

NEW MEXICO CULTURAL AFFAIRS DEPARTMENT
CULTURAL PROPERTIES REVIEW COMMITTEE
STATE HISTORIC PRESERVATION DIVISION

RULE HEARING ON 4.10.18 NMAC

July 20, 2012

10:00 a.m.

Old Senate Chambers
Bataan Memorial Building
407 Galisteo Street
Santa Fe, New Mexico 87501

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C O M M I T T E E

Rick Hendricks, Chair
Ronald Toya
Reginald Richey
Clarence Fielder
Douglas Boggess
Matthew Bandy
Jan Biella
Mona Valicenti, Assistant AG

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1 CHAIRMAN HENDRICKS: This hearing will please come
2 to order.

3 Dorothy, will you please call the roll?

4 MS. MOORE: Okay.

5 Member Toya?

6 MR. TOYA: Here.

7 MS. MOORE: Member Richey?

8 MR. RICHEY: Here.

9 MS. MOORE: Chair Hendricks?

10 CHAIRMAN HENDRICKS: Here.

11 MS. MOORE: Member Fielder?

12 MR. FIELDER: Here.

13 MS. MOORE: Member Boggess?

14 MR. BOGGESS: Here.

15 MS. MOORE: Member Bandy?

16 DR. BANDY: Present.

17 CHAIRMAN HENDRICKS: I'll entertain a motion for
18 approval of the agenda.

19 MR. RICHEY: I move to approve the agenda,
20 Mr. Chairman.

21 CHAIRMAN HENDRICKS: Is there a second?

22 MR. FIELDER: Second.

23 CHAIRMAN HENDRICKS: All in favor?

24 (All say aye.)

25 CHAIRMAN HENDRICKS: Opposed?

1 The item that we have on the agenda is the
2 proposed rule in NMAC 4.10.18, State Register of Cultural
3 Properties for public comment. I am Rick Hendricks, chair
4 of the Cultural Properties Review Committee, and I'll be
5 acting as the presiding officer for this rule hearing. The
6 purpose of the hearing is for CPRC to receive public comment
7 on proposed amendments to CPRC's current rules and
8 regulations, 4.10.18 NMAC.

9 The board welcomes everyone present at this
10 hearing. The hearing is to be conducted pursuant to and in
11 accordance with the provision of the Cultural Properties
12 Act, NMSA 1978, Section 18-6-12-23, and the Uniform
13 Licensing Act, NMSA 1978, Section 61-1-29.

14 The New Mexico Lobbyist Regulation Act regulates
15 activities before boards and commissions in rule-making
16 proceedings. The Secretary of State's Office can be
17 contacted for information and registration.

18 Public notice of this hearing was advertised in
19 the New Mexico Register on June 14th, 2012; and in the
20 Albuquerque Journal on June 20th, July 8th, July 15th, 2012.
21 Copies of the proposed rules were available from the board
22 office and on the board Web site. Copies of the proposed
23 rules are also available on the table located near the door.

24 May I remind everyone to sign the attendance
25 sheet, which will later be entered as an exhibit into the

1 record of this hearing.

2 And I would ask, Susie, if we have anybody that
3 arrives late, that we make sure that they sign the
4 attendance sheet.

5 Will the board's administrator, Dorothy Moore --
6 well, we've already called the roll.

7 Let the record show that Dorothy Moore, the board
8 administrator is present. Assistant Attorney General Mona
9 Valicenti, the board's legal counsel, is present.

10 For the record, would the members of the audience
11 please introduce themselves and state their affiliation.
12 And I guess we'll start with you, sir, and we'll go this
13 way.

14 MR. GORRELL: My name is Bob Gorrell. I'm the
15 director of the New Mexico Public School Facilities
16 Authority, state agency, and it -- I report to the Public
17 School Capital Outlay Counsel. I'm not representing the
18 counsel on any official action, but representing the agency.

19 MR. ROGERS: I'm Jerry Rogers. I'm retired,
20 National Park Service person, former keeper of the National
21 Register of Historic Places. And I'm here as an interested
22 citizen.

23 MR. MERLAN: My name is Tom Merlan, and I'm a
24 consulting historian in New Mexico. And I'm here as an
25 interested citizen.

1 MR. WATSON: My name is Alan Watson, and I'm a
2 former member of the CPRC and former chair of the CPRC. I'm
3 here as an interested citizen.

4 MR. MAXWELL: My name is Tim Maxwell. I'm here
5 representing two groups: The Old Santa Fe Association,
6 which promotes the protection of historic properties in
7 Santa Fe; and the Friends of Archeology at the Museum of
8 New Mexico Foundation, which supports archeological research
9 and the protection of archeological sites at the Museum of
10 New Mexico. And I am also a former member of the CPRC.

11 CHAIRMAN HENDRICKS: This is a formal proceeding
12 that will be recorded by the court reporter, Katherine
13 Gordon, through ATA Services. The CPRC will obtain only one
14 copy of this transcript. Anyone interested in a copy must
15 make his or her request in writing to the Historic
16 Preservation office. In order to ensure that the
17 proceedings are accurately recorded, only one person at a
18 time will be allowed to speak. Any person recognized to
19 addressed the board is asked to identify yourself for the
20 record each time you address the board and speak loudly and
21 clearly so the recorder can pick up your comments.

