

# Implementation of Road Settlement Agreements October 1, 2020

Presented by

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Diego Gomez, Projects Engineer

Gregory S. Shaffer, County Attorney

# Agenda

- Welcoming Remarks (Commissioner Henry P. Roybal)
- Meeting Protocol/Overview (Gary L.J. Giron)
  - Please sign in electronically using the electronic form or chat feature.
  - Please mute yourself when not speaking.
  - Please hold your questions until the end of the presentation concerning a specific Pueblo's Road Settlement Agreement.
  - Property specific questions may be deferred to future meeting or individual follow-up.
  - Email non-Road Settlement Agreement (e.g., Aamodt) questions to [ggiron@santafecountynm.gov](mailto:ggiron@santafecountynm.gov).
- General Overview of Road Settlement Agreements (Gary L.J. Giron)
- Nambe Pueblo Road Settlement Agreement (Ryan Ward)
- Pojoaque Pueblo Road Settlement Agreement (Ryan Ward)
- Tesuque Pueblo Road Settlement Agreement (Ryan Ward)
- San Ildefonso Pueblo Road Settlement Agreement (Gregory S. Shaffer)

# County Point of Contact on Road Settlement Agreements

- Gary L.J. Giron, Public Works Department Director
  - 505.986.6279.
  - [ggiron@santafecountynm.gov](mailto:ggiron@santafecountynm.gov).
- Contact Gary with questions about the Road Settlement Agreements, generally, or with comments and questions on the San Ildefonso Interim Permits.

# What are the Road Settlement Agreements?

- Settlement Agreements between Santa Fe County, the Pueblos of Nambe, Pojoaque, Tesuque, and San Ildefonso, and the U.S. Department of Interior (DOI) to resolve disputes over certain County-maintained roads (CMRs).
- The Road Settlement Agreements were all effective on April 12, 2018, when they were approved by the Secretary of the Interior.

# What do the Road Settlement Agreements do?

- The details of the various Road Settlement Agreements vary, but the macro goals of the Road Settlement Agreements are to:
  - Avoid uncertain, expensive, and lengthy litigation over legal status of CMRs.
  - Provide long-term right-of-ways (ROWs) for CMRs across Pueblo land issued by the DOI with the consent of each respective Pueblo.
    - ROWs are for 198 years, consisting of two consecutive 99-year terms.
  - Ensure that Private Land within the exterior boundaries of the Pueblos have recognized ingress/egress directly or indirectly from a CMR.
- In the Pueblos of Pojoaque and Tesuque, ROWs will be issued to the County and the County will continue to maintain the CMRs.
- In the Pueblos of Nambe and San Ildefonso:
  - ROWs will be issued to the Bureau of Indian Affairs (BIA) both where CMRs cross Pueblo Land (with the Pueblo's consent) and Private Land (by the County);
  - Existing CMRs and new roads (in San Ildefonso) will become BIA Roads; and
  - The County will maintain the roads pursuant to a Road Maintenance Agreement.

# What roads are we talking about?

- In Nambe: CMR 84E, CMR 84F, CMR 84G, CMR 106, CMR 113, CMR 113 South, CMR 113A, CMR 113B, CMR 115, CMR 117 South, CMR 117 North, CMR 119 South, and CMR 119 North.
- In Pojoaque: CMR 84, CMR 84E, CMR 84J, CMR 89, CMR 89A, CMR 89B, CMR 89C, CMR 89D, CMR 89E, CMR 101B, CMR 101C, CMR 101E, CMR 101G, CMR 103, CMR 105, CMR 109N, CMR 109S, and CMR 109A.
- In Tesuque: CMR 72-1.
- In San Ildefonso: CMR 84, CMR 84A, CMR 84B, CMR 84C, CMR 84D, and the Northern Segment of CMR 101D (between CMR 84 and CMR 84D).

