

**MEMORANDUM
(NOT CONFIDENTIAL)**

Date: January 24, 2018
To: Santa Fe County (County) Board of County Commissioners
Via: Katherine Miller, County Manager
From: R. Bruce Frederick, County Attorney
Subject: Settlement Agreements Concerning County-Maintained Roads (CMRs) within the Exterior Boundaries of the Pueblos of Pojoaque and Tesuque.

The purpose of this memorandum is to address some of the major questions and concerns raised by the public in both written comments and during several public meetings concerning the CMR Settlement Agreements among the County, the Secretary of the United States Department of the Interior (Secretary), and (in separate Agreements) the Pueblo of Pojoaque (Pojoaque) and the Pueblo of Tesuque (Tesuque). The Pojoaque and Tesuque Agreements are addressed in a single memorandum because they are similar in structure. The Settlement Agreements concerning the Pueblo de San Ildefonso and the Pueblo of Nambe are addressed in a separate memorandum.

The purpose of this memorandum is not to repeat the FAQs that the County has already published or cover every provision of the Settlement Agreements. Instead, this memorandum will address specific issues raised by the public and present staff's perspective on these issues. The issues are addressed in outline form under the numbered topics below. This memorandum has been shared with representatives of the Pueblos and the United States, and they have not objected to any of the statements or opinions presented below.

Pojoaque and Tesuque Agreements.

- I. County-Maintained Roads (CMRs) and Prescriptive Easements on Private Land within the Pueblos.**
- A.** Under long-established state law, the traveling public can establish a public road right-of-way, which is a type of easement, simply by using private property as a public road over a period of 10 years. Easements established by use rather than grant are called "prescriptive easements."
 - B.** Dozens of CMRs within the County have been established by prescription, including CMRs that traverse private land within the Pueblos. These prescriptive easements belong to the County and are legally distinct from the private property they traverse. As a general rule, an easement cannot be owned by the owner of the private property that it crosses.
 - C.** Under the Pojoaque and Tesuque Agreements, the County will survey the CMRs and, where they cross Pueblo Land, apply to the BIA for rights-of-way (ROWs) under 25 CFR Part 169. The County already has perpetual ROWs for CMR 73 and CMR 74 within the Tesuque Pueblo, and therefore, the Tesuque Settlement does not address these roads.

- D.** The ROWs granted to the County under 25 CFR Part 169 on Pueblo Land along with the County's prescriptive easements on private land and other grants will provide the County with undisputed title along the entire length of the CMRs within the boundaries of the Pueblos.

II. Private Property.

- A.** The Agreements do not grant, compromise, or encroach on any private property or alter private property rights in any way; nor could they.
- B.** The Agreements do not give, nor could they give, the Pueblos or the BIA the right to grant utility or other easements across private land. (However, public road rights-of-way that traverse private land, including those established by prescription, generally include the right to authorize the installation of utilities within the road rights-of-way.)

III. Jurisdiction.

A. Utilities.

- 1.** The Agreements will not change the jurisdiction over utilities on Pueblo Land. As is currently the case, the Pueblos and BIA will continue to have jurisdiction and authority to determine the terms and conditions under which utility easements may be granted on Pueblo Land.
- 2.** The County will no longer issue road cut permits along the CMRs for utilities after the Agreements are executed. However, since at least 2004, the County has required utilities companies to obtain Pueblo consent before it would grant a road cut permit within the boundaries of the Pueblos.
- 3.** The Agreements will not affect any existing utilities.

B. Criminal Jurisdiction. The Agreements will not change the allocation of criminal jurisdiction as between the State, Federal, and Pueblo authorities.

C. Civil Jurisdiction. The Agreement will not change the civil jurisdiction of the Pueblo courts.

IV. Emergency Services.

- A.** The Agreements will not prevent or change in any way the ability or right of State and local emergency responders to respond to accidents on BIA roads.
- B.** 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.

V. Gaps.

A. Pojoaque.

- 1.** Within 60 days of executing the Agreement, Pojoaque's Tribal Council will amend its Law and Order Code to make non-Pueblo landowners eligible to obtain land assignments from the Pueblo to resolve their access issues. Currently, only Pueblo members may obtain land assignments. The term of the land assignment will be up to 35 years, and it will be transferrable to subsequent purchasers and, in the event of a foreclosure, the lender. Other details will be specified in the Code.
- 2.** Private landowners may also apply for an ROW under 25 CFR Part 169 rather than obtaining a land assignment from the Pueblo.

B. Tesuque.

- 1.** CMR 72I is the only CMR within the Tesuque Pueblo on Pueblo Land that is not subject to an express grant. Any gaps along CMR 72I will be surveyed by the County and submitted as part of its ROW application under 25 CFR Part 169.