22 This hearing will be conducted in the following
23 manner: Ms. Moore will present exhibits to the committee.
24 I, as the presiding officer, will rule on the admissibility
25 of the exhibits offered for admission after allowing

1 questions from the board. Exhibits admitted into evidence
2 are available for review by members of the public; however,
3 exhibits may not be removed from the room. After Ms. Moore
4 offers exhibits and their admission is ruled on, I will open
5 the hearing for comments from the audience.

6 We have one rule only before us today. In
7 New Mexico, CPRC does not follow the rules of evidence but
8 shall, in the interest of efficiency, reserve the right to
9 limit all testimony deemed irrelevant, redundant or unduly
10 repetitious. The decision as to whether such testimony is
11 irrelevant, redundant or unduly repetitious shall be made by
12 me as the presiding officer.

13 May I have a show of hands on the number of people
14 who intend to testify or comment on the approved rule.

15 After a person has testified, offered comment, I
16 will permit the board members to question that person. Any
17 member of the audience wishing to question that person may
18 do so after being recognized by me, the presiding officer.
19 Each person recognized to speak shall identify him- or
20 herself for the record.

21 Discussion on the rules by the board will take
22 place during the board's regular meeting following this
23 hearing and additional meeting -- the next regularly
24 scheduled meeting --

25 MS. MOORE: August 10th.

1 CHAIRMAN HENDRICKS: -- on August 10th.

2 Final action such as actual amendments adoption,
3 tabling and so forth will be taken during that meeting --
4 that's the regularly scheduled meeting on August 10th.

5 The hearing is now open. Ms. Moore, at this time,
6 do you have any exhibits to introduce as evidence?

7 MS. MOORE: I do. We have -- it was published in
8 the New Mexico Register on June 14th, it's Exhibit 1, more
9 than 30 days prior to this hearing. Exhibit 2, the legal ad
10 that was published in the Albuquerque Journal on June 14th,
11 July 8th and July 15th, the notice of the meeting.

12 CHAIRMAN HENDRICKS: You're exercising that as
13 Exhibit 2?

14 MS. MOORE: Exhibit 2, yes.

15 And a correction. Exhibit 1, that was published
16 in the New Mexico -- that one was published in the
17 New Mexico Register on June 14th. But the correction for
18 Exhibit 2, it was published in the Journal on June 20th
19 rather than June 14th, as I indicated a moment ago.

20 Then Exhibit 3 is a list of the media that was
21 notified. This includes public television stations, mostly
22 radio stations, in New Mexico. That was sent on June 14th
23 as well. Exhibit 4 is the proposed rule for the State
24 Register of Cultural Properties.

25 CHAIRMAN HENDRICKS: Are there any questions from

1 committee members?

2 Let the record show that there are no questions.
3 Exhibits 1 through 4 are hereby admitted into the record.

4 (Exhibits 1, 2, 3 and four admitted into the
5 record.)

6 Ms. Moore, are there any other exhibits to enter
7 into the record?

8 MS. MOORE: No.

9 CHAIRMAN HENDRICKS: Any persons wishing to
10 testify as wishes to submit evidence with their comments
11 shall do so when they are recognized to testify. Each
12 document shall be introduced as an exhibit. Board members
13 will be permitted to ask questions before I rule on the
14 admissibility of evidence into the record. Upon
15 admissibility, each exhibit will be marked and numbered and
16 entered into the record.

17 At this time, each proposed rule will be
18 introduced in turn into the record and the floor will be
19 open from testimony and comments from the audience for each
20 rule. Members of the hearing committee or from the audience
21 may question each witness upon being recognized to speak.

22 Would anyone wish to comment on part 4.10.18,
23 State Register of Cultural Properties?

24 Please identify yourself for the record.

25 MR. ROGERS: Mr. Chairman and members of the

1 committee, thank you for holding this hearing. My name is
2 Jerry Rogers. 45 years ago next month I began my
3 association with the kind of work you're doing with the
4 National Register of Historic Places. And I, from that
5 perspective, have always viewed your work in this state and
6 the work of bodies like yours in every other state, similar
7 bodies in about 3,000 local governments, a few dozen
8 American Indian tribes, all the federal agencies and the
9 private sector as one big wonderful cooperative
10 citizen-driven activity.

11 I have the pleasure, in my career, of eventually
12 coming to manage all of those programs from the perspective
13 of the National Park Service. And having retired in -- near
14 Santa Fe 11 years ago, I've also had the great pleasure of
15 watching the program in this wonderful state. You guys
16 deal, you people deal, you members deal with the most
17 wonderful set of cultural resources in the United States,
18 and I compliment you and thank you for holding this hearing.

19 I was among those who advised Secretary Gonzales
20 that it would be a good idea to develop regulations so that
21 everyone who's dealing with your program, everyone who wants
22 to access the benefits of historic preservation, everyone
23 who's concerned about the effects of historic preservation
24 upon them but maybe aren't interested in doing it, can know
25 exactly what the rules are and can understand how to

1 cooperate with you.

2 The -- I think that it's enough for me to say that
3 I believe this is a very good rule. It's concise. It's
4 clear. Anyone can understand it. It fits perfectly with
5 the complete network of private sector, tribal, local,
6 federal activities that need to work as one big
7 smoothly-functioning entity in order not to throw obstacles
8 and red tape in the pathways of people who are wanting to
9 benefit from historic preservation or people who are
10 concerned about its effects.

11 This is a good job. I compliment the Historic
12 Preservation Division for developing it, and I hope you will
13 approve it. If I can answer any questions, I'll be happy to
14 do it.

