

## **ABOUT THE *NATIONAL ENVIRONMENTAL POLICY ACT***

The *National Environmental Policy Act* (NEPA) (42 United States Code [U.S.C.] §4321 *et seq.*) was enacted to ensure that Federal decisionmakers consider the effects of proposed actions on the human environment and to lay their decisionmaking process open for public scrutiny. NEPA also created the President's Council on Environmental Quality (CEQ). The U.S. Department of Energy's (DOE's) NEPA regulations (10 Code of Federal Regulations [CFR] 1021) augment the CEQ regulations (40 CFR 1500 through 1508).

Under NEPA, an environmental impact statement (EIS) documents a Federal agency's analysis of the environmental consequences that might be caused by major Federal actions, defined as those proposed actions that may result in a significant impact to the environment. An EIS also:

- Explains the purpose and need for the agency to take action.
- Describes the proposed action and the reasonable alternative courses of action that the agency could take to meet the need.
- Describes what would happen if the proposed action were not implemented—the “No Action” (or status quo) Alternative.
- Describes what aspects of the human environment would be affected if the proposed action or any alternative were implemented.
- Analyzes the changes, or impacts, to the environment that would be expected to take place if the proposed action or an alternative were implemented, compared to the expected condition of the environment if no action were taken.

The DOE EIS process follows these steps:

- The Notice of Intent, published in the *Federal Register*, identifies potential EIS issues and alternatives and asks for public comment on the scope of the analysis.
- The public scoping period, with at least one public meeting, during which public comments on the scope of the document are collected and considered.
- The issuance of a draft EIS for public review and comment (for a minimum of 45 days), with at least one public hearing.
- The preparation and issuance of the final EIS, which incorporates the results of the public comment period on the draft EIS.
- Preparation and issuance of a Record of Decision, which states:
  - The decision
  - The alternatives that were considered in the EIS and the environmentally preferable alternative
  - All decision factors, such as cost and technical considerations, that were considered by the agency along with environmental consequences
  - Mitigation measures designed to reduce adverse environmental impacts
- Preparation of a Mitigation Action Plan, as appropriate, which explains how the mitigation measures will be implemented and monitored.

## APPENDIX H COMMENT RESPONSE DOCUMENT

*This appendix provides a record of the solicitation of public comments on the Draft CT EIS and the consideration of those comments in the preparation of the Final CT EIS. The appendix outlines the public comment process and describes the changes made to the Final CT EIS. General or common issues of concern to the public are addressed collectively. This appendix also includes scanned images of all original comment documents and transcripts of the public hearings. Specific comments are identified and responses provided.*

# APPENDIX H COMMENT RESPONSE DOCUMENT

## 1.0 PUBLIC COMMENT PROCESS

### Introduction

The U.S. Department of Energy (DOE) has prepared this CT EIS in accordance with the NEPA (42 United States Code [U.S.C.] Section 4321) to examine the environmental impacts associated with the conveyance or transfer of each of 10 land tracts identified for such action in the area of Los Alamos, New Mexico. An important part of the NEPA process is the solicitation of public comments on a draft EIS and consideration of those comments in the preparation of a final EIS.

The DOE released the Draft CT EIS in February 1999 for review and comment by the State of New Mexico, Native American tribes, local governments, other Federal agencies, and the general public. The DOE distributed copies of the Draft CT EIS to those who were known to have an interest in this action in addition to those who requested a copy. The formal public comment period lasted 45 days, ending on April 12, 1999.

The DOE has considered all comments, including those received after the comment period ended, to evaluate the accuracy and adequacy of the Draft CT EIS and to determine whether text needed to be corrected, clarified, or otherwise revised in the preparation of the Final CT EIS. The DOE gave equal weight to spoken and written comments, to comments received at the public hearings, and to comments received in other ways. Comments were reviewed for content and relevance to the environmental analysis contained in the CT EIS.

Many of the comments received by the DOE during the public comment period concerned the same few general issues. To fully address these issues and aid the readers, a discussion of each of these issues is presented in Chapter 2 of this appendix. Although the general issues discussed are not taken verbatim from comment documents, they reflect many of the concerns expressed by various commentors. For each general issue, a synopsis is presented, followed

by a response to that issue. If the response to an individual comment is already contained within one of the discussions of general issues presented in Chapter 2 of this appendix, the reader is referred to the appropriate general issue discussion. Otherwise, each comment is provided with its own response in Chapter 3 of this appendix.

All comments received by the DOE through the means described were considered and, where appropriate, changes were made to the CT EIS. Changes to the text of the CT EIS are designated by a “sidebar,” or line in the margin, indicating where text has been revised. Each individual comment is identified by a sidebar and a code number. The code number is a tool to help readers identify their own comments and the associated response. The code numbers also help readers find comments made by others concerning the same subject. The responses are usually located just to the right of the comment.

### 1.1 Public Hearing Format

Public hearings were held during the public comment period in Pojoaque on March 24, 1999, and in Los Alamos on March 25, 1999.

Oral comments made during the public hearings were recorded by a court reporter, and verbatim transcripts were produced. In response to public feedback, the public hearings held on the Draft CT EIS were conducted using an informal format with a facilitator. This format allowed for a two-way interaction between the DOE and the public. The facilitator helped to direct and clarify discussions and comments, allowing every commentor the chance to formally present comments.

