

September 15, 2008

Gregory L. Heitmann, Environmental/ Realty Specialist
Federal Highway Administration, New Mexico Division
4001 Office Ct., Ste. 801
Santa Fe, New Mexico 87505

Dear Mr. Heitmann,

This letter and attachment constitute the Hopi Tribe's response to the *Transportation Needs Assessment Phase A/B Reports (Phase A/B Reports) for San Juan County (SJC) Road 7950* prepared by URS Corporation. As you know, CR 7950 is the main access road to Chaco Culture National Historical Park (Chaco), a World Heritage Site. The Hopi Tribe claims cultural affiliation to prehistoric cultural groups in New Mexico, Chaco, and this project area, and Chaco, *Yupqoyvi*, the Place Beyond the Horizon, is a Traditional Cultural Property of the Hopi Tribe.

The Hopi Cultural Preservation Office shares the concerns expressed by the Chaco Superintendent at the Cooperating Agencies' meeting on August 21, 2008 and in Chaco's review of these Phase A/B Reports regarding finalizing these Reports prior to consultation with Cooperating Agencies or the public. This lack of consultation and review compounds our concerns regarding the lack of previous consultation by SJC and the New Mexico Department of Transportation (NMDOT) on what we continue to consider to be an ongoing project.

Therefore, we appreciate FHWA's reconsideration of the finalization of these Reports and the opportunity for Cooperating Agencies to review and comment on them. We join Chaco in hoping whatever compliance documents are subsequently prepared will take into account their comments and questions, and ours.

As we stated at the Cooperating Agencies meeting, we are concerned that federal funding has been used to develop two apparently competing transportation studies for CR 7950. The FHWA was aware of the existing 2005 draft National Park Service (NPS) Transportation Analysis of CR 7950 by Dr. Jonathan Upchurch. These Phase A/B Reports appear to have been developed at least in part to contradict that analysis.

Based on the Chaco's and Dr. Upchurch's comments on these Phase A/B Reports, it is clear they were not consulted in their development. As we also stated previously, we believe the FHWA should be working on proposed improvements to CR 7950 not only with SJC and its contractor, but also with Chaco and not against it.

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We support the Comments and Questions Summary Document On

Transportation Needs Assessment by Chaco on these Phase A/B Reports, as well as the accompanying reviews by Dr. Upchurch. Therefore, we strongly recommend that the FHWA reconcile these Phase A/B Reports with the 2005 draft NPS Analysis and Chaco's review of these Phase A/B Reports before including inaccurate, or conflicting and contradictory data in an Environmental Assessment. The independent finalization of these two competing federally funded studies is likely to further polarize a process already complicated by SJC's and NMDOT's lack of consultation and segmentation.

We support improvements to CR 7950 that would balance local needs with the need to protect this Place Beyond the Horizon and World Heritage Site. We support the Navajo Nation providing a protective buffer for Chaco by maintaining the existing trespass road in its existing condition, and we support an Environmental Assessment for improvements including improved signage, fencing, drainage, and surface. We do not support paving or a bridge over the Escavada Wash. If the chip seal alternative with a bridge is proposed for the project area from the highway to the Park, we reiterate our request for a Draft Environmental Impact Statement to assess the potential adverse effects to Chaco.

If you have any questions or need additional information, please contact Terry Morgart, Legal Researcher at tmorgart@hopi.nsn.us. Thank you for your consideration, and we look forward to your timely response.

Respectfully,

Signed

Leigh J. Kuwanwisiwma, Director
Hopi Cultural Preservation Office

Enclosures: HCPO letters to SJC, June 1, 2006; NMDOT, September 5, 2006, FHWA, August 27, 2007
SHPO letter to NMDOT, August 20, 2007

xc: Tony Joe, Ron Maldonado, Navajo Historic Preservation Department, P.O. Box 4950, Window Rock, AZ

Barbara West, Chaco Culture National Historical Park, P.O. Box 220, Nageezi, NM 87037

Governors, 19 New Mexico Pueblos & Yselta del Sur

Bill Richardson, Governor, Capitol Building, 4th Floor, Santa Fe, New Mexico 87503

Becky Gear, Director of Constituent Services, Office of the Governor

Representative Tom Udall, State of New Mexico, Santa Fe, New Mexico

John Taschek, 8901 Adams, St. NE Ste. D, Albuquerque, NM 87113-2701

Rhonda G. Faught, Blake Roxlau, NMDOT, P.O. Box 1149, Santa Fe, NM 87504-1149

Dr. Jim Henderson, San Juan County Commission, 305 South Oliver Drive, Aztec, New Mexico 87410