15 CHAIRMAN HENDRICKS: Committee members, are there
16 any questions of this witness?

17 Would anyone in the audience wish to question this
18 witness?

19 Thank you.

20 Would anyone else wish to comment on Part 4.10.18,
21 State Register of Cultural Properties?

22 MR. MERLAN: Good morning, Mr. Chairman and
23 members of the committee. My name is Tom Merlan. I was the
24 New Mexico State Historic Preservation Officer for a long
25 time in the 1980s, and I wrote quite a bit of the Cultural

1 Properties Act.

2 We never had a regulation when I was preservation
3 officer. We used what we thought were commonsense
4 procedures for registration, and we also adhered closely to
5 the procedures of the National Register of Historic Places
6 when I -- when we worked with Mr. Rogers. But now we need a
7 regulation, both because there is, in fact, growing interest
8 in the program and in our cultural and historic properties,
9 and also because there's increasing pressure on them. We
10 have twice -- more than twice the population here in
11 New Mexico that we had in 1970.

12 We need a regulation, and this is it. It's clear.
13 It's concise. It's comprehensive and it's, in fact, no
14 longer than it needs to be. And my recommendation to the
15 committee is that you adopt it exactly as is, go through the
16 comment period, look at any and all comments and then decide
17 what to do next. Thank you, Mr. Chairman.

18 CHAIRMAN HENDRICKS: Committee members, are there
19 any questions of this witness?

20 Would anyone in the audience wish to question this
21 witness?

22 Thank you.

23 Would anyone else wish to comment on Part 4.10.18,
24 State Register of Cultural Properties?

25 MR. MAXWELL: Thank you, Mr. Chairman, members of

1 the committee. Again, my name is Tim Maxwell. And my
2 thoughts certainly echo those of the previous speakers. I
3 just want to go on the record as saying the two
4 organizations I represent support this; the Old Santa Fe
5 Association Museum of New Mexico Foundation, Friends of
6 Archaeology. And we will submit letters to that effect
7 before the comment period ends.

8 I do have one question for the committee, and
9 actually, perhaps it's more for HPD staff, regarding the
10 proposed rule. What is an appeal procedure in this
11 situation should you either successfully have a listing or
12 be denied a listing?

13 MS. BIELLA: Same rule, I just have to find it.

14 Mr. Chair, the Section of the rule under
15 4.10.18.8(C) -- no -- (D), Item 4(e), which is on Page 4 of
16 the rule, addresses that matter. It states that "The CPRC
17 shall issue a final registration order to accept or reject
18 the nomination. This register order constitutes a final
19 decision for purposes of initiating any judicial review.
20 Only parties at the CPRC meeting shall receive direct notice
21 of the registration order. An aggrieved party has the right
22 to judicial review of this registration order by filing a
23 petition for writ of" --

24 MS. VALICENTI: -- certiorari.

25 MS. BIELLA: -- "certiorario in district court

1 under Rule 1-075 NMRA. A petition writ" --

2 MS. VALICENTI: -- of certiorari.

3 MS. BIELLA: -- "of certiorari shall be filed in
4 district court within 30 days after the date of the CPRC's
5 final registration order pursuant to Rule 1-075 NMRA."

6 MR. MAXWELL: May I ask for clarification on the
7 answer?

8 Someone who is not at a hearing or at the meeting
9 where the application was discussed, the nomination, they
10 are not free to appeal, then? I believe it says "the
11 parties that were" --

12 MS. VALICENTI: I would think that you would have
13 to be an aggrieved party if rules of proper --

14 MR. MAXWELL: I guess --

15 MS. VALICENTI: I mean, the appeal process goes to
16 parties that are involved. If they have received notice, if
17 they were an interested party, they have -- they're
18 aggrieved by a decision, they have the right to appeal.

19 MR. MAXWELL: I was just curious if they actually
20 had to be in attendance to be an aggrieved party.

21 MS. BIELLA: I don't think so.

22 MS. VALICENTI: No. It could be any -- an
23 aggrieved party -- it doesn't define who an aggrieved party
24 is, so --

25 MR. MAXWELL: The reason I ask that, the City of

1 Santa Fe has determined that if you were not present at the
2 meeting --

3 MS. VALICENTI: Oh.

4 MR. MAXWELL: -- you cannot be an aggrieved party.
5 So I was just curious if that was the same outlook.

6 MS. VALICENTI: It doesn't say that in here.

7 MS. BIELLA: No.

8 Mr. MAXWELL: Okay. And there is no
9 administrator --

10 MS. VALICENTI: Actually -- I'm sorry -- it says,
11 "Only parties at the CPRC meeting shall receive direct
12 notice of the registration order." This is to appeal. Then
13 it says, "An aggrieved party," and so --

14 MS. BIELLA: In addition, the notification is on
15 the HPD's Web site. So it's simply saying that personal
16 notification -- you know, the individual notification is
17 only if you're in attendance.

18 MR. MAXWELL: It just seems a little bit -- kind
19 of unclear.

20 Mr. BIELLA: Okay.

21 MS. VALICENTI: It might need some clarification.

22 Mr. Chair, do you want us to -- since it doesn't
23 define what an "aggrieved party" is, and if it's not someone
24 who was in attendance at the meeting, maybe we need to work
25 on a little process here.