### 1.2 Organization of This Comment Response Document Appendix

This Comment Response Document (CRD) appendix has been organized into the following sections:

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## 1.0 PUBLIC COMMENT PROCESS

- **Chapter 1:** describes the public comment process, the CRD, and changes made to the Draft CT EIS.
- **Chapter 2:** presents the general issues associated with the DOE's Proposed Action Alternative and discusses each issue.
- **Chapter 3:** presents the scanned images of original documents received during the public comment period. These images are marked with sidebars denoting the identified comments. Responses are provided alongside that correspond to the identified comments.

All comments received on the Draft CT EIS were identified and categorized by issue (for example, Water Resources) and assigned a unique identifier. Table 1.2-1 lists the issue category codes, corresponding issue categories, and the pages in Chapter 3 of this appendix on which comments in those issue categories appear. Once identified and categorized, each comment was evaluated, and a response to the comment was prepared. Where appropriate, changes were made to the CT EIS. If applicable, the location of the revision to the Draft CT EIS is noted in Chapter 3 of this appendix.

Table 1.2-2 lists the agencies, organizations, and individuals that submitted comments. Commentors are listed alphabetically by last name or organization name, along with the issue category codes identified in the document and the page number on which each document begins. Table 1.2-3 lists those commentors who provided oral testimony during the public hearings. The commentors are listed alphabetically and according to the session of the public hearing.

Some comments only concerned a certain tract (for example, the Rendija Canyon Tract). Other comments concerned several tracts or all tracts. Table 1.2-4 presents the list of comments organized by tract.

Chapter 3 of this appendix contains all formal comments received on the Draft CT EIS during the public comment process. Every document received was electronically scanned and reproduced on the left side of this appendix's Chapter 3 pages. The public hearing transcripts also were reproduced. Comments identified are marked with a bar to the right of the corresponding text. Responses for identified comments are provided alongside each comment.

### 1.3 Changes from the Draft CT EIS

The DOE revised the Draft CT EIS in response to comments received from other Federal agencies; tribal, State, and local governments; nongovernmental organizations; and the general public. The text was changed to provide additional environmental baseline information, to correct inaccuracies and make editorial corrections, and provide additional discussion of technical considerations to respond to comments and clarify text. In addition, the DOE updated information due to events or decisions made in other documents since the Draft CT EIS was provided for public comment in February 1999.

#### 1.3.1 Summary of EIS Changes

Since the issuance of the *Draft Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico* in February 1999, there have been some changes in information, plans, and related NEPA documents. In addition, comments from agencies, organizations, and the public requested elaboration of several issues. These changes, as well as editorial corrections, are reflected in this Final CT EIS.

The DOE identified the Preferred Alternative in the Draft CT EIS as a subset of

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## 1.0 PUBLIC COMMENT PROCESS

the Proposed Action Alternative where the timing of the disposition of each tract would be subject to the LANL Environmental Restoration Project process and consideration of the use of some of tracts for mission support activities. The individual tracts were grouped according to when the DOE believed each tract or parts of each tract might be conveyed or transferred. Due to the identification of mission need for the TA 21 Tract and further analysis of the potential human health impacts associated with the TA 21 operations, portions of the Airport Tract may not transfer as soon as presented in the Draft CT EIS. These portions of the Airport Tract may be needed as a buffer zone for the TA 21 operations as long as those operations are active.

One change to the CT EIS involved the discussion of the Los Alamos Sportsman's Club activities and lease on the Rendija Canyon Tract. The text was amended to clarify that the Pueblo of San Ildefonso and the Incorporated County of Los Alamos have both agreed to honor the existing leases, and the County would renegotiate the lease should the Rendija Canyon Tract be conveyed to the County.

The CT EIS text regarding cultural resources has been modified to include the general information provided by the legal counsel for San Ildefonso Pueblo regarding the presence of traditional cultural properties (TCPs) on four of the tracts. Text regarding cultural resources and environmental justice has been clarified to explicitly discuss the potential for disproportionately high and adverse effects to minority populations based on impacts to TCPs. Text also was added to explain the current level of information available to the DOE to address impacts to TCPs and any related environmental justice effects. The opinions of the legal counsel for San Ildefonso Pueblo that there are environmental justice impacts related to the conveyance and transfer process or to contemplated land uses on particular tracts have been added to the environmental justice sections.

Other changes included new information on core and buffer habitat areas for threatened and endangered species on the tracts and new information on groundwater.

All comments on environmental restoration received during the comment period also were forwarded to the Environmental Restoration Project group for consideration.

The CT EIS also was updated to include the Findings of No Significant Impact and Records of Decision that have been issued since the publication of the Draft CT EIS.

Appendix D, Floodplains and Wetlands, of the CT EIS was changed to include a *Statement of Findings for the Conveyance and Transfer of Certain Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico*, prepared in accordance with the regulatory requirements of 10 CFR Part 1022. This Findings Statement was added to the CT EIS in keeping with the regulatory provisions, which allow an agency to make use of NEPA documents to facilitate public disclosure requirements.

### 1.3.2 Next Steps

The Record of Decision (ROD) or RODs, to be published no sooner than 30 days after the Notice of Availability for the Final CT EIS has been issued, will explain all factors, including environmental impacts, that the DOE considered in reaching its decision. The ROD(s) also will identify the environmentally preferred alternative or alternatives. If mitigation measures, monitoring, or other conditions are adopted as part of the DOE's decision, these will be summarized in the ROD(s), as applicable, and will be included in the Mitigation Action Plan that would be prepared following the issuance of the ROD(s). The Mitigation Action Plan would explain how and when mitigation measures would be implemented and how the DOE may monitor the mitigation measures over time to judge their effectiveness.

