

Rights-of-Way Within the Pueblos of Tesuque, Pojoaque, Nambe and San Ildefonso

December 12, 2017

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Why are we here?

- The Board of County Commissioners adopted Resolution No. 2015-125, which required that the legal status of roads within the exterior boundaries of the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque be resolved prior to ... appropriating funds for the construction costs of the Regional Water System
- The resolution identified some of the following elements:
 - **Settle** Legal Status of Roads
 - **Address** Lender/Title Insurance Industry concerns regarding title insurance, ability to purchase-sell property and the insurance of ingress/egress for properties located within boundaries of Pueblos in the Pojoaque Valley.
 - **Avoid** Costly and Lengthy Litigation
 - **Insure** that the Water Settlement May Be Implemented

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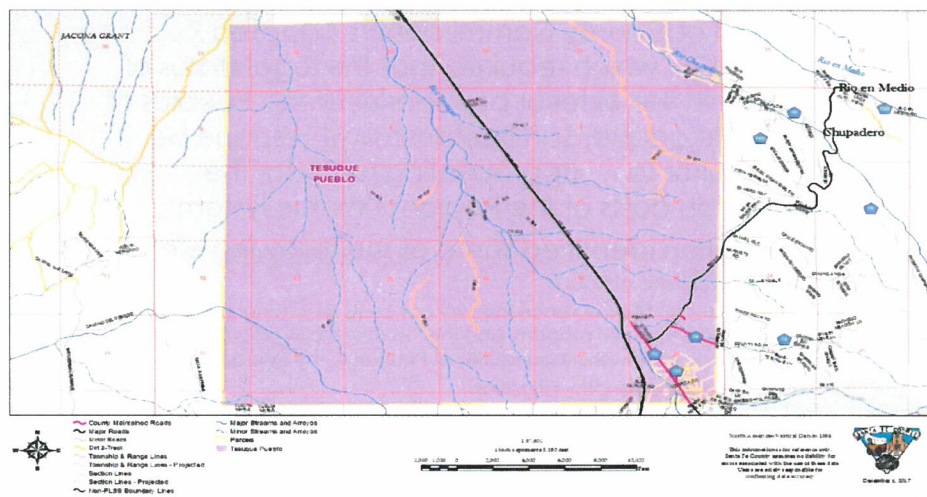
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Existing Conditions

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Pueblo of Tesuque

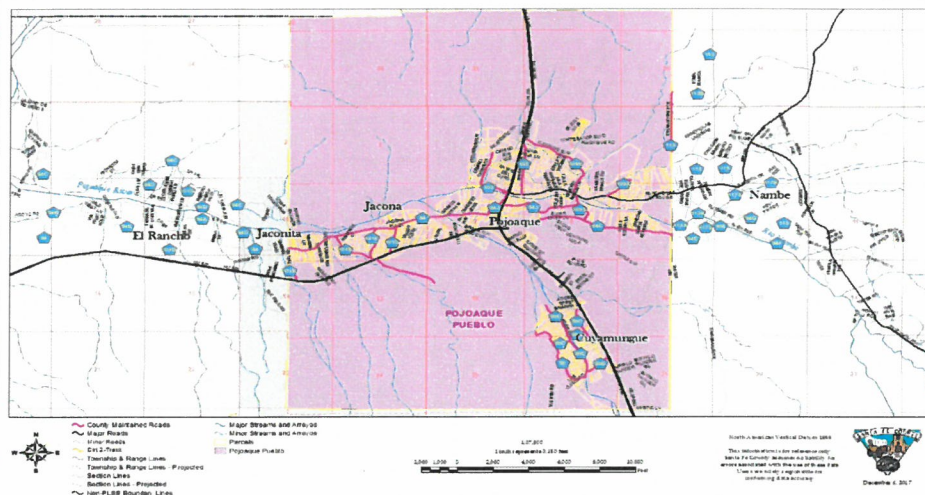


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- County maintains approximately 2.1 miles of roads within the Pueblo.
- County has written perpetual Rights-of-Way for:
 - CR73
 - CR74
- No written Right-of-Way exists for:
 - CR721

