Identify legislators that will be affected by request:** Lastly the land grant-merced must list all legislators that they will be requesting funding from. Here the land grant-merced can list up to 4 individual legislators. The land grant-merced should list only those Representatives and Senators whose districts are within the land grant-merced boundaries.

Once the form is complete select submit and the form will be saved. Information provided will appear on the individual project sheet for each project.

APPROVING AND SUBMITTING THE ICIP

Once all of the ICIP forms have been completed and printed the board of trustees must review and make the final approval. The ICIP must be adopted through resolution passed at a public meeting prior to being submitted to DFA-LGD. A sample resolution has been provided on the flash drive that accompanies this Guidebook under Section J – Infrastructure & Capital Improvement Planning. Once approved the land grant-merced must submit the resolution along with a printed copy of the ICIP Project Summary to DFA-LGD. The land grant-merced is not required to submit copies of the Entity Info or the Inventory, provided that all the forms have been filled out online. If the land grant-merced does not utilize the online Inventory then they must submit a memo along with the ICIP packet that indicates the land grant-merced has a separate inventory list that will be made available upon request from DFA-LGD. ICIP packets can be sent to the following address:

Local Government Division
Bataan Memorial Building, Suites 201-203
Santa Fe, NM 87501

ICIP's are typically due in either August or September. DFA-LGD determines the due dates every year. If you have any questions contact DFA-LGD at (505) 827-4950.

[SAMPLE ICIP RESOLUTION]

LAND GRANT - MERCED DEL PUEBLO DE _____

COUNTY(IES) OF _____

Resolution No. _____

A RESOLUTION
ADOPTING AN INFRASTRUCTURE CAPITAL IMPROVEMENTS PLAN (ICIP)

WHEREAS, the Land Grant-Merced del Pueblo de _____ recognizes that the financing of public capital projects has become a major concern in New Mexico and nationally; and

WHEREAS, in times of scarce resources, it is necessary to find new financing mechanisms and maximize the use of existing resources; and

WHEREAS, systematic capital improvements planning is an effective tool for communities to define their development needs, establish priorities and pursue concrete actions and strategies to achieve necessary project development; and

WHEREAS, this process contributes to local and regional efforts in project identification and selection in short and long range capital planning efforts.

NOW, THEREFORE, BE IT RESOLVED BY THE LAND GRANT-MERCED DEL PUEBLO DE _____ that:

1. The Land Grant-Merced has adopted the attached Infrastructure Capital Improvements Plan, and
2. It is intended that the Plan be a working document and is the first of many steps toward improving rational, long-range capital planning and budgeting for New Mexico's infrastructure.
3. This Resolution supersedes Resolution No. _____.

Adopted and approved this _____ day of _____, 20____.

President of the Board of Trustees

ATTEST:

Secretary of the Board of Trustees

SECTION K – LEGISLATIVE AND CAPITAL OUTLAY PROCESS

LEGISLATIVE & CAPITAL OUTLAY PROCESS

The following is an outline to the New Mexico legislative process including the steps necessary to apply for capital outlay funding. Understanding the legislature and legislative capital outlay process will provide land grants-mercedes the ability to better access lawmakers and funding for projects.

LEGISLATIVE STRUCTURE

The New Mexico State Legislature is one of the three branches of state government. The other two branches are the Executive, which is lead by the Governor and includes all state agencies, and the Judicial which are all of the courts. The Legislature was constitutionally created to write state laws, appropriate funding and conduct oversight of state agencies.

Legislative Bodies

The Legislature is a Bi-cameral body, which means it is composed of two separate chambers. These chambers are the House of Representatives and the Senate. The House of Representatives is considered the people's house and is to be more representative of New Mexico citizens. The House districts are smaller than Senate districts thereby creating more Representative seats than Senator Seats. The terms of office are for shorter periods than the Senate as well. Currently there are 70 House districts and members are elected for two year terms. As well, the rules regarding who can run for a House seat are less restrictive than the Senate. To be a Representative a person must be at least 21 years old.

Typically the Senate is considered the camber that represents the interests of the State. Therefore, the Senate chamber is smaller with only 42 members. Also Senate terms are for four years and in order to run for a Senate position a person must be at least 25 years old.

New Mexico has a citizen's legislature as opposed to a professional legislature, which means legislators are not full-time year round paid positions like the United State Congress. Both House and Senate members are only paid a per diem while at the session or acting in their official capacity at committee hearings.

Sessions

The Legislature meets once a year starting the 3rd Tuesday of January. The lengths of the sessions are either 30 days or 60 days depending on the year. Even number years are 30 days and odd number years are 60 days. In the 30 day session subject matter is restricted to bills that deal with the budget, appropriations or revenues as well as bills that have a message from the Governor or that were vetoed during the previous session. Bills that do not meet these requirements must be introduced during the 60 day session.

Committees

Since the Legislature only meets to pass bills once a year both chambers utilize committees to conduct business during the session and in the interim. There are three (3) types of committees Standing, Interim, and Select/Study. Committees in the House are assigned by the Speaker of the House and Committees in the Senate are assigned by the Committees Committee subject to the approval of the entire Senate.

The Standing committees deal with board issues and meet during the session. These are the individual committees that hear testimony on bills that are assigned to them during the session. Bills in the House are assigned a committee by the Speaker of the House and bills in the Senate are assigned at the recommendation of the Majority Floor Leader with the approval of the entire Senate. Standing Committees include Appropriations and Finance, Education, Judiciary, Rules etc. The House has nearly twice as many committees as the Senate. Standing committees are indefinite and meet from year to year.

Interim committees are set up to have a more narrow focus and meet outside the regular session. Interim committees meet to hear testimony and make bill recommendations for the session. Bills endorsed by a committee often carry more weight than bills introduced by a single Representative or Senator as they are supported by an entire committee. The Land Grant Legislative Interim Committee is a good example of an interim committee. It is important that land grant communities attend meetings when possible and get to know the committee members as they support most legislation related to land grant issues. Another interim committee that land grants should be aware of is the Legislative Finance Committee (LFC). The LFC is the committee which reviews the State's annual revenues and makes recommendations for annual budget appropriations as well as large capital outlay appropriations. Interim committees are comprised of members from both the House and the Senate.

Select or Study committees are created to address specific subjects and are dissolved when their task has been completed. An example of a select/study committee would be one charged with looking at the State's tax structure and making recommendations for possible changes to increase state revenue.

Legislative Staff

In addition to the Representatives and Senators the Legislature has numerous staff members that ensure legislative business can be conducted throughout the year. Legislative staff can be categorized as Non-Partisan, Partisan, Personal and Facilities/Legislative.

Non-Partisan staff does legal research, draft bills, analyze budgets, and respond to requests from members and committees. Examples of non-partisan staff are the Legislative Council Service staff, Information System staff, and LFC staff.

Partisan staff works exclusively for the majority or minority leadership or with the Democratic or Republican caucuses. These staff members develop party positions and programs along party lines.

Personal staff work for individual legislators and help them carry out their legislative duties. These are the secretarial and support staff assigned to individual legislators or their committees. It is helpful to know these individuals during the session, as they can help a land grant track down their Representative or Senator, determine the location of their bill, or help get a bill moved up on a committee's scheduled hearing agenda.

Facilities/Legislative staff maintains the facilities, and track the legislative process and actions. The Secretary of the Senate and Clerk of the House are in charge of tracking all bills. If a bill is passed or killed on the floor of the House or the Senate, the Secretary or Clerk can give a land grant a copy of the bill, as well as the vote count etc. The Sergeant at Arms maintains order on the floor by only allowing Representatives, Senators and authorized individuals on to the floor. As well, they coordinate the distribution of any materials on the floor. Representatives of land grant-merced ever wishing to speak with a Senator or Representative that is on the floor they can ask the Sergeant at Arms that is at the door closest their Senator or Representative to retrieve them off of the floor. It is good to have a business card handy for them so they may delivered it to the legislator be requested to come off the floor.

Legislative Measures

The legislature considers proposals that can be as simple as 1 paragraph to 100 page documents. There are 3 basic types of measures that can be heard by either chamber, they are Bills, Memorials, and Resolutions.

Bills are the form used to propose or amend laws. They require passage through both chambers as well as action by the Governor.

Memorials are a petition or declaration of intent addressed to another governmental body. They can be passed in either the House of the Senate and stand alone or can be passed jointly by both chambers. They do not require action by the Governor to become effective. For example the senate could pass a memorial asking the Department of Transportation to work with land grants on developing boundary marker signs along state highways or both houses could pass a Joint Memorial asking the Federal Government to address land grant issues.

Resolutions are formal declarations on a subject that the legislature cannot or does not want to control with legislation. Like memorials, resolutions can be passed alone through either house or jointly through both. Resolutions do not need action by the Governor to be effective. An example, of a resolution can be to declare a day to honor an individual or group.

LEGISLATIVE PROCESS: HOW BILLS BECOME LAW

Introduction of a Bill

In order for a bill to be introduced it must be either sponsored by a member of the House or Senate or on the Governor's Call. Once a bill is introduced in either chamber it is assigned a number such as House Bill 22 or Senate Bill 234. Bill numbers are assigned in numeric order as they are introduced. Once assigned the bill number can be used to track the bill throughout the session. Bills can be tracked online at <http://legis.state.nm.us/lcs/default.asp> or in person at the Secretary of the Senate or Clerk of the House Offices located in the basement of the Capitol Building. Once the bill number is assigned the bill is read twice on the floor of which ever chamber it was introduced in. It is a good idea to introduce duplicate bills in both chambers as it increases the likelihood of passage. If the bill is long the short version will be read twice. Once read on the floor the bill is assigned to various standing committees to review and make any necessary changes.

Testifying Before a Committee

Once a bill is assigned to a committee(s) it will be scheduled on the committee agenda for testimony to be heard and for committee members to ask questions about the bill. The protocol for testimony is as follows. The sponsor will introduce the bill before the committee and give a brief explanation. If the sponsor chooses they may ask an expert witness to testify about the bill before the committee. In doing so, the sponsor will ask to turn the floor over to the witness. Before proceeding with testimony the witness should wait to be recognized by the chair of the committee. Once recognized the witness must state their name and title for the record. Witnesses should always begin testimony with “Madame/Mister Chair, members of the Committee” and then proceed. Any and all questions and or responses must go through the chair and responses to questions should be proceeded with “Madam/Mister Chair, Senator/Representative (name of committee member who asked the question)” then proceed with the answer.

Committee Action

Once testimony is heard the committee can deliberate the bill and take any of the following possible actions: Do pass, do pass with amendments, do not pass, without recommendation, committee substitute, refer to another committee, table, and no action.

A do pass, means the bill is fine as is and can be passed to either the next committee it is assigned or to the floor if no other committee is assigned.

A do pass with amendments means the bill can be passed on but required small changes to the language of the bill that are reflected in the amendments.

A do not pass means the committee does not approve the bill and it will be killed in the committee. A bill that receives a no pass can be revived within the committee and reheard if one of the committee members that voted to kill the bill asks that it be put back on the agenda for reconsideration.

Without recommendation means that the committee reviewed the bill but took no formal action to pass the bill. This does not mean that the bill is killed only that the committee has no issues with the bill and prefers that it move on to the next committee or the floor for a vote.

A committee substitute means that the bill had so many little changes or enough substantive change that it required a substitute bill rather than amendment. The original bill is then tabled or killed and the substitute bill takes its places and moves on through the process.

A referral to another committee is made if the committee reviewing the bill feels that it should also be reviewed by an additional committee that may have more expertise in a certain area. For example, the Government and Urban Affairs committee in the House may choose to send a bill to the Judiciary committee to review the legal impact a bill may have.

Tabling a bill means that it will either be heard at another date or not at all. A bill can be tabled if a committee requires additional information before making a decision or as a way to kill the

bill without actually voting against it. If a bill remains tabled it will automatic die at the end of the session.

No action from a committee will kill the bill as it will automatically die at the end of the legislative session. No action means the bill never even made it before the committee to be heard. This can be the result of too many bills being scheduled or lack of desire from the Chair of the committee to place the bill on the Committee agenda. The Chair has the power to place a bill on the agenda as well as move it up after it has already been placed.

Final Passage

Once a bill has made it through all committee assignments within its chamber of origin it is placed on the floor calendar to be read for a third time. Once read the bill is debated and amendments may be made from the floor. While on the floor the bill sponsor and other legislators are allowed to testify on behalf of the bill. The sponsor may ask that an expert witness be present to consult with as the bill is being debated. In order for an expert witness to be on the floor they must have a letter from the Representative or Senator giving them permission to be on the floor. The witness will present the letter to the sergeant at arms at the door closest to the sponsor and they will allow the witness onto the floor. All men wishing to gain entry to the floor must wear a neck tie; this can include a bolo tie. If they do not have a neck tie on they cannot be on the floor.

Once the bill is debated it is voted on. The bill is then either passed or defeated by a majority vote of the members present. If the bill passes the floor it is then sent to the other chamber where the entire process outlined above is repeated. While in the other chamber if amendments are made to the bill the differences must be approved by both chambers. Differences that arise are reconciled by a conference committee comprised of both House and Senate members.

Once a bill has passed both houses it goes to enrolling and engrossing. This is where the bill is checked for errors, prepared and copied into its final form. The final bill is signed by the presiding officers of both the House and the Senate. Once the Speaker and President Pro Temp have signed the bill it is sent to the Governor for action.

Governor's Action

Once a bill is sent to the Governor he can take several actions. The Governor can choose to sign the bill thus passing it and making it a law or the Governor can veto the bill and effectively kill it. If the bill has an appropriation attached to it the Governor can issue a partial veto thereby stripping some or all of the funds attached to the bill. The Governor can take no action on a bill and depending on when it is presented before the Governor it will either pass as a result of no action or be pocket vetoed. The time limits which determine what effect no action from the Governor will have are as follows: If a bill reaches the Governor any time prior to up to three (3) days before the end of the session, it must be vetoed within 3 days of it reaching the Governor or if no action is taken it will automatically become law; If the bill reaches the Governor within the last three days of the session it must be signed within 20 days of the date it is received or it is automatically vetoed.

After a bill is signed by the Governor it is sent to the Secretary of State's Office where it is assigned the Bill and Chapter number and it becomes a part of the Session Laws for that year. Once signed laws take effect 90 days after the session unless another date is specified in the law. Emergency bills are effective immediately upon the signature of the Governor.

LEGISLATIVE FUNDING SOURCES

In addition to the creation of laws the Legislature is also charged with appropriating the State's revenue dollars. These appropriations include funding of the State's operating budget as well as investing money back into communities through Capital Outlay, General Fund, General Bond and other funding appropriations.

Capital Outlay

Funding for Capital Outlay appropriations typically come from Severance Tax Bonds (STB). STBs derive from the receipt of taxes levied on certain natural resource products severed and saved from the soil of the State. This includes resources such as oil, natural gas, coal, uranium etc. The proceeds from these taxes are leveraged to pay back bonds that are sold based on anticipated revenues. Annual revenues from severance taxes can fluctuate as they are subject to price changes in oil and gas. Therefore the amount of capital outlay that is available from year to year can also fluctuate up and down. Since these amounts can fluctuate capital outlay must be used for the purchase of fixed assets and appropriations must be one time non-recurring funds. This is since there is no guarantee on future revenues. Projects being submitted for capital outlay must be worth at least \$10,000. If less than \$10,000 the project will be funded from the General Fund.

