

**Timothy M. Keller**  
State Auditor



**Sanjay Bhakta, CPA, CGFM, CFE, CGMA**  
Deputy State Auditor

**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

August 11, 2016

Steve Polaco, President  
La Merced de Los Pueblos de Tierra Amarilla  
P.O. Box 205  
Tierra Amarilla, NM 87575

Re: FY 2011 and FY 2012 Tier 4 Agreed-upon Procedures

Dear Mr. Polaco,

On June 28, 2016, the Office of the State Auditor (“OSA”) received Fiscal Years (“FY”) 2011 and 2012 Agreed-upon Procedures (“AUP”) reports for La Merced de Los Pueblos de Tierra Amarilla (“Land Grant”). In light of the fact that the Land Grant is catching up on its audits at present, OSA believes it would be helpful to clarify certain events as discussed below. Further, it is noted that the issues reported in the FY 2011 and 2012 audits are not intended to suggest that such issues are ongoing at present. Instead, this is a necessary step in bringing transparency, accountability and closure to these historical fiscal years.

In FY 2011, an asset of the Land Grant was sold for the amount of \$233,980. At that time, it appears that there were issues with the composition of the Land Grant’s Board of Trustees and the individuals purporting to be the Trustees were not legally authorized to enter into such a transaction. As the transaction came to the attention of the community, the heirs of the Land Grant called for a meeting with the members purporting to be the Board of Trustees to demand information and accountability. When the signers of the transaction refused to provide complete information, the Legislative interim Land Grant Committee (“Committee”) requested that two signers testify at a hearing which was held on July 28, 2011.

The OSA’s preliminary conclusions as to the disposition were stated on April 29, 2014 in a letter from then State Auditor Hector Balderas to Representative Miguel Garcia, Chairperson of the Committee. The letter suggested that a “significant amount of funds” had been withdrawn by the former Board president without proper documentation and that many of the withdrawals were “questionable transactions,” in that they appeared to be for personal purposes.

When the OSA’s preliminary conclusions were made public, the steering committee of heirs moved to take legal action. On August 28, 2014, to prevent further withdrawals, five heirs that had been active in the steering committee obtained a court injunction freezing the bank accounts into which the funds had been deposited. That same day, the same five heirs filed suit to have the former Board of Trustees declared invalid and to call for a new election of Trustees, all of which the court granted. On September 27, 2015, five new Trustees were elected in an open election overseen by a court-appointed Special Master. The court officially recognized the results of the election on February 15, 2016.

The OSA recognizes the efforts of the current Board of Trustees in bringing the Land Grant into compliance with the Audit Act as well as attempting to place these unfortunate events behind them. While

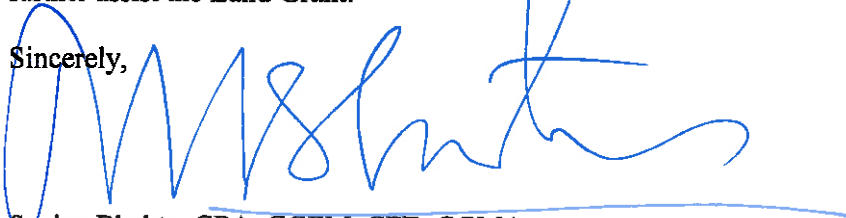
**2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507**  
**Phone (505) 476-3800 \* Fax (505) 827-3512**  
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we appreciate the Land Grant's progress that has been made so far, moving forward all responsible parties should continue to take steps in earnest to tangibly improve the transparency and accountability of the Land Grant.

The OSA and the Committee have been instrumental in assisting the Land Grant in becoming compliant with the Audit Act. In addition to the Committee providing funding to the Land Grant for the cost of the FY 2011 and FY 2012 AUPs, the OSA agreed to perform the engagements at a significantly discounted rate. The OSA has a limited set of resources, both internally and in its funding for small political subdivisions, many of which were deployed to help the Land Grant become compliant with the Audit Act. The Committee and the OSA have made substantial effort to assist the Land Grant in becoming complaint with the Audit Act.