# Who did the County hire to survey the ROWs and Access Points?

- Precision Surveys, Inc. is the County's contractor.
- Its duties include:
  - Surveying the ROWs, including Access Points;
  - Preparing a metes and bounds legal description of each segment of the ROWs;
  - Setting ROW Monuments and Reference Markers in the field; and
  - Preparing ROW applications to be submitted to DOI.

# What is the status of the Nambe Pueblo Road Settlement Agreement?

- Survey work is largely complete.
- ROW Reference Markers are already being placed in the field, with the Pueblo's permission.
- Draft ROW applications have been prepared.
  - Parties are working to assess what (if any) “[e]nvironmental and archaeological reports, surveys, and site assessments” will be needed under 25 C.F.R. § 169.102(b)(8) to support the ROW applications.
  - Draft ROW applications must be reviewed by BIA.
  - Final ROW applications must be approved by Tribal Council for submission to DOI.
- Additional remaining steps include:
  - Final public outreach regarding location of ROWs, Access Points, and Gaps; and
  - Finalizing form of County conveyance of ROWs across Private Land and Road Maintenance Agreement.



# What future public outreach will there be for Private Landowners in Nambe Pueblo?

- Virtual and in-person meetings to be offered in October to:
  - Review surveyed Access Point to Private Land from surveyed ROW; and
  - Identify Gaps that will require the Private Landowner to obtain a Gap ROW from the Pueblo.
    - ROW width is 25' from centerline or boundary of Private Land, whichever is less.
    - A Gap ROW is needed if the Private Land boundary is beyond the surveyed ROW.
- Notice of these meetings will be advertised in a variety of ways.
  - Email – subscribe for Commission District 1 news at [www.santafecountynm.gov](http://www.santafecountynm.gov).
  - Newspapers.
  - Physical signs.
  - Possible mailings.
- Individual notice to Private Landowners whose property is burdened by County prescriptive easement for CMR.

# Questions and Answers Concerning Nambé Pueblo Road Settlement Agreement

# Where is the status of the Pojoaque Pueblo Road Settlement Agreement?

- Survey work is largely complete.
  - Survey must be reviewed by Pueblo.
- Draft ROW applications have been prepared.
  - Draft ROW applications must be reviewed by Pueblo and BIA.
  - Final ROW applications must be approved by Tribal Council for submission to DOI.
- Additional remaining steps include final public outreach regarding location of ROWs, Access Points, and Gaps.

# What future public outreach will there be for Private Landowners in Pojoaque Pueblo?

- Virtual and in-person meetings to be offered this year to:
  - Review boundaries of ROW; and
  - Identify Gaps that will require the Private Landowners to obtain a land assignment from the Pueblo or individual ROW from DOI.
    - ROW width is existing driving surface plus 4' on either side or boundary of Private Land (or Assigned Pueblo Land), whichever is less.
    - A Gap land assignment or ROW for ingress/egress is needed if there is a gap of Pueblo Land located directly between Private Land and Public Road.
- Notice of these meetings will be advertised in a variety of ways.
  - Email – subscribe for Commission District 1 news at [www.santafecountynm.gov](http://www.santafecountynm.gov).
  - Newspapers.
  - Physical signs.
  - Possible mailings.