General Fund

General Fund appropriations are funded through the revenues generated from various taxes collected by the State. This includes gross receipts and income taxes as well as revenues earned from investment of those taxes. General fund appropriations are used to first to fund the recurring operating expenses for running State Government. Revenues in excess of those operating costs are then used for one time capital outlay funding for various projects.

General Obligation Bonds

General Obligation Bonds (GO bonds) are funded from the ad valorem (property) taxes levied on all taxable properties throughout the State. GO bond appropriations can only be made during the even numbered 30 day sessions and are subject to the approval of the voter during the next state-wide general election. GO bonds are typically used to fund education and community projects such as the construction of higher education facilities, public schools, senior facilities and libraries.

Other State Funds

Other State funds are derived from revenues collected from investments made from subject specific funds, such as Irrigation Water Construction Fund, the Game and Fish Protection Fund, etc. These funds have been established by law. Monies used to create these funds are derived from the enabling legislation and sources can include appropriations from the General Fund or designation of a portion of certain taxes levied by the State.

CAPITAL OUTLAY PROCESS

Below is a step by step outline of the capital outlay process including instructions on how to fill out all necessary forms.

Step 1 – Completion of Infrastructure Capital Improvement Plan (ICIP)

Although the ICIP is a volunteer program administered by the Department of Finance and Administration Local Government Division it is the unofficial beginning of the capital outlay process. This is since the ICIP specifically asks for entities to rank their top 5 legislative priorities. As well, the capital outlay requests forms ask if the project has been included in the requesting entity's ICIP. Copies of the ICIP are distributed to Legislators and various State agencies. State agencies utilize the ICIP when filling out Fiscal Impact Reports and making funding recommendations to both the Legislature and the Governor. For more information on what the ICIP is and how to complete one see Section J of this guidebook.

Step 2 – Talk with Local Legislators & the Governor

It is a good idea for land grants-mercedes to start talking with the local legislators during the interim to let them know they are interest in receiving capital outlay funding. It doesn't hurt to invite them for a tour of the land grant-merced and specific projects for which requests will be made. The time to start initiating contact with legislators is late summer/early fall after the ICIP has been completed. If Capital Outlay Requests forms have been filled out they may be signed at this time. The sooner the legislator is aware of the project the better. This is since they can receive over 100 million in requests but typically only have hundreds of thousands to a few million to give out.

It is also a good idea to start talking with the Governor's office. It is also advisable to get in to see the Governor in the early fall around September or October as this is when his legislative funding priorities are started to be laid out. The Governors office is important because the Governor receives approximately 60% of the total revenues available for capital outlay. The remaining 40% is given to the legislature were it is split between the two chambers and then divided amongst the members. The Senators receive more money than Representatives since there are less of them.

Step 3 – Capital Outlay Request Forms

The capital outlay request forms can be downloaded online from the New Mexico Legislative Website at <http://www.nmlegis.gov/lcs/capitaloutlay.aspx>. The forms include the Capital Outlay Request Form and the Capital Outlay Reauthorization Request From. The forms in PDF format and require the user to have Adobe Acrobat to open the file. Copies of the forms for 2010 can be found on the flash drive that accompanies this guidebook under Section K – Legislative & Capital Outlay Process in the Capital Outlay Forms folder. Below are instructions for filling out the forms:

Capital Outlay Request Form

If a land grant is filling out a project request form for a project that is not listed on the ICIP then the Board of Trustees must submit a written approval, such as a resolution, stating that the land grant agrees to own, operate and maintain the asset. The form itself is split into several

sections, with each section having a series of questions to answer. Some questions may require additional supporting documentation.

General Information

At the top of the form the land grant-merced must fill out the following general information:

- **Legislative Sponsor** - At the top of the form prior to answering any questions the land grant-merced must insert the name of Legislative Sponsor. Remember that each sponsor must sign a separate identical form.
- **Sponsor's Signature:** Below the sponsor's is the signature line that must be signed before the request can be processed. Legislative Council Service will not draft any capital outlay requests that do not have a legislator's signature.
- **Project Contact Name:** List the name of the representative from the land grant-merced that is going to oversee the project. This person should have intimate knowledge of the project in the event they are contacted for questions or clarification about the request.
- **Phone Number:** Insert the contact phone number for the person listed as the project contact.
- **Contact Email:** Insert the e-mail address for the person listed as the project contact.
- **Secretary's Name and Office Number:** If the form is brought in by legislative staff they are requested to provide the name of the Legislative Sponsor's secretary and the sponsor's office phone number.

Project Specifics Needed For Drafting

In this section the land grant-merced must answer six questions that will help the Legislative Council Service draft the bill correctly. Please be sure and answer the questions as precisely as possible. Below is information about how to answer each question.

1. Amount: The first question asks for the amount being requested. This does not have to be the same as the total project cost if the land grant-merced is only requesting for specific portion of the project such as planning and design or a certain project phase.

2. Project Description: Here the land grant-merced must include a brief project description and should include action words, such as "to plan, design, acquire property, construct, renovate, equip, furnish" to describe what will be done with the proceeds of the appropriation. This language will be used to draft the bill and once the bill become law the money must be spent in accordance to what has been written. If money must be used for something else not included in the original bill then the funding must be reauthorized during the next legislative session before it can be utilized. For this reason it is important to be as general as possible to allow for flexibility in the project. Therefore it is a good idea to include language such as the following in every request, deleting unnecessary items not in the project scope: "to acquire property and/or easements, plan, design, engineer, construct/renovate, equip and furnish" . . . then insert what

ever the project is such as: . . . “a land grant administrative complex/community center, water system, etc”. A land grant should not include any type of justification for the project in the description.

3. Location: Here the land grant-merced must name the specific village or placement of the project, such as Chillili Land Grant Common Lands or Village of Chimayo within the Santa Cruz de la Cañada Land Grant.

4. County: The land grant-merced must list in what county the project will be located. If the land grant-merced has common lands in multiple counties list only the specific county where the project will be located in.

5. What entity is requesting funding: Here the land grant-merced will write the name of their land grant-merced next to the appropriate line labeled Land Grant.

6. What entity will own the project: Here the land grant must indicate who will own the project once completed. In most cases the Land Grant will simply write out their official name, such as “Town of Tomé Land Grant”, but if the land grant is partnering with another unit of government, like a county, that will ultimately own the project they must list them here and provide copies of any written agreements between the two entities supporting the partnership for the project for which funds are being requested.

Project Details to Aid Legislators in Prioritizing Projects for Funding

In this section the land grant-must answer several questions about the how this request relates to a total overall project. Information about each question including how to answer the questions is below.

A. Amount needed to complete the project: This is the total amount needed to complete the project that has not yet been secured. This is not the total amount for the entire project since inception. No money that has already been spent or funded from other sources should be included here.

B. Total Estimated Cost of Project: Here is where the land grant-merced will give the total cost for the entire project including any money’s already spend or funded from other sources.

C. Will there be more than one legislative sponsor: Here the land grant-merced must answer yes or no. If yes they must list all legislative sponsors for the request.

Estimated Project Cost Breakdown & Completion: Here the land grant-merced must give cost information about different aspects of the project. Costs given should be based on the most current estimates. The land grant must also check whether or not a specific aspect of the project has been completed. The areas where cost estimates are to be given are: Planning; design; construction; zoning approval; land purchase; right-of-way, easements, archaeological clearances; environmental clearances; other (be specific); and the total for all. If there is no cost

associated in any area indicate by putting zero. If the land grant is donating land to the project indicate the estimated value of the land and indicate that it is complete.

Criteria Questionnaire

The questionnaire is a series of questions that require yes or no answers and which may also require additional supporting data and documentation. If a land grant-merced answers yes to any of the question they must attach supporting documentation. If a land grant-merced cannot provide all of the necessary documentation they should still proceed with submitting the request with as much documentation as possible.

The questionnaire is split into two sections Need-based Criteria and Planning Criteria.

Need-Based Criteria

The questions in this section and tips on how to answer them are as follows:

1. Is the project on government entity ICIP? – If the answer to this question is no then the land grant-merced provide written approval that they will own, operate and maintain the project as stated above. Written approval can be a resolution passed by the board of trustees or a letter from the President of the board.

2. Is the project necessary to eliminate potential or actual health or safety hazards or other liability issues? – If yes, the land grant must be prepared to provide copies of any reports, assessments, declarations or letters from government agencies and/or engineering firms supporting this claim.

3. Is project required by federal, state or judicial mandate? – If yes, the land grant-merced should be prepared to provide a copy of any such mandate upon request.

4. Will project prevent deterioration of asset or correct infrastructure problems of asset? If yes, the land grant-merced should be prepared to provide copies of any reports, assessment or letters from professional firms or government agencies supporting the claim.

5. Is the project necessary to address population or client growth, and if so, will it provide direct services to that population or clientele? – If yes, the land grant-merced should be prepared to provide population data and a service delivery plan as supporting documentation.

Planning Criteria

The questions in this section and tips on how to answer them are as follows:

1. Has project been thoroughly planned? If yes, the land grant should be prepared to provide any planning documentation such as comprehensive plan, ICIP, and any architectural or engineering design plans upon request.

2. Is the project ready to begin? If not when can it begin? – If the project is ready to begin once this funding is received select yes if not select no and enter the approximate date when it can start.

3. Has the project received prior funding? List prior funding sources, dates and amounts? – If the answer is yes list the sources, funding dates and amounts and be prepared to provide copies of any award letters or grant agreements for funds upon request.

4. Can project be completed with this legislative appropriation? If yes, the land grant-merced should be prepared to provide documentation such as cost estimate or quote for completion of project or purchase of asset.

5. Have matching funds or local share been secured for the project? List other funding sources and amounts: - If yes, provide a list of other sources and amounts; as well be prepared to provide copies of any award letters, grant agreements or budgeted funds to be used as a match.

6. Have operational costs for completed project been identified and planned for? – If yes, be prepared to provide copies of land grant-merced budget that includes line items for operation or operational lease contracts etc.

7. Has the project had public input and buy-in? - If yes, the land grant-merced should be prepared to provide copies of notices or minutes from public input hearings or board of trustees meetings where project was discussed.

8. Has the project been designed to be energy efficient in its operation? - If yes, the land grant-merced should be prepared to provide copies of design plans upon request.

9. Can construction of the project be successfully phased, so that each phase will be operational? – If yes, be prepared to provide copies of design plans upon request.

10. Has the Land been acquired? What entity will be or is the owner of the land? The land grant-merced must indicate if the land has already been purchased and who will own it once it is purchased. In many case the answer will be yes and the owner will be the land grant-merced unless the project is to purchase common land or if the land grant-merced is partnering with another unit of government that will own the land.

11. Is the project for a state government agency or state building? The answer to this question should always be no, since the land grant-merced is not a state agency and does not own any state buildings. There is no need to answer any of the additional questions related to question 11.

12. Is the project to be constructed on state-owned property, including property having a long term lease from the state? Answer yes or no.

13. Project benefits a Non-profit? If a land grant-merced is making the capital outlay request on behalf of or in conjunction with a non-profit entity then the land grant-merced must provide yes or no answers to the following questions as well as provide a written commitment certifying the answers:

- A. The land grant-merced is or will be the owner of the asset and the fiscal agent for the non-profit;
- B. The land grant-merced will lease the asset to the non-profit at fair market value;
- C. The land grant-merced will ensure the non-profit entity maintains the assets.

14. Economic development pursuant to the Local Economic Development Act: The land grant-merced should always answer no to this question, even if the land grant-merced's project is for economic development, as Economic Development Act currently only applies to Counties and Municipalities. The Economic Development Act allows for certain private entities to receive direct benefits from state funded projects but is only available to Counties and Municipalities. Economic development projects initiated by the land grant-merced must be owned directly by the land grant-merced and not a third party private entity.

Once the form is completed it must be signed by any and all legislative sponsors that you are requesting capital outlay from. A form should be completed and sign by both the local Senator and Representative. A land grant-merced with multiple Senators and Representatives should ask each for capital outlay support for any projects. If asking more than one legislator be sure to let them know that you are requesting funds from each so that they may coordinate with each other should they chose. As well, be sure and provide them with identical copies of the project forms for their signature. Once the form is signed it must be returned to the Legislative Council Service, located on the 4th floor of the State Capitol Building, prior to the deadline for submitting capital outlay requests. This deadline is typically half way through the session. The sooner a request is submitted the better the odds of getting it funded.

Capital Outlay Reauthorization Request Form

The capital outlay reauthorization form is used to reauthorize funds that are about to expire or the re-appropriate funds for a different use or to a new entity. All forms must be signed by the legislator that made the original appropriation. If the legislator is no longer in office their successor must sign the form. The form requires that a land grant-merced provide contact information including a name, phone number and e-mail address for someone that can be reached to answer questions related to the request. If the form is brought in by legislative staff they are requested to provide the name of the Legislative Sponsor's secretary and the sponsor's office phone number.

Next the land grant-merced must answer a series of questions to complete the form. The question and tips about how to answer are as follows:

- 1. What is the DFA project number:** The project number is assigned by the Department with is overseeing the distribution of funds. It is not always the Department of Finance and Administration (DFA). If it is a water or wastewater project it will be an Environment Department project, if it is related to acequias it will most likely be a State Inter-stream Commission project. Each state department or agency will assign a project number. The project number will be on the grant award agreement that the land grant-

merced should have received the summer after the legislative session when the money was appropriated.

2. **What is the current balance on this project:** The land grant-merced must insert the total balance remaining that has not been already been spent.
3. **Are there any binding contracts in place for this project:** If the answer is yes the land grant-merced should be prepared to provide copies of any such agreements upon request.
4. **How many times has the project been reauthorized:** Self explanatory. It is highly unlikely that the legislature will reauthorize a project that has already received an extension or reauthorization for a different use in the past.
5. **What was the original purpose of this appropriation:** The land grant-merced can use the direct language from the original appropriation, which can be found in the exhibits to the original grant award agreement.
6. **What is the language change you are requesting:** The land grant-merced should be sure to include action words, such as “to plan, design, acquire property, construct, renovate, equip, furnish.” The language should not be overly specific so as to limit the land grant-merced’s ability to utilize the funds.
7. **Does the expenditure period need to be extended:** Check yes or no.
8. **Does the agency/entity receiving the appropriation need to be changed?** Check yes or no. The land grant-merced should only check yes if they want to give their appropriation over to another government entity. If this is the case the land grant-merced needs to indicate who that government entity is.
9. **Indicate original citation of project:** The land grant must cite the original law, chapter, section and subsection where the original appropriation can be found. This information can be found on the grant agreement between the state agency administering the funds and the land grant. The land grant must also include if there have been any prior reauthorizations of the funds. If the land grant can’t provide the specific law and chapter numbers, etc, they must provide as much information about the project that they have such as the year appropriated, the original legislative sponsor the project name or state agency assigned project number.

Once the form is completed it must be signed by the appropriate Legislator and returned to the Legislative Council Service located on the 4th floor of the Capitol building prior to the deadline for submitting reauthorization requests. The deadline is typically one week before new capital outlay requests are due.

