

SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

SPECIAL MEETING

January 23, 2018

Henry Roybal, Chair - District 1
Anna Hansen, Vice Chair - District 2
Anna Hamilton - District 4
Ed Moreno - District 5
Robert A. Anaya - District 3

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I. This special meeting of the Santa Fe Board of County Commissioners was called to order at approximately 5:28 p.m. by Chair Henry Roybal in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll was called by County Clerk Geraldine Salazar and indicated the presence of a quorum as follows:

Members Present:

Commissioner Henry Roybal, Chair
Commissioner Anna Hansen, Vice Chair
Commissioner Robert A. Anaya [telephonically]
Commissioner Anna Hamilton
Commissioner Ed Moreno

Members Excused:

None

III. Rights-of-Way for County Roads on Pueblo Lands

A. Discussion of proposed Settlement Agreement among the County, the Pueblo de San Ildefonso, and the United States Department of Interior

TONY FLORES (Deputy County Manager): Thank you, Commissioners, Mr. Chair. I just want to point out that this is an amended agenda. We posted the amended agenda on the 18th of January and that changed the captions for items III. A. through III. D. So those items are for discussion purposes tonight on all four of the settlement agreements, and then we do have a public comment period after the rights-of-way. Then the Board will have the opportunity if so desire to go into executive session. And then we have three items for action besides adjournment under concluding business. So I just wanted to point out that tonight's discussion deals with each of the settlement agreements in a discussion perspective rather than an action perspective.

CHAIR ROYBAL: Yes, that's correct. So they'll all be just for discussion and we'll also have public comment after.

MR. FLORES: So thank you, Mr. Chair. So the first item that's on the agenda is item III. A. which is discussion of the proposed settlement agreement among the County, the Pueblo of San Ildefonso and the United States Department of the Interior. And as we stated back when we did the presentation in December we've gone through

some negotiations with the Pueblo of San Ildefonso and we've had on the agenda, since we originally posted the San I's agreement on January 2nd, what we've considered a final agreement where both parties, the County, the pueblo and the Department of the Interior have agreed to the terms.

So the Pueblo of San Ildefonso, the agreement is the same one that we looked at very early on in the process and we discussed the general terms or settlement terms back in December. So just a quick reminder, the Pueblo of San Ildefonso the County maintains currently approximately 9.68 miles of roadway. The rights-of-way are not complete or comprehensive – and I'm reading off the December 12th information. We have some information on County Road 84, rights-of-way for 84-A, -B, -C, and -D are limited or non-existent, and there are portions of 101-D that we do have right-of-way documents from DOT at different intersections.

For the Pueblo of San Ildefonso there's quite a few what we consider roads or driveways of convenience that cross from a County-maintained road onto their private parcel. The agreement that was discussed in early January, I think it was January 9th, contemplated the placement of roads, the development of two new roads, and the placement of roads that we would convey the County's right-of-way and the pueblo's right-of-way into the BIA inventory. So all the roads that are listed for the Pueblo of San Ildefonso would go into the tribal transportation program, including the two new roads that are contemplated, which would be the construction of Yellow Bird Loop, which is on the north side of the Rio Pojoaque and Blue Dove, which is between 84-B and County Road 84.

So the agreement that we discussed early on with the Pueblo of San Ildefonso has not changed. Santa Fe County is not providing compensation to the Pueblo of San Ildefonso; rather we are developing the roads to accomplish that. In addition, in the Pueblo of San Ildefonso, with the development of the Yellow Bird Loop, the gap issue, or the area between the County-maintained road and the private parcel of that area that would cross someone else's lands, for the Yellow Bird Loop that area would be contemplated in that right-of-way that the County would go out and survey.

For the properties that access off of County Road 84, or 84-B, those roads we've already identified which areas and those are along the 101-D area, south of the Rio to County Road 84. All the other roads have a legal, platted access that we can find to provide ingress and egress from properties on the northern part of 84 down to 84. So with the exception of the areas around 101-D, which is contemplated in the agreement, we have looked at providing ingress and egress or access points to individual parcels.