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**Table 1.2-1. Issue Categories and Comment Locations**

ISSUE CODE	ISSUE CATEGORY	PAGE NUMBER
01	Accidents	H-239, H-249
02	Air Quality	H-46
03	Alternatives	H-113, H-132
04	Cultural Resources	H-257
05	Cumulative Impacts	H-27, H-29, H-46
06	Decisions	H-28, H-29, H-48, H-56, H-58, H-74, H-76, H-77, H-79, H-80, H-82, H-90, H-91, H-96, H-114, H-126, H-219, H-247, H-264
07	Ecological Resources	H-26, H-27, H-68, H-69, H-70, H-72, H-89, H-238, H-260, H-262
08	Environmental Justice	H-33, H-34, H-37, H-39, H-40, H-50, H-51, H-159, H-160, H-206
09	Environmental Restoration	H-39, H-43, H-46, H-54, H-60, H-63, H-70, H-72, H-74, H-95, H-97, H-139, H-218
10	Human Health	H-34, H-37, H-39
11	Site Infrastructure	H-48
12	Land Use	H-59, H-72, H-74, H-81, H-88, H-90, H-93, H-115, H-116, H-121, H-166, H-167, H-192, H-204, H-213, H-215, H-240, H-242, H-245, H-267
13	Miscellaneous	H-31, H-37, H-46, H-63, H-124
14	Mitigations	H-29, H-31, H-43, H-46, H-55, H-56, H-63, H-67, H-74, H-77, H-79, H-80, H-82, H-87, H-88, H-89, H-92, H-94, H-201, H-207, H-208, H-255
15	NEPA Process and Procedures	H-26, H-29, H-31, H-43, H-55, H-56, H-62, H-63, H-68, H-70, H-72, H-117, H-121, H-131, H-168, H-169, H-172, H-194, H-206, H-216
16	Noise	H-57
17	Public Law 105-119	H-55, H-58, H-62, H-65, H-66, H-88, H-89, H-92, H-163, H-220, H-237, H-238, H-247, H-250, H-253, H-263
18	DOE Policy	H-74
19	Recreation	H-48, H-52, H-54, H-72, H-83, H-119, H-130, H-192, H-241
20	Regulatory Compliance	H-68, H-70, H-72
21	Socioeconomics	H-70
22	Title Search	H-51, H-122, H-125, H-131, H-164, H-165, H-246
23	Transportation	H-243, H-244, H-251
24	Visual and Aesthetics	H-78, H-201, H-202
25	Waste Management	H-46
26	Water Resources	H-43, H-46

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## 1.0 PUBLIC COMMENT PROCESS

**Table 1.2-2. Index of Commentors and Responses**

DOCUMENT	COMMENTOR	ISSUE CATEGORIES	PAGE NUMBER
<b>Federal Agencies</b>			
01	U.S. Department of Defense (Assistant to the Secretary of Defense)	No comments identified.	H-25
02	U.S. Department of the Interior (Office of the Secretary)	05, 06, 07, 15	H-26
03	U.S. Department of the Interior (National Park Service)	05, 06, 14, 15	H-29
04	U.S. Environmental Protection Agency (Region 6)	14, 15	H-31
<b>Tribal/Sovereign Nations</b>			
05	Pueblo of San Ildefonso, Chestnut Law Offices	08, 09, 10, 13	H-33
<b>State Government</b>			
06	State of New Mexico, Environment Department	02, 05, 09, 13, 14, 15, 25, 26	H-42
<b>Local Government</b>			
07	Incorporated County of Los Alamos	06, 11, 19	H-48
<b>Organizations</b>			
08	Homesteaders Association of the Pajarito Plateau	08, 22	H-50
09	Los Alamos County Trails and Pathways Subcommittee	19	H-52
10	Los Alamos Sportman's Club	09, 19	H-54
11	National Parks and Conservation Association, Southwest Regional Office	06, 14, 15, 16, 17	H-55
12	Northern New Mexico Citizens' Advisory Board	09, 12	H-59
13	Pajarito Group of the Sierra Club, Rio Grande Chapter (Letter 1)	09, 13, 14, 15, 17	H-62
14	Pajarito Group of the Sierra Club, Rio Grande Chapter (Letter 2)	06, 07, 09, 12, 14, 15, 17, 18, 19, 20, 21	H-65
15	Sangre de Cristo Audubon Society	06, 14	H-76
<b>Citizens</b>			
16	Diane Albert	24	H-78
17	Genevieve Barrett	06, 14	H-79
18	Larry Bryant	06, 12, 14	H-80
19	Trudy and Terry Filer	06, 14	H-82

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**1.0 PUBLIC COMMENT PROCESS**