# Questions and Answers Concerning Pojoaque Pueblo Road Settlement Agreement

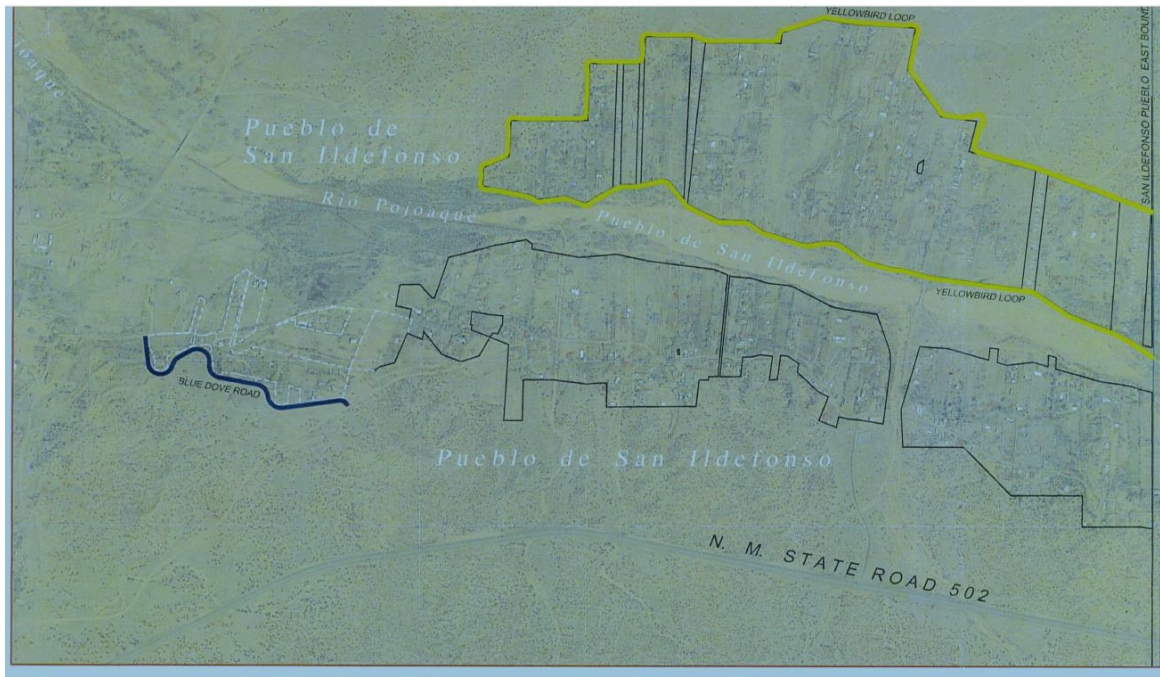
# Where is the Status of the Tesuque Pueblo Road Settlement Agreement?

- County's surveyor discovered errors in Bureau of Land Management (BLM) surveys for area.
- Errors in BLM surveys must be corrected before ROW survey can proceed.
- Timeframe for ROW Application TBD.

# Questions and Answers Concerning Tesuque Pueblo Road Settlement Agreement

# What are the New Roads in San Ildefonso?

- "Yellowbird Road," which will replace CMR 84C, CMR 84D, and Sandy Way where those roads cross Pueblo Land; and
- "Blue Dove Road," which will connect CMR 84 and CMR 84B.





# What is the status of the San Ildefonso Pueblo Road Settlement Agreement?

## *Yellowbird Road and Blue Dove Road*

- Current focus is on Yellowbird Road.
  - Pojoaque Basin Regional Water System (RWS) water lines will be placed in Yellowbird Road ROW.
  - County construction of Phase 1 of Yellowbird Road can save significant construction costs for RWS.
- What might change from Road Settlement Agreement with regard to Yellowbird Road and Blue Dove Road?
  - Settlement Agreement calls for driving surface of both roads to be basecourse.
    - Parties have tentatively agreed that final driving surface will be 4" of recycled asphalt pavement and a single layer of chip seal.
  - Settlement Agreement calls for Yellowbird Road to be constructed after utilities have been installed.
    - Parties are contemplating constructing Yellowbird Road in phases.
    - Phase I will be constructed before utilities are installed and have subgrade as final driving surface.
    - Phase II will be constructed after utilities are installed with final driving surface described above.