1 MS. BIELLA: Would you propose putting it in the
2 definitions?

3 MS. VALICENTI: An "aggrieved party"?

4 MS. BIELLA: Uh-huh.

5 MS. VALICENTI: We could, I guess.

6 MR. MAXWELL: That was my only question. Thank
7 you.

8 CHAIRMAN HENDRICKS: Thank you.

9 Committee members, are there any questions of this
10 witness?

11 Anyone in the audience wish to question this
12 witness?

13 Would anyone else wish to comment on Part 4.10.18,
14 State Register of Cultural Properties?

15 Yes, sir.

16 MR. GORRELL: Bob Gorrell, and I previously said
17 I'm the director of Public School Facilitates Authority.

18 I want to state that this is hugely important work
19 that you do, and it is appreciated by all of New Mexico.
20 I'm a New Mexican from Carlsbad. In fact, White Tate Lee is
21 a close friend of mine. And, you know, he's a very
22 pragmatic thinker, and I like to think that I learned
23 something from him in the past.

24 Mr. Moreland had mentioned a lot of pressures on
25 this process. There's lots of pressures everywhere. What

1 we have found that -- with schools, we have schools growing
2 in their gross square footage about 1 percent per year, and
3 the schools have not been able to keep up with them, and
4 they were starting to melt back into the earth, and the
5 State had to, through the Zuni lawsuit, create programs to
6 start rebuilding it. Huge amounts of money. But we didn't
7 solve the problem, the overproliferation of square footage.
8 So we have a problem that's not sustainable.

9 The basis of my comments today are somewhat
10 related to that with historic properties because I think
11 that they must be preserved. And I -- what I see, looking
12 through here generally -- and I'll talk specifically -- are
13 priorities so that choices can be made and funding can be
14 adequately found to preserve properties. I'm sure it
15 doesn't apply for private properties in some cases, but
16 maybe -- it certainly applies -- it does apply to public
17 property.

18 The first item I'd like to question and make
19 comment on is 4.10.18.7. It's in "Definitions," the
20 introduction of "Districts" in the rules. It broadens way
21 past the language in 18-8-2. That language, the enabling
22 language of the law, allows for the preservation or
23 conservation of significant prehistoric or historic sites.
24 To broaden this out with districts and then very large
25 boundaries, I think, go past the law. And typically, rules

1 become more specific rather than broader than the law.

2 4.10.18.8, "Nomination and Listing in the State
3 Register." There should be a clear desire of the applicant
4 to submit a nomination to the National Register. I would
5 suggest adding "upon written request" before "the applicant
6 may submit a single nomination on the National Register
7 nomination form for CPRC review." This simply would insure
8 that that was the intent of the person that is petitioning,
9 that they indeed did want it to go on to the National
10 Register. I see it in the law. I just think it ought to be
11 made clear and specifically a request from the person that
12 is petitioning.

13 4.10.18.9, "Public Notice for Cultural Properties
14 with Multiple Notice." I would suggest to strike after "any
15 owner" -- in the first sentence -- "of a private property."
16 Any owner as defined in 4.10.18.7 should include public
17 owners, and they're excluded here, and I think that's
18 important.

19 The 4.10.18.11 -- and this is really where I feel
20 that there's a lot of work that's needed, and it would be
21 for the benefit of everybody, and specifically protecting
22 properties. NMSA 18-8-2 allows for the preservation and
23 conservation of significant -- and I add emphasis on
24 significant prehistoric or historic sites. The proposed
25 rule does not provide specificity to what may be determined

1 as significant. Resources to maintain historic properties
2 are very limited, and lack of specificity will foster overly
3 broad registrations that may very well cause harm by
4 dilution to the very historic sites that the law intends to
5 protect.

6 I'm looking now at several new projects that we
7 have brought -- had put upon us to try to help Mesa special
8 schools. And where our focus came -- because they have a
9 lot of properties over 50 years, and some of them -- some of
10 them I have to question why they would be on there. I was
11 not part of the process. There was really nothing for me to
12 go back to see either. But I can say -- like if you're
13 familiar with the School for the Deaf here, the infirmary,
14 I've been in architecture and construction my entire life.
15 I'm very familiar with what's available, what there is in
16 New Mexico. I used to be construction manager for the
17 University of New Mexico. And I have no idea why that
18 building would be a -- registered cultural. Compared to
19 other things that are important, it's huge. It -- it makes
20 a difference to us to try to make a functional campus, and
21 we haven't even approached that yet, about moving the
22 registration. But I look at that and I question.

23 I'm under the benefit right now of being in one of
24 the four casitas down the street because they -- you know,
25 there's a problem with them, but they're four identical

1 casitas. Why would all of them be preserved and not just
2 one? And -- you know, it's a 38 building. I can show you
3 hundreds and hundreds of similar houses like that throughout
4 the state of New Mexico, probably many of them on the
5 register already.

6 Next bullet point is that similar representative
7 properties should not be duplicated. And that's on the last
8 point. If it is important to try and preserve properties,
9 it's important to make choices, just like we do in
10 everything in life. We look at what we can preserve and
11 figure out what's most important.

12 What's missing is -- I see in 4.10.18.11, the
13 Criteria for Registration, is a transparent scoring system.
14 Probably based upon points, I would suggest that it should
15 be developed, and it would insure protection of the most
16 valuable properties.

17 My next point is that similar properties should be
18 reassessed against once -- against each other each time that
19 a similar property is being considered for registration. So
20 if you've got 10 properties of a particular type and a new
21 one is added, should it be added? It is a better specimen
22 than the previous 10? Maybe there's only room for "X"
23 number of highly valuable properties. And setting a value
24 is important for preservation, in my opinion.

