

THE OLD FORT LEWIS AT HESPERUS FAQ

What is the name of the property/land grant?

The original grant in 1910 referred to the property as “the Fort Lewis School.” (36 Statutes at Large 269, 274.) Colorado statutes currently refer to the property simply as “the Hesperus property.” Like many properties with long histories, the property has been referred to by many names; for example, the Hesperus Trust, the Old Fort, Old Fort Lewis property, the Fort Lewis School Grant, etc. The State Land Board and Fort Lewis College have adopted the name *The Old Fort Lewis at Hesperus* for the property.

What was the Old Fort Lewis at Hesperus property before the federal land grant in 1910?

The Fort Lewis Military Reservation was created by executive order on January 22, 1882. Later that year the federal government set aside Fort Lewis for an Indian reservation school. The federally-owned Indian school on the Old Fort Lewis at Hesperus site remained in operation after the lands composing the surrounding reservation were released to the public domain in 1896. In 1908, the federal government proposed that the property be transferred from federal to state control and two years later it was conveyed to Colorado.

What are the conditions of the federal land grant?

The Old Fort Lewis at Hesperus property was part of a federal land grant to the State of Colorado in 1910. The grant was subject to the condition that “said lands and buildings shall be held and maintained by the State of Colorado as an institution of learning, and that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils.” The Colorado General Assembly accepted the grant in 1911 and agreed to the conditions imposed, including the requirement that Native American students at all times be provided tuition-free education and admitted on terms of equality with white students. Other uses have historically been allowed on the property, so long as the conditions of the grant were met.

When did the Fort Lewis School move to Durango?

The Fort Lewis School moved to its present location in Durango in 1956. The State continued to uphold the terms of the original grant with the establishment of the new campus and facilities in Durango, including tuition free education for Native American students.

Who owns the Old Fort Lewis at Hesperus property?

The State of Colorado, acting through the State Land Board, owns the land. The State Land Board is a state agency within the Colorado Department of Natural Resources. The State Land Board is comprised of five volunteer Commissioners appointed by the Governor and possessing specific experience as mandated by the Constitution (“The Board”), a director and staff. The Board “....serves as the trustee for lands granted to the state in public trust by the federal government ... has the duty to manage, control, and dispose of such lands in accordance with the purposes for which said grant of land were made.” (Article IX Section 9(6), Colorado Constitution.)

Who manages the Old Fort Lewis at Hesperus property?

The State Land Board is responsible for managing the Old Fort Lewis at Hesperus property. The State Land Board actually had no formal role in managing the surface of the property until 1961 although together with the State Board of Agriculture (the “SBA,” the former governing board of CSU and Fort Lewis College), it was authorized to issue mineral leases on the property prior to that time. In 1961, the Colorado Supreme Court held in the case of *Sunray Mid-Continent Oil Co. v. State*, 368 P.2d 563 (Colo. 1961), that the Colorado Constitution vested the State Land Board with exclusive authority over the lands granted to the state by the United States, including the Old Fort Lewis at Hesperus property.

Who owns the improvements (e.g. buildings, fences, wells, water, etc.) on the Old Fort Lewis at Hesperus property?

After the *Sunray* decision in 1961, the State Land Board determined that the “improvements” were owned by the then-lessee – the State Board of Agriculture. Section 23-52-104(3), C.R.S., transferred the lessee-owned improvements to Fort Lewis College.

Who owns the minerals under the Old Fort Lewis at Hesperus property?

The State of Colorado owns all minerals beneath the Old Fort Lewis at Hesperus property. In the absence of an expressed title reservation, a grant of title to land includes everything in the land beneath its surface. This doctrine is applicable to grants made by the United States as well as private property grants. The 1910 Act granting the Old Fort Lewis at Hesperus property to Colorado did not contain any reservation of title to oil and gas deposits or other mineral rights.

Have minerals been extracted from under the Old Fort Lewis at Hesperus property?