We appreciate the Land Grant's hard work and attention to this matter. Please let me know if the OSA can further assist the Land Grant.

Sincerely,



Sanjay Bhakta, CPA, CGFM, CFE, CGMA  
Deputy State Auditor

**Merced de los Pueblos de Tierra Amarilla**

**Independent Accountant's Report on Applying Agreed-Upon Procedures**

**For the Fiscal Years Ended June 30, 2011 & June 30, 2012**



**Merced de los Pueblos de Tierra Amarilla**

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**Merced de los Pueblos de Tierra Amarilla**

**Official Roster**

**Fiscal Years Ended June 30, 2011 & June 30, 2012**

**Current Board of Trustees**

Steve J. Polaco, President

Belarmino Archuleta, Vice President

Melvin Apodaca, Treasurer

Diana Candelaria, Secretary

Carlos Chacon, Sargent-at-arms

## **Independent Accountant's Report on Applying Agreed-Upon Procedures**

Members of the Board  
Merced de los Pueblos de Tierra Amarilla  
P.O. Box 205  
Tierra Amarilla, New Mexico 88041

We have performed the procedures enumerated below for the Merced de los Pueblos de Tierra Amarilla (Land Grant) for the years ended June 30, 2011 and June 30, 2012, solely to assist in determining compliance with the provisions of the Audit Act for a Tier 4 entity per Section 12-6-3(B)(4) NMSA 1978 and Section 2.2.2.16 NMAC. The procedures were agreed to by the Land Grant through the New Mexico Office of the State Auditor. The Land Grant's management is responsible for its accounting records and the subject matter. This agreed upon procedures engagement was conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

### 1. Cash

#### **Procedures**

- 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.

#### **Findings**

Bank reconciliations were not performed for any of the accounts in 2011 or 2012 by the former Board of Trustees. In addition, there were no financial documents to be reviewed to perform the procedures. The former Board of Trustees of the Land Grant did not have any uninsured deposits. See the Schedule of Findings and Responses 2011-002 for items noted.

## 2. Capital Assets

### **Procedures**

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

### **Findings**

The former Board of Trustees of the Land Grant did not perform an annual physical inventory during calendar years 2011 or 2012. See the Schedule of Findings and Responses 2011-003 for items noted.

## 3. Revenue

### **Procedures**

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.

For a sample of revenue based on auditor judgment the following procedures were performed.

- 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.

### **Findings**

We noted that the former Board of Trustees of the Land Grant did not maintain a daily detailed general ledger for 2011 or 2012. Additionally, we noted the former Board of Trustees of the Land Grant did not have any supporting documentation for the revenues received in 2011. See the Schedule of Findings and Responses 2011-004 for items noted.

## 4. Expenditures

### **Procedures**

For a sample of cash disbursements based on auditor judgment the following procedures were performed.

- 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 canceled 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).

**Findings**

We noted the former Board of Trustees of the Land Grant did not maintain a detailed general ledger for 2011 and 2012. Therefore, we were unable to select a sample and test for compliance with Section 12-6-3 B (4) NMSA 1978.

Furthermore, we noted the Land Grant did not have any supporting documentation such as invoices or receipts for expenditures in 2011 and 2012 totaling approximately \$65,524 and \$75,120 respectfully, based on review of the bank statements. See the Schedule of Findings and Responses 2011-005 for items noted.

5. Journal Entries

**Procedures**

- 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.

**Findings**

The former Board of Trustees of the Land Grant did not record non-routine journal entries.

6. Budget

**Procedures**

- 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; of 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.



## **Findings**

We were unable to locate any documentation that a budget was submitted by the former Board of Trustees to the Department of Finance and Administration – Local Government Division for 2011 and 2012.

Additionally, there is no activity documented as the former Board of Trustees of the Land Grant did not maintain a daily detailed general ledger. Therefore, we were unable to determine if total actual expenditures exceeded the final budget at the legal level of budgetary control. Furthermore, we were unable to prepare a schedule of revenues and expenditures – budget and actual on the budgetary basis used by the Land Grant as we do not have any of the actual activity for fiscal years 2011 and 2012. See the Schedule of Findings and Responses 2011-006 for items noted.