David P. Keck, San Juan County Public Works, 100 South Oliver Drive, Aztec, New Mexico 87410

Linda Rundell, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502-0115

Joel Farrell, BLM, Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401

Katherine Slick, State Historic Preservation Office, 407 Galisteo, Suite 236, Santa Fe, NM 87501

Background

Since June 1, 2006, the Hopi Tribe has stated and reiterated our interest in and

concerns about potential impacts of the completed and proposed improvements to CR 7950 on cultural resources to SJC, the NMDOT, and FHWA. As we stated in the enclosed letters to SJC dated June 1, 2006, NMDOT dated September 5, 2006, and FHWA dated August 27, 2007, a critical issue related to this proposal is a significant increase in visitation to Chaco that can be expected as a result of this project.

Our letters outline our concerns, supported by the enclosed letter dated August 20, 2007, from New Mexico State Historic Preservation Office, regarding the issues of compliance and segmentation raised by the paving of the first three miles of CR 7950. We understand SJC and NMDOT began these improvements without compliance with the National Historic Preservation Act and other relevant legislation and that Representative Udall's Congressional earmark of \$800,000 through the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, has continued the project.

The conclusion drawn on page six of the Transportation Needs Analysis that "the 2006 San Juan County project is not considered to be a connected action" is inconsistent with our ongoing position, and is a determination to be made by the State Historic Preservation Office, and not URS, SJC, NMDOT, or FHWA. We have documentation that SJC met with Chaco in 2004 and informed them of SJC's intent to pave all sixteen miles of CR 7950. The questions in our August 27, 2007, letter have not been satisfactorily answered. Therefore, we continue to consider the proposed improvements under the auspices of FHWA to be a continuation of the portion of the project already implemented by NMDOT and SJC.

We believe that at a minimum, the awareness of these facts and questions should have led FHWA to produce an independent and consistent approach to a proposal that is highly sensitive and impacts a site that is both a World Heritage Site and a sacred site to many Native American people.

At the August Cooperating Agencies' meeting, we requested, and reiterate here our request that the NPS finalize their 2005 draft Analysis. This draft Analysis lists negative impacts to fragile sites, infrastructure, and the quality of the visitor experience, as well as the inability of the staff to deal with the increased visitation if the road is chip sealed. We appreciate that Chaco contracted with Dr. Upchurch to review these Phase A/B Reports because of his specific expertise as a transportation engineer and because his work was referenced in these Reports.

Review of Transportation Needs Analysis County Road 7950, San Juan County, New Mexico, June 2008 Final Report

Executive Summary & Purpose and Need Statement

Reducing maintenance appears to be the most important purpose to SJC according to the

Phase A/B Reports. We agree with Chaco's review of these Phase A/B Reports in that they fail to demonstrate that safety is the overriding purpose. We also agree with Chaco's review questioning the validity of the "increasing" requests for maintenance as a basis for the need for the project. And we further agree with Chaco's review questioning the "legislative mandate" for specific improvements to CR 7950.

The first page assumes in Purpose and Need that "roadway safety enhancement" is a need. Like the Chaco response, including the review by Dr. Upchurch, we question the purpose and need of the project as a legislative mandate. We have found from previous experiences that safety emerges in the National Environmental Policy Act (NEPA) process as a purpose and need when inconvenience is found to be an inadequate justification or when a proposed purpose and need meets with resistance. After all, everyone supports safety.

We understand that SJC does no regular maintenance on CR 7950, and only maintains the road when there are requests and complaints. In spite of repeated requests from several parties to include an alternative for regular maintenance in this proposal, it is apparently still not an alternative under consideration. We hereby again support the evaluation and assessment of a regular maintenance alternative.

We understand 3,500 have been received from interested parties across the country, and we conclude the public involvement process resulting in these comments is that the proposal is highly controversial because of its potential effects, some of which may be adverse, to this world Heritage Site. How many of these 3,500 comments support the proposed paving of CR 7950 from the highway to the Park and how many oppose any improvements?

Project Background and Study Process

Based on these Phase A/B Reports, and Chaco's review of them, there is a serious lack of consensus on methodology and factual statistical data. These Phase A/B Reports seem to not appreciate the 2005 draft NPS Analysis' use of "Peer Parks" to determine visitation trends, and Chaco's review of the Phase A/B Reports seem to not appreciate URS's methodology and statistics. According to Chaco's review, these Phase A/B reports offer numerous instances of inconsistent research and unsupported assumptions.