25 The last bullet is justification for registration

1 should be written and based upon both transparent scoring
2 criteria and upon the site significance as compared to
3 similar properties; that both of those should be important,
4 how the criteria was applied, and then how it applies to
5 other property that has been previously registered so that
6 it's clear to the public and everybody why this is an
7 important property and why it should be preserved.

8 Resources are limited and our -- and in the public
9 school system, we're going to have to make a lot of choices
10 as we go to reduce square footage to try to make something
11 so that there will be schools available. As an example, I
12 may -- I don't know how many of you are familiar with
13 building and building operations. This building, as every
14 other building, has a minimum cost of \$6 per square foot per
15 year for keeping it maintained and the heat on, keeping the
16 electrical on. It actually goes up from there. The feds
17 use \$12.75. So there is a cost of space when we build
18 schools, that they have to take those budgets to pay
19 teachers, to buy paper, to run copiers, and they spend it on
20 space that they didn't need instead of being able to spend
21 it on what the true mission and function is.

22 And that's the problem that we're trying to solve.
23 And I see all of this as fitting together. And again, I
24 just want to thank you. And I really appreciate your work.
25 It's hugely important. I think that if you forget, you

1 know, the past and where we came from, there's no future,
2 and I firmly believe that.

3 CHAIRMAN HENDRICKS: Excuse me?

4 MR. GORRELL: Yes?

5 CHAIRMAN HENDRICKS: Are there any questions?

6 MR. RICHEY: Yes.

7 I'd like you to discuss, a little bit, first, your
8 notion of the district as being overly -- and your sense of
9 that. If you would just run that by once more, please.

10 MR. GORRELL: Well, for instance, at the School
11 for the Blind, it's -- there was some mention of it becoming
12 a district. I looked in the law. I didn't see any
13 district. I know that there are probably some properties
14 down there that should be preserved. We have a water tower
15 that a lot of people in the community think that should be
16 preserved. I can show you three dozen of them around the
17 state right now that have not been torn down. That one, we
18 probably will need to remove it because it's rusted out.
19 It's a safety problem, and there is not funding to fix it
20 up. This is not on the table right now. But had this rule
21 been in effect, it automatically would be on the table. And
22 I think that it's overly broad as far as a site. I think
23 that it brings -- it brings things into the picture
24 automatically without having a due process.

25 MR. RICHEY: To follow up on that a little bit.

1 I'm an architect, and the one case that came before this
2 committee this year was similar to what you're talking
3 about, St. Catherine's, and there is a process. And maybe
4 it's not so obvious to everybody, but there really is a
5 process on the National Register and a scale system of how
6 you -- what is merit. St. Catherine's, a lot of those
7 buildings were already -- before it came before this
8 committee, the City of Santa Fe had already come to a weight
9 system, and some of them were, you know, not contributing,
10 and so there is a process.

11 Maybe it needs to be -- and what you're saying
12 is -- I think it's interest because what you're saying I've
13 felt too, that maybe there is a dilution sometimes. But I
14 think there is a definite process. And maybe it needs to be
15 stated here or footnoted in some way because it's maybe not
16 so apparent here. But the National Register, that's a
17 pretty good -- I think has a good process for doing what
18 you're saying.

19 Now, there are cases, and Albuquerque's a good
20 example, where there's large districts, mainly residential.
21 And it covers a large area, but it has really more to do --

22 My sense, Jan, and maybe you can correct me -- but
23 has more to do with people who have all agreed and has great
24 advantages tax-wise for those people because of the tax
25 credit program, which I participate in. And that has a

1 good -- that goes back to the City. So there is that, I'll
2 just say that to you.

3 Now, I forgot my second point I wanted to question
4 you about. I think it was almost the same heart of the
5 matter. You were talking about dilution, and you were
6 concerned with overly broad designations. So maybe that,
7 what we've just discussed, covers it, but --

8 MR. GORRELL: Mr. Chair, could I respond?

9 CHAIRMAN HENDRICKS: Sure.

10 MR. GORRELL: Those districts and neighborhoods
11 are absolutely wonderful, and they typically, from my
12 limited knowledge, are self-elected. I don't think that
13 that would be prevented by not broadening this. You know, I
14 think that if a community -- a residential community wanted
15 to set a bunch of sites together and each petition, or
16 petition together and name the sites, so long as they were
17 all signatory and request it, it accomplishes the same.

18 CHAIRMAN HENDRICKS: Thank you.

19 Is there anyone in the audience who would like to
20 question this witness?

21 MR. ROGERS: I'm Jerry Rogers. I just wanted
22 to -- I sympathize with the concerns you've expressed. And
23 I wanted to ask if you're familiar with the enormous body of
24 technical information that's available at NPS.gov that
25 explains the 45 years of application of district criteria

1 everywhere in the United States. It's really very clearly
2 understood.

3 And also, that explains that the whole matter of
4 historic preservation is more merely a matter of making
5 intelligent decisions than it is of dictating that something
6 has to be preserved. So there's a tremendous amount of
7 information that I believe would be very useful to you in
8 your work. I don't know if you're familiar with it, but if
9 not, I think you would benefit from it.