So, Mr. Chair, that is in essence the San Ildefonso agreement, the Pueblo of San Ildefonso agreement, and again, nothing has changed from the time that we rolled that out in early January. We had the discussion here and it remains the same as we provided to the public at the community meeting on January 3rd.

CHAIR ROYBAL: Okay. Thank you.

III. B. Discussion of proposed Settlement Agreement among the County, the Pueblo of Tesuque and the United States Department of Interior

MR. FLORES: So, Mr. Chair, going on to item III. B. This is the

discussion of the proposed settlement agreement among the County, the Pueblo of Tesuque and the United States Department of the Interior. Similar to the Pueblo of San Ildefonso this agreement is what staff is considering complete. It's not in draft form anymore. The parties have agreed to the terms in there that we've presented to the Board. Again, the principles that we presented in December and again we posted this on January 4th and we had a community meeting.

The Pueblo of Tesuque, we have about two miles of roads, 2.1 miles of roads we maintain in that pueblo. Two of the roads already have right-of-way agreements. The only road that is subject to the settlement agreement is County Road 72-I, which is accessed as the Old Stagecoach Road, which accesses off of 73, and the Pueblo of Tesuque, has, as has the Pueblo of San Ildefonso, agreed to provide the single access point, so when we are required to once again and survey the right-of-way, we will include those access points. I believe there are two access points that are off 72-I in the width of our right-of-way.

So for the Pueblo of Tesuque, the issue with the gap, or that area between the private claim and the right-of-way would be handled with our right-of-way submittal to BIA. Therefore there is no gap issue with the Pueblo of Tesuque. Unlike the Pueblo of San Ildefonso, Santa Fe County is compensating the pueblo for that right-of-way, and that's included in the settlement agreement that was agreed to, an amount of \$185,000 as a settlement amount for that right-of-way and that would include some contributions to the surveying of County Road 73 and 74, because they are currently in the right-of-way system. However, their right-of-way documents are not necessarily perfected so they're contemplating surveying those and get those surveys to be attached to the right-of-way document that's on file.

So that's the Pueblo of Tesuque.

III. C. Discussion of proposed Settlement Agreement among the County, the Pueblo of Nambe and the United States Department of Interior

MR. FLORES: The next item on the agenda, Mr. Chair, is item III. C. which is a discussion of the proposed settlement agreement with the Pueblo of Nambe. We had posted draft agreements with the Pueblo of Nambe on the 9th of January. That was the day before we held the community meeting on the 10th, and at the community meeting or the discussion that we had on the Pueblo of Nambe, there were quite a few to-be-determined within that agreement – areas with what we're calling the gap issue, the interim access, etc.

The agreement that was completed late Friday and we received authorization to public yesterday and we posted that online, the Pueblo of Nambe – and it's in your packet – although it's still listed as a draft agreement of the January 19th date, the pueblo has provided some terms for what I consider that gap issue. There are still a few terms of that agreement that require some final discussions and fine tuning under special funding sources, etc. but for the Pueblo of Nambe, and I'm going to ask Mr. Frederick to jump in if I err on this discussion, but when it deals with the gap issue, Santa Fe County with the two previous settlement agreements is required to survey our rights-of-way, for the County-maintained roads, and submit that application to the Bureau of Indian Affairs

with the consent of the pueblo.

They've also provided that there will be a calculation of that right-of-way from the centerline of the road, approximately 25 feet on either side, so a 50-foot wide right-of-way, and the idea there is that 50 feet would encompass some of the access points to private claims. Therefore that wouldn't be an issue. There's also a provision in here, if the right-of-way cannot meet that 50-foot or 25-foot from centerline, it would be to existing property lines with the goal of also including the driveways or gaps at that point in time as well.

So that's a change from the draft agreement that was published and posted online January 9th. Mr. Frederick.