Step 4 – Legislative Sponsors Introduce Requests

Once the completed requests are submitted to the Legislative Council Service bill drafters begin to prepare the requests into bills that are introduced by the legislative sponsors. The process for introduction is different for each legislative chamber. On the Senate side bills are introduced and tabled until the Senate Finance Committee makes recommendations for funding. No public testimony is taken for the requests. On the House side Representatives introduce capital outlay requests in the various committees assigned where public comment is taken. Once introduced and testimony given all capital outlay requests are tabled until the House Appropriations and Finance committee makes their funding recommendations.

Each legislator is given a portion of the total funds available for capital outlay. Funds on the House side are divided by the 70 members and funds on the Senate side are divided by the 42 members. The committee recommendations for capital outlay funding are based on the project recommendations from each legislator. All the funding requests that are approved for funding are placed into the Capital Outlay Bill, usually introduced into the Senate.

Once the bill is approved by both chambers it is sent to the Governor for his approval. The Governor has the authority to line item veto appropriation amounts recommended by the Legislature. This means he can add to, reduce or completely strip the funding appropriated to a specific project.

Step 5 – Capital Outlay Projects Assigned to State Agencies

Once the Governor signs the final version of the capital outlay bill it is assigned the appropriate state agency as called for in the Capital Outlay bill. Assignments are typically based on project type, for instance appropriations for water and wastewater systems go to the Environment Department- Construction Programs Bureau, road projects go to the Department of Transportation, and community center and administrative facilities go to Department of Finance and Administration Local Government Division. The agency must then start the process for getting the funding out to the entities.

The first step for the state agencies is to send out severance tax bond certifications to communities that are receiving capital outlay appropriations that are funded through Severance Tax Bonds. The certification is a questionnaire similar to the capital outlay request form that helps the State's bond attorneys determine if a project is ready to be funded. If the project is ready to be funded the bonds for that specific project will be sold and the money made available. If the project is deemed not ready then the bonds will not be sold and the land grant-merced will have to wait until the next bond sale to fill out a new questionnaire. The State will not sale the bonds until the project is ready so that it does not have to pay interest and fees on the bonds if the money is just sitting in the bank not being utilized. The bond certifications typically go out in March or April in preparation for the June bond sale. Land grants-mercedes have approximately one week to complete the bond certifications and get them back to the issuing State Agency. There are typically 2 bond sales in a year, one in June and one in November.

Once the bonds are sold grant agreements are prepared and sent out to communities for execution. Grant agreements sent to a land grant-merced must be signed by the President of the

Board. If an appropriation is funded from the general fund the grant agreement will be the first thing received from the state agency as no bond certifications will be necessary. Once the grant agreement is signed by the land grant it must be approved and signed by DFA. The Grant agreement process typically takes place in May or June. No money can be disbursed until a grant agreement is in place.

As new political sub-divisions of the State land grants-mercedes must meet certain criteria before a grant agreement will be issued. This includes: being fully registered with the Secretary of State's Official Land Grant Registry including current list of Elected Officials and by-laws; and having an approved budget on file with the Department of Finance and Administration – Local Government Division Financial Management Bureau. Land Grant-merced must also be prepared to receive at minimum a financial review of their books related to the project once at least 50% of the funds have been expended. For more information on Registering with the Secretary of State see Section L of this guidebook, for more information on Budgets see Section E of this guidebook and for more information about financial reporting requirements see Section F.

Once grant agreements are in place the land grant-merced can begin drawing down on funds in accordance with the administering agencies rules and regulations for disbursement of funds. Timelines for drawing down on funds before they revert are as typically as follows:

- **4 years** – for Construction/Renovation Projects
- **1 year** – for equipment purchases
- **2- years** – for emergency equipment purchases such as ambulances or fire trucks

SECTION L – OFFICIAL LAND GRANT REGISTRY

REGISTERING WITH SECRETARY OF STATE

Every land grant-merced that is organized as a political sub-division of the State under Chapter 49-1-1, NMSA 1978 must register with the Secretary of State Official Land Grant Registry. To register the land grant-merced must submit copies of their current by-laws as well as an updated list of the elected or appointed officials and their position on the board of trustees. Both the by-laws and list of land grant-merced officials must be updated whenever there is a change. Land grants-mercedes may also file any official documentation, such as maps, patents agreements etc., which they so choose with the Secretary of State. The Secretary of State may choose to keep those files within the office or store them with them at the State Archives and Records Center.

It is imperative that all land grants-mercedes which fall under political sub-division status; register with the Secretary of State; so as to comply with State law and not jeopardize funding nor governance status.

Land grants-mercedes that are not organized as political sub-divisions of the State may also register with the Secretary of State if they so choose.

The Secretary of State's Office is located in the State Capitol Annex North on 325 Don Gaspar, Suite 300 in Santa Fe. The number for the Secretary of State is 1-800-477-3632 or (505) 827-3600.

SECTION M – LAND GRANT ELECTIONS

ELECTION GUIDE

In 2009 the state legislature passed legislation amending the election procedures for land grants-mercedes. The changes to the law set up the basic principles and procedures by which a land grant-merced is to hold elections. This includes the election of members to the board of trustees as well any questions to be voted on by the general membership of the land grant-merced. In the past land grants-mercedes were required to hold their elections as near as practicable to the general elections of the state. This meant that the procedures for all land grant-merced elections were those prescribed in the Election Code 1-1-1 NMSA 1978. The new laws governing land grant-merced elections are more reflective of the needs and capabilities of land grants-mercedes today. Below is an overview and guide to all the requirements that a land grant-merced must complete as part of the election process.

1 - Bylaw Election Provisions

The first thing that a land grant-merced must do prior to having an election is ensure that their bylaws have a provision outlining the procedures for registering voters and conducting elections as well as have sample forms that will be utilized during the election (Sample election forms have been provided on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder). The requirement to include these election provisions in the bylaws as called for in Land Grant General Provisions Section 49-1-5 C & I NMSA 1978. Procedures set in the bylaws must comply with any specific laws and procedures set up in the Land Grant General Provisions Sections 49-1-4, 49-1-5, 49-1-7 and 49-1-8 NMSA 1978. It is recommended that the land grant-merced do their best to mirror those procedures established in those sections and only amend or include additional procedures as absolutely necessary.

The first item that the bylaw election provisions should establish is the date for when elections are to be held and how often [49-1-5(A) NMSA 1978]. The General Provisions call for land grant-merced elections to be held on the first Monday in April unless otherwise specified in the bylaws. If a land grant-merced chooses to hold their elections at a different time of the year it is important to note that state law prohibits any local government elections within 42 days prior to any state-wide election. State-wide elections include the Primary and General elections held every 2 years. The Primary election takes place every first Tuesday in June of every even numbered year and the General election takes place every first Tuesday in November of every even numbered year. Therefore no land grant-merced election can take place, on even numbered years, between April 19 through June 7 or between September 19 through November 7. If a land grant-merced holds its elections in odd numbered years then there are no date restrictions on the when the election can be held.

State law requires that elections for the board of trustees must be held every 2 or 4 years as specified in the bylaws of the land grant-merced [49-1-5(A) NMSA 1978]. The land grant-merced must decide how often they would like to hold elections every 2 or every 4 years. Here are some factors that should be taken into consideration when deciding how often elections should be held:

- Term of office for members of the Board of Trustees – The general provisions do not set the length for the term of office for members of the board of trustees. Therefore, this needs to be clarified in the bylaws. Since state law requires that elections be held every 2 or 4 years then term lengths must at least 2 years and no more than 4 years. Holding elections every 2 years does not mean that the term lengths have to be 2 years only that terms must be staggered.
- Staggering of Terms – Staggering of terms means that not all members of the board of trustees are up for re-election at the same time. It is a good idea to stagger terms so that there is continuity on the board. Without the staggering of terms it is possible that an entire board may be replaced at one time. This generally tends to be bad practice since the transition from one board to the next can be abrupt and often time new board members need time to adjust to their new duties. Replacing the entire board at once can also result in delays in any pending projects. If a land grant-merced wishes to stagger terms then elections must be held every 2 years, with 4 year term limits. This would mean that at each election either 2 or 3 board members would be elected. If a land grant-merced currently has all board members up for re-election at the same time they can stagger the terms at the next election by having 2 of the trustees elected serve a 2 year term for the very first term and then 4 year terms there after. The selection of which 2 trustees will have first and only 2 year terms can be determined voluntarily or by the drawing of lots or straws.

In addition, to determining when and how often elections are held land grant-merced bylaws must also set up the procedures for registering qualified voting members and for how elections are to be run. For more information about registration of voters see Section 2 – Qualified Voting Members and for recommendations on election procedures see Section 3 – Preparing for an election & section 4 – Conduct of Election.

A sample set of bylaws that include provisions for elections can be found in Section B of the guidebook as well as on the flash drive that accompanies this guidebook.

2 – Qualified Voting Members

The board of trustees can determine in their bylaws what the qualifications are to be qualified voting members of the land grant-merced. The minimum qualification set in the General Provisions is that an individual must be an heir to the land grant-merced as defined in section 49-1-1.1 NMSA 1978. Apart from the requirement that they must be an heir the General Provisions leave it up to each land grant-merced to spell out other requirements in the bylaws. Additional requirements could include: payment of dues, attendance at a certain number of land grant-merced meetings; living or owning property within the current, patented or historic boundaries of the grant; community service hours, etc. Once it has been determined what the exact requirements are for becoming a qualified voting member the land grant-merced bylaws must also describe the process for how eligible heirs are then registered.

In most cases the Secretary of the board of trustees will register voting members. Registration typically will include filling out an application for membership, verifying heirship and eligibility as per requirements in the bylaws, paying any necessary dues, approval of

membership by the board of trustees, issuing a certificate of membership or membership card and placing the individual's name, address and any other pertinent information in the official registration book of the land grant-merced. Specific registration procedures must be spelled out in detail in the bylaws. State law requires that the Secretary must maintain the registration books. The registration books must be closed 15 days prior to any election and cannot be reopened until the Monday following the election. This means that no person can become a qualified voting member during that time period and therefore any individuals seeking membership within 15 days of the election cannot vote in the election. A Sample membership application/affidavit of heirship and a sample certificate of membership can be found on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder

3. Preparing for an Election

Below are the steps that the board of trustees must follow when any election of the land grant-merced is to be held.

Step 1. – Election Proclamation: Whenever an election is to be called or is required by law, the board of trustees shall by resolution issue a public proclamation calling the election [49-1-5(F) NMSA 1978]. The proclamation must include the following 7 elements:

- (1) **the date on which the election will be held** – State the date of the election as determined in the bylaws or by the board of trustees. This should be the actual date i.e. April 4, 2011 and not stated as it appears in the bylaws, i.e. the 1st Monday in April.
- (2) **the purpose for which the election is held** – For example: State that the purpose of the election is to elect (insert # of board positions to be filled) members to the board of trustees to the (insert name of land grant-merced) land grant-merced. Typically elections are for board of trustees to serve but they can also be an opportunity to have the membership vote to approve certain items such as changes to bylaws or policy decisions for use of common lands. In this case include a statement that the purpose of the election is also to approve amendments to the bylaws or determine a specific policy related to use of common lands, etc.
- (3) **if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed** – This date must be at least 10 days after the date that the proclamation is published.
- (4) **if a question is to be voted upon, the text of that question** – If any question such as an amendment to the bylaws or a policy related to use of the common lands, etc is to be voted on then the exact question to be voted on as it will appear on the ballot must be included on the proclamation.
- (5) **the location of each polling place in the land grant-merced** – State the place(s) where a qualified voting member can cast their vote in the election.
- (6) **the hours that each polling place will be open** – State the time that the voting location(s) will open and close.
- (7) **the date and time of the closing of registration books** – State the exact date when the registration books will be closed, this date must be 15 days prior to the election

date. Must also state the time that the books close, for example: the registration books for the land grant-merced shall close on March 16, 2011 at 5:00 pm.

The election proclamation must be in both Spanish and English and must be published in a newspaper of general circulation within the land grant-merced no more than 45 days and no less than 30 days prior to the election date. The Spanish and English versions of the proclamation must be posted in at least 5 public places within the land grant-merced [49-1-5G NMSA 1978]. Examples of public places include the land grant hall, local library, community centers, local churches, post office, community billboards etc. Be sure to save a copy of both the Spanish and English proclamation and write down all the public locations where it was posted. Remember that a resolution issuing the proclamation must be passed in a meeting of the board of trustees that has been properly advertised in accordance with 49-1-9 NMSA 1978 and the Open Meetings Act. A sample election proclamation resolution and a sample election proclamation for publication and posting can be found on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder.

It is recommended that if no local newspaper of general circulation is available within the land grant-merced boundaries that the land grant-merced publishes in a newspaper of general circulation within the region. Also a land grant may choose to publish in the Albuquerque Journal as it is considered the newspaper of general circulation for the entire state. Also for record keeping purposes be sure to get an affidavit from the newspaper showing that the proclamation was published or save a copy of the publication including title of newspaper and proof of date.

Since the proclamation must be published and posted at least 30 days prior to the election it is recommended that the board of trustees pass the election proclamation resolution at least 2 months prior to the election date. This will ensure that there is sufficient time to meet all public notice requirements. It is important to remember that each newspaper has deadline requirements for publishing legal notices. Often times these deadlines are anywhere from 1 to 2 weeks in advance of the publication date, depending on how often the paper is printed.

Step 2. – Declaration of Candidacy: Once the election proclamation has been published and posted the period for members wishing to declare their candidacy in hopes of serving on the board of trustees begins. The period must last at least 10 days after the date the proclamation is published but it can last as long as the board of trustees sees fit. The length of time for the declaration period must be stated in the bylaws. The period should end with sufficient time for the board of trustees to verify candidates and prepare the ballots. Although the declaration of candidacy must remain open for at least 10 days it does not require that declarations be filed openly during that period. Instead a land grant-merced may opt to have all declaration of candidacy filed on the same date and time so long as that date and time is at least 10 days from the date that the proclamation calling for the election is published. If a land grant-merced chooses to have candidacies all declared on the same day these procedures must be spelled out in the bylaws of the land grant-merced and the exact date and time to declare

must appear in the election proclamation. The proclamation should also include information about where a member can obtain a copy of the declaration of candidacy form during the prescribed declaration period. Candidates must run for board of trustee membership positions at large and not for specific offices, like president, treasurer, etc. Those offices are decided by the board of trustees among themselves after every election [49-1-8 NMSA 1978].

Candidates must declare their candidacy by filing the proper form with the Secretary of the board of trustees [49-1-5E NMSA 1978]. The process and forms for declaring candidacy should be spelled out in the bylaws. Declaration forms should include the candidate's name, address and if more than one voting precinct, as prescribed by the county for general elections of the state, exists within the boundaries of the land grant-merced the candidate's voting precinct number. A sample declaration of candidacy has been supplied on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder. The voting precinct is important because state law requires that if more than one voting precinct exists within a land grant-merced than no more than three members of the board of trustees shall be from the same precinct [49-1-4 NMSA 1978]. If more than one precinct exists within the land grant there are a couple of ways the land grant-merced can address the issue. One way is to place candidates on the ballot based on their precinct, so that only those candidate from the same precinct run against each other for positions on the board, similar to other districted offices. Another way is to have all candidates presented for votes together but award election certificates first to the highest vote getters from each precinct and then after all precincts are represented to the next highest vote getter regardless of precinct. This may mean that a candidate from one precinct may get elected even if they have fewer votes than another candidate from a different precinct, if the three member precinct limit requirement has already been met. Whichever option the board of trustees chooses needs to be reflected in the bylaws.