**Table 1.2-2. Index of Commentors and Responses (Continued)**

<b>DOCUMENT</b>	<b>COMMENTOR</b>	<b>ISSUE CATEGORIES</b>	<b>PAGE NUMBER</b>
20	John and Adele Hopkins	19	H-83
21	Judy Hutson	14	H-87
22	Jennifer A. Johnson	12, 14, 17	H-88
23	Terrell H. Johnson	07, 14, 17	H-89
24	Milton G. Lockhart	06, 12	H-90
25	Bob Meade	14, 17	H-92
26	Mike R. Montoya	12	H-93
27	Rebecca H. Shankland	14	H-94
28	Al Shapolia	09	H-95
29	Elizabeth A. Souder	06	H-96
30	Richard Weinstein	09	H-97
<b>Public Hearing Transcripts</b>			
31	Pojoaque Public Hearing (Afternoon Session)	03, 06, 09, 12, 13, 15, 19, 22	H-98
32	Pojoaque Public Hearing (Evening Session)	08, 12, 15, 17, 22	H-144
33	Los Alamos Public Hearing (Afternoon Session)	06, 08, 09, 12, 14, 15, 17, 19, 24	H-178
34	Los Alamos Public Hearing (Evening Session)	01, 04, 06, 07, 12, 14, 17, 19, 22, 23	H-223



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**Table 1.2-3. Index of Commentors Who Provided Oral Testimony at the Public Hearings**

SPEAKERS	ORGANIZATION	COMMENTS
<b>Pojoaque Public Meeting (Afternoon Session) Document 31</b>		
Mr. Gonzales		31-09-22, 31-10-13
John Hopkins		31-03-12
Joe Martinez		31-11-22
Gordon Spingler	Pajarito Group, Sierra Club	31-01-03, 31-02-06, 31-04-12, 31-05-15, 31-07-17, 31-12-06, 31-16-03
Steve Stoddard	Los Alamos Sportsman's Club	31-06-19, 31-13-19
Darrell Tafoya	Bureau of Indian Affairs	31-17-09
Unidentified Speakers		31-08-12, 31-14-22, 31-15-15
<b>Pojoaque Public Meeting (Evening Session) Document 32</b>		
Judy Espinosa	Homesteaders Association of the Pajarito Plateau	32-03-17, 32-04-22, 32-10-15
Joe Gutierrez	Homesteaders Association of the Pajarito Plateau	32-01-08, 32-02-08
Unidentified Speakers		32-05-22, 32-06-12, 32-07-12, 32-08-15, 32-09-15, 32-11-15
<b>Los Alamos Public Meeting (Afternoon Session) Document 33</b>		
Diane Albert	Friends of Bandelier	33-04-24, 33-05-14, 33-13-12, 33-14-15, 33-15-09
Jeremy Kruger	National Parks and Conservation Association	33-06-24, 33-07-12, 38-08-08, 33-09-15, 33-10-14, 33-11-14
Glen Lockhart		33-01-12
Janie O'Rourke		33-02-19, 33-16-06, 33-17-17
Gordon Spingler	Pajarito Group, Sierra Club	33-03-15
Georgia Strickfaden		33-12-12
Unidentified Speakers		33-18-17
<b>Los Alamos Public Meeting (Evening Session) Document 34</b>		
Newby Ellington		34-01-17, 34-02-17, 34-17-17
Dorothy Horde		34-19-04
Richard Morely	Los Alamos Sportsman's Club	34-06-19
John Sarracino		34-08-23, 34-09-23, 34-16-23
Blair Schwartz		34-03-07, 34-04-01, 34-05-12, 34-07-12, 34-14-01, 34-15-07, 34-20-07, 34-21-07
Unidentified Speakers		34-10-12, 34-11-22, 34-12-17, 34-13-06, 34-18-14, 34-22-17, 34-23-06, 34-24-12

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**Table 1.2-4. Comments Regarding Each Tract**

TRACT	COMMENTS
Rendija Canyon	05-01-08, 05-02-08, 07-02-19, 10-01-19, 10-02-09, 10-03-09, 10-04-09, 11-08-06, 14-13-09, 15-01-06, 17-02-06, 18-03-12, 19-04-06, 20-01-19, 24-02-06, 31-06-19, 31-13-19, 33-07-12, 33-08-08, 33-11-14, 34-03-07, 34-04-01, 34-05-12, 34-08-23, 34-09-23, 34-16-23
DOE LAAO	12-01-12, 33-12-12, 33-13-12
DP Road	33-15-09
TA 21	06-01-26, 14-17-09, 14-24-06, 30-01-09
White Rock Y	05-03-08, 05-04-10, 14-19-19
TA 74	05-05-08, 05-06-10, 25-02-17
White Rock	05-07-13, 05-08-08, 05-09-10, 06-12-13
Multiple Tracts	03-01-06, 05-11-08, 06-05-26, 09-01-19, 11-02-15, 11-05-15, 11-06-14, 11-07-16, 11-09-17, 14-08-07, 14-18-12, 14-22-12, 14-25-09, 14-26-06, 15-02-06, 15-03-14, 15-04-06, 16-01-24, 17-01-14, 19-01-06, 19-02-06, 19-03-14, 24-03-06, 25-01-14, 29-01-06, 31-10-13, 31-12-06, 33-05-14, 33-06-24, 33-10-14, 33-04-24
All Tracts	02-01-07, 02-02-15, 02-03-15, 02-04-05, 02-05-07, 02-06-06, 03-02-15, 03-03-14, 03-04-05, 04-01-15, 04-02-14, 05-10-08, 05-12-09, 06-02-26, 06-03-09, 06-04-26, 06-06-26, 06-07-15, 06-08-14, 06-09-26, 06-10-02, 06-11-05, 06-13-09, 06-14-25, 06-15-14, 07-01-06, 07-03-11, 08-01-08, 08-02-22, 08-03-08, 11-01-17, 11-03-14, 11-04-06, 12-02-09, 13-01-15, 13-02-17, 13-04-15, 13-05-14, 13-06-03, 13-07-09, 13-08-15, 14-01-17, 14-02-17, 14-03-17, 14-04-17, 14-05-14, 14-06-15, 14-07-20, 14-09-15, 14-10-07, 14-11-07, 14-12-02, 14-14-21, 14-15-15, 14-16-07, 14-20-20, 14-21-15, 14-23-14, 14-27-18, 18-01-06, 18-02-14, 21-01-14, 22-01-17, 22-02-14, 22-03-07, 23-01-14, 23-02-12, 23-03-17, 23-04-17, 24-01-12, 26-01-12, 27-01-14, 28-01-09, 31-01-03, 31-02-06, 31-03-12, 31-04-12, 31-05-15, 31-07-15, 31-08-12, 31-09-22, 31-11-22, 31-14-22, 31-15-15, 31-16-03, 31-17-09, 32-01-08, 32-02-08, 32-03-17, 32-04-22, 32-05-22, 32-06-12, 32-07-12, 32-08-15, 32-09-15, 32-10-15, 32-11-15, 33-01-12, 33-02-19, 33-03-15, 33-09-15, 33-14-15, 33-16-06, 33-17-17, 33-18-17, 34-01-17, 34-02-17, 34-06-19, 34-07-12, 34-10-12, 34-11-22, 34-12-17, 34-13-06, 34-14-01, 34-15-17, 34-17-17, 34-18-14, 34-19-04, 34-20-07, 34-21-07, 34-22-17, 34-23-06, 34-24-12