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Pueblo of Pojoaque



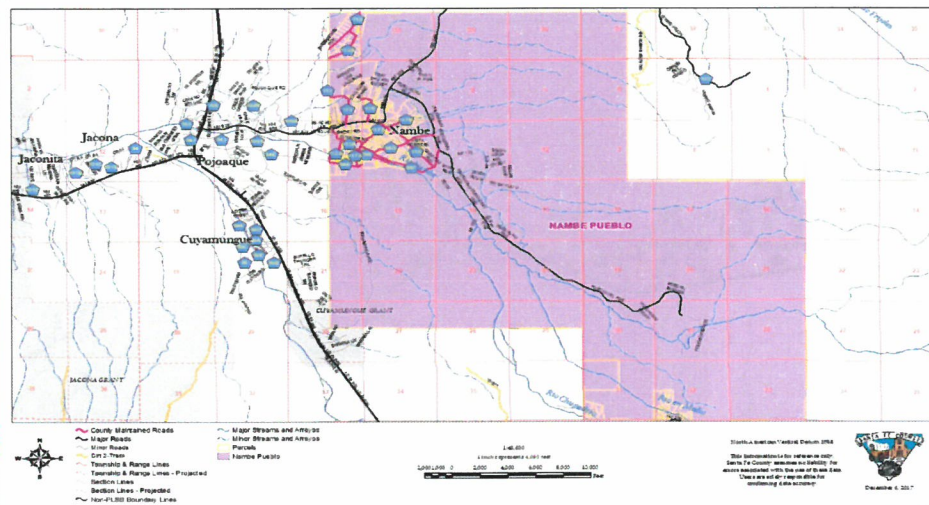
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- County maintains approximately 15.77 miles of roads within the Pueblo.
- No written Rights-of-Way exist for any County-maintained roads within the Pueblo.

- CR84
- CR84E
- CR84J
- CR89
- CR89A
- CR89B
- CR89C
- CR89D
- CR89E
- CR101B
- CR101C
- CR101D
- CR101G
- CR103
- CR105
- CR109
- CR109N
- CR109S

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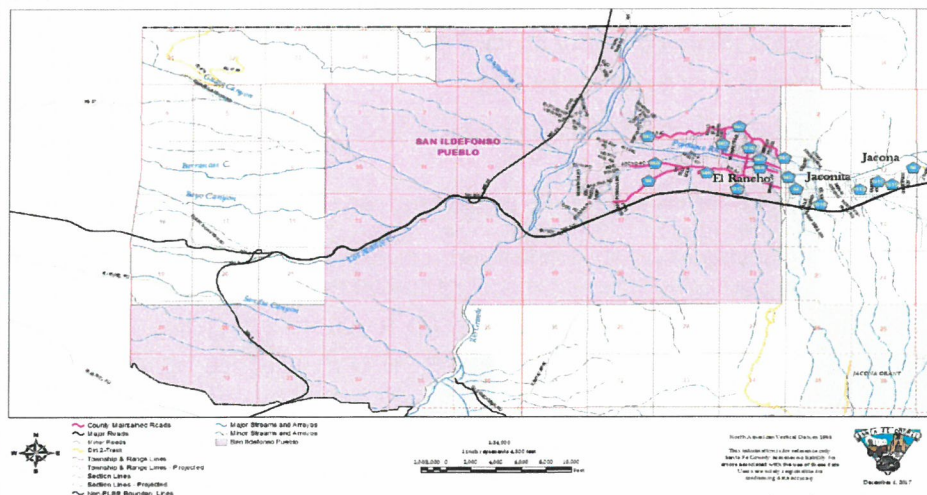
Pueblo of Nambe



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- County maintains approximately 10.17 miles of roads within the Pueblo.
 - County-maintained roads within the Pueblo are currently listed on BIA road Inventory, but no written Rights-of-Way exist.
- CR84E
 - CR84F
 - CR84G
 - CR106
 - CR113A
 - CR113B
 - CR113S
 - CR115
 - CR117N
 - CR117S
 - CR119N

Pueblo of San Ildefonso



- County maintains approximately 9.68 miles of roads within the Pueblo.
- Written rights-of-Way are not complete or comprehensive on the following County-maintained roads within the Pueblo:
 - **CR 84**
 - Written Right-of-Way from NMDOT
 - **CR84 A**
 - **CR84 B**
 - **CR84 C**
 - **CR84 D**
 - **101 D**
 - Written Right-of-Way from NMDOT from State Road 502 to CR84
 - Written Right-of-Way for CR101 D from intersection of CR84 to CR84 D
- Many roads/driveways of convenience are in trespass within the Pueblo.

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How are We Going to Resolve?