Once the period for declaration of candidacy ends the board of trustees must review all declarations submitted and verify which of those candidates are eligible to be placed on the ballot. Filing a declaration does not automatically qualify a person to be placed the ballot. Candidates must meet the criteria established in state law. Namely candidates for the board of trustees must be qualified voting members, as defined in the bylaws, and must not be in default of any dues, rent or other payment for the use of any of the common lands of the land grant-merced [49-1-4 NMSA 1978]. Once the board verifies which candidates are eligible they can be placed on the ballot. It is a good idea to set a date and time for approved candidates to meet in order to draw for a ballot position. This is important because it preserves fairness in the election by having ballot position determined by chance rather than by some other means determined by the board of trustee. The easiest way to do this is to have approved candidates draw a number equal to the amount of position open for election (example 1, 2, 3, etc) from a hat or a bag. The order by which a candidate gets to draw can be determined by the order in which they filed their candidacy.

The board of trustees should include provisions in the bylaws for the withdrawal of candidacy, in the event that any candidates choose to withdraw from the election. It is recommended that the board of trustees set a specific date by which candidates must withdraw if they are to avoid being placed on the ballot. This date should be prior to printing the ballots. It is also recommended that the board require an affidavit from the candidate officially withdrawing from the election. A sample withdrawal of candidacy affidavit has been provided on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder.

All candidates for the board of trustees must declare their candidacy and be approved by the board of trustees in order to appear on the ballot. Typically write-in candidates would not be allowed during a land grant election since the write-in candidate has not officially declared their candidacy nor been approved by the board of trustees as a valid candidate. If a land grant-merced wishes to allow for write-in candidates they must spell out the procedures for doing so in their by-laws. Included in the procedures must be a way for the land grant-merced board of trustees to verify that write-in candidates are valid candidates that meet all the requirements to serve on the board of trustees. In Primary and General elections of the State individuals are required to file a declaration to be a write-in candidate in order to have votes cast for them counted. The timeframe for land grant-merced elections generally does not support having a process for declaration of candidates and a separate declaration to be a write-in candidate. If no write-in candidate process is allowed in the bylaws then ballots issued for an election should not provide any space for a write-in vote. Also if an individual voter writes in a candidate that does not appear on the ballot then the board of trustees and the election judge must determine how to handle that ballot. Their options would be to either throw the ballot out completely and not count it at all, or if there are multiple positions up for election, then on the votes cast for official candidates on the ballot can be counted and any write-in's on the ballot can be ignored. Which ever option the land grant chooses the procedures should be clearly spelled out in the bylaws.

Step 3. – Closing of Registration & Preparation of Registration Books:

Fifteen (15) days prior to an election all registration of new members to the land grant-merced must cease. The registration must remain closed until the Monday following the election [49-1-5C NMSA 1978]. After the close of the registration the Secretary must prepare the registration books to be used on the day of the election. The registration books should contain the names of all members of the land grant that have satisfied all membership requirements to be an active voting member as called for in the bylaws and are thus eligible to vote in the election. Eligibility to vote on the day of the election may include that the member is current on all dues and/or rents or other payments owed to the land grant-merced and/or any other requirements set forth in the bylaws. Only those individuals whose name appears in the official registration book shall be allowed to cast a ballot on election day and no ballot cast from anyone not listed in the registration book shall be counted or canvassed [49-1-5D NMSA 1978]. If there are to be more than one polling locations then a copy of the registration book must be placed at each. It is good practice to have multiple copies of the registration book at each polling location, at least one for each clerk checking in voters and passing out ballots.

In addition, to the official registration book the board of trustees may want to compile a list that contains every single member of the land grant-merced regardless of payment or activity status. This list should include whether the member is considered an active voting member or not, and if not, why. This list will be useful on the day of the election as it will help the clerks to provide answers to any one showing up to vote that is not listed in the official registration book.

Step 4. – Preparation of Ballots and Other Election Materials: Once the board of trustees has determined which candidates are qualified to serve on the board the ballots can be created. Ballots must include the names of all eligible candidates as well as any questions to be voted on. Candidate must be presented on the ballot as prescribed in the bylaws, either by precinct/district or all together. Candidates are voted on for general membership on the board of trustees and ballots should not specify any one office position for any one or group of candidates. The text of the question must appear exactly the same as it appeared on the election proclamation. All ballots should be of the same size and weight of paper so that one cannot easily be distinguished from next. The total number of ballots produced should be equal or slightly greater than the total number of qualified voting members. A sample ballot has been provided on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder.

The board of trustees may also choose to create provisional ballots. A provisional ballot is a ballot that can be cast by an individual when they claim to be an eligible voter but do not appear in the official registration book. This provisional ballot allows the individual to cast a vote and then gives the election clerks, judges and board of trustee's opportunity to investigate whether or not the individual has the right to vote in the current election. The vote shall only be placed in the ballot box and counted once the person is verified as having being a qualified voting member. If their membership status is not verified the provisional ballot is discarded and not counted. For more information on provisional ballots see Section 4 - Conduct of Election. A sample provisional ballot has been provided on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder.

In addition, to the ballots the board of trustees needs to prepare a ballot box. If there is more than one polling location than a ballot box needs to be prepared for each location. The ballot box should be of sufficient size to hold the expected number of votes to be cast and it should be locked or closed in a manner that will not allow for any tampering or removal of ballots until the ballots are to be counted. A small to medium size box that is completely wrapped with paper and tape so that it cannot easily be opened and that has a slit cut out in the top for the insertion of ballots is a simple and cheap way to produce a ballot box.

Other materials recommended for the election are pens and envelopes. The pens are used to have members sign the registration book and fill out the ballots. The envelopes can be used to place provisional ballots in for later review once the polls are closed.

Step 5. – Appointment of Election Judge and Clerks: Prior to the election but after the verification of candidates to be placed on the ballot the board of trustees must appoint one election judge and at least two election clerks for each polling location. The board of trustee must wait to appoint these positions until after candidates are verified for placement on the ballot because no election judge nor election clerk can serve if they are a spouse, parent, child, brother or sister of any candidate to be voted for at the election [49-1-5(H) NMSA 1978].

The election judge shall preside over the election and ensure that the election procedures as called for in the bylaws are followed. It is the duty of the election judge to oversee and attest to the counting of the votes cast on the day of the election as well as to be present for the canvassing of the votes by the board of trustees within seven days of the election.

The election clerks shall assist in conducting the election. The clerks are responsible for checking in voters, distributing ballots and ensuring that ballots are properly placed and secured in the ballot box.

4. Conduct of Election

The procedures for how to conduct a land grant-merced election must be included in the bylaws. The following is are recommendations for conducting an election and are only suggestions not requirements. The board of trustees must determine what procedures work best for them based on the membership. The recommendations have been broken up into different steps.

Step 1. – Opening the polls: The polls must be opened for voters at the time and location(s) designated in the election proclamation. Election judges, clerks and any members of the board of trustees that shall be present at the election should arrive early at the polls so that they can set up and be ready for voters once the polls officially open.

Step 2. – Checking in Voters: Once the polls are open voters must be checked in before they are given a ballot. Voters must present an i.d. or membership card to the clerk so that the clerk may locate them in the registration book. The voter must then sign next to their name in the registration book. Once they have been verified and signed the registration book they can be given a ballot.

Step 3. – Casting of ballots: Once a voter has filled out their ballot they must place the ballot in the ballot. This completes their voting.

If the voter does not appear in the registration book they can either be turned away or allowed to vote on a provisional ballot. A separate sign in sheet should be kept for provisional voters to be used during the counting and canvassing of votes. The provisional ballot must be kept separate from the other ballots and must not be placed in the ballot box unless it is determined that the individual casting the provisional ballot is a qualified voting member. To ensure that the votes cast on ballot remain secret, in the

event that it is approved for placement in the ballot box, the name of the individual casting the provisional ballot should not appear anywhere on the ballot. Once the ballot is filled out should be placed in an envelope and sealed. The individual that cast the provisional ballot should then print and sign the outside of the envelope. This will allow the election judge and board of trustees to investigate and determine if the vote should be allowed or not. Once it is determined if the individual is a qualified voting member then the ballot can either be removed from the envelope and placed in the ballot box to be counted or discarded entirely. The use of provisional ballots and procedure for their use should be included in the bylaws of the land grant-merced. A sample provisional ballot has been provided on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder.

The General Provisions in section 49-1-5(I) NMSA 1978 allows for the board of trustees the option of conducting early and/or absentee voting for all land grant-merced elections. In order to do both or either the board of trustees must first include procedures for how to conduct early and absentee voting in the bylaws. Early voting means that a polling location would be open for a period of time prior to the actual election day. Absentee voting means a qualified voting member who cannot attend on the date of the official scheduled election has an opportunity to cast his/her vote on an absentee ballot that will be counted on election day.

Both types of extended voting options would require set procedures and timelines in order to ensure proper application. If a land grant chooses to conduct either form of alternative voting it must be sure and set specific procedures for doing so. This should include:

For early voting: The date on which the polls open (must not open until after the date for declaration of candidacy has expired and the ballots are prepared). The period for which open voting is allowed, i.e. include both a starting and an ending date (Can be up until the day before the actual election date). Also those allowed to vote early should be active qualified voting members already on the land grants registration books as of the day the early voting started. If an individual becomes a qualified voting member during the early voting period, but prior to the 15 day closing of the registration books, required by law (49-1-5C), then the individual must vote on election day. If early voting is to occur the date, time and location when and where early votes can be cast must be stated in the election proclamation.

For absentee voting: The date on which absentee ballots may be requested/picked up (must not open until after the date for declaration of candidacy has expired and the ballots are prepared). The date by which absentee ballots must be submitted (can be on submitted at the polls on election day). Typically all absentee ballots are not counted until the election day after the polls have closed. The requirements for being eligible to vote via an absentee ballot, for example, will be out of town or state on election day, cannot physically get out to the polls on election day, etc. If an individual becomes a qualified voting member during the absentee voting period, but prior to the 15 day closing of the registration books, required by law (49-1-5-C), then the individual must

vote on election day. If absentee voting is to be allowed the election proclamation must state how an absentee ballot can be obtained and how, where and by when they must be returned in order to be counted.

Step 4. – Closing of the polls: At the time designated in the election proclamation for the election to end the election judge and clerk must close the polls and not allow for any other voters to be check in or votes to be cast.

Step 5. – Counting of Votes: After the polls have been closed the election judge and clerk may begin to count the votes cast. If provisional ballots have been cast then the judge and board of trustees must verify if any of the provisional ballots should be counted. Provisional ballots can only be allowed if the individual casting the vote met all of the criteria to be an eligible voter prior to the closing of registration and they were mistakenly left off of the official registration book. If any individuals meet these criteria their vote should be removed from the sealed envelop with their name on it and placed in the ballot box prior to the official count. Any provisional votes cast by individuals that do not meet the criteria must be discarded and their names should be crossed out from the provisional voter sign in sheet. All early and absentee votes, if applicable, should be included in the vote count after the polls are officially closed.

Prior to counting the ballots in the ballot box the clerks should count the total number of voters that signed the registration book. Any provisional voters whose vote is determined allowable should be added to the total voters that signed the registration book as should any early or absentee votes, if applicable. The total number of voters that signed in must be verified by the election judge.

Next the total number of ballots cast needs to be counted. This is not the same as tabulating the votes cast on each ballot, but rather simply hand counting how many ballots, including eligible provisional ballots, early ballots and absentee ballots (if applicable), have been placed in the ballot box or cast. The total number of ballots in the ballot box should be equal to the total number of voters that signed the official registration plus the total number of eligible provisional voters and early and absentee voters, if applicable. The ballots should be counted by the clerks and verified by the judge. After counting and verifying the total number of ballots cast the votes may be tabulated.

Tabulating the votes requires the clerks and judge count up all the votes cast for every individual item appearing on the ballot. For example, if two trustee positions are open and voters are allowed to vote for up to two candidates a tabulation of votes will be kept for each candidate as they appear on every ballot. Also votes cast for any questions appearing on the ballot must be tabulated as well. The clerks should then write down the total number of voters that check in, the total number of ballots placed in the ballot box and the total number of votes cast for each candidate and for any questions appearing on the ballot, on a sheet of paper. This results sheet should then be verified and signed by the election judge. The judge must then deliver the results, plus all of the ballots

counted, the signed registration book, and the provisional ballot roster (if applicable) to the board of trustees.

5. Canvassing the Votes

Within seven days following the election the current board of trustees and the election judge must meet to canvass the votes. Canvassing the votes means reviewing all the materials collected from the election, and verifying that the results are true and correct. This includes: verifying the number of voters that signed the registration book; verifying that any provisional ballots approved for placement in the ballot box were eligible to be counted; verifying the number of ballots cast; and verifying the number of votes cast for each candidate and each question (if applicable) appearing on the ballot. Once the board of trustees has verified the results as presented by the election judge they should endorse his results sheet by signing off on it and adopting the results by use of a motion or a resolution. The results should be contained in the official meeting minutes and the results sheet should be placed in the file for safe keeping and later reference.

6. Issuing Election Certificates

Once the votes have been canvassed and the election results verified the board of trustees must issue certificates to the persons receiving the highest number of votes (by precinct if necessary) certifying that those individuals have been duly elected. The number of certificates issued should be equal to the number of board positions up for election [49-1-7 NMSA 1978]. A sample certificate of election has been provided on the flash drive that accompanies this guidebook under Section M – Land Grant Elections in the Sample Election Documents folder.

7. Organizing of Board of Trustees

Within seven days of the votes being canvassed the new board of trustees, both newly elected members and sitting members whose term has not yet expired (for land grant-mercedes with staggered terms) shall meet and elect among themselves a president, treasurer and secretary as required by law [49-1-8 NMSA 1978]. If specified in the bylaws the board may also include other officers such as vice-president or parliamentarian. The board must be reorganized after every election.

[SAMPLE ELECTION PROCLAMATION RESOLUTION]

LAND GRANT-MERCED DEL PUEBLO DE _____

ELECTION PROCLAMATION RESOLUTION

Resolution No. 20__ - ____

WHEREAS, the Land Grant General Provision 49-1-5 NMSA 1978 requires the Land Grant-Merced del Pueblo de _____ to hold elections every 2 or 4 years in accordance with the bylaws of the Merced; and

WHEREAS, bylaws of the Land Grant-Merced del Pueblo de _____ call elections of the Merced to be held every _____ (insert applicable language from the bylaws about when elections to be held); and

WHEREAS, Section 49-1-5 NMSA 1978 also calls for the land grant-merced to pass by resolution an election proclamation that shall be published in an newspaper of general circulation and posted in at least five public places no more that 45 days and no less that 30 prior to the election;

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Land Grant-Merced del Pueblo de _____, New Mexico that:

1. A regular election of the Land Grant-Merced del Pueblo de _____ for the election of members to the board of trustees shall be held on _____ (DATE).
2. The purpose of the election shall be to elect _____ (insert number of open positions) members to the board of trustees. Terms of service for each elected position shall be _____ years.