10 CHAIRMAN HENDRICKS: Anyone else?

11 Yes, sir.

12 MR. MERLAN: Mr. Gorrell, is it really your view
13 that education is more important than historic preservation?

14 MR. GORRELL: I don't care to answer that.

15 CHAIRMAN HENDRICKS: Okay. Anyone else?

16 MR. WATSON: This is quite a -- I'm Allen Watson.
17 This is not entirely a question for you, sir, but a comment.
18 Those of us who -- and I'm an architectural conservatory by
19 profession, so a lot of my interest in preservation is about
20 architecture as is Mr. Richey's interest in preservation,
21 coming from architecture. But the committee, the CPRC's
22 charge, their duty by law is to identify cultural
23 properties.

24 And "cultural properties," the term encompasses
25 things that are way beyond architecture. Architecture is

1 some of their work, to identify architectural properties.
2 But there are archeological properties, there are
3 traditional cultural properties that expand the idea of
4 cultural properties way beyond architecture. And the
5 criteria that had been set out under the rule as written,
6 the criteria for registration, are -- work in a way that
7 allows for the identification of cultural properties that do
8 not fit into specifically the category of architecture.

9 And to try to, say, determine a rating system, a
10 scoring system for something that encompasses the large
11 selection of types of cultural properties that we have, I
12 think, would be to put the committee here in a position of
13 trying to come up with an impossible task to solve an
14 impossible problem.

15 As Mr. Rogers has said, the practices for -- the
16 practices for determining whether or not a property
17 qualifies for registration are not stated in this rule, but
18 they are certainly part of the practice of identifying
19 cultural properties that have been determined by years and
20 years and years of work by the federal government and this
21 committee over the years as well. And they are well
22 articulated in the literature that is available on the Web
23 site that Mr. Rogers refers to. And that part of it --
24 that's part of the background that members of the CPRC
25 really need to have under their belts when they approach the

1 task of identifying cultural properties.

2 CHAIRMAN HENDRICKS: Would you like to respond?

3 MR. GORRELL: Mr. Chair, I would.

4 I didn't say that something that hasn't been done
5 before doesn't come with -- effortless. I was asked to
6 present in Boston two months ago. And one of the attendees
7 was Ken Mitchell. He's the director of buildings for
8 Monticello and the Jefferson Foundation. And the reason he
9 was there is because New Mexico has figured out a way --
10 because we had to; we're poor -- has figured out a way to
11 score every school in the state against every other school
12 in the state.

13 Spreading capital around to make people happy
14 didn't work. It's gotten us -- we had too much, and it's
15 gotten us in a lot of trouble. So we have found a way of
16 targeting the worst problems and addressing them. We had
17 people there from different countries, from about 12 states,
18 trying to understand how we could set a measure system. And
19 it works in New Mexico, and a lot of people are trying to
20 figure out how they can apply it in different ways.

21 A hospital group is looking to see how they can
22 apply it to their facilities. This fellow was there to see
23 how he talks -- yeah, how he deals with his facilities. He
24 has had to make these choices. His budgets are drying up,
25 so he's trying to figure out ways to measure his facilities,

1 look at the cultural relevance -- and I'm sorry, but that
2 would absolutely require expertise, and there's always the
3 ability to put exceptions in rules. Here is how things
4 normally apply, but if it doesn't fit in here, then here's
5 the exceptions. And it's usually a more rigorous process
6 that requires a lot more writing down and sharing of why
7 that decision-making was done.

8 So, you know, I can't say that it would be easy.
9 I don't want to say it would be easy. I don't want to
10 compare value of this against that. You know, is a school
11 more important than a road? You know, is -- you know, you
12 can go on forever. And those types of silent questions are
13 huge. They're absolutely huge.

14 Here's the bottom line that I don't think anybody
15 would argue with. If you have -- if you can't take care of
16 what you have, it's going to get lost. And that's what
17 happened to us with the schools. If that also applies with
18 historic properties, then, you know, you can stick your head
19 in the sand, it doesn't make the problem go away.

20 But I've seen lots of historic places around the
21 state, some of them are schools, where there's -- scratch up
22 enough money to put a new roof on the school, but it's still
23 full of rats; it's probably going to burn down; it could
24 hurt somebody. What's the value of that, if that were to
25 happen?

1 And I'm kind of off into the weeds now, and I
2 apologize, because that was not my intent. My intent was
3 that if there's a registration of properties, that it be a
4 clear and transparent process so that if there's
5 duplication -- and if there's duplication, that maybe there
6 could be choices made: Is this a more important property?
7 Is this a better specimen?

8 And what I think I heard you say is that almost
9 anything can be important, and I would have to agree with
10 you.

11 MR. WATSON: May I respond to that, Mr. Chair?

12 CHAIRMAN HENDRICKS: Sure.

13 MR. WATSON: The charge, by law, to this committee
14 is to identify the cultural properties. That is an almost
15 yes-or-no charge; they either are, or they are not. The
16 charge is not to identify the cultural properties and
17 prioritize their cultural importance. Their charge is not
18 to take on issues of economics or of political issues.
19 Things that are beyond their purview, we can't ask them to
20 do.

21 And I think -- you know, you say you've developed
22 a system of scoring for the schools, but I don't even know
23 what the values are that you've brought to that system. Are
24 they economic values? Cultural values? Are they social
25 values? Are they political values?

1 If you're asking the committee to bring those
2 kinds of judgments to their work, I think you are presenting
3 them with an impossible task.