- Negotiation of Individual Settlement Agreements with 4 Sovereign Pueblos.
- 2 Options for Addressing Rights-of-Way without litigation:
 - Grant of Rights-of-Way to Santa Fe County and approved by the Bureau of Indian Affairs.
 - Grant of Rights-of-Way to the Bureau of Indian Affairs by the County and Pueblos to place them into the Tribal Transportation Program.
- Establish a process by Pueblo to address gaps of Pueblo Land located between a Public Road and a private lot.

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Proposed Agreements in Principle

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General Conditions

- All Rights-of-Way will be granted for two consecutive 99-year terms – totally of 198 years.
 - Santa Fe County will survey ROW's for placement into the Bureau of Indian Affairs (BIA) Tribal Transportation Program.
 - All roads will remain as Public Roads
 - The Pueblo's or BIA will not permanently close roads during the term of the rights-of-way or remove the roads from the BIA inventory.
 - *On occasion a road may be temporarily closed for cultural purposes as is the current practice.*
- Santa Fe County will maintain all Rights-of-Way within the 4 Pueblos for the term of the agreements, by:
 - Negotiating and entering into a road maintenance agreement with the Bureau of Indian Affairs for the Pueblos of Nambe and San Ildefonso.
 - Utilize the existing County road maintenance program for the Pueblos of Tesuque and Pojoaque.

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- In cases where Pueblo land is located between an Existing Right-of-Way and a non-Pueblo parcel, and this “gap” in ownership prevents lawful ingress and egress to that parcel, the settlement agreements will establish a process by which the non-Pueblo landowner(s) may obtain insurable access across the Pueblo land.

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Pueblo of Tesuque

- Pueblo will consent to the Bureau of Indian Affairs Granting to Santa Fe County a Right-of-Way for CR72I.
- Gap Issue –
 - Not known at this time.
 - Once survey is completed, if any exist, utilize the BIA easement acquisition process to address.

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Pueblo of Pojoaque

- Pueblo will consent to Bureau of Indian Affairs Granting to Santa Fe County Rights-of-Way for all County maintained roads.
- Gap Issue –
 - Pueblo is developing a process of a transferable land assignment for ingress/egress for a term up to 35 years.
 - Provides the ability for the Pueblo to take action on requests timely.
 - Codified within the Pueblo's Law and Order Code.

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Pueblo of Nambe

- Pueblo and Santa Fe County to Grant to the Bureau of Indian Affairs Rights-of-Way for County-maintained roads that are currently listed on the BIA inventory.
- Gap Issue –
 - Pueblo is developing a process of land assignment .
 - Variable issues to be looked at in process including the Herrera Decree of 1935.

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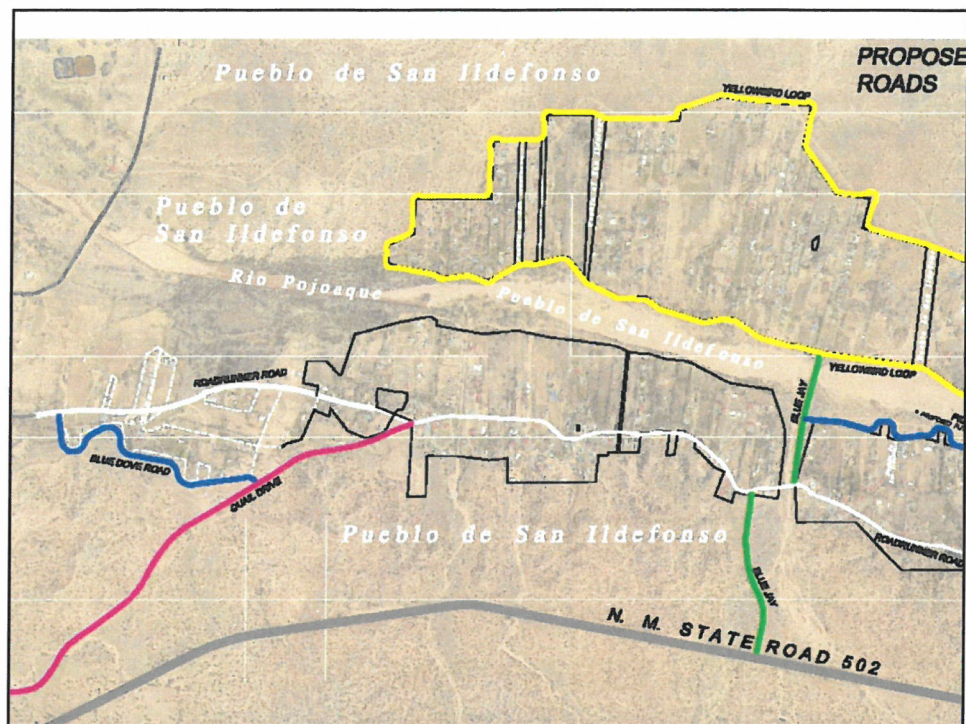
Pueblo of San Ildefonso