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# APPENDIX H COMMENT RESPONSE DOCUMENT

## 2.0 GENERAL ISSUES

### 2.1 Introduction

Several topics raised by public comments on the Draft CT EIS were of broad interest or concern. These topics were categorized as general issues and represent broad concerns directly related to the environmental consequences associated with implementing the alternatives analyzed in the CT EIS. Many commentors also raised topics that are not pertinent to this environmental review; however, for clarification, the DOE addressed them to the extent practicable. General issues include the following topics:

**General Issue 1:** Purpose and Need

**General Issue 2:** Deed Restrictions

**General Issue 3:** Basis for DOE's Decisions

**General Issue 4:** Public Law Process and the CT EIS

**General Issue 5:** Environmental Restoration Process

**General Issue 6:** Environmental Justice

**General Issue 7:** Homesteaders Association Claims

### 2.2 General Issue 1: Purpose and Need

#### Issue:

*Commentors questioned whether the proposed conveyance and transfer of the tracts identified in the CT EIS would fulfill the purpose of Public Law (PL) 105-119. Commentors noted that Los Alamos County has stated that the proposed conveyance of these lands would not provide the income necessary for the County to become self-sufficient. Commentors also noted that the real costs for the County to meet the self-sufficiency goal, such as addressing the water and electrical usage demand, make the proposed action untenable. Therefore, commentors opined that the proposed*

*conveyance and transfer action would not satisfy the purpose of PL 105-119, specifically Los Alamos County self-sufficiency, and that the conveyance and transfer action evaluated in this CT EIS does not meet the “purpose and need for agency action” presented in this CT EIS. Commentors further stated that for this reason the conveyance and transfer action should not be selected by the decisionmakers. Commentors also noted that other alternatives, such as continuing assistance payments to the County, were rejected because they did not meet the need for agency action. Commentors believe that if the DOE's proposed action does not meet the need for agency action, it too should be rejected just as other alternatives were rejected.*

#### Response:

The DOE believes there may be confusion between the “purpose and need” for DOE action and the intended purpose of PL 105-119. The purpose and need for DOE action evaluated in this CT EIS is “to act in order to meet the requirements of Section 632” of PL 105-119. The DOE has evaluated the conveyance and transfer action and other suggested action alternatives in light of meeting its requirements under PL 105-119—that is, to convey and transfer certain parcels of land identified by the DOE as being suitable for conveyance or transfer, as defined by PL 105-119. To be conveyed or transferred (1) the parcels of land must have been determined to be unnecessary for support of the DOE's national security mission requirements before November 26, 2007<sup>1</sup>; (2) the DOE also must complete, to the maximum extent practicable, any necessary environmental remediation or restoration by that time; and (3) the parcels must be suitable for use by the receiving parties for historic, cultural, or environmental preservation purposes, economic diversification purposes, or community self-sufficiency purposes. The

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<sup>1</sup> November 26, 2007, marks the end of the 10-year action period specified in Section 632 of PL 105-119.

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## 2.0 GENERAL ISSUES

conveyance and transfer of land tracts would satisfy the DOE's obligations required by PL 105-119. The other suggested action alternatives would not satisfy these requirements.

The "purpose and need" referenced by the commentor is best described as the intended purpose of PL 105-119, which is to provide Los Alamos County with the means for self-sufficiency, due to the end of assistance payments, and to transfer lands to the Pueblo of San Ildefonso. Section 1.1, Background Information, in Chapter 1 of the CT EIS, contains further information on the intended purpose of PL 105-119.

The congressionally mandated action considered in this CT EIS, namely, the conveyance and transfer of the land tracts, would meet the purpose and need for agency action set forth in Section 1.2 in Chapter 1 of the main report and described above. The DOE does not consider whether or not the intended purpose of PL 105-119 is met. This would likely be determined by Congress, the County of Los Alamos, and the Pueblo of San Ildefonso.