4 MR. GORRELL: Mr. Chair, I'm --

5 CHAIRMAN HENDRICKS: Member Bandy has a question
6 or comment.

7 MR. GORRELL: Sure. Do I get to respond, please?

8 CHAIRMAN HENDRICKS: Absolutely.

9 MR. GORRELL: I'm sorry.

10 What I'm looking at is the law. The law must be
11 applied first. And it says "significant prehistoric or
12 historic sites." So the word "significant" is the one that
13 I am interested in.

14 DR. BANDY: Yeah. I appreciate your comments very
15 much, and I think -- you know, I respect Max's opinions and
16 the points that he's made, but I think we all recognize we
17 work in the real world, and we want historic preservation
18 and environment that works with agencies and private
19 property and everything.

20 In terms of the scoring system, I think your
21 frustration with the sort of fuzziness -- although there's a
22 large body of technical literature relating to significance,
23 in determination of significance. But ultimately, it
24 remains opaque. And even to practitioners, it remains
25 rather opaque and difficult to apply and subjective at

1 times. And, you know, I really appreciate your suggestion
2 about the scoring system. And I know some things like that
3 have been done. Things specifically at the Department of
4 Transportation Bridge Context where they developed a numeric
5 scoring system, because they're in the same sort of
6 situation, hundreds of bridges falling apart, and you have
7 to have some sort of, you know, way to recognize the most
8 significant ones.

9 And that's -- you know, for specific property
10 types, that can certainly work. I can't imagine a single
11 scoring system that would encompass all possible property
12 types, but I've heard you. And for schools to work with HPD
13 to develop some sort of way of sort of recognizing
14 significance in this particular property type, I think it
15 can work very well in specific situations.

16 MR. GORRELL: Thank you.

17 CHAIRMAN HENDRICKS: Yes?

18 MR. MERLAN: Mr. Chairman, would it be okay if I
19 commented briefly on what the witness has presented?

20 CHAIRMAN HENDRICKS: Sure. Go ahead.

21 MR. MERLAN: I asked a question, and the witness
22 didn't care to answer it. My name is Tom Merlan, and I'm a
23 consulting historian.

24 I asked a question, the witness didn't care to
25 answer it, so let me try to answer it. Education and

1 historic preservation are equally important. And as the
2 witness suggested, they are strongly related.

3 As to the funding of public entities, the
4 legislature decides who gets money. As to the funding
5 privately-owned properties, that's up to the owner. And if
6 he gets any money, it will probably be through this program.
7 And including, for example, grants for restoration or tax
8 benefits, when such things are available.

9 I think that a district should be defined, and I
10 don't think that that would be that hard to do. The idea of
11 a scoring system, it seems to me, would place a heavy,
12 probably impossible burden on the committee. The committee
13 exists to make professional judgments. The idea that a
14 certain number of properties should be identified and that
15 properties that are similar should be compared and that
16 certain properties should be dropped on that basis, I think,
17 fails to recognize that each and every historic or
18 archeological property is essentially unique.

19 It also fails to recognize that recognizing the
20 value of a property does not mean that it's going to be
21 preserved; it means that the committee has made a
22 professional judgment concerning it, and that on that basis,
23 it has a chance. We lose historic properties every day, but
24 the committee tries to recognize them to put them forward
25 and make their significance evident to the public.

1 Thank you, Mr. Chairman.

2 MR. GORRELL: Mr. Chair, I just would read from
3 18-8-2. It's the law, and it allows for the preservation
4 and/or conservation of significant prehistoric or historic
5 sites. It's more than just recognizing them. It says
6 "preservation and/or conservation." And I would -- in my
7 opinion, at least for the counsel that I work with, it makes
8 your job a lot easier to have a very clear way of scoring
9 the process. It takes the politics out of it. And while
10 they're all professionals and way up here as far as
11 understanding finances and that, it makes their job a lot
12 easier, to minimize those kinds of professional judgments
13 and make the process a little more mechanical and a little
14 more transparent.

15 CHAIRMAN HENDRICKS: Thank you.

16 MR. GORRELL: Thank you.

17 CHAIRMAN HENDRICKS: Is there anyone else that
18 would like to comment on 4.10.18, State Register of Cultural
19 Properties?

20 Has everyone present signed the attendance sheet?

21 MS. HART: Yes.

22 CHAIRMAN HENDRICKS: At this time, the attendance
23 sheet shall be marked as an exhibit and entered into the
24 record.

25 Yes, sir?

1 MR. WATSON: Mr. Chair, this is Alan Watson
2 speaking. I have a question that I would like to ask of the
3 committee or the Chair or HPD staff.

4 Written comments are to be submitted on this to
5 this board, the committee, at a date certain. And there's a
6 transcript that is being prepared of the notes that are
7 being taken by the recorder. I'm wondering when the
8 comments and the transcript will be available to interested
9 parties.

10 CHAIRMAN HENDRICKS: I'm not sure.

11 MS. MOORE: I can help you.

12 The comment period will run through August 3rd.
13 So the comments won't be available prior to that. The
14 transcripts, I was told that the very earliest they would be
15 ready would be July 27th, next Friday. And as soon as we
16 have them, they can be made available.

17 MR. WATSON: And the comments, will those be
18 available before the next CPRC hearing?

19 CHAIRMAN HENDRICKS: I am going to request that
20 the comments be compiled by Ms. Biella for the committee.
21 And I'm not sure how much time it will take for her to do
22 that or what the procedure will be exactly.

23 MS. VALICENTI: Except, Mr. Chair, you will not be
24 taking -- I mean, receiving or entertaining any additional
25 comments at a public meeting or to review this for -- this

1 is the time to comment, and the written comments will be it,
2 so the board will be discussing the rule then.