BRUCE FREDERICK (County Attorney): So I would just add, Mr. Chair, Commissioners, that if we extend that centerline out 25 feet and there's still a gap after that, individuals will be able to obtain rights-of-way under Part 169 for a nominal fee in the Nambe agreement.

CHAIR ROYBAL: Quick question. Is that the remainder of the amount of land after the 25 feet? It would be the remainder, correct?

MR. FREDERICK: Mr. Chair, I think I understand you and I think that's correct. We're talking about the gap of pueblo land that may exist between the end of that 25-foot boundary and private lands. So there's be a right-of-way connecting the two.

MR. FLORES: Thank you, Mr. Frederick. With the Pueblo of Nambe there is a compensation to the Pueblo for the rights-of-way. That's contained on page 4 of 21 on the January 19th discussion draft of the Pueblo of Nambe settlement agreement whereby the County agrees to pay the pueblo a one-time lump sum \$1 million as a settlement amount, if and when the Secretary grants the rights-of-way. And to follow up quickly on Mr. Frederick's comments, on the bottom of page 10 of 21, where it talks about Section 10, the gap and other access issues, the gaps outside that right-of-way would be provided or they could be submitted on a term of up to 35 years for a nominal fee.

So the Pueblo of Nambe's agreement from when we originally published the draft, when we had the community meeting to what was approved to be published yesterday is contained in the packet and also available in the back for the public's viewing.

III. D. Discussion of proposed Settlement Agreement among the County, the Pueblo of Pojoaque and the United States Department of the Interior

MR. FLORES: And the last item, Mr. Chair, on the discussion of the settlement agreements deals with the Pueblo of Pojoaque and similar to the Pueblo of Nambe we posted the draft agreement on January 9th of this year and it also included quite a few to-be-determined within the draft that basically dealt with a similar issue of the interim or the gap considerations. We held a meeting on January 11th. The Pueblo of Pojoaque was in attendance and actually provided most of the information back to the residents for their question and answers. Subsequent to that meeting, on Friday evening, we received what we are deeming our final discussion draft that's included in your packet and also available online and in the back, the Pueblo of Pojoaque's agreement.

The compensation, which was included in the original draft, has the County paying the pueblo \$1.75 million, and then on the 25th and 50th anniversaries, half a million dollars at those two anniversaries. And then there's an adjustment of fair market value for the settlement payments that is included and we've discussed that on page 3 of the January 19th settlement.

And then for the gap issue, for the areas that we would have to look at that are outside the surveyed area that the County has to also do for this particular settlement agreement – I'm trying to find the page. Actually, Bruce, can you jump in on the gap issue with the Pueblo of Pojoaque?

MR. FREDERICK: So Mr. Chair, Commissioners, on the Pueblo of Pojoaque we are still in the process of negotiating the gap issue but it's getting fleshed out pretty well. The pueblo is going to make non-pueblo members eligible for what's called a land assignment. As I understand it currently only pueblo members are eligible for land assignments but the pueblo uses them to give members the right to do home construction and other types of permanent improvements.

The pueblo proposes to amend its Law and Order Code to include this provision for non-pueblo members to obtain these land assignments. We're trying to flesh out as much of the procedure as we can in the agreement, and like I say we're still in the process of negotiating that. What we have fleshed out so far is that it's going to be transferrable. It's going to be up to a term of 35 years, which is going to cover most mortgages plus five years. It's going to be transferrable to subsequent purchasers if they come in during that term. It will be transferrable if a lender forecloses, so it will be transferrable to the lender.

The fee is going to be – more will be stated about the fee in the Law and Order Code. Right now the agreement simply says it's going to be – I think it says it's going to be uniform and ascertainable, but it doesn't really specify more than that currently. If for any reason a land assignment either doesn't satisfy a lender or the individual wants a different right-of-way they can apply for a right-of-way under Part 1 69 and get one from the BIA. Again, it will be up to a term of 35 years.