The DOE received several suggestions regarding other alternatives to be evaluated in this CT EIS (for example, reinstate the assistance payments without conveyance or transfer). These alternatives were considered but eliminated from detailed analysis, as described in Section 2.4 in Chapter 2 of the main report, because they would not allow the DOE to meet its need to comply with the requirements of PL 105-119. Also see General Issue 3: Basis for DOE's Decisions.

### 2.3 General Issue 2: Deed Restrictions

#### Issue:

*Commentors urged the DOE to ensure that future ecological and cultural resource protections for the parcels remain at their current levels. Specifically, many commentors*

*were concerned that the proposed action would not provide adequate protection of threatened and endangered species and cultural resources. Commentors wanted the DOE to accomplish protection of these resources by placing restrictions in the instruments of conveyance or transfer so that any future development of the tracts would be limited in a manner that would maintain the ecological and cultural resources of the tracts. Commentors were concerned that both Los Alamos County and San Ildefonso Pueblo lacked the legal drivers, funds, or staff to adequately protect the existing natural and cultural resources. They also were concerned that there appears to be no long-term resource protection of these lands if they are conveyed or transferred. Concern was expressed that development of these lands would adversely impact Bandelier and the Santa Fe National Forest and would not be in harmony with the existing natural setting. Commentors also wanted the DOE to ensure that the current recreational access to the tracts is continued and enhanced.*

#### Response:

The DOE's authority to limit or condition the conveyance or transfer of the tracts at issue in the CT EIS is circumscribed by the provisions of PL 105-119. That statute directs the DOE to convey to the County of Los Alamos (or its designee) or transfer to the U.S. Department of the Interior (DOI) (in trust for the Pueblo of San Ildefonso) tracts of land in the Los Alamos area under its administrative control that meet the criteria set out in the statute. The provisions of PL 105-119 apply differently to conveyances to the County than they do to transfers to the DOI. These differences affect the manner in which ecological and cultural resources would be protected.

In the case of transfer to the DOI, the land would still be owned by the U.S. Government; only the administrative jurisdiction would be transferred from one Federal agency to another. (See section 632(a)(2) of PL 105-119, presented

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## 2.0 GENERAL ISSUES

in Appendix A.) Thus, all applicable requirements governing activities on Federal land, including those for the protection of sensitive resources, would continue. Responsibility for interpreting and applying those requirements would rest with the DOI. It would be inappropriate for the DOE to attempt to place prior restraints on the DOI's ability to exert its authority in administering land under its jurisdiction.

In the case of conveyances to the County of Los Alamos, the DOE must convey to the County "fee" title<sup>2</sup> to the parcels of land. See section 632(a)(1) of the PL 105-119, presented in Appendix A. The DOE must work within this limitation in determining what, if any, conditions or restrictions can be included in the instruments of conveyance. The DOE may conclude that deed restrictions are not the most effective vehicle to preserve ecological and cultural resources. However, notwithstanding the limited authority conferred upon the DOE by PL 105-119, the DOE is required to consult with appropriate regulators concerning the protection of threatened and endangered species and cultural resources before conveying title to any tracts of land to the County. These consultations could lead to agreements between the DOE, the regulators, and the County on mitigation measures to be applied to minimize the potential for adverse impacts after conveyance of the land occurs. The DOE has contacted these regulators (see Chapter 18 of this CT EIS). The regulators have agreed that it will be most productive to defer further consultations until the County and the Pueblo of San Ildefonso have reached agreement on which recipient will receive which tracts of land. (See

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<sup>2</sup> The term "fee" title speaks to the degree, quality, nature, and extent of interest that a person or entity holds in real property. Specifically, it is a contract term in real estate that means that the holder is entitled to all rights incident to the property. There are no time limitations on its existence (it is said to run forever). The ownership of the land by a fee holder is complete and free of State domination (except the rights of the State of taxation, police power, and eminent domain).

section 632(e) of PL 105-119, presented in Appendix A.) The land division process should be completed by November 1999. At that time, the DOE and the regulators will know which tracts will be conveyed to the County and thus will be the subject of consultations. These consultations will address the specifics of the mitigation measures. The Mitigation Action Plan (MAP) that the DOE will develop as part of its NEPA compliance process will include this information.

The DOE does not have the authority under PL 105-119 to ensure continued recreational use of the tracts. Use of the land will be determined by the recipients. However, any interested party can contact the recipients and explore the question of continued recreational access.

### 2.4 General Issue 3: Basis for DOE's Decisions

#### Issue:

*Commentors wanted the DOE to choose the No Action Alternative for some or all of the tracts, in whole or in part, based on the potential adverse impacts associated with the tracts' eventual use and development by the recipient parties. Commentors were concerned that if Los Alamos County received the land it would be fully developed, and the existing environmental and cultural resources would be lost. Commentors believed that if San Ildefonso Pueblo received the lands they would not be fully developed, and a better protection of resources would occur. For this reason, commentors also wanted the DOE to convey or transfer particular tracts to a particular recipient based on the difference in potential impacts to environmental or cultural resources.*

#### Response:

The decision process regarding whether a particular tract of land will be conveyed or transferred was clearly defined by Congress in section 632 of PL 105-119. This section of

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## 2.0 GENERAL ISSUES

PL 105-119 specifically directs that the tracts of land identified by the DOE in the report to Congress titled “Land Transfer, A Preliminary Identification of Parcels of Land in Los Alamos, New Mexico for Conveyance or Transfer,” if suitable, be transferred to the Secretary of the Interior in trust for the Pueblo of San Ildefonso or conveyed to the County of Los Alamos or their designee. See section 632(g) of PL 105-119, presented in Appendix A. The DOE’s role in the process involves deciding whether the suitability criteria set by Congress in PL 105-119 have been met for each tract. If these criteria are met for a particular tract or portion of a tract, the portion of the tract that meets the suitability criteria will be conveyed or transferred. Moreover, the DOE has no role in deciding which recipient will receive a particular tract. This decision is to be made jointly by the County of Los Alamos and San Ildefonso Pueblo. (See section 632(e) of PL 105-119, presented in Appendix A.)