In addition to electing members to the board of trustees voters will cast votes for the following items:

(State any question that is be voted on as it will appear on the ballot)

3. All Declarations of Candidacy shall be filed with the Secretary of the Board of Trustees on _____ (Choose DATE) from _____ am/pm (insert time) to _____ am/pm (insert time)
4. The following location(s) is designated as a polling place(s) for the conduct of the election:

(State the location and address of each polling place)

5. Polls shall be opened for voting at _____am/pm (insert time) and shall close at _____am/pm (insert time)
6. The registration books for the Land Grant-Merced del Pueblo de _____ shall be closed on _____ (insert date that is 15 days prior to election) at _____ am/pm (insert time). Any heirs desiring to become qualified voting members must do so prior to that date or wait until the Monday following the election, when registration shall reopen.

BE IT FURTHER RESOLVED, that items 1 through 6, exactly as stated above, shall serve as the official election proclamation and notice which shall be published, in both Spanish and English, in the _____ (insert name of newspaper) and shall posted in the follow 5 publics places (list all five) _____, _____, _____, _____, _____, no more that 45 days and no less than 30 prior to the date set for the election, as stated in this resolution.

Adopted and approved this _____ day of _____, 20_____.

President of the Board of Trustees

ATTEST:

Secretary of the Board of Trustees

**[SAMPLE OFFICIAL ELECTION PROCLAMATION RESOLUTION -
ENGLISH]**

LAND GRANT-MERCED DEL PUEBLO DE _____

OFFICIAL ELECTION PROCLAMATION

Pursuant to the Land Grant General Provisions Section 49-1-5 NMSA 1978 and the bylaws of the Land Grant-Merced del Pueblo de _____, a regular election of the Land Grant-Merced del Pueblo de _____ for the election of members to the board of trustees shall be held on _____ (Insert Date).

The purpose of the election shall be to elect _____ (insert number of open positions) members to the board of trustees. Terms of service for each elected position shall be _____ years.

In addition to electing members to the board of trustees voters will cast votes for the following items:

(State any question that is be voted on as it will appear on the ballot)

All Declarations of Candidacy shall be filed with the Secretary of the Board of Trustees on _____ (Insert Date) from _____am/pm (insert time) to _____am/pm (insert time)

The following location(s) is designated as a polling place(s) for the conduct of the election:

(State the location and address of each polling place)

Polls shall be opened for voting at _____am/pm (insert time) and shall close at _____am/pm (insert time)

The registration books for the Land Grant-Merced del Pueblo de _____ shall be closed on _____ (insert date that is 15 days prior to election) at _____ am/pm (insert time). Any heirs desiring to become qualified voting members must do so prior to that date or wait until the Monday following the election, when registration shall reopen.

[SAMPLE OFFICIAL ELECTION PROCLAMATION RESOLUTION - SPANISH]

MERCED DEL PUEBLO DE _____

PROCLAMACIÓN DE ELECCIÓN OFICIAL

De acuerdo con la Land Grant General Provisions 49-1-5 NMSA 1978 y el estatuto del Merced del Pueblo de _____, una elección regular del Merced del Pueblo de _____ para la elección de fideicomisarios será sostenida en _____ (Pone Fecha).

El objetivo de la elección será decidir _____ (el número de encarte de puestos vacantes) miembros al bordo de fideicomisarios. Los términos del servicio para cada posición decidida serán _____ años.

Además de la elección de miembros al bordo de fideicomisarios votantes echará votos para los artículos siguientes:

(Declare cualquier pregunta que es ser votado en cuando aparecerá en la votación)

Todas las Declaraciones de la Candidatura serán archivadas con el Secretario del Bordo de Fideicomisarios en _____ (Pone Fecha) desde _____ de la mañana /de la tarde (pone tiempo) hasta _____ de la mañana /de la tarde. (pone tiempo)

El lugar(es) siguiente es designada como un lugar(es) de votación para este elección:

(Declare el lugar y la dirección de cada lugar de votación)

El lugar de votación serán abiertas para votar en _____ de la mañana /de la tarde (pone tiempo) y va a cerrcar en _____ de la mañana /de la tarde (pone tiempo)

Los libros de registro para el Merced del Pueblo de _____ estarán cerrados en _____ (pone la fecha que es 15 días antes de la elección) en _____ de la mañana /de la tarde (pone tiempo). Cualquier heredero que desea hacerse miembros votadores calificados debe hacer así antes de aquella fecha o esperar hasta el lunes después de elección, cuando el registro se volverá a abrir.

[SAMPLE APPLICATION & AFFIDAVIT OF HEIRSHIP]

MERCED DEL PUEBLO DE _____

MEMBERSHIP APPLICATION & AFFIDAVIT OF HEIRSHIP

1. Name: _____
[print or type]

2. Mailing Address: _____

3. Physical Address: _____

4. Telephone: _____

5. E-mail: (optional) _____

6. Legal Description of Property Owned within Land Grant-Merced:

[attach documents as necessary]

I, _____, after first being duly sworn, under oath,
[print or type name]

depose and state as follows:

1. I hereby declare that I am a descendent of an original grantees(s) by the name(s) of
_____, _____ of the

_____ Land Grant-Merced, and that I have
an interest in the common land of the Land Grant-Merced.

2. I have received my interest in the common land through inheritance, gift or purchase, as follows and as documented:

[attach documents as needed]

3. I further certify that I am eligible for membership in the Land Grant-Merced because I meet the following qualifications outlined in the bylaws:

- a) I am a descendent of an original grantee(s) of the Land Grant-Merced as stated above.
- b) I have an interest in the common lands as stated above.
- c) (Insert other membership requirements as stated in the Bylaws)
- d)
- e)

5. I hereby acknowledge that my membership is subject to the approval of the Board of Trustees of the Land Grant-Merced in accordance with its Bylaws, Rules and Regulations, and that I will furnish supporting documentation of the statements in this Affidavit upon request of the board of trustees. Finally, I acknowledge that upon Board approval this membership in the Land Grant-Merced shall become permanent and may or may not include voting privileges in accordance with the Bylaws of the Land Grant-Merced.

I, _____, certify that the contents of this Affidavit are true and correct to the best of my information, knowledge and belief.

SIGNATURE OF HEIR

SUBSCRIBED AND SWORN TO AND ACKNOWLEDGED before me this
____ day of _____, 200__.

My commission expires: _____

NOTARY PUBLIC

[SAMPLE CERTIFICATE OF MEMBERSHIP]

LAND GRANT - MERCED DEL PUEBLO DE _____

CERTIFICATE OF MEMBERSHIP

The Board of Trustees of the Land Grant-Merced del Pueblo de _____ on this _____(insert day)
day of _____ (insert month), 20____ (insert year) does hereby find that
_____(insert name of heir), whose address is
_____, has met all of the
qualification necessary to become a qualified voting member of the Land Grant -Merced del Pueblo de _____.
By the powers vested in the Board of Trustees through the bylaws of the Land Grant-Merced del Pueblo de _____
and through the Laws of the State of New Mexico, this Board does hereby recognize _____
(insert name of heir) as a qualified voting member of the Land Grant -Merced del Pueblo de _____.
As a qualified voting member, _____ (insert name of heir) shall have all the rights and
responsibilities of membership as prescribed in the bylaws.

Adopted, Approved and Certified by the Board of Trustees of the Land Grant-Merced del Pueblo de_____.

By: _____
President

Attest: _____
Secretary

[SAMPLE DECLARATION OF CANDIDACY]

LAND GRANT-MERCED DEL PUEBLO DE _____

DECLARATION OF CANDIDACY

I, _____, being first duly sworn upon my oath do hereby state for my affidavit that:

I, _____, hereby declare that I am a candidate for the office of Trustee for a _____ (two/four) year term to be elected at the regular election of the Merced del Pueblo de _____ to be held on _____ (insert date).

I affirm that I currently reside at _____ (Insert Address including city, state and zip code) and that my County designated voting precinct is # _____ (Insert precinct #)

I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my registration on file with the Merced del Pueblo de _____.

I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.

☐ I affirm that I have not been convicted of a felony.

-OR-

☐ I affirm that I have been convicted of a felony, and that my elective franchise has been restored, and, I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.

I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes receiving telephone notice: _____ or _____.

I affirm that this declaration of candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth degree felony under the laws of New Mexico.

Signature of Candidate

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission Expires:

Notary Public

Received by the Secretary of the Board of Trustees at _____ (A.M. /P.M.) on the
_____ day of _____, 20_____.

Secretary of the Board of Trustees

[SAMPLE WITHDRAWAL OF CANDIDACY]

MERCED DEL PUEBLO DE _____

AFFIDAVIT OF WITHDRAWAL OF CANDIDACY

I, _____, being first duly sworn upon my oath do hereby state for my affidavit that:

I, _____, hereby withdraw as a candidate for the office of Trustee for a two/four year term in the election scheduled for _____ (insert date), and that I hereby irrevocably revoke my Declaration of Candidacy filed with the Land Grant Board of Trustees on _____(insert date).

Signed _____

Subscribed and sworn to before me this _____ day of _____, 2000

Notary Public

My Commission Expires:

Received by the Secretary of the Board of Trustees at _____ (A.M. /P.M.) on the _____ day of _____, 20____.

Signed _____
Secretary of the Board of Trustees

Official Land Grant Seal:

[SAMPLE ELECTION BALLOT]

LAND GRANT-MERCED DEL PUEBLO DE _____

OFFICIAL ELECTION BALLOT

ELECTION HELD ON _____ (DATE)

1. Please cast a vote for up to _____ (insert number of board positions up for election) candidates running for a member position of the Board of Trustees. Place an X next to candidate(s) for whom you wish to cast a vote.

- _____ 1. _____ (name of candidate)
- _____ 2. _____ (name of candidate)
- _____ 3. _____ (name of candidate)
- _____ 4. _____ (name of candidate)
- _____ 5. _____ (name of candidate)
- _____ 6. _____ (name of candidate)
- _____ 7. _____ (name of candidate)
- _____ 8. _____ (name of candidate)
- _____ 9. _____ (name of candidate)
- _____ 10. _____ (name of candidate)

2. If any question(s) are to be voted on place the exact text as it appeared on the election proclamation followed by the correct voter action (for example, place an X next to the appropriate response yes or no).

[SAMPLE PROVISIONAL BALLOT]

LAND GRANT-MERCED DEL PUEBLO DE _____

PROVISIONAL BALLOT

ELECTION HELD ON _____ (DATE)

1. Please cast a vote for up to _____ (insert number of board positions up for election) candidates running for a member position of the Board of Trustees. Place an X next to candidate(s) for whom you wish to cast a vote.

- _____ 1. _____ (name of candidate)
- _____ 2. _____ (name of candidate)
- _____ 3. _____ (name of candidate)
- _____ 4. _____ (name of candidate)
- _____ 5. _____ (name of candidate)
- _____ 6. _____ (name of candidate)
- _____ 7. _____ (name of candidate)
- _____ 8. _____ (name of candidate)
- _____ 9. _____ (name of candidate)
- _____ 10. _____ (name of candidate)

2. If any question(s) are to be voted on place the exact text as it appeared on the election proclamation followed by the correct voter action (for example, place an X next to the appropriate response yes or no).

[SAMPLE CERTIFICATE OF ELECTION TO THE BOARD OF TRUSTEES]

LAND GRANT - MERCED DEL PUEBLO DE _____

CERTIFICATE OF ELECTION TO THE BOARD OF TRUSTEES

The Board of Trustees of the Land Grant-Merced del Pueblo de _____ on this ____ (insert day) day of _____ (insert month), 20__ (insert year) does hereby certify that _____ (insert name of candidate), a candidate for the position of member of the Board of Trustees of the Land Grant-Merced del Pueblo de _____, whose address is _____, having received the necessary amount of votes in the election held on _____ (insert date), has been duly elected to the Board of Trustees of the Land Grant-Merced del Pueblo de _____. The term of office for the position is for 2/4 (choose one) years and service on the board shall begin on _____ (insert date must be within 7 days of issuing canvassing the votes).

Adopted, Approved and Certified by the Board of Trustees of the Land Grant Merced del Pueblo de _____.

By: _____
President

Attest: _____
Secretary

SECTION M – WATER RIGHTS

WATER RIGHT DECLARATION GUIDE

NEW MEXICO WATER LAW

Article 16 of the New Mexico State Constitution outlines New Mexico Water Law. The state engineer develops rules and regulations in accordance to constitutional statute in order to develop a framework to supervise the distribution of water in a manner that protects senior users, and complies with Federal compacts.

PRIOR APPROPRIATION LAW

The Prior Appropriation Doctrine governs water law in much of the southwestern United States. The essence of the doctrine of prior appropriation is that, while no one may own the water in a stream, persons, corporations, and municipalities may obtain the right to use the water for beneficial purposes. The allocation of water rests upon the fundamental rule "first in time, first in right." The first person to use water (called a "senior appropriator") acquires the right which is a better right than later more junior users.

Prior Appropriation Law also follows the principle that you must apply water to beneficial use in order to retain the right to its use or you give up the right, thus the term "Use it or lose it." The basic principles of Prior Appropriation Law require intent to apply water to beneficial use.

Beneficial Use

The definition of beneficial use is founded in Spanish Law. Beneficial use requires that a person intervene in natural processes to make the land do something that wouldn't happen without human intervention. The right to use water is established when action is taken to use water and control it. Under Spanish Law if a person stops using land and water, it reverts back to the public domain for the public good. Therefore under Prior Appropriation, any water not being consistently applied to beneficial use can revert to the public domain and can be reallocated to another use. This is why stream flow is not recognized as a beneficial use under New Mexico water law. When water is left to flow in a stream there is no human intervention to apply the water to beneficial use. Beneficial uses of water include but are not limited to agricultural, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. Ecological purposes, such as maintaining a natural body of water and the wildlife that depends on it was not generally considered to be beneficial uses but has recently been accepted in some jurisdictions.

Prior Appropriation law views beneficial use as the basis, the measure, and the limit of the water right. The "basis" indicates the use that your water right is for. The "measure" and "limit" defines the amount of water associated with the right. It is limited only by the amount of water required to fulfill the beneficial use – and, of course, the date the water was first put to use.

Establishing Intent to Apply Water to Beneficial Use

New Mexico Water Law as outlined in the State Constitution doesn't require a diversion to demonstrate intent. Case law, which interprets the constitution, has outlined the significance of diversions to show intent. The courts have ruled that when a structure is made to divert water

for use this demonstrates that time and money has been invested to take water under an individual's control. This requirement is specific to New Mexico water law.

Priority in time will give the better right

Prior Appropriation Law is based on the principle of first in time first in right, making the senior right the better right. Under the strict application of prior appropriation the senior water user is entitled to one hundred percent of their right before a junior water right holder can fulfill any of their right. Because water that is not put to beneficial use is considered to be wasted, New Mexico water law promotes maximum use. Prior Appropriation does not give priority to a type of use - instead it recognizes priority in time only – all beneficial uses of water are considered equal under the law. . Pre 1907 surface water rights do not require a permit in order to establish the right. Post 1907 surface water rights require a permit from the state engineer. To date in New Mexico during times of drought the state engineer has not made a priority call which would allow full water rights to senior water users. Instead users have shared water shortages.