MR. FLORES: Thank you, Mr. Frederick. So Mr. Chair, the items that Mr. Frederick is referring to are found on the bottom of page 6 and the top of page 7 in the January 19th draft and for the Pueblo of Pojoaque there are two options for that gap issue, if you will. One is through the land assignment; the other is through the BIA process. So the Pueblo of Pojoaque is a little different in that respect that they'll actually provide two avenues for a private landowner to acquire that point.

I can tell you, Mr. Chair, in general, all four settlement agreements are for a period of 99 and 99. That has remained the same since we talked about the key principles of settlement back on December 12th. We've agreed in a couple of pueblos we're going to assign and the pueblos will assign to the inventory and other areas we're purchasing or acquiring that right-of-way for that term. We will continue to maintain all the rights-of-way. We are required in the settlement agreements to enter into an agreement with the Bureau of Indian Affairs for the actual maintenance program.

Those are covered in this document and all roads will remain open as public roads with the exception, as is the case today, the interim or closures necessary due to cultural events. So all the agreements cover that general premise of 198 years in totality. Roads

remain open to the public. The County – provided we enter into those agreements – we will continue the maintenance on the roads as we are doing today.

So that, Mr. Chair, that covers the overview of all four of the settlement agreements that are included in with today's amended agenda and packet. Mr. Chair, there's also an item, if Bruce or Katherine wanted to dovetail any information they will insert that now and then we'll have the opportunity for public comment.

KATHERINE MILLER (County Manager): Mr. Chair, at the last BCC meeting we had discussed that individuals had passed out some questions. Also at the meetings that we've had up at the Middle School, we've written down a lot of the questions that have been asked and answered or even asked and maybe not answered at those meetings, as well as comments we've received online, through emails or concerns and questions. So I was going to have Bruce go over – what we tried to do is break them down by types of agreement. We'll have a memorandum answering those questions on the website. We'll go through them right now but we'll put it up on the website after tonight's meeting because we'll also try to add anything that might come up this evening relative to questions that would apply to the Nambe and San Ildefonso agreements, another one that would apply to the Pojoaque and Tesuque agreements since they're similar in the way we're handling the rights-of-way. And then another one that has to do with points that were brought forward relative to individual or specific things within the settlement agreements' language in the settlement agreements. So I'm just going to turn it over to Bruce to quickly summarize some of the questions and answers and then as I said we will post that on the website with the agreements and everything that we have currently on the County's website relative to these.

MR. FREDERICK: Mr. Chair, Commissioners, as Katherine said, I've prepared really three memoranda. One of them deals with Nambe and San Ildefonso, one of them deals with Pojoaque and Tesuque, and a third one tries to address most of the comments made that we received on kind of an annotated comments on the San Ildefonso agreement. I believe we received those from Dave Neal. So what we're going to do is I'm going to go over them, kind of paraphrase them tonight and then we'll post them tomorrow on the website and they'll be publicly available.

I want to make clear that the memos – we're not trying to duplicate the FAQs that we've already put out there. We're not trying to regurgitate what's in the settlement agreement. We're trying to answer questions that we've heard at public meetings that people have given us in writing and trying to answer the comments on a specific agreement that we received. We may not hit them all but I think we've hit most of them.

I'll start with the memo concerning Nambe and San Ildefonso, if that's okay, Mr. Chair.

CHAIR ROYBAL: Yes.

MR. FREDERICK: All right. We get lots of questions about prescriptive easements on private lands within the pueblos and the assignment of easements, road rights-of-way to the BIA. And the memo basically, first off, points out that under long-established state law, the County has County Roads throughout the county on prescriptive easements. It's not a unique thing within the pueblo boundaries and the same basic law is going to apply as far as I'm concerned whether you're on private land within the pueblo or private land outside the pueblo. A prescriptive easement is obtained through ten years

of public use of that road as a public road. So those are prescriptive easements.