NEPA requires that an agency evaluate the No Action Alternative in the preparation of an EIS. The No Action Alternative reflects the status quo and provides a baseline against which the impacts of the various action alternatives may be compared. An agency’s discretion to select the No Action Alternative may be limited or controlled by the enabling legislation under which the agency is operating. In this CT EIS, the No Action Alternative means that the DOE would decide to not transfer or convey individual tracts. Under PL 105-119, such a decision must be based on a determination that a tract does not meet one of the statutory criteria, and therefore, is not suitable to be transferred or conveyed. For example, the DOE could determine that the necessary environmental restoration or remediation cannot be completed within the 10 years allowed by the statute. (See section 632(g)(3) of the PL 105-119, presented in Appendix A.) However, the DOE cannot base a decision to select the No Action Alternative on any factor other than a failure of a tract to meet the criteria set out in PL 105-119,

including such factors as potential adverse resource impacts.

The assessment of potential adverse impacts presented in this CT EIS can be used by the San Ildefonso Pueblo and the County to help them reach decision as to which party will receive which tract. In addition, the Pueblo and County can use the information to guide future use and development decisions. As required by PL 105-119, the environmental impact information also will be part of the DOE report due to Congress regarding the tracts being considered for conveyance and transfer (the Combined Data Report). Thus, the information on potential adverse impacts will be part of the overall decisionmaking process.

### 2.5 General Issue 4: Public Law Process and the CT EIS

#### Issue:

*Commentors believed that the proposed conveyance and transfer in general was unfair or that the process set by PL 105-119 was unfair. Specifically, commentors felt that the exclusion of potential recipients other than the Pueblo of San Ildefonso and the County of Los Alamos was unfair. Commentors requested that the DOE consider conveying land to a party other than the two specified in PL 105-119. Commentors believed that because PL 105-119 defines the steps to be taken by the DOE, an evaluation of all reasonable alternatives has not occurred. For this reason, commentors believed that the CT EIS does not fully encourage and facilitate public involvement in the decisionmaking process, which is the intent of NEPA. Commentors believed that PL 105-119 made the decision to bypass the NEPA process.*

#### Response:

Congress enacted PL 105-119 to address a very specific issue: the self-sufficiency of the Los Alamos County. A review of the historical basis for this legislation places in context the process Congress chose to achieve this goal.

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Under the *Atomic Energy Community Act* (AECA) of 1955 (42 U.S.C. §§2301-2394), the Federal Government recognized its responsibility to provide support for a specified period to agencies or municipalities that were strongly affected by their proximity to facilities that are part of the nation's nuclear weapons complex while they achieved self-sufficiency. These facilities were three so-called Atomic Energy Communities: Oak Ridge, Tennessee; Richland, Washington; and Los Alamos, New Mexico. Each of these communities was established as a wholly government-owned community in which all municipal, educational, medical, housing, and recreational facilities were provided by the Federal Government. Under the AECA, national policies were established regarding the obligations of the United States to the three Atomic Energy Communities. These policies were directed at terminating Federal Government ownership and management of the communities by facilitating the establishment of local self-government, providing for the orderly transfer to local entities of municipal functions, and providing for the orderly sale to private purchasers of property within these communities with a minimum of dislocation. The establishment of self-government and transfer of infrastructures and land were intended to encourage self-sufficiency of the communities through the establishment of a broad base for economic development.

In spite of all efforts to the contrary, the transfer and self-sufficiency process has been slower for Los Alamos than for other Atomic Energy Communities, due to its unique nature and location.

In June of 1996, the DOE submitted a report to Congress concerning the assistance payments to the County. (See Section 1.1.2 in Chapter 1 of the main report.) In that report, the DOE recommended that:

- The historically paid annual assistance payment be discontinued with a final lump-sum settlement of \$22.6 million,
- The DOE transfer to the County several municipal installations and functions under its administration and operation, and
- That the DOE transfer to the County undeveloped land that could be utilized by the County or developed by private interest to increase the County's revenue from property and gross receipts tax.

In October 1996, Congress enacted legislation (the *Energy and Water Development Appropriations Act* of 1997) to terminate the annual assistance payments to the County by mid 1997, with the recommended lump-sum termination payment. Disposition of municipal functions and installations (the water system, fire stations, and lease of the Airport) were begun in 1997.

Congress completed the steps considered necessary to provide self-sufficiency for Los Alamos in keeping with the last of the recommendations made in the June 1996 report to Congress by enacting PL 105-119. The same legislation provided for land to be transferred to the DOI, in trust for the San Ildefonso Pueblo, that had been used by the Pueblo prior to the creation of LANL.