# What is the status of the San Ildefonso Pueblo Road Settlement Agreement, cont.?

## *Yellowbird Road and Blue Dove Road*

- Engineer is finalizing design of Yellowbird Road.
  - Final design must be approved by County, Pueblo, and BIA.
- Survey work for Yellowbird Road is largely complete.
  - Survey must be reviewed by San Ildefonso and BIA.
  - Public outreach concerning Access Points to follow.
- County is procuring environmental and archeological assessment services to support ROW applications for both New Roads.
- ROW applications must be prepared, draft reviewed by Pueblo and BIA, and final version approved by Tribal Council.
- Road Maintenance Agreement between BIA, Pueblo, and County must be negotiated.
- Construction of Phase 1 of Yellowbird Road hoped for in 2021, in coordination with RWS construction.
  - This requires that ROW for Yellowbird Road be granted prior to construction.

# What is the status of the San Ildefonso Pueblo Road Settlement Agreement, cont.?

## *Yellowbird Road*

- Additional public outreach concerning Yellowbird Road.
  - Virtual and in-person meetings to be offered in October and/or November to:
    - Review surveyed Access Point to Private Land from surveyed ROW; and
    - For those lots that do not have a surveyed Access Point directly from a surveyed ROW, review access from non-BIA public roads and easements.
  - Notice of these meetings will be advertised in a variety of ways.
    - Email – subscribe for Commission District 1 news at [www.santafecountynm.gov](http://www.santafecountynm.gov).
    - Newspapers.
    - Physical signs.
    - Possible mailings.
- Individual outreach to Private Landowners with unique access issues.

What is the status of the San Ildefonso Pueblo Road Settlement Agreement, cont.?

*CMR 84, 84A, CMR 84B, and the Northern Segment of CMR 101D*

- Timeframe for ROW Applications for CMR 84, 84A, CMR 84B, and the Northern Segment of CMR 101D TBD.
  - Deadline for all ROW applications is April 12, 2023.
  - Do not anticipate any issues in meeting that deadline.
  - Additional public outreach will be scheduled concerning those roads as project advances.

# What are the San Ildefonso Interim Permits?

- They generally authorize Private Landowners to use CMRs for ingress/egress and the continued maintenance of CMRs by the County.
- They are being called “Interim Permits” because, subject to their potential extension and the location of the underlying property, they expire on April 12, 2023, or when the New Roads are open to the public or ROWs are issued for CMR 84, 84A, CMR 84B, and the Northern Segment of CMR 101D, whichever occurs first.
  - San Ildefonso Governor is authorized to grant extensions.

# What does the San Ildefonso Settlement Agreement say about the Interim Permits?

Section 9 of the Settlement Agreement provides that the Pueblo will:

- Grant the County a temporary public road permit for CMR 84C, CMR 84D, and Sandy Way;
- Provide legal access to all Private Land through a legislative grant of temporary access; and
- Grant specific temporary access across Pueblo Land to individual landowners seeking such specific access.

To implement Section 9 of the Settlement Agreement, the Pueblo enacted the *Interim Road Access Authorization Act of 2018*.

In addition to Section 9, the Settlement Agreement also provides that:

- “[b]etween the Effective Date and the date of the execution of the [Road Maintenance Agreement] described below, the County shall continue to maintain [CMR 84, CMR 84A, CMR 84B, and the Northern Segment of CMR 101D]” [Settlement Agreement, Section 11(A)]; and
- The Pueblo will “[t]imley issue permits and such other authorizations as may be necessary for the County to work lawfully on Pueblo Land.” [Settlement Agreement, Section 2(B)(3).]

Consistent with these provisions, County staff requested, and the Pueblo agreed to issue, a permit authorizing the County to enter on Pueblo lands for the purpose of maintaining CMR 84, CMR 84A, CMR 84B, and the Northern Segment of CMR 101D.

