MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS
REGULAR MEETING – May 16, 2017
1205 Camino Carlos Rey, Santa Fe, NM 87507
Corrected and approved minutes

Members Present
Robert J. Tórrez
Edwynn Burckle
Jeff Pappas
Lynne S. Rhys
Christine Espinoza
Chair and Historian
Cabinet Secretary, General Services Department
Designee, Department of Cultural Affairs
Supreme Court Law Librarian
Designee, Secretary of State

Members Absent
Hector Baldenas
Tim Keller
Attorney General
State Auditor

Staff Present
Dylan Lange
Matthew Ortiz
Leo Lucero
Peter Chacon
Rick Hendricks
Felicia Lujan
Ruben Rivera
Thomas Shumaker
Emmanuel Rodriguez
Jennifer Camp
Tanya Vigil
Susan Montoya
Pamela Lujan y Vigil
Dennis Branch
Assistant Attorney General
Director, Administrative Law Division (ALD)
Director, Records Management Division (RMD)
Director, Information Technology Management Division (ITMD)
State Historian, Office of the State Historian (OSH)
Director, State Archives of New Mexico (SANM)
Chief Financial Officer, Administrative Services Division
Grants Administrator, OSH
Records Center Bureau Chief, RMD
Management Analyst, RMD
Management Analyst, RMD
Management Analyst, ALD
Management Analyst, ALD

I. OPENING ACTIVITIES
A. Call to Order
Chairman Tórrez called the meeting to order at 10:00 a.m.

B. Approval of Agenda
The chair entertained a MOTION to approve the agenda with an amendment to suspend the rule hearing. Ms. Rhys MOVED, and Dr. Pappas SECONDED; the motion PASSED UNANIMOUSLY.

C. Approval of February 14, 2017, Regular Commission Meeting Minutes
The chair entertained a MOTION to approve the meeting minutes as submitted. Secretary Burckle MOVED; and Ms. Espinoza SECONDED; the motion PASSED UNANIMOUSLY.
D. FY16 Annual Report Presentation
Mr. Ortiz presented the FY16 Annual Report to the commission on behalf of interim State Records Administrator Melissa Salazar. Chairman Tórez expressed his appreciation for the use of archival materials in the annual report and stated that the report was well done. Dr. Pappas inquired whether the annual report was completed in house and asked whether it was statutorily required. Staff responded in the affirmative, adding that the report was printed at State Printing.

II. ACTION ITEMS
A. Adoption of Fiscal Year 2018 Commission of Public Records Reasonable Meeting Notice Resolution pursuant to the Open Meetings Act, Section 10-15-1(D) NMSA 1978
Mr. Ortiz presented the resolution, stating that staff recommended deleting the requirement in section C.1 to post the notice on the entrance door of the State Records Center and Archives. He explained this was an additional step and that the notice was already posted on the agency website and in the New Mexico Register. Chairman Tórez expressed that he did not see a problem with posting the notice on the front entrance of the building. Mr. Lange added that after July 1, 2017, House Bill 58 would fundamentally change the notice requirements for rulemaking. Mr. Ortiz and Dr. Pappas clarified that posting on the front entrance was going above and beyond the requirements of House Bill 58. Commission members offered that it was not over burdensome to post the notice on the entrance door.

The chair entertained a MOTION to adopt the Fiscal Year 2018 Commission of Public Records Reasonable Meeting Notice Resolution retaining section C.1. Ms. Rhys MOVED; and Ms. Espinoza SECONDED; the motion PASSED UNANIMOUSLY.

B. New Mexico Historical Records Advisory Board (NMHRAB) Appointment
Dr. Hendricks presented for the commission’s consideration the appointment of Dale W. Anderson to the NMHRAB. He pointed to the biographical sketch in the commission packet, explained it was a new appointment, and remarked that the board had not had representation from that area of New Mexico before.

The chairman entertained a MOTION to appoint Dale W. Anderson to the New Mexico Historical Records Advisory Board. Dr. Pappas MOVED; Ms. Rhys SECONDED; the motion PASSED UNANIMOUSLY.