Prior Appropriation as it Applies to Ground Water

New Mexico Groundwater management is handled differently than surface water. As of September 23, 2005, the State Engineer has jurisdiction over the appropriation and beneficial use of all of the underground waters of the state of New Mexico. The State Engineer declares basins that are experiencing over drafting of ground water. Declared underground water basins are managed as “critical areas” in which new well drilling and pumping may be severely curtailed or prohibited. Wells located inside a declared basin require a permit from the state engineer. The date that the permit is filed establishes the priority date associated with the right. The owner of a water right within a declared underground water basin cannot change the location of the well without the approval of the state engineer.

If a well is drilled outside a declared basin it is managed like a pre 1907 surface water right and does not require a permit from the state engineer. Once a basin is declared the well is subject to the State Engineer's administration. The owner of a pre-basin well has the right to declare their well at any time, either before or after the groundwater basin is declared. The State Engineer declared ground water basins in the entire state as of September 2005. Rules of forfeiture and abandonment still apply to groundwater. More than four years of unexcused non-use constitutes forfeiture if the state engineer gives notice.

The amount of water that can be pulled from ground water wells is decided by the State Engineer's office depending on the basin from which the water is to be pulled. Generally, domestic wells are allowed no more than one acre-foot (325,851 gallons) of water per year [19.27.5.9 NMAC-N, 8-15-2006]. The allowed permitted uses of this water are for household and other domestic uses, rental units, drinking and sanitary purposes, the irrigation of non-commercial vegetation, and livestock watering [19.27.5.7E NMAC-N, 8-15-2006]. The State Engineer must grant a well permit for domestic water use since it is considered to be a fundamental use of water. All of the allowed uses of water require that the water use be metered.

(For additional information regarding ground water contact the Office of the State Engineer at 827-6091 or visit them online at www.ose.state.nm.us).

LAND GRANT WATER RIGHTS

Now That land grants-mercedes have acquired political subdivision status with the state of New Mexico it is important that water rights are protected and recorded along with the common land. In order for a water right to be acknowledged by the state it must be declared and recorded with the Office of the State Engineer (OSE). The recognition of a water right is critical especially as water basins are adjudicated and all water rights within that basin are legally identified. In order for land grants to claim their right and have it recognized each land grant must under go this process. Currently the OSE does not have a declaration process specific to land grants-mercedes for establishing a water right. Land grants-mercedes should use the “New Mexico Office of the State Engineer Declaration of Ownership of Water Right of Surface Waters Perfected Prior to March 19, 1907” (A PDF version of the file can be found in the CD that accompanies this guidebook under the Water Rights folder; Forms can also be accessed online at the State Engineer’s Website listed above) for declaring surface water and for declaring ground water land grants should use the form titled “New Mexico Office of the State Engineer Declaration of Owner of Underground Water Right” (A PDF version of the file can be found on the flash drive that accompanies this guidebook under the Water Rights folder; Forms can also be accessed online at the State Engineer’s Website listed above).

Formalizing a Pre-1907 Water Right

When a declaration of a water right is made to the State Engineer, the owner is making a statement claiming their water quantity, use and intent. By declaring a water right there is a belief that the claim is true but it can be easily overturned by the courts.

The declaration process as outlined by the OSE in the “Rules and Regulations Governing the Appropriation and use of the Surface Waters of New Mexico” document, Adopted January 31, 2005) the process is as follows:

The water right declaration should be filed to the State Engineer outlining the history and continuity of the beneficial use. A declaration may be accompanied by a map, patent/deeds, survey plats, affidavits of the most senior water users that can recall the historic water uses of the land grant-merced and any other historical documentation that defines the beneficial use both purpose and quantity. Include any other evidence tending to substantiate the claim. No declarations will be accepted for filing within any stream system where an adjudication case is occurring.

- a. A declaration form to be filed with the state engineer should include information of the owner, legal descriptions for the point of diversion, place of use and purpose of use.
- b. An amended declaration may be filed to supplement the evidence substantiating the claim or to correct any clerical errors in the initial declaration. An amended declaration that changes the purpose of use or amount of water, or that is filed after an application affecting the declared water right has been filed, will only be

accepted for filing if substantial and specific documentation supporting the change(s) is filed with the amended declaration.

- c. Filing fee: A fee of \$10 must accompany a surface water right declaration and a fee of \$1 must accompany a ground water right declaration. An amended declaration requires a fee of \$25.
- d. Action of the state engineer: Upon receipt of a declaration or amended declaration a preliminary investigation may be performed by the state engineer to identify any deficiencies in the declaration. If the state engineer accepts the declaration it is then filed by the state engineer. This is not the equivalent to adjudication. The declaration may also be recorded with the county clerk's office.

Water rights are accepted by the OSE for each individual water use and not for all surface and ground water within the boundaries of a land grant-merced. The declaration must be described to a specific structure. For example each stock tank or well within a land grant-merced should be declared as an individual use of water. It is important to provide supporting documentation with your declaration as well as outlining the specific beneficial uses. Any change in water use both the location of the diversion and the purpose of use should be documented by the land grant-merced. This tracking can be done by keeping annual counts of the number of livestock and type of animal raised on a plot of land. This information can be used to calculate the amount of water put to beneficial use.

It is advisable for land grants-mercedes to create their own documentation and permitting process for heirs that lease the common lands and appropriate water. This procedure is significant as it maintains the documentation demonstrating that the land grant-merced owns the land and water right and allows a leaser to use the water and make improvements such as build water structures. This is similar to the process used by other government entities such as the Forest Service and State Land Office.

Once your water rights are declared with the OSE land grants-mercedes should maintain their own paper work including all copies of the declaration and supporting documents. Once the OSE has recorded the declaration, land grants should receive a file number that references your water right. It is important to also check with the OSE after the paperwork is filed to ensure that it was recorded and present.

Establishing Land Grant Water Rights

The following are points that land grants-mercedes should consider and follow in establishing their senior water rights.

- Document water sources and water uses on land grants-mercedes both historical and modern. File a separate declaration for each specific use.

- Collect supporting documentation that pertains to the land grant-merced water right including: patents, deeds, maps, plats, affidavits, legal findings, Congressional GAO Report that define and acknowledge land grants, etc.
- Ensure that rights are not lost to forfeiture, meaning ensure that water is being put to beneficial use.
- Land grants-mercedes should consider being the agent that requests new well permits for common land lease allotments rather than allow the leasing to seek the permit as an individual. Also land grants-mercedes may want to require heirs that are currently leasing common land allotment and that received a well permit to change the permit ownership over to the land grant. This can be done utilizing the OSE Change of Ownership Form supplied in Appendix N-3.
- Declaration of water rights with the state engineer. The state engineer needs to create a form and process for documenting and filing land grant-merced water rights. Establishing the need with the state engineer can be achieved by creating the need. As more land grants-mercedes begin to file their water rights the state engineer will need to create a process. For now land grants-mercedes must use the forms outlined above.
- Become informed about New Mexico Water Law and the requirements for maintaining a water right.
- Address land grant-merced water rights within the Land Grant Interim Committee and Federal Legislation.

[NM OSE DECLARATION OF OWNERSHIP OF SURFACE WATERS]

File Number: _____ (For OSE Use Only)

NEW MEXICO OFFICE OF THE STATE ENGINEER DECLARATION OF OWNERSHIP OF WATER RIGHT OF SURFACE WATERS PERFECTED PRIOR TO MARCH 19, 1907

1. DECLARANT

Name: _____ Work Phone: _____
Contact: _____ Home Phone: _____
Address: _____
City: _____ State: ____ Zip: _____

2. LOCATION OF WATER POINT OF DIVERSION (A, B, C, or D required, E or F if known)

A. ____ 1/4 ____ 1/4 ____ 1/4 Section: ____ Township: ____ Range: ____ N.M.P.M.
in _____ County.

B. X = _____ feet, Y = _____ feet, N.M. Coordinate System
_____ Zone in the _____ Grant.
U.S.G.S. Quad Map _____

C. Latitude: ____ d ____ m ____ s Longitude: ____ d ____ m ____ s

D. East _____ (m), North _____ (m), UTM Zone 13, NAD ____ (27 or 83)

E. Tract No. _____, Map No. _____ of the _____ Hydrographic Survey

F. Lot No. _____, Block No. _____ of Unit/Tract _____ of the
_____ Subdivision recorded in _____ County.

G. Other: _____

H. Give State Engineer File Number if existing Diversion: _____

I. On land owned by (required): _____

J. Source of surface water supply:

a. Name of ditch, acequia, or spring: _____

b. Stream or water course: _____

c. Tributary of: _____

3. QUANTITY

Diversion Amount: _____ acre-feet per annum

Consumptive Use: _____ acre-feet per annum

4. PURPOSE OF USE

Domestic: ____ Livestock: ____ Irrigation: ____ Municipal: ____ Industrial: ____

Commercial: ____ Other (specify): _____

Specific use: _____

Do Not Write Below This Line

File Number: _____

Trn Number: _____

Form: wr-21

page 1 of 4

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNERSHIP OF WATER RIGHT OF SURFACE WATERS
PERFECTED PRIOR TO MARCH 19, 1907**

5. PLACE OF USE

_____ acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres	Owner
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Who is the owner of the land? _____

6. WATER WAS FIRST APPLIED TO BENEFICIAL USE ON: _____ (date) and since that time has been used fully and continuously for all of the above described purposes except as follows: _____

7. CONSTRUCTED WORKS CONSIST OF:

(Enumerate Diversion dams, main canals, headgates, pipelines, flumes, reservoirs, laterals, etc.) _____

8. DIVERSION DAM (if applicable)

The diversion dam is constructed of _____;
Crest length _____ feet; Crest width _____ feet;
Height above stream bed _____ feet; Depth below stream bed _____ feet;
Side slopes of _____ horizontal to 1 (one) vertical on upstream face
And _____ horizontal to 1 (one) vertical on downstream face;
And contains about _____ cubic yards of material.

Do Not Write Below This Line

File Number: _____

Trn Number: _____

Form: wr-21

page 2 of 4

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNERSHIP OF WATER RIGHT OF SURFACE WATERS
PERFECTED PRIOR TO MARCH 19, 1907**

9. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE (if applicable)

Name of ditch _____ ;
Bottom width _____ feet;
Depth of water at full operating capacity _____ feet;
Side slopes _____ horizontal to 1 (one) vertical;
Diameter (pipe line or circular flume) _____ feet;
Type of pipe line _____ ;
Slope _____ feet per 1000 feet; Capacity _____ cubic feet per second;
Length of canal or pipeline _____ feet.

10. HYDRAULIC PROPERTIES - STORAGE DAM (if applicable)

Maximum storage capacity _____ acre feet;
Maximum height above foundation _____ feet; length of crest _____ feet;
Maximum width at base _____ feet; Crest width _____ feet;
Slope of upstream face _____ horizontal to 1 (one) vertical;
Slope of downstream face _____ horizontal to 1 (one) vertical;
Elevation of crest of dam _____ feet; Elevation of spillway crest _____ feet;
Elevation of flow line of outlet conduit _____ feet;
Freeboard (above high water line at maximum spill) _____ feet;
Width of spillway _____ feet;
Discharge capacity of spillway _____ cubic feet per second;
Location of spillway: _____ ;
Cross-sectional area at maximum flow: _____ square feet;

Size and character of outlet conduit _____ ;
_____ ;

Type of dam, construction material, etc. _____

Elevation or (feet) depth above outlet	Area of Water Surface, (Acres)	Storage Capacity (Acre Feet)	Remarks
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Do Not Write Below This Line

File Number: _____

Trn Number: _____

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNERSHIP OF WATER RIGHT OF SURFACE WATERS
PERFECTED PRIOR TO MARCH 19, 1907**

[illegible]

(I, We) _____ affirm that the
(Please Print)
foregoing statements are true to the best of my knowledge and belief.

NOTARY

My commission expires _____

Notary Public

This Declaration form is hereby accepted for filing in accordance with NMSA-1978 (1985), as amended.

The acceptance by the State Engineer Office does not constitute validation of the right claimed.

Do Not Write Below This Line

page 4 of 4

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT**

1. DECLARANT

Name: _____ Work Phone: _____
Contact: _____ Home Phone: _____
Address: _____
City: _____ State: __ Zip: _____

2. LOCATION OF WELL (A, B, C, or D required, E or F if know)

A. ____ 1/4 ____ 1/4 ____ 1/4 Section: ____ Township: ____ Range: ____ N.M.P.M.
in _____ County.

B. X = _____ feet, Y = _____ feet, N.M. Coordinate System
____ Zone in the _____ Grant.
U.S.G.S. Quad Map _____

C. Latitude: ____ d ____ m ____ s Longitude: ____ d ____ m ____ s

D. East _____ (m), North _____ (m), UTM Zone 13, NAD ____ (27 or 83)

E. Tract No. _____, Map No. _____ of the _____ Hydrographic Survey

F. Lot No. _____, Block No. _____ of Unit/Tract _____ of the
_____ Subdivision recorded in _____ County.

G. Other: _____

H. On land owned by (required): _____

3. DESCRIPTION OF WELL

Date drilled: _____ Driller: _____

Depth: _____ feet. Outside diameter of casing _____ inches;

Original capacity _____ gal. per min.; Present capacity _____ gal. per min.;

Pumping lift: _____ feet; Static water level: _____ feet (above) (below) land
surface; Make of pump: _____; Type of pump: _____

Make, type, horsepower, etc., of power plant: _____

Fractional or percentage interest claimed in well: _____

Do Not Write Below This Line

File Number: _____ Trn Number: _____

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT**

4. QUANTITY

Consumptive Use: _____ acre-feet per annum
 Diversion Amount: _____ acre-feet per annum

5. PURPOSE OF USE

Domestic: ____ Livestock: ____ Irrigation: ____ Municipal: ____ Industrial: ____
Commercial: ____ Other (specify): _____
Specific use: _____

6. PLACE OF USE

_____ acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres

Who is the owner of the land? _____

7. WATER WAS FIRST APPLIED TO BENEFICIAL USE ON: _____ (date)
and since that time has been used fully and continuously for all of the
above described purposes except as follows:

8. ADDITIONAL STATEMENTS OR EXPLANATIONS:

[illegible]

Do Not Write Below This Line

File Number: _____
Form: wr-03

Trn Number: _____
page 2 of 3

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT**

ACKNOWLEDGEMENT

(I, We) _____ affirm that the
(Please Print)
foregoing statements are true to the best of my knowledge and belief.

Declarant Signature	Declarant Signature

NOTARY

This instrument was acknowledged before me this ____ day of _____,
A.D., ____, By _____.
Name of Applicant

My commission expires _____

Notary Public

ACCEPTANCE OF STATE ENGINEER

This Declaration form is hereby accepted for filing in accordance with NMSA-1978 (1985), as amended.

The acceptance by the State Engineer Office does not constitute validation of the right claimed.

