

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accelerating Wireless Broadband	)	WR Docket No. 17-79
Deployment by Removing Barriers	)	
To Infrastructure Investment	)	

To: The Commission

**REPLY OF THE PUEBLO OF ACOMA**

**July 7, 2017**

This reply is submitted on behalf of the Pueblo of Acoma, by and through its general legal counsel, Chestnut Law Offices, P.A. At the direction of Pueblo of Acoma Governor Kurt Riley, we reviewed a majority of the comments filed with the Federal Communications Commission Notice of Proposed Rule Making (NPRM) and Notice of Inquiry in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT 17-79).

Acoma is located approximately 65 miles west of Albuquerque, New Mexico, at the base of Mount Taylor. It is said by some to be the oldest continually inhabited community in North America. Acoma's Historic Preservation Office and its Advisory Board have been in existence for decades. Through the work of the Acoma HPO, the Pueblo has been in the forefront of tribal cultural resources protection in the Southwestern United States. Acoma understands the strong desire to move forward with the next generation of wireless communication, and looks forward to the day when its own lands have this service. At present, despite communication towers on Acoma land, there are still large areas of Acoma lands that have no service at all.

Unfortunately, that is the ordinary course of events when companies come on to Pueblo land, even with the best of intentions, and with a strong public purpose. Today, Acoma's prime agricultural lands that have served the community for the past millennia are traversed by railroads, an interstate highway, phone lines, telegraph lines, gas lines and electrical lines, most of which provide some, if meager, benefit to the Pueblo, but great benefits to the public. Most of these "improvements" were installed without anyone even asking Acoma if cultural resources were threatened, and many were destroyed. The classic example is the Chief Rancho complex with several kivas that were destroyed in 1961, prior to the enactment of the National Historic Preservation Act in 1964, during the construction of Interstate Highway 40.<sup>1</sup> At least one of the kivas at the Chief Rancho site dated from A.D. 950 to 1000, with walls that were decorated "by a 'parade' of white antelopes which, at one time, must have encircled the whole room."<sup>2</sup> If this federal project were to be done today, Acoma could have protected this clear example of cultural patrimony, and likely traditional cultural property through the National Historic Preservation Act provisions for tribal participation.

Acoma wants to be part of this next generation of wireless broadband service, but does not agree with several comments that demand that tribes sacrifice their ability to protect and preserve cultural patrimony and traditional cultural properties.<sup>3</sup> Acoma does not want yet another Chief Rancho, at any cost. To prevent that from happening, Acoma has used the existing processes to facilitate developments on its lands, or other lands where Acoma traditional cultural properties are located, and, at the same time, protect and preserve its rich cultural heritage.

---

<sup>1</sup> A kiva is a chamber that is used for traditional ceremonial activities. At least one of the kivas at the Chief Rancho site dated from A.D. 950 to 1000, with walls that were at one time decorated "by a 'parade' of white antelopes which, at one time, must have encircled the whole room."

<sup>2</sup> Peckham, Stewart L., *Archaeological Salvage Excavations on Interstate 40 Near McCartys, New Mexico Project I-040-2(13) – 96 SHD #4235 and SHD #4235 A*, Laboratory of Anthropology Note No. 11, Santa Fe, NM 1962 at p. 9.

<sup>3</sup> See, Comments of the Computer & Communications Industry Association ((CCIA), June 15, 2017 at p. 11.

## THE ACOMA MODEL

The Acoma Model was developed for projects on Acoma lands, but has been successfully used for projects where Acoma has cultural landscapes and sites located outside Pueblo lands. It is a collaborative effort to not only design and implement a Class III cultural resources survey, including TCPs, but also to determine the best location for a project. It flows from the definition of a traditional cultural property: "A [TCP]... can be defined generally as one that is eligible for inclusion in the National Register because of its association with the cultural practices or beliefs of a living community that (a) are rooted in the community's history, and (b) are important in maintaining, the continuing cultural identity of the community."<sup>4</sup> Obviously, proper identification of a traditional cultural property requires expertise that is only within the living community; not within the larger national community.

### A. Acoma Ethnographic Assessment Teams.

No one can expect any other community or entity unrelated to the Pueblo to be able to identify Acoma traditional cultural properties. Acoma understands that this is a role that only it can do. Acoma's Director of Realty and Natural Resources worked with a consulting anthropologist with extensive experience with Acoma, to put together ethnographic assessment teams made up of persons with the expertise to identify Acoma TCPS, and provided on the ground training for working with conventional CRM teams. Acoma does charge a fee for using these teams, which is dependent on the size and scope of the project. In many instances the fee is nominal for small, compact and discrete projects, but even on larger projects where the fee may be significant, the time saved in moving a project forward outweighs the cost.<sup>5</sup>

### B. Early and Often Contact

Acoma encourages companies with proposals that may affect Acoma TCPs or Acoma lands to meet with the Pueblo early and often. Early Pueblo participation often reduces the time and expense of cultural resources review. When a project is proposed, rather than have an outside entity prepare a cultural resources inventory for later review by Acoma in a Section 106 process, which inventory in every single instance is totally inadequate and generally has to be replicated, the Acoma process puts Acoma cultural practitioners into the field WITH the outside entities at the start.