3 MR. WATSON: Thank you.

4 CHAIRMAN HENDRICKS: Yes, sir?

5 MR. GARCIA: Mr. Chair, committee members, good
6 morning.

7 I'm Mike Garcia, tribal historic preservation
8 officer for the Pueblo of Santa Ana. I just have a couple
9 questions, that's all.

10 First, for clarification of the rule, are there
11 specific points that have been amended, or is this a whole
12 brand-new ruling?

13 CHAIRMAN HENDRICKS: This is a brand-new rule.
14 There has not been a rule --

15 MR. GARCIA: Previous?

16 CHAIRMAN HENDRICKS: -- previous.

17 MR. GARCIA: Okay.

18 CHAIRMAN HENDRICKS: This is brand-new.

19 MR. GARCIA: All right. I'm kind of brand-new
20 too. I'm back to the State, and kind of picking up things.

21 So in this, as well, you mention districts. But
22 is there room in here for landscapes? Would the committee
23 consider landscapes as far as properties?

24 CHAIRMAN HENDRICKS: Well, I would just say, I
25 would encourage you to submit your comments in writing, and

1 we will consider whatever -- we will deliberate based on
2 what information we get.

3 MR. GARCIA: Okay.

4 CHAIRMAN HENDRICKS: Yes, sir?

5 DR. BANDY: Well, there is a -- "Place" is defined
6 in point "L" there as "geographic location that possesses
7 cultural or historic significance including districts and
8 sites as appropriate." So that's a larger scale.

9 MR. GARCIA: But it's not specific. When it comes
10 down to legal issue, you know how they focus on words. So
11 that's why --

12 DR. BANDY: For that matter, I would emphasize
13 that the National Register doesn't have a cultural landscape
14 property type either. It's fit into the concept itself.

15 MR. GARCIA: In the bigger picture.

16 DR. BANDY: Yeah.

17 MR. GARCIA: I was wondering if that would just
18 fit into either places or districts.

19 MS. BIELLA: It does.

20 MR. GARCIA: That's all I had.

21 MS. BIELLA: The National Register is actually
22 considering the concept of landscapes right now. But at
23 present, it doesn't recognize landscapes as a property type.
24 The word "place" appears in statute.

25 MR. GARCIA: Okay.

1 MR. RICHEY: Jan, I think HPD, the Historic
2 Preservation Division of New Mexico, has recognized cultural
3 landscapes -- not just landscapes -- viewsheds, watersheds,
4 just something you look at. It's been issued -- those
5 guidelines have been developed and formally published.
6 They've been issued to the State Highway Department, and
7 they've used them in their work. So maybe that's
8 appropriate to what you're saying. It's interesting to me,
9 what you're saying. It's certainly a huge, important part
10 of New Mexico.

11 MR. GARCIA: It's a component.

12 MR. RICHEY: Yeah.

13 CHAIRMAN HENDRICKS: Yes?

14 MS. BIELLA: Let me make one other comment. I'm
15 Jan Biella.

16 Mount Taylor, for example, is a landscape as well
17 as a sacred site. Under the National Register criteria,
18 they have bulges, and we have spoken of the bulges, the
19 National Park Service has, and the National Register within
20 it, has issued as guidance. And that guidance is also
21 referenced in this rule, and it talks about ethnographic
22 landscapes, traditional cultures, places and cultural
23 properties, and trying to use the concepts of site and
24 district. And at present, that's how we've handled that.

25 MR. GARCIA: I'm familiar with those, yes.

1 Thank you.

2 CHAIRMAN HENDRICKS: I believe I was at the point
3 of asking for the attendance sheet to be admitted, and that
4 would be Exhibit 5.

5 MS. VALICENTI: Right.

6 MS. MOORE: Exhibit 5.

7 CHAIRMAN HENDRICKS: Are there any questions for
8 the committee regarding the attendance sheet?

9 Exhibit 5 is hereby admitted into the record.

10 (Exhibit 5 admitted into the record.)

11 The comments submitted and discussion heard during
12 this rule hearing will be considered and discussed by the
13 committee during the next scheduled meeting of the CPRC, and
14 that is scheduled for August 10th. The committee will then
15 vote on the proposed rule. Members of the audience are
16 invited to attend that meeting.

17 The rule adopted by the committee will be filed
18 with the State Records and Archives in accordance with the
19 State Rules Act and New Mexico registered publication
20 deadlines. The adopted rule will become effective 30 days
21 after the filing date.

22 And I would like to thank you all, the committee
23 members and everyone else present, for their participation
24 and attendance today.

25 I would just like to remind all of you that the

1 comment period is open until August 3rd.

2 And Jan, and I would ask that you compile those
3 materials for that committee.

4 Let the record show that the hearing is adjourned
5 at 11:38 a.m. -- well, let's try 10:58 a.m.

6 (The hearing concluded at 10:58 a.m.)
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REPORTER'S CERTIFICATE

I, KATHERINE L. GORDON, New Mexico Provisional Reporter, working under the direct supervision of Debra L. Williams, New Mexico CCR License Number 92, hereby certify that I reported the attached proceedings; that pages numbered 1-40, inclusive, are a true and correct transcript of my stenographic notes. On the date I reported these proceedings, I was the holder of Provisional License Number P-400.

Dated at Albuquerque, New Mexico, this 27th of July, 2012.

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