Do Not Write Below This Line

File Number: _____
Form: wr-03

Trn Number: _____
page 3 of 3

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
CHANGE OF OWNERSHIP OF WATER RIGHT (INDIVIDUAL)**

1. OWNER OF RECORD

Name: _____
Contact: _____ Work Phone: _____
Address: _____ Home Phone: _____
City: _____ State: __ Zip: _____

NEW OWNER

Name: _____
Contact: _____ Work Phone: _____
Address: _____ Home Phone: _____
City: _____ State: __ Zip: _____

2. AMOUNT CONVEYED

State Engineer File Number: _____
Subfile Number _____ of Cause Number _____
Owner of record has conveyed _____ of said right.
(all or part)
Consumptive Use: _____ acre-feet per annum
Diversion Amount: _____ acre-feet per annum
Other: _____ (units)

3. PURPOSE OF USE

Domestic: __ Livestock: __ Irrigation: __ Municipal: __ Industrial: __
Commercial: __ Other (specify): _____
Specific use: _____

4. PLACE OF USE

_____ acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres	Priority
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Do Not Write Below This Line

File Number: _____ Trn Number: _____

File Number: _____ (For OSE Use Only)

**NEW MEXICO OFFICE OF THE STATE ENGINEER
CHANGE OF OWNERSHIP OF WATER RIGHT (INDIVIDUAL)**

5. WELLS TO ACCOMPANY CONVEYED RIGHT

Well File No.	Subdivision	Section	Township	Range
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. CONSENT TO LAWFUL CHANGE IN PLACE AND/OR PURPOSE OF USE

(I, We) the above owner(s) of record, hereby consent to a lawful change in the place and/or purpose of use of the above-described water right: (To be completed only if it is an irrigation water right and has been conveyed separate from the land to which it was appurtenant.)

_____	_____
(Signature)	(Signature)

7. ADDITIONAL STATEMENTS OR EXPLANATIONS:

ACKNOWLEDGEMENT

(I, We) _____ affirm that the
(Please Print)
foregoing statements are true to the best of my knowledge and belief.

_____	_____
Applicant Signature	Applicant Signature

NOTARY

This instrument was acknowledged before me this ____ day of _____,

A.D., _____, By _____
Name of Applicant

My commission expires _____	_____
	Notary Public

Do Not Write Below This Line

This Change of Ownership form is hereby accepted for filing in accordance with Section 72-1-2.1, NMSA-1978 (1985 Repl. Pam), as amended. The acceptance by the State Engineer does not constitute validation of the right conveyed.

File Number: _____ Trn Number: _____
Form: wr-02i (Individual) - page 2 of 2

**NEW MEXICO OFFICE OF THE STATE ENGINEER
CHANGE OF OWNERSHIP OF WATER RIGHT**

CHANGE OF OWNERSHIP INSTRUCTIONS

- a. The "Owner of Record" of a water right is the current owner recorded in the State Engineer Office.
- b. This form shall be completed by the new owner and shall be accompanied by a warranty deed or other instrument of conveyance that has been properly recorded with the county clerk's office.
- c. A separate Change of Ownership of Water Right form shall be filed for each water right recorded in the State Engineer Office by Permit, License, Declaration or Court Adjudication.
- d. This form shall be filed in duplicate (two) and must be accompanied by the proper filing fee. Each form must have an original signature and each must be properly notarized.
- e. An original will be forwarded to the new owner with instructions to file it with the county clerk in the county in which the water right is located. Acceptance of the form for filing by the State Engineer does not constitute verification of the right conveyed.

LINE BY LINE INSTRUCTIONS

1. Name and address of new owner is required.
2. If for irrigation, "Diversion Amount" is the diversion at the farm (turnout) headgate. State Engineer file number is required.
3. State purpose of use of the existing water right of the owner of record.
4. A legal description of the land with the water right or place of use is required. If possible, a copy of the survey plat shall accompany this document.
5. If the ownership of a well is being changed, the State Engineer file number of the well is required.
6. If the water rights being transferred are irrigation rights and they are being severed from the lands to which they have been appurtenant, consent of the landowner (the owner of record of the water rights) must be obtained.

Assistance in completing this form is available, and the form may be filed at the State Engineer Office in Santa Fe and the District Offices located as follows:

District 1 - 5550 San Antonio Dr. NE,
Albuquerque, NM 87109-4127, Phone # 505-383-4000
District 2 - 1900 West Second Street,
Roswell, NM 88201-1712, Phone # 575-622-6521
District 3 - 301 South Tin, P.O. Box 844,
Deming, NM 88031-0844, Phone # 575-546-2851
District 4 - 1680 Hickory Loop, Suite J
Las Cruces, NM 88005-6598, Phone # 575-524-6161
District 5 - 100 Gossett Drive, Suite A
Aztec, NM 87410, Phone # 505-334-4571
District 6 - Room 102, Bataan Memorial Building, P.O. Box 25102,
Santa Fe, NM 87504-5102, Phone # 505-827-6120
District 7 - 301 East 9th Street
Cimarron, NM 87714, Phone # 575-376-2918

SECTION O – CALENDAR OF EVENTS

FISCAL YEAR CALENDAR OF EVENTS

JULY

- 1st - Start of fiscal year
- Adopt Open Meetings Act Resolution at first board of trustees meeting of new fiscal year.
- Land Grant Council meets 2nd Friday of every month.
- Continue work on development of Infrastructure Capital Improvement Plan.
- Land Grant Legislative Interim Committee meets.
- 31st – Year-end budget reports, final budget adjustments requests, and final budget due to Dept. Finance & Administration- Local Government Division (DFA-LGD) for all land grants with annual revenues over \$10,000. .

AUGUST

- Finalize ICIP and adopt through Resolution.
- Land Grant Council meets 2nd Friday or every month.
- CDBG Application workshop.

SEPTEMBER

- 1st Monday of September DFA-LGD certifies Land Grant Annual Budget.
- Complete Capital Outlay Request Forms.
- Land Grant Council meets 2nd Friday of every month.
- Land Grant Legislative Interim Committee meets.
- Third Saturday - New Mexico Land Grant Council/Consejo quarterly meeting.
- Initiate contact with local Legislators regarding capital outlay requests, get required signatures.
- 30th – ICIP due to DFA-LGD.

OCTOBER

- Initiate contact with Governor's Office regarding capital outlay requests/infrastructure needs.

- Land Grant Legislative Interim Committee meets.
- Land Grant Council meets 2nd Friday of every month.
- 31st – 1st Quarter budget reports due to DFA-LGD.

NOVEMBER

- Continue work on capital outlay requests with local Legislators and Governor's Office.
- Land Grant Legislative Interim Committee meets to finalize legislation for session.
- Land Grant Council meets 2nd Friday of every month.
- Deadline for CDBG Threshold compliance

DECEMBER

- 1st - Land Grant audits/ financial review reports due to State Auditors Office.
- CDBG application deadline.
- Land Grant Council meets 2nd Friday of every month.
- 2nd Saturday - New Mexico Land Grant Council/Consejo quarterly meeting.

JANUARY

- 3rd Tuesday in January 1st day of legislative session.
- Land Grant Council meets 2nd Friday or every month.
- 31st – 2nd Quarter budget reports due to DFA-LGD.

FEBRUARY

- Begin preparation for next year FY budget – project revenues, review inventory, assess capital needs.
- Land Grant Council meets 2nd Friday of every month.
- Deadline to submit reauthorization requests, one week before capital outlay requests deadline.
- Deadline to submit capital outlay requests, half way through legislative session.
- End of legislative session for 30 day session.

- For land grants-mercedes with Elections held 1st Monday in April - Adopt land grant election resolution and issue public proclamation calling for election. (Not less than 30 days and not more than 45 days prior to election). Begin taking Declarations of Candidacy for at least 10 following the publishing of the election proclamation.

MARCH

- Begin developing proposed budget.
- Land Grant Council meets 2nd Friday of every month.
- Third Saturday - New Mexico Land Grant Council/Consejo quarterly meeting.
- CDBG application hearings.
- End of legislative session for 60 day session.
- Close voter registration books at least 15 days prior to election for land grants that hold elections on 1st Monday in April.
- Audit Rule Trainings

APRIL

- 1st Monday of April hold land grant elections (unless specified otherwise in land grant by-laws).
- Reopen land grant-merced registration books (1st Monday following election)
- Within 7 days of election, Board of Trustees meets to canvass votes and certify election results. Issue election certificates to highest vote getters in election.
- Within 7 days of canvassing votes and certifying election, the newly appointed Board of Trustees meets to organize themselves with offices of President, Secretary and Treasurer.
- Hold public hearings for budget and ICIP.
- Land grants-mercedes receive letters from State Auditor giving them authority to procure financial review/audit services. First step is to determine revenue tier utilizing form from State Auditor on Land Grants that fall into revenue tiers 3 through 7 requires IPA services. (Contact State Auditor Office for assistance with financial review process).
- 30th – 3rd Quarter budget report due to DFA-LGD

MAY

- 15th – Deadline to submit recommendations and contracts for an Independent Public Accountant (IPA) to State Auditor for approval (for all land grants in revenue tiers 3 through 7).
- 15th – Deadline to submit Revenue Certification to State Auditor's office for land grant's whose annual revenues will not exceed \$10,000 by fiscal year close out on June 30th.
- Land Grant Council meets 2nd Friday or every month.
- Finalize budgets and adopt through resolution.
- Land Grant Legislative Interim Committee meets to plan interim agenda.
- CDBG allocation hearing.

JUNE

- 1st – Deadline to submit preliminary budget and budget adopt resolution for next fiscal year to DFA-LGD Budget and Finance Bureau.
- 1st – Deadline to submit Revenue Certification to DFA-LGD Budget and Finance Bureau for land grant's whose annual revenues will not exceed \$10,000.
- Land Grant Council meets 2nd Friday or every month.
- CDBG implementation workshop.
- CDBG proposed rules change hearing.
- Land Grant Legislative Interim Committee meets to plan interim meeting schedule
- Third Saturday – New Mexico Land Grant Council/Consejo Annual meeting and election of officers.
- 30th – Close of Fiscal Year, close out books.

SECTION P – CONVEYANCE OF COMMON LAND

CONVEYANCE & LEASING OF LAND GRANT-MERCED COMMON LAND

The only way that a land grant-merced can convey any of its common lands is in accordance with 49-1-11 and 13-6-2.1 NMSA 1978. The first statute, which is a part of the general provisions, sets forth the requirements that a land grant-merced must follow in order to gift, sale, mortgage, transfer or utilize any other method in which a change in ownership of land grant-merced common land could be permanent. The second statute deals specifically with the sale of public property and requires that any sale, trade or lease of public property is subject to approval by the State Board of Finance. The purpose for the State Board of Finance approval is to ensure that there is no violation of the state's Anti-donation Clause. The State Board of Finance approves the any sale, transfer or lease to any non-government entity once it determines that all such transactions occur based on the fair market value for the property in question.

Below is an outline of the exact steps that must be followed when a land grant-merced wishes to dispose of any of the common lands. Failure to follow these steps will result in an invalid land transfer that if challenged in court could be ruled null and void. This process covers permanent land transfers as well as mortgages placed on any of the common lands but does not apply to long term leases held by heirs. Long term leases with non-heirs that last more that 5 years or that are valued at more \$25,000 over the life of the lease would be subject to approval of the State Board of Finance in accordance with 13-6-2.1 NMSA 1978.

Steps Required to Convey Common Land

1. In order to convey property the land grant-merced must have a provision for the conveyance of common land in their bylaws.
2. At a public meeting of the land grant-merced, that has been properly advertised in accordance with the Open Meetings Act, §10-15-11 NMSA 1978 and Land Grant General Provision, §49-1-9 & §49-1-12 NMSA 1978, a resolution shall be passed approving the conveyance of common. The land grant must ensure that the resolution is signed and its passage is clearly reflected in the minutes of the meeting. A sample resolution has been provided on the flash drive that accompanies this guidebook under Section P – Conveyance of Common Land in the Sample Conveyance Documents folder.
3. Once the resolution is passed the land grant-merced must wait thirty (30) days to allow for protest, prior to petitioning the district court for an order affirming the resolution approving the conveyance of property. The land grant-merced can act pro se (without an attorney) in filing the petition with the district court that has jurisdiction over where the property is located. The land grant-merced shall file the petition along with a copy of the resolution, meeting minutes and conveyance documents (i.e. deed or mortgage), and a court order to be signed by the judge. A sample petition and sample court order has been provided on the flash drive that accompanies this guidebook under Section P – Conveyance of Common Land in the Sample Conveyance Documents folder.

4. If a protest is received the land grant-merced board of trustees must address the protest in a special meeting held within thirty (30) days of the protest being filed and held in accordance with the Open Meetings Act, 10-15-11 NMSA 1978 and Land Grant General Provision, 49-1-9 & 49-1-12 NMSA 1978.
5. Once the land grant-merced receives the signed order from the court the land grant-merced must then get approval from the State Board of Finance (13-6-2.1 NMSA 1978 and 1.5.23 NMAC – N, 2-14-2001). In order to get approval the land grant-merced must submit the following documentation to the State Board of Finance for approval at one of their regularly scheduled public meetings.
 - A. A cover letter explaining the details of the proposed land transfer.
 - B. the unsigned quitclaim deed from the land grant-merced transferring title to purchaser containing the legal description of the property;
 - C. a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review by the property tax division of the taxation and revenue department if the appraisal was not done by the division (for both properties if trade); the public entity seeking division review must submit necessary information to division within time frame specified by division; when the buyer is another governmental entity, neither an appraisal nor department review is required;
 - D. a description of the reason for the sale or trade;
 - E. selection process used to determine purchaser; competitive sealed bid, public auction, or negotiation;
 - F. purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);
 - G. sale agreements, if applicable;
 - H. resolution of the land grant-merced authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the board and court order affirming the board of trustees resolution;
 - I. approval by the state engineer of any transfer of water rights.

The State Board of Finance requires that one hard copy and one identical electronic version of all the above applicable documentation be submitted on or before the Board's meeting deadline as published on the Board's website at: <http://www.board.nmdfa.state.nm.us/>

The Board of Finance requires that the hard copy be tabbed for easy reference and that the electronic version be in a single PDF Document that is bookmarked. The hard copy must be standard letter size, 8 ½” by 11”.

All documentation submittals for Board of Finance approval must go to the following:

By mail:

STATE BOARD OF FINANCE
BATAAN MEMORIAL BUILDING
ROOM 181
SANTA FE, NM 87501

By e-mail:

bof.administrator@state.nm.us

The Board of Finance will not approve any transfer that is below fair market value.

6. Once the land grant-merced receives approval from the State Board of Finance then they may execute the conveyance by signing and recording the deed or executing the mortgage agreement, etc.

Long Term Leases on Common Land to Non-heirs

Leasing of the common lands to non-heirs should always been done in accordance with the bylaws of the land grant-merced. In addition, any leasing of the common lands to a non-heir for a period longer than 5 years or for a total leasing price of more than \$25,000 over the life of the lease must be approved by the State Board of Finance in accordance with 13-6-2.1 NMSA, 1978 and 1.5.23 of the New Mexico Administrative Code (NMAC).

The steps for getting a long-term lease to a non-heir approved are as follows:

The land grant-merced must provide 1 original hard copy and 1 identical, bookmarked PDF file on a cd of all the following documentation.