## 7. Other

### **Procedures**

- a. If information comes to the IPA's attention (regardless of materiality) indicating any fraud, illegal acts, noncompliance, or any internal control deficiencies by the former Board of Trustees during the years covered by this Report, 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.

### **Note**

During the years covered by this Report, i.e., the fiscal years ending June 30, 2011 and June 30, 2012, a different group of people were acting as Board of Trustees of the Land Grant. For a number of reasons, including the failure to hold elections required by law, their status as a valid Board of Trustees during the years covered by this Report is questionable. A number of problems during those years relating to mishandling of money and a lack of accounting for money occurred under the former Board that were the subject of a separate investigation by Office of the State Auditor. The former Board has now been replaced and the current Board of Trustees is committed to full compliance with financial reporting requirements, including reporting on what took place under the former Board's tenure. The current Trustees are not the same people involved in the actions and failures of the previous Board that are detailed in the findings herein.

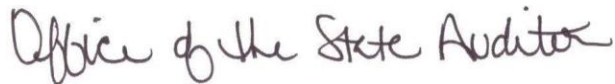
### **Findings**

The Land Grant was required to obtain the services of an independent public accountant to perform procedures under Tier 4 of the Audit Act – Section 12-6-3 B (4) NMSA 1978 and Section 2.2.2.16 NMAC. Reports were not submitted by the former Board of Trustees of the Land Grant to the State Auditor's Office by the due date. See the Schedule of Findings and Responses 2011-007 for items noted.

In addition, it was determined through a special investigation conducted by the Office of the State Auditor that the then-acting Board of Trustees of the Tierra Amarilla Land Grant received \$233,980 in funds from the sale of an asset from an outside source, however, it was not properly approved by the board members. In addition, it appears that approximately \$221,128 was misappropriated by a former Land Grant trustee and did not inure to the benefit of the Land Grant heirs or the general community. See the Schedule of Findings and Responses 2011-001 for items noted.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the Tier 4 agreed upon procedures. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of management of the Land Grant, the NM Office of the State Auditor, the NM Office of the State Engineer, the NM Department of Finance and Administration – Local Government Division, and the NM State Legislature and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in cursive script that reads "Office of the State Auditor".

Office of the State Auditor  
Santa Fe, New Mexico  
June 7, 2016

**Merced de los Pueblos de Tierra Amarilla  
Schedule of Findings and Responses  
June 30, 2011 and June 30, 2012**

**STATUS OF PRIOR YEAR FINDINGS**

NONE

**CURRENT YEAR FINDINGS**

**2011-001 Misappropriation of revenue from sale of Land Grant property**

**Condition:**

It was determined through a special investigation conducted by the Office of the State Auditor that the then-acting Board of Trustees of the Tierra Amarilla Land Grant received \$233,980 in funds from the sale of an asset from an outside source, however, it was not properly approved by the board members. Therefore, the sale may not have been legally effective. In addition, it appears that approximately \$221,128 was misappropriated by a former Land Grant trustee and did not inure to the benefit of the Land Grant heirs or the general community.

**Criteria:**

Per Section 49-1-11 NMSA 1978, a conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if the conveyance is made in accordance with the land grant-merced by-laws and this section; the conveyance is made for the benefit of the land grant-merced; 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; 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 the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection E of this section. In addition, per section 2.2.2.10(I)(1)(b)(ii) NMAC 2011, Section 12-6-5 NMSA 1978 (Reports of Audits) states "each report shall set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination." Therefore, all such findings must be included in the annual financial audit report including all instances of fraud, illegal acts, or abuse. Furthermore, Management is responsible for adopting sound accounting policies, and for establishing and maintaining internal control that will, among other things, initiate, authorize, record, process, and report transactions (as well as events and conditions) consistent with the boards by-laws.

**Effect:**

An inadequate accounting system and the lack of proper internal controls can lead to the misappropriation of public funds and could increase the risk of fraud going undetected.

**Cause:**

Because the former Board of Trustees of the Land Grant had not established a proper internal control structure there were no controls in place to prevent or detect misstatements of accounting information.