On page 4, Figure 2.1, the total length of the study area is about 16 miles, with 12.59 miles proposed for improvements by FHWA, and the difference having already been paved by SJC and NMDOT without consultation or compliance.

On pages 6, 11, and throughout the Phase A/B Reports are statements that the "County Commissioners deem the roadway to be a liability." The Phase A/B Reports apparently accept these statements as fact but then proceed to produce evidence to discredit them. In fact, the Phase A/B Reports state that accidents reported on CR7950 are few in number, the traffic volumes are described as low, and these Phase A/B Reports

acknowledge that "conclusions cannot be drawn from this data." Further, there is no evidence presented of any lawsuits ever been filed against

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SJC because of the condition of CR 7950.

Is this perceived liability increased because SJC provides no regular maintenance? We join Chaco's review in asking what the liability risk is compared to other unpaved county roadways, and what are the accident rates on those roadways compared to CR 7950? What evidence is there to support significant thresholds of hazard or liability for SJC?

Chaco's review states that

there has been no demonstration of SJC's commitment to provide "safe and efficient accommodation for public travel" in the recent past...

If anything, the condition of the road has significantly deteriorated since the paving of the road was proposed. There does not seem to have been obvious demonstration of commitment to maintaining the roads...

Its strategy appears to be to eliminate any costs for maintenance and externalize the capital improvement costs of the road...

Obtaining federal funds for improvements to the road should not relieve the county of its obligation to maintain the road.

Chaco's review indicates that a speed limit has been posted that may be higher than the design speed of the road, and suggests that a road with appropriate speed limits that appears to be unsafe may in fact reduce speed. On page 32, the Phase A/B Report confirms that a chip seal treatment "would likely encourage higher travel speeds, which commonly increases the potential for accidents."

On pages 8 and 9, the section on Agency Coordination includes tribal coordination with only the Navajo Nation. There are at least 24 tribes that have traditional cultural associations with Chaco Canyon who should be consulted on a government to government basis. The Hopi Tribe has requested such consultation from SJC, NMDOT, and FHWA since June 1, 2006. Therefore, we hereby reiterate our repeated requests for FHWA to host a meeting of the Chaco Native American Consultation Committee as soon as possible, and prior to the finalization of alternatives for a draft environmental assessment.

We are not in a position to mediate the vast discrepancies in visitation between in the Phase A/B Reports and the 2005 NPS analysis and Chaco's review of it, other than to note that Chaco's review includes comments such as:

By using the 1993-2004 numbers, traffic volumes are significantly inflated....

The estimate of 71,491 as average visitation used in the document is almost twice the average visitation...

3.4, It appears that the 282 vehicles per day reported on page 15, the traffic volumes reported in Table 3.4, the traffic volumes reported in Figure 3.2, and the 270 vehicles reported on page 16 are probably high by a factor of two.

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Chaco's review states:

We hope to be able to provide a follow-up to the study in the near future. Until those new data are available, we suggest none of these faulty extrapolations and assumptions be used.

The NPS has been counting its visitation for decades. URS apparently compiled a week of traffic counts, that does not provide an adequate basis for assessing traffic volumes. Therefore, we recommend the FHWA adopt the NPS visitation statistics and projections and scrap the visitation numbers and projections created by URS.

Chaco's review states that the Park has expressed concern about the potential effects of serving an increased number of large groups however they arrive at the Park, because the park infrastructure is not suited to serving large numbers of people simultaneously.

If the road improvements result in an increase in the number of large groups to the park, we will have to take some steps to assure that the park's resources continue to be protected and the quality of the visitor experience does not decline.

In response to page 23 and its description of CR 7950 providing direct and indirect access to local residences, we are interested in Dr. Upchurch's suggestion that local residences tend to be located toward the northeast end of the 12.59 mile unpaved road segment, and that this could potentially lead to a different level of improvements toward the northeast end of the road, serving the residents, and a different level of improvements for the remainder of the road. We have consistently supported improvements for the residents while simultaneously supporting protection for the park. We continue to believe that these two purposes and needs are not mutually incompatible.

Surprisingly, the Phase A/B Reports conclude that the projected fiscal outlay to maintain a chip sealed CR 7950 is over \$720,000 more over a twenty year period than for the current unpaved road. Even if SJC made the decision to provide regularly scheduled maintenance beyond its current policy of "as needed" corrective maintenance, and even with a maintenance expense increase of as much as 30% per year, the twenty year maintenance expense would still fall almost \$600,000 short of the chip seal alternative. In addition, Dr. Upchurch's review notes that it is worth emphasizing that a chip seal surface can fail and provides examples on CR 7900.