# San Ildefonso Interim Permits

## *Temporary, Global Public Road Access Authorization for Private Landowners*

Among other things, this Interim Permit would:

- Apply to all CMRs – i.e., CMR 84, CMR 84A, CMR 84B, the Northern Segment of CMR 101D, CMR 84C, CMR 84D and Sandy Way (Section 3);
- Grant temporary access over Pueblo Land to private landowners and their invitees who access their property from an existing identified Access Point or Common Access Point off of a CMR (Section 3);
- Require a private landowner to obtain the Pueblo's and County's approval prior to changing their existing Access Point or Common Access Point (Section 5(a)-(b));
- State that the Interim Permit, and the use of the identified roads as public roads, does not confer, grant or recognize any property right or property interest to any entity, private landowner, or individual (Section 5(c));
- Recognize that there may be occasions where the Pueblo may temporarily close portions of the identified roads for cultural purposes, requiring the Pueblo to provide as much advance notice as possible of such temporary closures (Section 5(d)); and
- Authorize the Pueblo Governor to revoke a grant of temporary access to a particular landowner if the Governor determines that the private landowner has not materially complied with, or is not in material compliance with, any terms of Interim Road Access Authorization Act of 2018, or the Interim Permit. Prior to revoking temporary access to a particular landowner, however, the Governor would be required to provide the private landowner with written notice of non-compliance and that the private landowner shall have a reasonable opportunity to cure the non-compliance prior to temporary access being revoked (Section 5(e)).

# San Ildefonso Interim Permits

## *Temporary, Global Public Road Access Authorization for Private Landowners, cont.*

- This Interim Permit is generally applicable to all Private Landowners.
  - It does **NOT** list individual Private Landowners.
  - It does **NOT** identify specific Private Land.
- Private Landowners do **NOT** have to apply for this Interim Permit.
  - The San Ildefonso Governor will issue it automatically.
- There is no fee for this Interim Permit.



# San Ildefonso Interim Permits

## *Property Specific Temporary Public Road Access*

### *Permit Issued to Specific Individual Landowner*

Among other things, this Interim Permit would:

- Be issued to an individual private landowner at the landowner's request and upon payment of a \$100 processing fee (Section 4);
- Identify the property owner, the property, and the CMR used to access the property (Sections 1 and 3);
- Require a private landowner to obtain the Pueblo's and County's prior approval prior to changing their existing Access Point or Common Access Point (Section 5(a));
- NOT authorize access to the identified private property or any other private property over any Pueblo Land from any unauthorized roads of convenience, or from anywhere other than the identified Access Point or Common Access Point (Section 5(b));
- State that the Interim Permit, and the use of the identified roads as public roads, does not confer, grant or recognize any property right or property interest to any entity, private landowner, or individual (Section 5(c));
- Provide that it is not transferable, meaning that it terminates upon the property being sold or transferred but allows the new property owner to apply for a Temporary Public Road Access Permit in accordance with *Interim Road Access Authorization Act of 2018* (Section 5(d));
- Recognize that there may be occasions where the Pueblo may temporarily close portions of the identified roads for cultural purposes, requiring the Pueblo to provide as much advance notice as possible of such temporary closures (Section 5(e)); and
- Authorize the Pueblo Governor to revoke a grant of temporary access to a particular landowner if the Governor determines that the private landowner has not materially complied with, or is not in material compliance with, any terms of Interim Road Access Authorization Act of 2018, or the Interim Permit. Prior to revoking temporary access to a particular landowner, however, the Governor would be required to provide the private landowner with written notice of non-compliance and that the private landowner shall have a reasonable opportunity to cure the non-compliance prior to temporary access being revoked (Section 5(f)).

# San Ildefonso Interim Permits

## *Property Specific Temporary Public Road Access Permit Issued to Specific Individual Landowner, cont.*

- This Individual, Property Specific Interim Permit is only issued upon request of a Private Landowner.
  - It DOES list individual Private Landowners.
  - It DOES identify specific Private Land.
- Each individual Private Landowners will have to decide whether they want or need this Individual, Property Specific Interim Permit.
  - This Interim Permit is not required.
  - Individual decision of whether to obtain.
- There is a \$100 processing fee for this Individual, Property Specific Interim Permit.