C. New Mexico Historical Records Advisory Board Grant Approvals
Dr. Shumaker presented the New Mexico Historical Records Advisory Board’s regrant recommendations for FY18. The recommendations include the Institute of American Indian Arts, Doña Ana County, the National Hispanic Cultural Center, the Menaul Historical Library of the Southwest, and the Aztec Museum Association. Dr. Shumaker stated that the only available funds for FY18 were $25,000 in federal funds. Secretary Burckle asked if Doña Ana County could accomplish their project based on the amount of monies received. Dr. Shumaker explained that the board and board chair determined that the county could complete the project.

The chair entertained a MOTION to approve the board grants as submitted by the NMHRAB. Ms. Espinoza MOVED; and Secretary Burckle SECONDED; the motions PASSED UNANIMOUSLY.

D. Acceptance of Deeds of Gift
1. Nancy Poltrock Collection of Pearl Eaton Records and Photographs
Ms. Lujan asked the commission to consider the Nancy Poltrock Collection of Pearl Eaton Records and Photographs, comprised of .25 linear feet of material, including a Western
Union telegraph received in Las Vegas, New Mexico, on May 5, 1934; the handwritten Morse Code guide used by Eaton; newspaper clippings about Eaton’s chorus girls; and black and white photographs of Las Vegas, New Mexico.

According to Ms. Lujan, Ms. Poltrock discovered a treasure of family papers as she prepared to move. Ms. Poltrock’s aunt, Pearl Mitchell Eaton, was the manager of the Western Union Office in Las Vegas, New Mexico. Ms. Lujan stated the records will give researchers a glimpse into the life of an extraordinary woman. Ms. Eaton was mentioned in an early city directory as the manager of the Western Union office stationed on 514 Douglas Ave. Ms. Lujan pointed out two images from this collection in the commission package. The images were taken of the handwritten Morse code guide kept and used by Eaton during her career. Eaton also worked closely with a group of chorus girls in that area. By the 1940s, she had moved to Santa Fe and was still working for Western Union as a bookkeeper. Ms. Lujan thanked the commission and asked for its consideration and acceptance of the collection and deed.

The chair entertained a MOTION to accept the deed of gift for the Nancy Poltrock Collection of Pearl Eaton Records and Photographs. Ms. Rhys MOVED, and Dr. Pappas SECONDED; the motion PASSED UNANIMOUSLY.

2. Stan Graham Collection of Journals Related to John T. Curtis
Ms. Lujan presented the deed of gift for the Stan Graham Collection of Journals Related to John T. Curtis. The collection is comprised of approximately 1 linear foot of materials and includes work journals; Mr. Curtis’s certificate as a professional land surveyor; and images of offices, crew members and New Mexico towns.

According to Ms. Lujan, Curtis was born March 26, 1944, in Sims, Arkansas. In 1928 his family moved to Otis, New Mexico before moving to Malaga, New Mexico. Curtis attended K-8 schools in Malaga and Loving. He entered Carlsbad High School in 1940 and graduated in 1944. He was active in sports in high school, receiving letters in both basketball and football. After graduating from Carlsbad High School, Curtis attended the University of New Mexico on a football scholarship, and at the end of his first semester he was drafted into the United States Army. After basic and advanced radio training, he was sent overseas to Germany for 13 months as a radio operator. After his discharge in August 1952, he enrolled in electrical school in Chicago, Illinois, and graduated in 1955 with a certificate as an electrical repairman and operator for radio and television. Most of the jobs in this field at that time were in large eastern cities. Curtis wanted to be in New Mexico, so he moved back hoping to find work as an electrical repairman. He had several part-time jobs but wanted a more permanent career. In the late 1950s, Curtis accepted a job offer to work on a New Mexico Department of Transportation land survey crew. He liked the work and decided he wanted to be a land surveyor. Between 1958 and 1979, Curtis captured images of Anton Chico, Galisteo, Golden, La Cueva, Monticello, Pecos, Santa Rosa, Springer, and Villanueva. These images were likely tied to his work as a surveyor for the Department of Transportation. After taking correspondence courses in Highway Engineering from the International Correspondence School in Pennsylvania, he graduated in 1965. On June 12, 1970, Curtis received certificate number 4878 from the State of New Mexico’s Board of Registration for Professional Engineers and Land Surveyors. Curtis was also interested in New Mexico history, fishing, hunting, genealogy, photography, and poetry. Curtis published two books of poetry with a partner. The first, Lite Verse and Other Poems, was published in 1995 and the second, Small Voices, was published in 1996. In 2007 he published a solo book of poetry,
Mr. Lujan thanked the commission and asked for its consideration and acceptance of the collection and deed.