There has been some limited mineral exploration on the Old Fort Lewis at Hesperus property, including oil, gas, and coal. However, no significant mineral extraction has occurred. Claims that individuals or entities have extracted significant mineral value from the property are false.

The issuance of leases for the extraction of mineral resources does not mean that extraction actually occurred. A lease allows a company to apply for a mining or oil and gas permit through State regulators. State regulators have issued a limited number of oil and gas permits over the years. Three oil and gas wells were drilled on the property between 1953 and 1967, but there has been no economic production.

Who has a beneficiary interest in the property? What happens to the income derived from lease and rental agreements on Old Fort Lewis at Hesperus property?

The Board of Trustees of Fort Lewis College has a beneficial interest in the property. (Section 24-52-104(3), C.R.S.) This means that the Board of Trustees for Fort Lewis College can receive revenue from and/or use of the property for the benefit of the College.

By state statute, income from lease and rental agreements on the Old Fort Lewis at Hesperus property is deposited into the “Hesperus Fund.” (Section 23-52-114, C.R.S.) Money in this fund is subject to appropriation by the Colorado General Assembly and designated by statute to go first towards the Native American tuition waiver at Fort Lewis College. Remaining moneys may be applied to such other public purposes as determined by the Board of Trustees for Fort Lewis College, subject to appropriation by the General Assembly.

Who uses the Old Fort Lewis at Hesperus property?

The Old Fort Lewis at Hesperus property has been used by various entities over the past 100 years. These individual uses have been granted by the State Land Board or the State Board of Agriculture.

The SBA directly controlled the property until 1961. Beginning in 1962, the State Land Board entered into a lease with the SBA for the continued operation of CSU’s San Juan Basin Research Center on the property.

In 2002, the Colorado General Assembly created a separate governing board for Fort Lewis College. As directed by state statute, CSU and Fort Lewis College subsequently requested a lease extension from the State Land Board for CSU’s research operation. The State Land Board granted CSU a 15-year lease extension, and CSU continued to operate the San Juan Basin Research Station on the property, until CSU operations were ceased at the end of June, 2010.

Currently, the State Land Board and Fort Lewis College, through the Old Fort Steering Committee, are working on an agreement that will govern the management and use of the property through 2017. It is anticipated that Fort Lewis College will oversee educational and community uses of the property and the State Land Board will continue to lease certain areas of the property.

What are the permissible uses of Old Fort Lewis at Hesperus property?

The Old Fort Lewis at Hesperus property is held for educational purposes and is not available for public use without prior approval. In the past, the primary use of the property has been for educational purposes related to agriculture. The property has been leased and used by other entities as well, including local fire protection organizations, conservation groups, Native American tribes, ranchers, and natural resource exploration companies.

What about Native American sacred sites located on the Old Fort Lewis at Hesperus Property and access for Native American religious ceremonies?

Currently there are no known Native American sacred sites recognized by the federal government or the State of Colorado located on the Old Fort Lewis at Hesperus property. However, groups such as the Fort Lewis College Pejuta Tipi Society do hold religious ceremonies on the property. Fort Lewis College and the State Land Board are working with groups, such as Pejuta Tipi Society, to make sure access to areas designated for religious use is maintained.

Are there Native American burial sites located on the Old Fort Lewis at Hesperus Property?

There are none that have been confirmed to date. Archaeological surveys on parts of the property have been conducted using appropriate imaging technology. There are areas where unmarked graves are possible, but no excavations have been done to verify that these are indeed graves. Furthermore, if these sites do hold graves, there is no evidence yet discovered indicating who may be buried on site. It is possible the graves may hold civilian settlers who lived in the area or they may be pre-historic burials.

There is a former military graveyard on the Hesperus property that was used by the military post in the late 1800's. After the Army left the post in 1891, the remains of the military personnel in the graveyard were exhumed and transported to a different location.