**Recommendation:**

We recommend the Land Grant implement a process to create and maintain adequate internal controls over accounting records, which includes proper segregation of duties.

**Agency Response:**

A new Board of Trustees for the Merced de Los Pueblos de Tierra Amarilla was recognized through action by the First Judicial District Court of New Mexico in February 2016. The new Board of Trustees is in the process of establishing new bylaws and operation procedures including accounting controls. The Board has

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**June 30, 2011 and June 30, 2012**

initiated the requirement for having two-signatories on checks issued by the Merced. Signatories include the President, Treasurer and Vice-president. The Treasurer provides monthly treasurer's reports of all financial transactions of the Merced at every regular meeting of the Board of Trustees. The Board of Trustees meets monthly. The reports are approved by official action after review by the Board of Trustees and the members of land grant-merced. The Merced will institute a policy requiring that the Treasurer's report include: a copy of the bank statement, to be reviewed and signed by a member of the Board of Trustees, who does not have signatory authority on the account (either the Secretary or the Sergeant-At-Arms); a reconciliation of the bank account which includes a listing of revenues and expenditures; and also includes all supporting documentation. After official adoption the approved report shall be signed by the President, attested by the Secretary and stamped or embossed with the seal of the Merced. The approved report will be kept by the Secretary as part of the official records of the Merced de Los Pueblos de Tierra Amarilla and shall be placed in the Merced's Annual Report as required by §49-1-12, NMSA 1978.

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**June 30, 2011 and June 30, 2012**

**2011-002 Controls over Cash**

**Condition:**

During our testwork over bank reconciliations we noted that none of the four bank accounts in the name of the Board of Trustees of the Tierra Amarilla Land Grant were being reconciled in any form throughout fiscal years 2011 and 2012 by the former Board of Trustees and former Treasurer.

**Criteria:**

Per Section 6-10-2 NMSA 1978, it is the duty of every public official or agency of this state that receives or disburses public money to maintain a cash record in which is entered daily, in detail, all items of receipts and disbursements of public money. The cash record shall be balanced daily so as to show the balance of public money on hand at the close of each day's business.

**Effect:**

The former Board of the Land Grant was not maintaining adequate controls over cash to safeguard cash and provide prompt and accurate reporting. In addition, unreconciled bank accounts could increase the risk of fraud going undetected and cash balances could be misstated which could lead to expenditures in excess of the budget.

**Cause:**

The former Board of the Land Grant was unaware of the requirements.

**Recommendation:**

The Land Grant should ensure they are performing monthly reconciliations on each individual bank account.

**Agency Response:**

The Treasurer shall provide monthly treasurer's reports of all financial transactions of the Merced de Los Pueblos de Tierra Amarilla at every regular meeting of the Board of Trustees. The Board of Trustees shall hold regular meetings on a monthly basis. The reports will be approved by official action after review by the Board of Trustees and the members of land grant-merced. The Merced will institute a policy requiring that the Treasurer's report include: a copy of the bank statement, to be reviewed and signed by a member of the Board of Trustees, who does not have signatory authority on the account (either the Secretary or the Sergeant-At-Arms); a reconciliation of the bank account which includes a listing of revenues and expenditures; and also includes all supporting documentation. After official adoption the approved report shall be signed by the President, attested by the Secretary and stamped or embossed with the seal of the Merced. The approved report will be kept by the Secretary as part of the official records of the Merced de Los Pueblos de Tierra Amarilla and shall be placed in the Merced's Annual Report as required by §49-1-12, NMSA 1978.

**Merced de los Pueblos de Tierra Amarilla**  
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**2011-003 Capital Assets Inventory**

**Condition:**

The former Board of Trustees of the Land Grant did not perform an annual physical inventory for fiscal years 2011 and 2012. In effect, the current Board was unable not provide a listing of assets for the fiscal years 2011 and 2012

**Criteria:**

Section 12-6-10 NMSA 1978 requires each agency to conduct an annual physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year.

**Effect:**

The lack of an annual inventory count increases the risk of theft being perpetrated and going undetected. Additionally, capital asset balances could be materially misstated.

