

# CHACO ALLIANCE

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J. Don Martinez, FHWA  
Greg Heitmann, FHWA  
Blake Roxlau, NMDOT

June 4, 2009

Re: Preliminary Response to the Cultural Resources Survey for CR7950

Dear J. Don Martinez, Greg Heitmann, Blake Roxlau

Our organization has Consulting Party Status under Section 106 of NHPA. We have been involved in the CR7950 project for over three years, initially meeting with the FHWA about this project in August 2006 in Santa Fe. We are in possession of letters, reports, emails, etc., that cover almost five years of history that detail San Juan County's (SJC's) desire to pave the sixteen mile gravel road (now thirteen) into Chaco Culture National Historical Park (CCNHP). We recently received the Cultural Resources Survey. Numerous questions remain unanswered, and numerous objections and questions are raised. This is a preliminary response.

1) We believe that there will be direct effects to Chaco Cultural National Historical Park if the chip seal alternative is chosen. We reject the contrary determination asserted by the URS document, and all three of the reasons they present to support it.

a) The URS study and visitation model used as one justification for the determination of no direct or indirect effects to Chaco is deeply flawed as the NMSHPO, the Hopi, CCNHP, the Chaco Alliance, San Juan Citizens Alliance and others have already pointed out. On September 18, 2008, the NMSHPO wrote, "The analysis needs substantial unbiased improvements before it can stand as a basis for decision-making." Her letter outlines a long list of concerns and questions that have not been answered. The Hopi letter of September 15, 2008 talks of a "lack of consultation and review," and their summary document asks many questions that remain unanswered. Jonathan Upchurch, Ph.D., and CCNHP have also submitted detailed comments and questions that are critical of the adequacy of the prior URS work. We have seen no revised study, no new visitation model, or response to these concerns. We are asking that all questions and concerns be addressed before any EA or EIS is drafted.

b) The buffer proposal used as a second justification for the determination of no effect is not a guarantee of protection because of the support by some Navajo for paving (chip

sealing). There is no guarantee that an easement will not eventually be granted, or that the Navajo Nation will not chip seal. As stated below in (4), SJC has been aware of the ROW problem for some time. In addition, what is described as a No Action alternative is in fact an Action Alternative if SJC maintenance of the last 4.4 miles is terminated.

c) The third leg of the URS determination of no effect, the admission that Chaco might be affected, but that it can control visitation on its own, is in itself an admission of direct effect if the park has to change its management approach, and if, in doing so, the visitor experience and resources at Chaco are significantly impacted. The document does not include any discussion of these impacts to a World Heritage Site.

2) Proper procedure in terms of 106 consultation has not been followed. Section 106 800.8(c) makes it clear that FHWA should have "notified in advance the SHPO/THPO and the Council" if FHWA intended to use the NEPA process for section 106 purposes. This did not take place as required by law. As late as February 2008, we were informed that NHPA Section 106 had not even begun (phone conversation with SHPO). The intent of FHWA and NMDOT regarding the official beginning of the Section 106 process and its use in conjunction with NEPA must be fully explained and clarified.

3) In addition to the initial apparent non-compliance with NHPA law, our organization was never officially informed that the project was halted by SJC in the fall of 2008 (or why), nor were we officially informed that SJC had instructed URS to begin work again on an EA (or why). We had no input, nor apparently did many Cooperating Agencies, into the findings of the survey, nor were we made aware it was being generated. We ask for a consulting party meeting with all parties to examine FHWA's record on consultation. We request that the ACHP be invited to participate at that meeting.

4) There is no defined purpose and need of what is certainly a road to nowhere. The NMSHPO and others have already challenged the "hazardous" assumption made by SJC. There are now even fewer residents being served. In addition, the new scope of the project cannot escape the charge of segmentation, a road without a logical terminus. Both NEPA and DOT require logical destination for the employment of federal funding (Transportation Act 23 CFR 771).

5) SJC cannot change the scope of the project at this stage. SJC has known for some time that Navajo ROW issues exist on the last 4.4 miles of CR7950. Public comment was solicited on a project that ended at Chaco. A series of meetings now have to be held under NEPA/NHPA given the new scope of the project.

6) After years of claims to the contrary, it appears the SJC does consider the first three miles included in the improvements to CR7950. Our organization has consistently claimed that the intended scope of the project was all sixteen miles from the start, and that NHPA and NEPA should have been in force from the beginning although only local funding was used. The inclusion of the first three miles again raises the issue of lack of proper consultation with the NMSHPO and the Hopi, and the question of improper oversight by the NMDOT.

We have consistently voiced our support for improvements to CR7950 that do not include chip sealing. We again request the inclusion of scheduled maintenance as an obvious alternative, especially in light of the URS study that demonstrates the cost-ineffectiveness of the chip seal alternative (See Hopi letter in response to URS Phase A/B Transportation Study). The significant controversy about this project should have already elevated the level of study to an EIS. But taxpayer money should no longer be wasted on expensive consultants when simple steps can be taken to improve CR7950 that do not threaten a pristine World Heritage Site. We look forward to your timely response.

Sincerely,

*s/Anson Wright*

Anson Wright  
Coordinator, Chaco Alliance