# San Ildefonso Interim Permits

## *Temporary Public Road Permit to the County for CMR 84C, CMR 84D, and Sandy Way*

Among other things, this Interim Permit would:

- Temporarily authorize (a) continued public use of CMR 84C, CMR 84D, and Sandy Way, (b) access by private landowners and their invitees from CMR 84C, CMR 84D, and Sandy Way, and (c) continued maintenance of CMR 84C, CMR 84D, and Sandy Way by the County, at its sole expense, within the boundaries of the Pueblo de San Ildefonso (Section 2);
- Prohibit private landowners from changing their existing Access Points without the Pueblo's and County's prior approval (Section 5(b));
- Require the County to comply with all applicable Tribal and Federal laws and regulations (Section 6(a));
- Provide that the County will be responsible for any damage to roads, persons and property caused by, or arising from Permittee's operations or activities relating to this Permit; provided, however, that Permittee's liability to third-parties shall be subject to and limited by the New Mexico Tort Claims Act and other applicable law (Section 6(b));
- Require the County to remain within designated areas for the identified roads, meaning that the County's road maintenance activities cannot enlarge the existing roadways or change the locations (Section 6(c));
- Require the County to immediately notify the Pueblo in the event of discovery or disturbance of any cultural matter and prohibit the County from removing any cultural mater (Section 6(d));
- Require notification of the Pueblo's Realty Office of scheduled maintenance (Section 6(e));
- Acknowledge that there may be occasions where the Pueblo may temporarily close portions of the roads for cultural purposes, requiring the Pueblo to provide as much advance notice to the County as possible of such temporary closures (Section 6(g));
- Authorize the revocation of the permit, including temporary access granted to private landowners, only in the event of material non-compliance with any terms of the *Interim Road Access Authorization Act of 2018*, the Settlement Agreement, or the Interim Permit and only after written notice of material non-compliance and a reasonable opportunity to cure (Section 6(h)); and
- State that the Permit is not intended to modify or amend the Settlement Agreement (Section 6(i)).

# San Ildefonso Interim Permits

## *Permit to County for Maintenance of CMR 84, CMR 84A, CMR 84B, and the Northern Segment of CMR 101D*

Among other things, this Interim Permit would:

- Grant the County the right to maintain these roads;
- Require the County to comply with all applicable Tribal and Federal laws and regulations (Paragraph 1);
- Recognize that the County is responsible for damage caused by our operations, subject to liability limitations in the New Mexico Tort Claims Act and other applicable law (Paragraph 2);
- Require the County to remain within designated areas for the roads, meaning that the County's road maintenance activities cannot enlarge the existing roadways or change the locations (Paragraph 3);
- Prohibit the County from removing, disturbing or damaging any cultural matter and requires the County to notify the Pueblo in the event of discovery or disturbance (Paragraph 4);
- Require notification of the Pueblo's Realty Office of scheduled maintenance (Paragraph 5);
- Recognize that the Pueblo may temporarily close portions of the roads for cultural purposes, requiring as much advance notice as possible of any such temporary closures (Paragraph 6);
- Provides the permit may be revoked upon material non-compliance by the County, which has not been cured after notice and a reasonable opportunity to cure (Paragraph 7); and
- States that the Permit is not intended to modify or amend the Settlement Agreement (Paragraph 8).

# Board of County Commissioners Consideration of San Ildefonso Interim Permits

- Board of County Commissioners is currently scheduled to consider Interim Permits at its October 13, 2020, regular meeting.
- This public outreach is being conducted in advance to:
  - Inform public of the San Ildefonso Interim Permits and their contents;
  - Answer questions concerning the San Ildefonso Interim Permits; and
  - Take feedback on the San Ildefonso Interim Permits, so that it can be considered before the October 13, 2020, meeting.

# Questions and Answers Concerning San Ildefonso Road Settlement Agreement and Interim Permits