The chair entertained a MOTION to accept the deed of gift for the Stan Graham Collection of Journals Related to John T. Curtis. Ms. Espinoza MOVED; and Ms. Rhys SECONDED; the motion PASSED UNANIMOUSLY.

3. Katherine Pomonis Research Collection
Ms. Lujan presented the deed of gift for the Katherine Pomonis Research Collection. The collection is comprised of approximately 1.5 linear feet and contains ledger books, obituaries, news clippings, photographs, correspondence, and anniversary records for the St. George Greek Orthodox Church. The collection also includes historical information on the first Greeks in Albuquerque, Greek women, immigration history and the naturalization process, tuberculosis and sanatoriums, and mining accidents involving Greeks.

According to Ms. Lujan, Ms. Pomonis has been a patron of the State Archives of New Mexico since 2007. She is a knowledgeable resource on the Greek community. Ms. Pomonis has an extensive article on the Office of the State Historian’s web site titled “History of Greeks in Albuquerque.” Through her research, Ms. Pomonis discovered that “in 1924, the US government placed a quota on the number of immigrants allowed yearly into the country. Only 52,000 Greeks came to the United States between 1921 and 1930,” and Pomonis’ parents were among them. The research in this collection is connected to Alexander Dimitri Kassimis, the first Greek to become naturalized in Albuquerque in 1912. Kassimis left San Francisco, California to live in Albuquerque in 1905. He was only 20 years old at the time. In January of 2013, the Albuquerque Journal published an article titled “Greeks’ Duke City History Explored.” The article mentioned a copy of the passenger manifest for the S.S. Martha Washington. The ship sailed in 1910 from Patras, Greece, to Ellis Island, and the first name on the passenger list was Anastasios Pomonis, Katherine’s father. Ms. Lujan thanked the commission and asked for its consideration and acceptance of the collection and deed.

The chair entertained a MOTION to accept the deed of gift for the Katherine Pomonis Research Collection. Dr. Pappas MOVED; and Ms. Espinoza SECONDED; the motion PASSED UNANIMOUSLY.

Mr. Lucero presented on an on-going discussion with the University of New Mexico (UNM) and a letter it submitted in December 2016, relating to its intent to self-regulate the retention and disposition of public records within its custody and control. According to the letter, UNM stated it would no longer seek approval for its microphotography plans or for the destruction of its records. The letter referenced the constitutional autonomy of the University’s Board of Regents. UNM cited Attorney General Opinion 78-23, which determined that “state educational institutions” are not “state agencies” as it pertains to microphotography plans. The 1978 opinion states that state educational institutions are not state agencies within the terms of the Public Record Act. Mr. Lucero offered that the interim state records administrator responded on February 7, 2017, citing a 1996 Advisory Attorney General Opinion, clarifying that “state educational institutions” were “agencies” for the purpose of the Public Records Act and asked UNM to comply under the act. He explained that there is confusion and/or conflict between the two AG opinions, namely the definition of “agency” and the term “state agency” as it is used in
parts of the act. He asked if state educational institutions are required to comply with parts of the act or with all of the Public Records Act.