There seems to be some confusion over – people seem to call these private easements. They're not private easements. Where these roads cross private property the County owns that easement and that's a property interest that's separate from the private property that they easement crosses. The easement is called the dominant estate. The property that it goes across is called the servient estate and they're separate things. If the easement ever comes to be owned by the same entity that owns the private property, the easement goes away under what's called the doctrine of merger. So we're going to transfer our – the County's – interests to the BIA. The County's easements to the BIA. We're not transferring any private interest to the BIA and we couldn't transfer any private interests to the BIA.

That kind of leads into the next discussion. Folks, or at least some folks feel that in assigning the County's easements or road rights-of-way to the BIA – and I use the term right-of-way and easement interchangeably because a right-of-way is just a kind of easement. So some people that in transferring or assigning our easements to the BIA there'll be a taking of property and there won't be any taking of property. We're not – by assigning our interest to the BIA we're not enlarging our rights; we're not going to make the rights-of-way wider than they are. Of course we have to come through because I don't know of any deeded easements out there. People keep mentioning deeded easements. I think we're going to be dealing mostly if not entirely with prescriptive easements. So we have to – since they're not described legally in a deed, we're going to go through and survey those easements. We're going to work with the landowners in doing that. We're going to look in the record if there are any granted easements and somebody asked if there's any restriction on transferring a deeded easement to the BIA, and the answer to that is no, unless the deed itself contains a restriction. And like I say, I haven't seen any deeds involving these County Roads and I would be very surprised if there was any restriction on the County's ability to assign that easement to a third party, to the BIA.

Now, on pueblo lands, wherever these roads cross pueblo lands, that's an entirely different area of law there and in those instances it will be the Secretary who's granting BIA the right-of-way, not the County. So together with the Secretary's grants of rights-of-way on pueblo land and the County's grants of its rights-of-way on private land the BIA would then have a continuous line of rights-of-way on both private and pueblo land and those will be incorporated into the tribal transportation network. And that's done – again, I'm talking about Nambe and San Ildefonso only, where that's the structure that we've created in these agreements.

As I said the agreements don't grant, compromise or encroach on any private property, don't grant the County the right to do that, and they couldn't grant the County the right to do that. Now, that's not to say we won't disagree on where boundaries of easements are; that happens all the time, but like I say, we're going to try and resolve those disputes amicably with the landowners and let them see our draft surveys and figure that out case by case.

Lots of questions about utilities, and the agreements – as I've said at many public meetings, since 2004 the County has not issued road cut permits to utilities unless the pueblos consent. Now, under these agreements we're not even going to issue road cut permits anymore. The pueblos will have jurisdiction to grant easements for utilities on

pueblo land. Nothing in this agreement gives the pueblos the right to grant utility easements on private land. These agreements – the memos that I’ve done, I should say, I haven’t had time to give them to all the federal and pueblo representatives. We’re going to do that tomorrow and if they object to anything in here they will come forward and tell us that and if anything I’m saying – if they disagree with anything they have the opportunity to come forward and say, no, we disagree with that. But I suspect they won’t disagree, that nothing in this agreement gives the BIA or the pueblo the right to grant easements on private lands.

The agreements will not affect existing utilities. It will affect new utilities. So where utilities have to be installed along pueblo land, as I said, the pueblo and the BIA will have jurisdiction to make those decisions and that’s including how much to charge, where to put those easements, etc. But they have had – by us not issuing road cut permits without the pueblos consent they’ve essentially had that authority and we’ve recognized that authority since at least 2004. So the agreement’s really not going to change the status quo as to utilities.

Criminal jurisdiction isn’t going to change under these agreements. Civil jurisdiction, because these are going to be BIA roads now, it’s possible the pueblo courts could assert civil jurisdiction over – to resolve disputes involving accidents on BIA roads.

Emergency services won’t change. These agreements aren’t going to prevent or change in any way the ability of the state or local emergency responders to respond to accidents on these BIA roads. The agreements will not prevent or change in any way the ability or right of emergency responders or non-pueblo law enforcement from responding to incidents on private land located within the pueblos.