**Cause:**

The former Board of the Land Grant was unaware of this requirement. In addition, the current Board of Trustees of the Land Grant was unable to obtain any documentation from the previous board.

**Recommendation:**

The Land Grant should ensure they maintain a listing of assets and they should ensure a complete physical inventory of all assets is performed annually.

**Agency Response:**

At this time the Merced del Los Pueblos de Tierra Amarilla does not own any physical assets that would be included on an annual inventory. The Board of Trustees will institute a policy requiring that any future physical assets obtained by the Merced will be placed on the Merced's official inventory listing, which shall be physically inventoried on an annual basis. The results of that inventory shall be included as part of the Merced de Los Pueblos de Tierra Amarilla Annual Report. For any year in which there are no physical assets to include on an inventory, that fact shall be stated in the Annual Report.

**Merced de los Pueblos de Tierra Amarilla**  
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**2011-004 Controls over Revenue**

**Condition:**

During testwork performed over revenues, we noted the former Board of Trustees of the Land Grant did not maintain a daily detailed general ledger. Additionally, we noted the former Board of the Land Grant did not have any supporting documentation for the revenue received in fiscal year 2011 totaling approximately \$233,980.

**Criteria:**

Section 6-10-2 NMSA 1978, states “It is the duty of every public official or agency of this state that receives or disburses public money to maintain a cash record in which is entered daily, in detail, all items of receipts and disbursements of public money. The cash record shall be balanced daily so as to show the balance of public money on hand at the close of each day's business.”

**Effect:**

Failing to properly preserve the audit trail related to revenues could lead to misstatements and misappropriation going unnoticed by the Land Grant’s management.

**Cause:**

The current Board of Trustees of the Land Grant was unaware of the activity being conducted by the former Board of Trustees. In addition, the new Board was unable to obtain all supporting documentation from 2011 and 2012.

**Recommendation:**

We recommend the Land Grant implement a process to create and maintain adequate accounting records.

**Agency Response:**

It shall be the duty of the Treasurer to provide monthly treasurer’s reports of all financial transactions of the Merced de Los Pueblos de Tierra Amarilla at every regular meeting of the Board of Trustees. The Treasurer’s report is to include: a copy of the bank statement(s) for all accounts owned by the Merced de Los Pueblos de Tierra Amarilla, a reconciliation of all such statements that provides a detailed daily ledger accounting of all revenues and expenditures that transpired during the statement(s) period including any outstanding expenditures transacted during the statement(s) period that are not reflected on the statement(s); a budget summary update detailing current and year-to-date financial activities within each budgeted line-item; copies of all supporting documentation for all financial transactions occurring with the statement(s) period. After official adoption the approved report shall be signed by the President, attested by the Secretary and stamped or embossed with the seal of the Merced. The approved report will be kept by the Secretary as part of the official records of the Merced de Los Pueblos de Tierra Amarilla and shall be placed in the Merced’s Annual Report as required by §49-1-12, NMSA 1978.

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**2011-005 Controls over Expenditures**

**Condition:**

During testwork performed over expenditures, we noted the former Board of the Land Grant did not maintain a daily detailed general ledger. Therefore, we were unable to select a sample and test for compliance with Section 12-6-3 B (4) NMSA 1978.

Furthermore, we noted the former Board of the Land Grant did not have any supporting documentation such as invoices or receipts for expenditures in fiscal years 2011 and 2012 totaling approximately \$65,524 and \$75,120 respectfully, based on review of the bank statements.

**Criteria:**

Per section 6-5-8 NMSA 1978, all purchase vouchers for goods and services, other than personnel, shall be accompanied by supporting invoices and documentation required by the division.

Also, good internal controls require that those signing checks are not going to personally benefit from the check bearing their signature.

**Effect:**

Failing to properly track expenditures and practice segregation of duties could lead to unauthorized disbursements increasing the risk of theft or expenditures in excess of the budget. Also, when sufficient controls over expenditures are not designed, implemented and operating effectively, it increases the risk of financial statement misstatements going undetected.