- Pueblo and Santa Fe County will grant to the Bureau of Indian Affairs (BIA), Rights-of-Ways for County-maintained roads: 84, 84A, 84B.
 - Santa Fe County will survey CR84, CR84A, CR84B, and CR101D (north of CR84 and South of CR84 D) and these ROW's will be placed into the BIA's Tribal Transportation Program (TTP).
 - The Pueblo will over time rename the public roads.
- County maintained roads located entirely on private land will remain and continue to be maintained by Santa Fe county (CR101/Evergreen; CR84K ...)
- In approximately 2-3 years, the road of convenience located on Pueblo land just south of the Rio Pojoaque and west of CR101 D (not a County maintained ROW) will no longer be accessible.
 - Property owners will be required to begin using a surveyed legal access point.
 - The County will assist in this transition.

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- Gap Issue –
 - In the interim, before the roads are placed in the TTP and a ROW granted, the Pueblo will provide legal access to all private lots through a legislative grant of temporary access from identified ROW's.
 - Grant of temporary access will remain in place for 5 years or until the ROW's are granted
 - Surveys and grants of ROW to BIA will identify access points.
 - The Pueblo may choose to resolve any gap issues along CR84A by undertaking a road realignment.
- County to construct entirely on Pueblo lands, Yellowbird Loop (formerly portions of CR84C, CR84 D, and Sandy Way) and Blue Dove Road (which will serve properties between CR84 and CR84B) within 5 years of agreement .
 - The Pueblo and Santa Fe County will work cooperatively to incorporate the new roads into the BIA TTP.

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FAQ's

- Based upon comments and questions we have received, we have prepared a "frequently asked questions" handout.

- **Why did the County, the Pueblos, and the United States (Settlement Partners) negotiate Right-of-Way Settlement Agreements rather than litigate the roads issue?** *The County, the Pueblos, and the United States agreed that litigation would unnecessarily divide the affected communities for years to come and that, by settling, the Settlement Partners would avoid the uncertainty and great expense of litigation. A negotiated win-win settlement is a far better approach than win-lose litigation to resolve the long-standing debate about the roads on Pueblo land.*

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- **What types of Settlement Agreements were negotiated?** *The County has separately negotiated the key principles of settlement with the United States and each Pueblo. The Settlement Partners are now in the final stages of negotiating four formal Settlement Agreements that will resolve the roads issue on each Pueblo. Although each Settlement Agreement includes unique terms, they also have many terms in common. In addition, the Settlement Agreements can be divided into two general types. Under the Settlement Agreements for the Pueblos of Pojoaque and Tesuque, the Pueblos will consent and BIA will grant the County rights-of-way for County-maintained roads within those Pueblos. Under the Settlement Agreements for the Pueblos of Nambe and San Ildefonso, the County and those Pueblos will grant the BIA rights-of-way for County-maintained roads and place those roads in the Tribal Transportation Program. In all cases, the rights-of-way will be granted for two 99-year terms. In some cases, where there is no dispute that a specific County-maintained road is already subject to an adequate right-of-way, the Settlement Partners agreed that no further grant is necessary.*

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- **Why are there 4 different Settlement Agreements with different approaches?** Each road situation is different on each of the Pueblos. Each Pueblo is a separate government and addressed the roads situation within its lands differently according to the needs of the Pueblo and its community. Each Agreement is tailored to resolve the roads issue within each Pueblo.
- **What is the difference between a Right-of-Way granted to the County by the BIA (the approach taken by the Pueblos of Pojoaque and Tesuque) and a Right-of-Way granted by the County and the Pueblo to the BIA (the approach taken by the Pueblos of Nambe and San Ildefonso)?** The difference is mostly technical, because in both cases the roads in question will remain public roads for generations to come (198 years, at a minimum). The technical difference is that, when BIA grants a road right-of-way to the County, the County obtains an easement across Pueblo land along the surveyed right-of-way route. In contrast, when the Pueblo and the County grant rights-of-way to the BIA, the Pueblo and the County are granting easements to the BIA across Pueblo and private land, respectively. Note that the Settlement Partners agree that the County already has easements through years of public use where the County-maintained roads cross private land.