1. Cover letter to the State Board of Finance explaining all the details of the lease;
2. Current appraisal or evidence of fair market value and a report of review from the Property Tax Division of the Taxation and Revenue Department on the appraised value. (Contact: Property Tax Division: (505) 827-0885);
3. Signed copy of the lease. The lease must include a stipulation in the agreement that states the lease is subject to the approval of the State Board of Finance;
4. A resolution (see sample resolution provided on the flash drive that accompanies this guidebook under Section P – Conveyance of Common Land in the Sample Conveyance Documents folder) or official approved minutes from the land grant-merced board of trustees approving the lease and containing a provision that the lease is subject to approval of the State

Board of Finance;

5. Reason for the lease;

6. Selection process used to determine lessee (i.e. negotiation, competitive sealed bid or public auction);

All documentation submittals for Board of Finance approval must go to the following:

By mail:

STATE BOARD OF FINANCE
BATAAN MEMORIAL BUILDING
ROOM 181
SANTA FE, NM 87501

By e-mail:

bof.administrator@state.nm.us

The State Board of Finance will not approve any lease to a private interest in which fair market lease value for the subject property has not been met.

[SAMPLE LEASE RESOLUTION]

**Land Grant-Merced del Pueblo de _____
Resolution #20__ - ____**

A RESOLUTION CONCERNING THE LEASING OF COMMON LAND OF THE LAND GRANT-MERCED DEL PUEBLO DE _____.

WHEREAS, the Board of Trustees of the Land Grant-Merced del Pueblo de _____ met at its regular scheduled and properly posted public meeting, in accordance with the Open Meetings Act, Chapter 10-15-11 NMSA 1978 and the Land Grant General Provision, Chapter 49-1-9 & 49-1-12 NMSA 1978, at _____ (location) on _____ (date) at _____ (time) as required by law; and

WHEREAS, the Board of Trustees of the Land Grant- Merced del Pueblo de _____ believes that the leasing of the property described below:

_____ (Insert Property Description)

from the land grant-merced to _____ (name of individual or group to receive property) is made for the benefit of the Land Grant - Merced del Pueblo de _____, because _____

_____ (Insert reason property transfer benefits the land grant-merced); and

WHEREAS, the leasing of the Land Grant-Merced del Pueblo de _____ common land is made in accordance with the Merced Bylaws; and

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Land Grant-Merced del Pueblo de _____ that Resolution #_____ is hereby adopted approving the lease of the above described property; and

BE IT FURTHER RESOLVED by the Board of Trustees of the Land Grant - Merced del Pueblo de _____ that the lease of the aforementioned property is subject to approval by the State Board of Finance in accordance with 13-6-2.1 NMSA 1978.

PASSED, SIGNED AND APPROVED THIS _____ DAY OF _____, 20__.

President of the Board of Trustees

Attest by: _____
Secretary of the Board of Trustees

[SAMPLE LAND CONVEYANCE RESOLUTION]

Land Grant-Merced del Pueblo de _____
Resolution #20____ - _____

A RESOLUTION CONCERNING THE CONVEYANCE OF COMMON LAND OF THE
LAND GRANT MERCED DEL PUEBLO DE _____.

WHEREAS, the Board of Trustees of the Land Grant Merced del Pueblo de _____
_____met at its regular scheduled and properly posted public meeting, in accordance with
the Open Meetings Act, Chapter 10-15-11 NMSA 1978 and the Land Grant General Provision,
Chapter 49-1-9 & 49-1-12 NMSA 1978, at _____ (location) on
_____ (date) at _____ (time) as required by law; and

WHEREAS, the Board of Trustees in accordance with Land Grant General Provisions, Chapter
49-1-11 NMSA 1978 believes that the conveyance of the property described below:

_____ (Insert Property Description)

from the land grant-merced common land to _____ (name of
individual or group to receive property) is made for the benefit of the Land Grant-Merced del
Pueblo de _____, because _____

_____ (Insert reason property transfer benefits the land grant-merced); and

WHEREAS, the conveyance of Land Grant-Merced del Pueblo de _____
common land is made in accordance with the Merced Bylaws; and

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Land Grant-Merced
del Pueblo de _____ that Resolution #_____ is hereby adopted approving the
conveyance of the above described common land; and

BE IT FURTHER RESOLVED by the Board of Trustees of the Land Grant-Merced del Pueblo
de _____ that the conveyance of the aforementioned property is subject
to affirmation of this resolution in accordance with 49-1-11 NMSA 1978 and is also subject to
approval of the State Board of Finance in accordance with 13-6-2.1 NMSA 1978.

PASSED, SIGNED AND APPROVED THIS _____ DAY OF _____, 20____.

President of the Board of Trustees

Attest by: _____
Secretary of the Board of Trustees

[SAMPLE LAND CONVEYANCE PETITION]

(Insert District #) Judicial District Court
County of _____
State of New Mexico

No. _____

**Board of Trustees of the
Land Grant-Merced del Pueblo de _____ (Petitioner)**

Petition

To affirm a Resolution by the Board of Trustees of the Land Grant-Merced del Pueblo
de _____.

On _____ (date) in the community of _____, NM the Board of
Trustees of the Land Grant-Merced del Pueblo de _____ took action at a
public meeting of the Merced for which public notice has been provided in accordance with the
Open Meetings Act, Chapter 10-15-11 NMSA 1978 and the Land Grant General Provisions,
Chapter 49-1-9 & 49-1-12 NMSA 1978.

- The Board of Trustees did pass a resolution to convey a portion of common lands at a regular meeting in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978.
- The Board of Trustees did pass a resolution to convey a portion of common lands in accordance with the Bylaws of the Land Grant-Merced del Pueblo de _____ and with the Land Grant General Provisions of the State 49-1-1 thru 49-1-18 NMSA 1978.
- The Board of Trustees has notified the heirs at a public meeting of the same date above their right to file a written protest of a conveyance with the Board of Trustees and the District Court within thirty (30) days of the date that the resolution approving the conveyance is passed by the Board of Trustees. The Board of Trustees shall address and make a decision on any protest in a special meeting held in accordance with Sec. 49-1-9 and 49-1-12 NMSA 1978 within thirty (30) days of receiving a protest.
- The Board of Trustees has submitted all supporting documents, and minutes of the public meeting of the Land Grant-Merced del Pueblo de _____, and the roster of attendees of such meeting.

- The Board of Trustees submits that this conveyance of the common lands will benefit the Land Grant-Merced del Pueblo de _____ and all of its heirs and/or qualified voting members.
- The Board of Trustees submits that no protests to the conveyance of property have been filed with the Board within the thirty (30) day limit for protests and that it is not aware of any protest being filed with the District Court.

Signed this _____ day of _____ (month), _____ (year) by:

(Merced Seal)

President of the Board of Trustees

Attested by:

Secretary of the Board of Trustees

The foregoing instrument executed

before me on _____ (date)

Notary:

My commission expires on:

[SAMPLE COURT ORDER]

(Insert District #) Judicial District Court
County of _____
State of New Mexico

IN RE: The Land Grant-Merced del Pueblo de _____
Resolution to Approve Conveyance

No. _____

ORDER

This matter came before the court on the petition of the Board of Trustees of the Land Grant-Merced del Pueblo de _____ for an order affirming a resolution and the court having considered such petition and having been sufficiently advised in the premises, finds the following:

1. The Board of Trustees of the Land Grant-Merced del Pueblo de _____ is the board entrusted by statute to protect and govern the common lands within the exterior boundaries of the Land Grant-Merced del Pueblo de _____.

2. At a regular meeting held on _____ (date), the Board of Trustees voted to approve of a resolution to make a conveyance of _____

(description of property) to _____ (name the individual(s) or entity receiving property).

3. The conveyance is made in accordance with the bylaws of the Land Grant-Merced del Pueblo de _____, and section 49-1-11 NMSA 1978.

4. The Conveyance is made for the benefit of the Land Grant-Merced del Pueblo de _____.

Therefore, the petition is granted and the Board of Trustees resolution #_____ is hereby affirmed.

DISTRICT COURT JUDGE

SECTION Q – TORT CLAIMS

TORT LIABILITY COVERAGE

Tort Claims Act

Sections 41-4-1 through 41-4-27 NMSA 1978, is known as the Tort Claims Act. The purpose of the Tort Claims Act is to establish the allowance and extent to which government entities in New Mexico, such as land grants-mercedes governed as political sub-divisions of the State can have tort claims filed against them. A tort is any non-contractual, non-criminal wrongdoing for which an action for damages may be brought.

Section 41-4-4 NMSA 1978 grants government entities and any public employee while acting within the scope of duty immunity from liability for any tort except as waived by the New Mexico Religious Freedom Restoration Act [28-22-1 NMSA 1978] and by Sections 41-4-5 through 41-4-12 of the Tort Claims Act. This means that government entities cannot be sued for any tort claims unless they have been waived as called for above. For more information on the tort claims a land grant-merced can still be sued for see the Waiver of Immunity section below.

The Tort Claims Act also established the statute of limitation for bringing a tort claim against a government entity or its employees and the maximum limit of liability for which damages can be awarded in a successful claim. The statute of limitations for tort claims that have been waived from immunity is two years [41-4-15 NMSA 1978]. This means that if actions are not brought against a government entity or its employee within two years of the occurrence resulting in loss, injury or death then any future actions shall be barred forever. This two-year limit does not apply to children under age 7, who have until their 9th birthday to file suit. The maximum liability for which damages can be awarded are spelled in section 41-4-19 NMSA 1978, and are listed below:

1. The sum of two hundred thousand dollars (\$200,000) for each legally described real property for damage to or destruction of that legally described real property arising out of a single occurrence;
2. the sum of three hundred thousand dollars (\$300,000) for all past and future medical and medically related expenses arising out of a single occurrence; and
3. the sum of four hundred thousand dollars (\$400,000) to any person for any number of claims arising out of a single occurrence for all damages other than real property damage and medical and medically related expenses as permitted under the Tort Claims Act.

This section of the Act further states that the maximum award for all claims pursuant to the above items (1) and (3) that arise out of a single occurrence shall not exceed seven hundred fifty thousand dollars (\$750,000). It also set the maximum rate of interest and how it is to be applied to any award judgment made until it is paid in full. Lastly, this section also bars any judgment awards made from including any exemplary or punitive damages or interest prior to judgment.

The Act also states, in section 41-4-20 NMSA 1978, that “It shall be the duty of governmental entities to cover every risk for which immunity has been waived under the provisions of the Tort Claims Act. Therefore, land grants-mercedes are required to obtain liability coverage for torts waived in the act. In 2010 the New Mexico Legislature passed Senate Bill 94, which provides that any land grant-merced, that is governed as a political sub-division of the state, which applies to the Risk Management Division (RMD) of the General Services Department for liability coverage for any risk for which immunity has been waived under the Tort Claims Act shall be authorized to purchase coverage through the Public Liability Fund. The Public Liability Fund is created in the Tort Claims Act under section 41-4-23. The purpose of the fund is to provide government entities, which cannot otherwise obtain coverage, liability insurance coverage for torts claims waived in the act. For more info on liability coverage from RMD see the Risk Management Division Public Liability Fund section below.

Waivers of Immunity

The following are the tort liabilities for which immunity under the Tort Claims Act have been waved and which are or can be applicable to land grant-mercedes. For a complete listing of all liabilities for which immunity has been waived please refer to the Tort Claims Act sections 41-1-5 through 41-4-12 NMSA 1978.

1. Religious Freedom - A person whose free exercise of religion has been restricted by a violation of the New Mexico Religious Freedom Restoration Act [28-22-1 to 28-22-5 NMSA 1978] may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government agency. Relief may include injunctive or declaratory relief against a government agency that violates or proposes to violate the provisions of the New Mexico Religious Freedom Restoration Act and damages pursuant to the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], reasonable attorney fees and costs.
2. Operation or Maintenance of Motor Vehicles, Aircraft & Watercraft - The immunity granted in the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft [41-4-5 NMSA 1978].
3. Buildings, Public Parks, Machinery, Equipment and Furnishings - The immunity granted in the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment or furnishings [41-4-6 NMSA 1978].
4. Public Utilities - The immunity granted in the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of the following public utilities and services: gas; electricity; water; solid or liquid waste collection or disposal; heating; and ground transportation.

5. Highways and Streets - The immunity granted in the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties during the construction, and in subsequent maintenance of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

Risk Management Division Public Liability Fund

As per the Tort Claims Act Section 41-4-23 NMSA 1978, the Risk Management Division (RMD) of the General Services Department shall expend money from the Public Liability Fund for the following purposes:

1. To purchase tort liability insurance for state agencies and their employees and for any local public body participating in the public liability fund and its employees;
2. To contract with one or more consulting or claims adjusting firms pursuant to the provisions of Section 41-4-24 NMSA 1978;
3. To defend, save harmless and indemnify any state agency or employee of a state agency or a local public body or an employee of such local public body for any claim or liability covered by a valid and current certificate of coverage to the limits of such certificate of coverage;
4. To pay claims and judgments covered by a certificate of coverage;
5. To contract with one or more attorneys or law firms on a per-hour basis, or with the attorney general, to defend tort liability claims against governmental entities and public employees acting within the scope of their duties;
6. For additional allowable expenditures please see section 41-4-23 NMSA 1978.

Land grants-mercedes that are governed as political sub-divisions of the state are now eligible to receive liability coverage from the Public Liability Fund. RMD requires that any land grant-merced interested in coverage send a letter from the board of trustees, on official land grant-merced letterhead to the Director of RMD requesting coverage. The letter must also include the mail address for the land grant-merced. The letter can be sent attention to the Director of RMD at the following address:

Risk Management Division
Property & Casualty Bureau
P.O. Box 6850
Santa Fe, NM 87502

Letters may also be e-mailed to the Director of RMD. For the current name and e-mail address of the Director visit www.generalservices.state.nm.us/rmd/ or call (505) 827-2036.

Once RMD receives a request for coverage from a land grant-merced they will send out an application for coverage. The application will provide RMD an opportunity to assess the risk exposure for each land grant-merced based on their total assets, including common lands and facilities and their activities. Based on the exposure RMD will provide a premium quote for coverage. RMD estimates that cover for land grants-mercedes will average a little over \$1,000 per year. RMD has agreed to allow land grants-merced to pay for coverage premiums all at once or in quarterly or semi-annual installments.

If the land grant-merced chooses to accept the coverage and pays the required premium then they will be eligible for liability coverage as defined in the Certificate of Coverage issued by the by RMD. The current Certificate of Coverage can be viewed online at www.generalservices.state.nm.us/rmd/, also a copy of the Certificate of Coverage of FY 2009 can be found on the flash drive that accompanies this guidebook under the Section Q – Tort Claims folder.

Once covered a land grant-merced shall remained covered provided they remain current on their premium payments. If a land grant-merced that is covered is presented or served with any legal documents relating to a claim, such as a complaint, petition or summons, the board of trustees must immediately send a copy of the documents to RMD's Property and Casualty Bureau. Copies can be faxed to (505) 827-0593 or mailed to:

Risk Management Division
Property & Casualty Bureau
P.O. Box 6850
Santa Fe, NM 87502

Once RMD receives copies they will review and notify the land grant-merced as to availability of coverage.

For more information about Public Liability Fund please contact RMD Property & Casualty Bureau at (505) 827-0440.