**Cause:**

The current Board of Trustees of the Land Grant was unaware of the activity being conducted by the former Board of Trustees. In addition, the new Board was unable to obtain all supporting documentation from 2011 and 2012.

**Recommendation:**

We recommend the Land Grant implement a process to create and maintain adequate accounting control and records, which includes proper segregation of duties.

**Agency Response:**

It shall be the duty of the Treasurer to provide monthly treasurer's reports of all financial transactions of the Merced de Los Pueblos de Tierra Amarilla at every regular meeting of the Board of Trustees. The Treasurer's report is to include: a copy of the bank statement(s) for all accounts owned by the Merced de Los Pueblos de Tierra Amarilla, a reconciliation of all such statements that provides a detailed daily ledger accounting of all revenues and expenditures that transpired during the statement(s) period including any outstanding expenditures transacted during the statement(s) period that are not reflected on the statement(s); a budget summary update detailing current and year-to-date financial activities within each budgeted line-item; copies of all supporting documentation for all financial transactions occurring with the statement(s) period. After official adoption the approved report shall be signed by the President, attested by the Secretary and stamped or embossed with the seal of the Merced. The approved report will be kept by the Secretary as part of the official records of the Merced de Los Pueblos de Tierra Amarilla and shall be placed in the Merced's Annual Report as required by §49-1-12, NMSA 1978. An officer of the Board of Trustees who does not have signatory authority for the account(s) shall review the bank statement(s) to ensure that they



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are in agreement with the Treasurer's official report. If there are no discrepancies between the statement and the treasurer's report the officer shall sign off on the bank statement indicated it has been reviewed.

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**2011-006 Controls over Budget**

**Condition:**

We were unable to locate any documentation that a budget was submitted to the Department of Finance and Administration – Local Government Division by the former Board of Trustees of the Land Grant for fiscal years 2011 and 2012.

Additionally, there was no activity documented as the former Board of the Land Grant did not maintain a daily detailed general ledger. Therefore, we were unable to determine if total actual expenditures exceeded the final budget at the legal level of budgetary control. Furthermore, we were unable to prepare a schedule of revenues and expenditures – budget and actual on the budgetary basis used by the Land Grant as we do not have any of the actual activity for fiscal years 2011 and 2012.

**Criteria:**

Pursuant to Section 6-6-2 NMSA 1978 all Land Grant funds, with the exception of agency funds, are to be budgeted by the local governing body and submitted to the State of New Mexico Department of Finance and Administration – Local Government Division for approval. Once adopted, any claims or warrants in excess of budget are a violation of Section 6-6-6 NMSA 1978, as the fund level has been established as the legal level of budgetary control.

Tier 4 of the Audit Act – Section 12-6-3 B (4) NMSA 1978 requires, “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.”

**Effect:**

Failing to properly preserve the audit trail related to revenues and expenditures could lead to misstatements and misappropriation going unnoticed by Land Grant management.

The Merced is unable to comply with state statute as they do not have the documentation from the former Board of Trustees to complete the required schedule of revenues and expenditures – budget and actual.

**Cause:**

The former Board of the Land Grant was unaware of the requirements.

**Recommendation:**

We recommend the Land Grant implement a process to create and maintain adequate accounting records.

**Agency Response:**

The land grant shall develop an annual budget that will be submitted to the Department of Finance and Administration, Local Government Division, Budget and Finance Bureau when budgeted revenues for any year are expected to exceed \$10,000 or include New Mexico Legislative capital outlay appropriation revenues.

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**2011-007 Failure to File Agreed Upon Procedures Report by the Required Due Date**

**Condition:**

The Land Grant was required to obtain the services of an independent public accountant to perform procedures under Tier 4 of the Audit Act – Section 12-6-3 B (4) NMSA 1978 and Section 2.2.2.16 NMAC for fiscal year 2011. Reports were not submitted to the State Auditor’s Office by the former Board of Trustees by the due date.

**Criteria:**

Per Section 2.2.2.16(H)(1) NMAC, local public bodies with a June 30 fiscal year end, the report due date is December 1.