Mr. Lange offered that UNM’s first argument was that the Public Records Act did not apply to them because they are an “educational institution” not an “institution.” In their argument, UNM referenced other statutes such as the Inspection of Public Records Act. Mr. Lange pointed to a 1996 Attorney General opinion, which clarified that under the Public Records Act institutions do include state educational institutions. Mr. Lange stated that UNM was relying on a 1978 AG opinion, which states that “educational institutions” are not considered “state agencies” within the public records act. Mr. Lange explained that “agency” is an umbrella term in the act and under that umbrella of “agency” are “institution” and “state agency.” Consequently, UNM’s stance is that under the act it is an “agency” but not a “state agency.” Mr. Lange further explained that throughout the Public Records Act, either due to the language or to lack of attention, words such as agency and state agency are used interchangeably. UNM’s position is that any time the act uses “state agency” it does not apply to them because they are an “institution” and not a “state agency.” This interpretation involves the commission because under the sections involving the destruction of public records and the approval of microphotography plans, the act uses “state agency” rather than “agency.” UNM is standing firm that any time it refers to state agency it does not apply to them. Mr. Lange added that UNM wants to be in charge of its own retention, its own destruction, and its own policy regarding microphotography. He advised the commission that the agency has written UNM clarifying our position and asking that they comply with the Public Records Act. He also informed that the commission could request another AG opinion. Chairman Tórrez asked if this was a problem of statutory language or an issue of interpretation. If the issue was related to statutory language then legislative action would be required to clarify. Dr. Pappas offered that the definition of agency was clear to him and did not agree with UNM’s interpretation. Secretary Burekke asked if UNM had submitted a request in writing. Mr. Lange confirmed a letter had been submitted by UNM on December 8, 2016, stating its intent to self-regulate the retention and disposition of public records within its custody and control. He added that the agency responded with a letter disagreeing with their interpretation and asked UNM to comply. UNM responded, asking what other universities were complying with these requirements. Mr. Lange offered that Ms. Salazar responded with a list of universities in compliance. Mr. Lange stated it is a matter of interpretation and added that attorney general opinions are not binding. Dr. Pappas stated it sounded like a statutory change was required to have them comply.

After further discussion, the chairman expressed his wish to formulate a subcommittee comprised of the state records administrator, staff, general counsel, and one or two members of the commission to further review the issue of the Public Records Act interpretation and language. Dr. Pappas and Ms. Rhys agreed to participate.

III. RULE HEARING – SUSPENDED

IV. OLD BUSINESS
A. Records Center Update
Mr. Rodriguez presented the records center update. According to Mr. Rodriguez, the agency had completed its move from the Yale Records Center to the Copper Pointe Records Center. He reported that all issues at the Yale location had been resolved, additional work and final walkthroughs completed, and all keys returned to the landlord as of February 27, 2017.

Mr. Rodriguez stated that the Santa Fe records center was accepting storage. The staff brought in approximately 1,100 boxes for storage and was working on the delivery of an additional 443
boxes. The records center has space for an additional 2,099 boxes. He noted that Santa Fe was also accepting monthly destruction. The Santa Fe location is taking in approximately 1,000 boxes a month for destruction.

Mr. Rodriguez stated that the Copper Pointe records center was not yet accepting storage, but staff hoped to do so once the issue with the plywood deck above the offices was resolved and the shelving installed. According to Mr. Rodriguez, the shelving layout was approved and the shelving ordered on April 21, 2017. He estimated the new shelving will provide 9,624 additional spaces for boxes. He stated this will allow staff to begin accepting storage. At present, there are 2,667 boxes awaiting storage. Mr. Rodriguez indicated that Copper Pointe is accepting monthly destruction at this time. He added that once the annual destruction is completed at both locations, they will begin accepting storage on a regular basis.

Mr. Rodriguez reported that the annual destruction memos had been sent out and a deadline of June 30, 2017, was given for response. The memos addressed only paper records stored in the records center. He stated they had originally identified more than 17,000 boxes eligible for destruction in Santa Fe; however, not all will be signed off on for a variety of reasons. Another 7,103 boxes were identified for destruction at the Albuquerque location. As with Santa Fe, not all will be approved for destruction for a variety of reasons.

Mr. Rodriguez stated that microfilm was not included in the destruction because of the cost to destroy film. He offered that a rule hearing in June would address charging a fee of .25 cents per roll to state agencies for the destruction of their microfilm. Agencies would also have the option to take possession of their film.

Mr. Rodriguez reported that the agency had notified counties and municipalities about the charge to store their microfilm in the agency’s climate controlled vault. He stated that staff was busy working to withdraw microfilm for these local governments, many of which now have their own records storage facilities. He reported that three local bodies have agreed to pay for storage services. The revenue from these entities is about $1,080.50 per month. He stated they are working with an additional 30 public entities and hopes it will result in additional revenues.

Chairman Tórrez asked if the Copper Pointe safety issue relating to the plywood decking above the offices had been resolved. Mr. Rodriguez answered it was in the process of being resolved. Secretary Burckle stated he believed the safety had been resolved and the issue was who would bear the cost. He stated the lease was at GSD’s legal review and described it more as a contractual dispute.