---

<sup>4</sup> National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties, revised 1998

<sup>5</sup> The fee is determined through a process first used to determine the actual cost to the Pueblo of processing an application for a land use permit on the Pueblo which includes a cultural resources review even if NHPA and NEPA do not apply. Each department reviews a proposal to estimate its costs, the total amount of the combined departments is considered, but is often set at a lower amount by the Realty Director, the Governor or the Tribal Council depending on the size of the project.

### C. Pueblo Active Facilitation to Avoid Traditional Cultural Properties

With early and active participation in a project, Acoma can actually facilitate placement of infrastructure that avoids traditional cultural properties, thereby resolving any need for consideration of how to avoid or mitigate effects on properties that would likely be determined to be eligible for the National Register of Historic Properties.

### D. Example

A. Kinder-Morgan CO<sub>2</sub> Pipeline. Kinder Morgan and the Bureau of Land Management came to the Pueblo with a proposal to for a pipeline that would cross lands held in trust for the Pueblo by the United States. The Lobos CO<sub>2</sub> Pipeline, designed for enhanced oil recovery in the larger Permian Basin, extended 214 miles (344.4 km) from the St. Johns Field in Apache County, AZ to an interconnect with Kinder Morgan's Cortez Pipeline in Torrance County, NM. Most of the alignment traversed BLM land but approximately fourteen (14) miles crossed lands held by the United States in Trust for Acoma Pueblo.

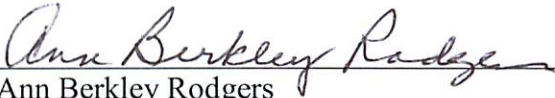
Using the Acoma Model, Acoma developed an estimate of its costs for the project, and then entered into an agreement for reimbursement of those costs by Kinder-Morgan. Thus, there was no issue as to what the fee was covering, or what was or was not an actual cost. Acoma ethnographic assessment teams worked with Kinder-Morgan archaeologists and engineers to design and implement a simultaneous Class III cultural resources survey, TCP survey and routing study for KM's Lobos CO<sub>2</sub> Pipeline. A 300 foot corridor was surveyed across BLM land, but on Acoma, in order to facilitate possible routing alternatives, the survey examined a half mile (2,640 feet) wide study area, within which a 100 foot wide construction corridor was ultimately delineated and approved by the Pueblo of Acoma and Kinder Morgan. More than 150 cultural and/or archaeological properties were recorded on Acoma land - more than all those recorded along the rest of the Lobos alignment. Ninety were TCPs that would not have been recognized by archaeologists untrained in Acoma traditional cultural practices. Furthermore, a number of what the trained archaeologists would call "isolated occurrences" were also TCPs.

Despite a significant number of TCPs and/or archaeological properties within the Acoma study area, the company engineers, working with the Pueblo, were able to designate an Area of Potential Effect for the entire corridor across Acoma land that was able to avoid all of these properties. Use of the Acoma Model took approximately six weeks with three of those weeks in the field due to the size of the area to be surveyed, but it saved lengthy consultation time about route selection, identification of effects and resolution of adverse effects. It avoided time and costs for preparation and negotiation of Section 106 agreement documents (MOA, PA, etc.); avoided Phase II evaluations; avoided large expenditures for mitigation (data recoveries); and avoided legal challenges. The cost reimbursement approach removed any issue as to the Tribal fee. With participation of the BLM agency staff in the overall effort, there were no certification issues. For the Pueblo, Acoma was compensated for its expertise, was confident that the rich cultural heritage along the route was protected, and the Pueblo avoided all issues as to the confidential nature of the information concerning its TCPs.

## CONCLUSION

The Acoma Model has been used in projects as diverse as a proposed solar panel generating field, a uranium mine, the approval of the extension of an existing pipeline lease, and is presently being used by Acoma in its participation in review of a major water pipeline in western New Mexico. In each instance, these minor, but significant changes that are consistent with the existing NHPA process, including the existing FCC procedures as set out in Programmatic Agreements, produce better results for the applicant, the federal agency and the Pueblo.

In light of this experience, Acoma concludes that the best approach is to actually do nothing more than facilitate collaboration among project applicants and tribes, and to be flexible to new approaches within the existing framework. This approach makes Tribes active participants in this national effort, and not victims of suggested "shortcuts" in the comments submitted by industry. Many of these "shortcuts" are so inconsistent with the intent of the NHPA that adoption would do nothing but delay the overall effort through endless legal challenges. The Commission should avoid that outcome at all costs.



Ann Berkley Rodgers  
Chestnut Law Offices, P.A.  
121 Tijeras, NE Suite 2001  
Albuquerque, NM 87102  
(505) 842-5864  
[abr@chestnutlaw.com](mailto:abr@chestnutlaw.com)

General Counsel to the Pueblo of Acoma, a  
Federally recognized Indian Tribe