**Effect:**

The former Board of the Land Grant was not in compliance with State of New Mexico requirements and could potentially jeopardize future state and federal funding.

**Cause:**

The former Board of the Land Grant was unaware of the requirements.

**Recommendation:**

The Land Grant should ensure the proper Tier Agreed Upon Procedures are completed and submitted to the Office of the State Auditor no later than five months after year-end.

**Agency Response:**

The Board of Trustees shall seek to meet all applicable financial reporting requirements and submit required documentation to the Office of the State Auditor by the established deadlines.

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**2011-008 Failure to Provide Requested Written Representation**

**Condition:**

Those charged with governance of the Land Grant are required to provide written representation confirming management's responsibility for the presentation of the Agreed-Upon procedures report as well as the completeness for all the information provided to the OSA. The current Board of Trustees of the Land Grant would not sign the management representation letter due to the fact that they will not take responsibility for the matters stated in finding 2011-001.

**Criteria:**

Per Section AU-C 580.10, AT 201.09, and 201.37, the auditor should request management to provide a written representation that it has fulfilled its responsibility, as set out in the terms of the audit engagement, *a.* for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework; and *b.* for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.<sup>2</sup> (Ref: par. .A7-.A10, .A22, and .A29)

**Effect:**

By refusing to sign the Management Representation Letter, the current Board of Trustees is not taking responsibility for the contents of this report.

**Cause:**

Those charged with governance or the current Board of Trustees would not sign the management representation letter requested by OSA since the current board was not in a management capacity for the fiscal years reviewed.

**Recommendation:**

The land grant should ensure that all possible future written representation requested by the auditor be signed by management or those charged with governance. In addition, timely completion of audits will ensure that the current board is responsible.

**Agency Response:**

As noted above, the current Board of Trustees of the Merced is unwilling to sign the management representation letter because the AUP Report addresses problems and failures of a former Board of Trustees that was acting outside the scope of its authority. The findings in the AUP Report describe the financial misdeeds of a group of people holding themselves out to be the Board of Trustees of the Land Grant and acting in the years 2011-2012. At that time, their terms had expired and, even if that were not the case, they did not proceed as required by law to obtain the proper authority to sell the assets of the land grant, which they did without informing the heirs of the Merced and without informing even all of the members of the Board. Moreover, they consistently failed to follow proper accounting procedures to account for their disposition of the money that they collected from the transaction, and failed to otherwise disclose to the heirs of the Merced what they did with the money. The heirs of the Merced were forced to take legal action against the former Board of Trustees, which resulted in an election being held and the current Board of Trustees being elected in September, 2015. The new Board was officially affirmed by the Court only four months ago, in February, 2016. The current Board of Trustees clearly was not responsible for the wrongful actions and the accounting and reporting failures that took place in 2011-2012 as described in the AUP Report. In fact the current Board of Trustees has taken the necessary steps to bring the Merced back into compliance with state financial reporting requirements to the degree that the Office of the State Auditor

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has taken the Merced off of its list of at-risk agencies. This means the Merced should be able to pursue state and federal funding opportunities. The current Board of Trustees has worked hard to bring the Merced out from under the cloud that was created by the former Board, but that does not mean the current Board is responsible for the actions of the former Board. Rather, the current Board of Trustees completely disassociates itself from the former Board. For this reason, and so that there is no misunderstanding as to which group of people is responsible for the problems set forth in the AUP Report for the years 2011-2012, the current Board declines to sign the management representation letter.

**STATE OF NEW MEXICO  
MERCED DE LOS PUEBLOS DE TIERRA AMARILLA  
EXIT CONFERENCE  
June 30, 2011 and June 30, 2012**

On June 7, 2016 an exit conference was held with the following individuals to discuss the results of the agreed upon procedures and the contents of this report:

**Merced de los Pueblos de Tierra Amarilla**

Steve J. Polaco, President  
Melvin Apodaca, Treasurer  
Carlos E. Chacon, Sargent-at-arms  
David Benavides, NM Legal Aid

**Office of the State Auditor**

Anna Williams, CPA, Audit Director  
Christopher Garcia, Senior Auditor