B. Centralized Electronic Records Repository (CERR) update
Ms. Montoya presented an update on the CERR project. She stated the CERR project remained in the proof-of-concept phase. While the agency has been fully deployed, the deployment of two pilot agencies was pending. According to Ms. Montoya, the CERR team determined there was insufficient time for the contracted vendor to deploy the pilots. Consequently, the contract was terminated in March. She explained that CPR staff would be responsible for deploying the remaining two pilots. She also offered that the proof-of-concept phase would continue past the expiration of the special appropriation funding on June 30, 2017.

According to Ms. Montoya, the team identified a deficit in the type of licensing it had to move forward with a pilot agency. She said the team worked the Hewlett Packard Enterprise to resolve the issue. The agency now has sufficient licensing to move forward with the pilot deployment. She offered that the Economic Development Department had signed on to be the first pilot
agency and recruitment of a second pilot was ongoing. Ms. Montoya stated the agency was in the process of initiating a contract with ABBA technologies for network connectivity work to establish a connection between the agency and its pilot agencies. She also stated the agency was on track to spend remaining special appropriation funding by the expiration date of June 30, 2017. Secretary Burckle asked for the estimated cost for the ABBA contract and whether it was through the statewide price agreement. She stated the estimated cost was approximately $9,000 and was through the statewide price agreement.

C. Amendments to State Rules Act overview
Mr. Ortiz presented an overview of the amendments to the State Rules Act. Prior to beginning, he introduced Dennis Branch, ALD’s newest analyst. Mr. Ortiz reported that House Bill 58 was signed into law on the last day by Governor Martinez and had bi-partisan support. The bill was amended on both the House floor and in committee.

Mr. Ortiz explained that there was now a requirement for all agencies to have a minimum of 30 days’ notice from the time the notice was published in the New Mexico Register to the time of the rulemaking hearing. He offered that the notice requirements had also changed. In every notice, if not the proposed rule itself within the notice, there has to be a synopsis of the amendments explaining to the public what is happening. Those proposed rules must also be current and available at the time of publication. According to Mr. Ortiz, there must be a public comment period of at least 30 days before you can do any type of adoption of any kind of rule. Mr. Ortiz explained that any agency not having its own rulemaking procedure must adopt the Attorney General’s procedures. The Attorney General has until January 1, 2018, to come up with a template for what a rulemaking hearing should look like.

Mr. Ortiz explained that after a rule hearing, an agency has to come up with a concise explanatory statement that describes what was adopted, the date of adoption, and findings for that proposed rulemaking. Mr. Ortiz stated that the agency was looking to amend its own rules with respect to the New Mexico Administrative Code and the New Mexico Register, 1.24.10 and 1.24.15, to comport the agency’s rules with the new proposals. Mr. Ortiz offered that one idea as it deals with the concise explanatory statement is to put the statement into the transmittal form that is already required. Mr. Ortiz passed out a draft of what the concise explanatory statement would look like. The transmittal form included a new section and additional page should an agency require additional space. He stated the new law required that at the time an agency files its rules, the concise explanatory statement must be filed as well. This proposed solution addresses and simplifies the requirements for all state agencies.

Mr. Ortiz explained that agencies are also now required to keep a record of rulemaking. After rule adoption, agencies must keep within their records and make available to the public by posting on the internet and for executive agencies posting on the governor’s Sunshine portal a record of rulemaking. The record of rulemaking must include the notice they published, the proposed rule, the adopted rule, the concise explanatory statement, and any changes made by the state records administrator. He explained further that the administrator could make minor, non-substantial changes such as grammar, spelling, or format. The law, however, required that the administrator inform agencies of the changes. The agency must keep those changes and all must be made available to the public.

According to Mr. Ortiz, the last significant change related to emergency rules. At present, agencies are allowed to file emergency rules at their discretion, and they are effective for 90 days unless an agency publishes them in the New Mexico Register. The amendment still allows for an agency to file an emergency rule. Emergency rules, however, have to be filed and published in
the New Mexico Register, and there has to be certain findings made that relate to the need for the agency to file an emergency. The findings need to include imminent peril to the public health, safety or welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law. Mr. Ortiz noted that through the legislative process, the agency estimated it will receive upward of $20,000 or more in filings related to the amendments. He stated that was good news from the revenue side, but there will multiple questions from agencies regarding publication requirements. Additional training will be required to assist with the changes.