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- **Can any of these roads be closed by the Pueblos or BIA during the term of the Settlement Agreements?** The Pueblo and BIA will not permanently close the roads during the term of the rights-of-way or remove the roads from the BIA public roads inventory. However, a Pueblo may on occasion temporarily close a road for cultural purposes, as has been done in the past. The Settlement Agreements will not change a Pueblo's policies regarding temporary closures.
- **What is the term of Rights-of-Way and what happens to the roads at the end of the term?** The rights-of-way will be granted for an initial term of 99 years, and will automatically renew for a second 99-year term. At the end of the 198-year period, the rights-of-way for the roads will revert to the party that granted or assigned them, unless the parties otherwise agree at that time.

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- **How do these agreements help me?** *The Settlement Agreements resolve a decades-old problem by making the identified roads unequivocally public roads with continuous lawful public access across both Pueblo and private land, either through grants of rights-of-way to the County or to the BIA. The Settlement Agreements will also resolve the "gap" issues where driveways or access roads cross Pueblo lands, enabling property owners to obtain insurable access to their homes.*
- **Will the Settlement Agreements resolve the ingress and egress issues with the title companies?** *Yes. The Settlement Agreements will provide for long term access to private property off of the identified roads through the grants of rights-of-way, and each Pueblo will establish a long-term process for those properties in which a gap of Pueblo land exists between the property and the road. This will provide a long-term solution to the "gap" issue.*

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- **How do the Settlement Agreements affect my individual rights as a private land owner within the exterior boundaries of a Pueblo?** *Your individual property rights will not be affected. In fact, your property will benefit from this long-term resolution of the roads and "gap" issues, since it is designed to enable property owners to obtain insurable access required to have marketable title and for financing purposes.*
- **Who will maintain the roads?** *Under all four Settlement Agreements, the County will maintain the roads for the term of the rights-of-way, regardless of whether the roads rights-of-way are granted to the County or the BIA.*

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- **How will the Settlement Agreements affect land use issues for my property?** The Settlement Agreements do not address land use issues directly. However, in reviewing and approving new development on private lands within the Pueblos, the County will require the ingress and egress to the subject lot(s) to be consistent with the legal access points established under the Settlement Agreements.
- **How will this affect utilities to my property?** The Settlement Agreements acknowledge that the Pueblos have sole authority to allow the installation of utilities along roads that cross Pueblo lands. However, since at least 2004, the County has required utility companies to obtain Pueblo consent before they install utilities along the County-maintained roads on Pueblo land. Accordingly, the Settlement Agreements should not affect the utilities serving your property.

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- **Why aren't the Right-of-Way Agreements granted in perpetuity?** The County and the Pueblos understand the concern for a long term solution, especially since it affects the ability to obtain title insurance and financing. However, after consulting with representatives of the title insurance industry, the Settlement Partners concluded that two 99-year terms, totaling 198 years, provide long-term stability and enable private property owners to obtain lawful access, title insurance, and financing. In addition, it is common for sovereign entities, including the State of New Mexico, not to grant rights-of-way or other easements across their land in perpetuity.
- **Will my street address change?** As part of the Settlement Agreement, the roads within the Pueblo de San Ildefonso will be renamed by the Pueblo. Your street address will not change right away, however, because the renaming will be done in a phased approach over several years and you may see signs for both the County Road designations and the new road names for a period of time. The renaming will be consistent with E-911 service requirements. Other Pueblos may rename roads within their lands.

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- **Who provides law enforcement on each type of Right-of-Way?** The Settlement Agreements will not change allocation of criminal jurisdiction as between federal, state, and local law enforcement officials over the County-maintained roads. The complicated rules governing law enforcement jurisdiction in Indian Country will continue to apply.
- **Will the Settlement Agreements raise my property taxes or be paid for by a local tax assessment?** No, while the Settlement Agreements impose costs on the County, these costs will be paid entirely from existing revenue sources. The Settlement Agreements will not cause any increase in property or other taxes, will not be funded by a local tax assessment of any kind, and will not be funded by general obligation bonds paid from property taxes.

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Next Steps

- Information including the Frequently Asked Questions (FAQ's) will be posted on County's web page and questions/comments can be emailed to tflores@santafecountynm.gov
- Small town-hall style meetings with residents of the Pojoaque Valley will be held to discuss Agreements in Principles for each respective Pueblo.
 - Meetings will occur in the Pojoaque Valley between December 13, 2017 and January 5, 2018.
- Consideration of 4 Settlement Agreements:
 - January 9, 2018, BCC meeting

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