



BILL RICHARDSON
Governor

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

BATAAN MEMORIAL BUILDING
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27 August 2008

Larry Morrin, Regional Director
Southwest Region
Bureau of Indian Affairs
PO Box 26567
Albuquerque, NM 87125-6567

Dear Mr. Morrin,

Due to continued concern by the public and the New Mexico Cultural Properties Review Committee my office is trying to determine whether or when there was a § 106 undertaking at the Santa Fe Indian School preceding the July demolition of a National Register eligible district. In the telephone call you and I had in late July about this issue, I recall you saying that the BIA had transferred the SFIS buildings out of federal ownership. However, BIA still holds the land in trust, a relationship that does not give the BIA the right to intervene with the buildings. I hope I captured that correctly.

In an effort to understand your statement I looked into PUBLIC LAW 106-568—DEC. 27, 2000, Subtitle B, SEC. 821 – 824, Santa Fe Indian School Act which “declares that certain land in Santa Fe, New Mexico, upon which the Santa Fe Indian School is located shall be held in trust for the benefit of the 19 Pueblos of New Mexico.... Requires such land to be used solely for the educational, health, or cultural purposes of the Santa Fe Indian School.... Except as otherwise provided in this subtitle, the land taken into trust under section 823(a) shall be subject to the laws of the United States relating to Indian lands.”

In a different case in 2007, BLM requested a Solicitor’s Opinion from the BIA regarding the Pueblo of Santo Domingo Settlement Lands. In the July 26, 2007 Memorandum from the BIA, the Solicitor provided an opinion that addressed whether the BIA has responsibility for protection of cultural resources upon conveyance of land to the Pueblo prior to their receiving trust status. The answer was “As restricted lands, the BIA is responsible for cultural resource protection activities upon conveyance of the lands to the Pueblo.” See opinion attached.

I assume the opinion refers to 36 CFR § 800.5, assessment of adverse effects, (2)(vii), “transfer, lease, or sale of property out of Federal ownership or control

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without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance."

I hope you can appreciate why this office is confused about the SFIS example which raises serious issues for future undertakings between NMSHPO and BIA where conveyance may have occurred, and in this case three remaining historic buildings we are lead to believe are still standing and in use. To further complicate issues, I haven't found information that speaks to separating the buildings from the land and what responsibilities BIA might have to the district's long-term preservation.

I would appreciate your assistance in explaining BIA's actions with documentation regarding the SFIS to assure that compliance with 36 CFR § 800.5 occurred. And, in an effort to understand our future relationship on various undertakings, can you explain BIA's responsibilities for cultural resource protection activities lands held in trust if different from the above referenced Solicitor's opinion. Since we are unsure of the status of the three remaining historic buildings, I look forward to a speedy response.

Best regards,



Katherine Slick

Enclosure

CC's (with enclosure):

Don Klima, Director, Office of Federal Agency Programs ACHP
Alan Watson, Chair, NM Cultural Properties Review Committee
Valerie Hauser, Coordinator, Native American Program, ACHP
Reid Nelson, Assistant Director, Federal Property Management Section, ACHP



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Southern Pueblos Agency

P. O. Box 26567

Albuquerque, New Mexico 87125-6567



IN REPLY REFER TO:

Branch of Real Estate Services

JUL 26 2007

Memorandum

To: Bureau of Land Management, Rio Puerco Field Office
Attention: Field Manager

From: Superintendent /s/ Florine L. Gutierrez

Subject: Status of Pueblo of Santo Domingo Settlement Lands

On April 9, 2007, this Agency received a letter dated April 3, 2007, from the Pueblo of Santo Domingo (Pueblo) requesting a Solicitor's opinion on restricted status of lands acquired with global settlement funds by the Pueblo. This Agency requested an opinion from the Solicitor and the following is the conclusion made by the Solicitor.

The Opinion addresses the question asked if the Bureau of Indian Affairs (BIA) has responsibility for protection of cultural resources upon conveyance of land to the Pueblo prior to their receiving trust status. The other question is the restricted status of these lands. The Solicitor concluded that both BLM Patent Lands (the Ball Ranch lands) and the lands which are the subject of the three-way exchange with the State of New Mexico are subject to the restrictions of §17 of the Pueblo Lands Act. As restricted lands, the BIA is responsible for cultural resource protection activities upon conveyance of the lands to the Pueblo.

If you have any further questions, please contact the Agency Realty Officer at (505) 563-3680.

cc: Nelson Pacheco, Governor, Pueblo of Santo Domingo
Noelle Graney, Tribal Attorney, Nordhaus Law Firm, LLP
Debby Lucero, BLM, NM930 Division of Resources, New Mexico State Office

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