Large international groups have increased this year at the Grand Canyon and other areas due to the currency exchange rate. Many large international groups visit Mesa Verde. We agree with the Chaco review that the Phase A/B Reports "assertions that visitation is unlikely to increase as a result of the project are not based on rigorous analysis of defensible data."

As we have stated previously, access to Chaco will provide international access to large groups via Albuquerque International Airport and tour bus, to a destination that is overwhelmed by 50 people arriving at the same time. Chaco states that they do not have the ability to "schedule" commercial groups.

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**Review of Technical Memorandum entitled
Estimated Changes in Visitation Patterns at CCNHP as a Result of Improving CR
7950,
April 2008**

The Park and Upchurch's review indicates that:

The model developed in the Technical Memorandum is based on an insufficient sample size for it to be reliably used in predicting future visitation at Chaco...The shortcomings of the model described in the Technical Memorandum are such that little confidence can be placed in the predictive ability of the model for the Chaco setting...

and provides additional details to support this comment.

The Park and Upchurch's review concludes:

There are so many weaknesses in the five sample parks that great doubt is cast on the model that is subsequently developed in the Technical Memorandum. In my professional opinion, that model should not be relied on in preparing an environmental assessment for County Road 7950 or for other decision making.

and reiterates:

The conclusions on future visitation levels are based on a model that has no confidence. These projects should not be used in the Environmental Assessment and should not be used for other decision-making processes.

The 2005 draft NPS Analysis by Upchurch states:

Based on experience at other Park Service units, it is anticipated that improved access may lead to increased visitation to Chaco.

If a comparison to Mesa Verde National Park, another remote World Heritage Site but with easy motorized access, were to be made, to us, this conclusion is self evident. Given the revised visitation numbers presented in the Chaco review, Mesa Verde

has visitation fourteen times the visitation of Chaco. Even if the paved road is only part of this differential, Chaco would be in for a huge visitation increase if the road is chip sealed.

We believe the NPS visitation statistics and projections on visitation should be applied to the proposed improvements to CR 7950, and the *Technical Memorandum entitled Estimated Changes in Visitation Patterns at CCNHP as a Result of Improving CR 7950, April 2008* should be scrapped or modified to reflect the NPS statistics and projections on visitation.

URS characterize stakeholders as expressing "sentimentality", "disdain for any type of change," and of offering "no basis" for a visitation model. Many stakeholders have in fact taken the time to read the Upchurch study, citing it as the basis for their opinions. And many have always suggested limited improvements, but opposed chip sealing

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The Technical Memorandum goes into great detail in an effort to discredit the draft 2005 NPS Analysis, beginning with a paragraph on deterrence that claims that there is no evidence that "any length of unpaved road presents a deterrence to anyone." The Phase A/B Reports claim the 2005 NPS Analysis "references no interviews with motorists or park visitors to support" that the unpaved road is a deterrent. In fact, the companion Transportation Needs Analysis states that three out of seven tour bus operators take the condition of the unpaved road into account.

The Phase A/B Reports states, "Speculation has also surfaced from interested parties that oil and mineral resource companies are behind the initiative to improve CR 7950. This allegation is false." Since the Cooperating Agencies' meeting, we have provided FHWA with documentation related to the XTO and Cimarex developments that are planned near Chaco and receive no mention in these Phase A/B Reports. At the Cooperating Agencies meeting the BLM field Office manager indicated that XTO was "very active in the area," a fact SJC's Contractor and you seemed to be unaware of at that meeting, in present a report that was purported to be final.

We understand that SJC is behind the initiative to improve CR 7950, and that the SJC has an interest in energy development. Therefore, we request full disclosure of all proposed energy projects near Chaco and access roads to these projects be made public. It is possible that access to these projects could be diverted from CR 7950 so that the pressure to chip seal CR 7950 would diminish.

Conclusion

We further understand that SJC seems to feel empowered by federal funding and a perceived "legislative mandate." However, a federal funding does not exempt SJC from federal compliance requirements any more than NMDOT funding exempts SJC from state compliance requirements. Therefore, we appreciate the FHWA and the Cooperating

Agencies' resistance to SJC's ongoing efforts to avoid complying with these requirements on this ongoing project. We again agree with the Chaco review comment that "an open process with discussion of alternatives could surface a solution to some of the issues to the benefit of all parties," and feel that we have offered some solutions to some of the issues to the benefit of all parties.