On gaps, I think Tony’s adequately covered that. We think that the majority of gap issues are going to be resolved by the County constructing Yellow Bird and Blue Dove, according to the alignment that the County and the pueblo have worked out. There are some internal access issues that may arise and there are some outlier properties that aren’t within Yellow Bird, that aren’t next to a County-maintained road or aren’t next to the new Blue Dove. They’re basically along, I think it’s Tunyo Po, which is a tribal road. There’s a few private parcels there. In those cases and in other cases this agreement, we’ll have to work with the pueblos to figure out how to resolve those. But the County is willing to act as a liaison, to work with – first off, to work with the private property owners and secondly to act as a liaison between those private property owners and the pueblo to work out unique issues. But I think probably over 90 percent of the access issues should be resolved by these agreements.

In the short term, for the next five years, County Road 84-C, 84-D and Sandy Way are going to remain open. Things won’t change over night. Those roads will only be closed after Yellow Bird Loop is opened and there’s some discussion that 84-C may stay open longer but that’s not resolved in the agreement. If it takes longer to construct than five years then those roads will remain open until Yellow Bird is actually constructed. The pueblo, in this interim period, the pueblo will grant individuals specific access for \$100 for the first five years and if it last longer than five years, \$100 for each year thereafter until permitted access is available.

I think the way Nambe is going to handle the gap issue has already been covered and it’s covered again in these agreements.

So on the Pojoaque and Tesuque agreements, the memo duplicates some of the prescriptive easement issues, duplicates some of the jurisdiction issues, duplicates some of the emergency services issues and talks about the way gaps are handled, so I don't think I need to go over those more specifically unless you have questions about Pojoaque's and Tesuque's agreements.

CHAIR ROYBAL: Okay, do we have any questions from the Board?
Commissioner Hansen.

COMMISSIONER HANSEN: So I have a question about the short-term access. San Ildefonso will grant access for five years for \$100. Will the title companies accept that as a condition of receiving title insurance? And will the lenders accept that as agreement?

JOHN FOX: Good evening, Commissioner Hansen and Mr. Chair. My name's John Fox. I'm the president-elect of the New Mexico Land Title Association, and in response to the question about whether the title insurance companies and lenders will accept the short-term access grant by San Ildefonso, I think is the one we're talking about specifically. I think it's important to understand, in a general sense, that a title insurance policy, either for an owner or a lender has a general coverage for access. It's an affirmative statement that insurance is granted for access.

In the last few years we've run into issues where we've taken – or the title companies have take a strong stance that access is being excepted to, that that access is not covered because of some of the trespass claims that have occurred. Not in every pueblo but primarily see. So as we move towards completing these agreements it's important to understand that the title industry is committed to a course of action that will grant or that will cover those rights that are important, both for buyers, owners and lenders.

So the way this will work is that there will not be any exception taken to access. There will be exceptions made to the terms of the agreements, because we can't control those terms and as a matter of law we're required to disclose that those agreements are outstanding and that they are a part of the access which we are insuring in a general sense. So we have to make exception for the agreements until the agreements have turned into grants of right-of-way, and then the agreements will most likely go away.

So coming back to your specific question about the San Ildefonso five-year permits and lenders, we will take exception to those and at this point it appears that the process will be that we will request approval from the Superintendent of Insurance to give affirmative coverage with respect to those access issues where we have agreements, or permits or other things of that nature which relate to those gap questions.

And so the only thing that we anticipate being a next step is that we go to the Superintendent of Insurance and seek approval for granting that specific affirmative coverage. And that's a lot of words and I hope I addressed your question but if I didn't I'll try again.

COMMISSIONER HANSEN: So what I'm hearing is that you will grant title insurance with an exception.

MR. FOX: We will issue coverage –

COMMISSIONER HANSEN: You will issue coverage –

MR. FOX: Which includes access. We will make specific disclosure by