Dr. Pappas commented that there has have never been very good guidance on how to incorporate public comment into rulemaking. Mr. Ortiz stated that House Bill 58 provided a floor for public comment. Further discussion was had on how to document public comment. Secretary Burckle asked questions about the transmittal form requirement. Mr. Ortiz stated the transmittal form is required to file rules.

V. DIRECTOR’S REPORT
Mr. Rivera presented on behalf of Ms. Salazar. He reported the agency had 42 positions in FY17 but was losing 5 of those positions in FY18. He stated that the agency has 13 vacancies for a vacancy rate of 30.9 percent. He noted that the agency was still trying to fill the state records administrator position. Mr. Rivera reported the hiring of Susan Montoya as the new Records Management Agency Analysis Bureau Chief. He pointed to the vacancy positions in the written report in the commission packet. Chairman Tórrez, Dr. Pappas, and Secretary Burckle asked questions about vacancies, hiring, and budget adjustment requests (BAR). Mr. Rivera explained that a BAR was approved to move $50,000 in vacancy savings from our 200 category to our 400 category to cover other agency purchases.

Mr. Rivera next addressed the FY18 budget appropriation, handing out budget sheets to each of the commissioners. He pointed to the difference between what was requested and the funds that were appropriated. In personnel services and benefits, they gave the agency sufficient monies to pay the current staff and perhaps one more position. He explained the 300 category had been cut significantly, with not enough appropriated to cover the cost of the annual audit. According to Mr. Rivera, he shifted the remaining cost to the 371 revolving fund. Within the 400 category, the appropriation covered some fixed costs, including the Albuquerque rent in the amount of $137,200. He explained that all other operating costs were shifted to the 371 revolving fund. Chairman Tórrez and Dr. Pappas asked questions relating to travel, which Mr. Rivera explained was very limited. Dr. Pappas pointed out the motor pool budget was $10,000. Secretary Burckle suggested using the courier service offered by the General Services Department. Dr. Pappas asked if the agency was considering additional closures. Ms. Lujan responded that cutting hours did not result in a budget savings.

Mr. Rivera proceeded to cover the FY17 371 revolving fund, stating the current revenues were more than $72,000.00; however, the total encumbered to date was more than $79,000.00. He explained the agency was spending more than it was making. He offered that the agency depended on the Administrative Law Division for much of its revenues.

Mr. Rivera gave the division reports and statistics as included the commission packets.

VI. EXECUTIVE SESSION
The chair entertained a MOTION to enter into executive session at 12:12 p.m. Ms. Rhys MOVED to enter into executive session to discuss the hiring of a permanent state records administrator pursuant to Section 10-15-1 (H) (2) of the Open Meetings Act. Ms. Espinoza SECONDED. The
Chair requested a roll call vote. The motion **PASSED UNANIMOUSLY**. The commission went into executive session. The recorder was turned off and all non-commission members, except General Counsel Lange, left the room.

The chair announced for the record that the recorder was back on and called the meeting back into an open session at 12:23 p.m. The chair stated for the record that the only matter discussed in executive session was limited to the hiring of a permanent state records administrator. The search committee recommended appointing Melissa Salazar as the permanent state records administrator at the beginning of the next pay period with a salary equal to the ending salary of Linda Trujillo, which was $85,326.

The chairman entertained a MOTION to appoint Melissa Salazar to the State Records Administrator position. Dr. Pappas MOVED; Ms. Rhys SECONDED; the motion **PASSED UNANIMOUSLY**.

**VII. SCHEDULING OF NEXT MEETING**
The chairman stated the next meeting is scheduled for Tuesday, August 29, 2017, at 10:00 am.

**VIII. ADJOURNMENT**
The chairman entertained a MOTION to adjourn. Dr. Pappas MOVED; and Ms. Espinoza SECONDED; the motion **PASSED UNANIMOUSLY**.

Submitted by:  
[Signature]  
Melissa T. Salazar, Interim State Records Administrator  
8-29-17  
Date

Attested by:  
[Signature]  
Robert J. Tórrez, Commission Chair  
8/29/17  
Date

Minutes approved on:  
8-29-17