PL 105-119 was drafted with input from the DOE, San Ildefonso Pueblo, and the County of Los Alamos. It is customary for Congress to consult with parties affected by prospective legislation. However, Congress ultimately prescribed both the results to be accomplished by the statute and the process to be followed in accomplishing those results. That process was specified in substantial detail. These details included the potential recipients, criteria for determining the suitability of parcels of land for conveyance or transfer, setting the steps for



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implementing the process, setting the timetable for implementing the process, and the roles and responsibilities of the parties involved. The DOE is obligated to adhere to these requirements and carry out its role as mandated by PL 105-119. While the NEPA process includes addressing public concerns and comments regarding the proposed action, the DOE does not have the authority to modify the requirements of PL 105-119. Only Congress can address changing the process or details of the process by amending PL 105-119.

A NEPA analysis is based on the authority and limitations imposed by the enabling legislation; this does not invalidate the NEPA process, but may narrow the scope of the analysis. Congress could have provided that a more broadly scoped EIS be prepared by granting the DOE more discretion in implementing the statute. Conversely, Congress could have removed all discretion and required that the DOE carry out a mere ministerial conveyance and transfer action, thereby negating the applicability of NEPA. However, Congress gave the DOE a limited decisionmaking role, and that role is reflected by the scope of this CT EIS. For example, the alternatives analyzed in the CT EIS (that is, to convey or transfer each tract, or no action) are appropriately tailored to the underlying legislation for this action.

Although there is limited involvement by the DOE in the conveyance and transfer decisions, Congress instructed the DOE to proceed with the NEPA process to evaluate the potential environmental impacts associated with the conveyance and transfer action. (See section 632(d)(1)(B) of PL 105-119, presented in Appendix A.) While the CT EIS may only play a limited role in the overall decisions made by the DOE, it fulfills the intent of NEPA. It informs the public of the impacts of the proposed action. Moreover, it can be used by the Pueblo and the County to help reach their decision as to which party will receive which

tract, and to what use they will ultimately put the land. Finally, the DOE will use the CT EIS analyses as part of the report to Congress on the suitability of the tracts for conveyance and transfer. (See section 632(d)(1)(C) of PL 105-119, presented in Appendix A.) These uses of the CT EIS analyses fulfill the intent of NEPA process to inform the decisionmakers and promote better decisionmaking. The process through which this CT EIS has been prepared also fulfills the intent of the NEPA to inform the public in a timely manner so that the public can provide input to the decisionmaking process.

#### 2.6 General Issue 5: Environmental Restoration Process

##### Issue:

*Commentors presented concerns or questions about details of the environmental restoration activities that will take place on each of the tracts, such as the timetable for cleanup and the setting of cleanup levels. Commentors were concerned that the CT EIS does not adequately address the environmental remediation that may be necessary for these tracts. Questions were raised about the DOE being able to certify that contaminants were cleaned up to the level of specified use. Concern also was expressed that cleanup levels for use of the land for cultural preservation purposes would be less than the level of cleanup for residential use.*

##### Response:

Under the requirements of PL 105-119, the DOE is required to clean up each tract, to the maximum extent practicable, before it can be conveyed or transferred. The DOE, through the LANL Environmental Restoration Project, is conducting a separate process for site cleanup. This process will involve the public and State and Federal regulatory agencies to determine the appropriate level of cleanup to be

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undertaken for the each tract, the technical manner in which it will be achieved, and the priority of the cleanup actions. This separate process will include the DOE's NEPA review of the cleanup actions as details are developed and they become ripe for decision.

Currently, there is not enough detail known regarding the cleanup required for each of the tracts to pursue the NEPA compliance action(s). When the regulators and the public have reviewed and approved the various types of remediation and restoration under consideration, the DOE will then be in a position to pursue the NEPA compliance review necessary.

The CT EIS presents the information available to the DOE concerning the potential environmental restoration of the tracts proposed for conveyance and transfer. The cleanup of most of these tracts was already in the preliminary stages or had been completed before they were identified for the proposed conveyance and transfer action. Plans for completing the cleanup of the tracts will be dynamic and are subject to revision and change as additional information becomes available. This is especially true for plans dealing with buildings that are currently in service and contain asbestos or other hazardous materials requiring decontamination before demolition may be undertaken. Plans also will be developed to address the issue of cleanup of floodplain areas that may receive contamination washed downstream from other areas. To the extent known or anticipated, information on environmental restoration and remediation impacts is included in this CT EIS.

Because the details of the future cleanup activities associated with these tracts are unknown, this CT EIS presents information intended to bound the potential environmental impacts. The environmental information on restoration provided in this CT EIS (see Appendix B) is based on the DOE's

Environmental Restoration Report, which is being produced to meet the DOE's requirements under section 632 of PL 105-119. This section of PL 105-119 requires the DOE to identify any environmental remediation or restoration necessary on the tracts considered for conveyance and transfer and to then supply this information in a report to Congress together with the environmental impact information. The Environmental Restoration Report seeks to bound the amounts of wastes generated, the costs of the cleanup activities that will occur in the future, and the durations of cleanup actions, even though the exact details of these cleanup activities are currently only estimated. The DOE's proposed remedies and estimates of projected waste volumes, cleanup costs, and cleanup duration presented in the Environmental Restoration Report are based on site knowledge and characterization data as they exist today. These projections also are based on the DOE's understanding of the types of cleanup strategies and the cleanup levels that are generally acceptable to the regulators as meeting the RCRA corrective action requirement by which LANL is regulated.

Comments on the Environmental Restoration Report have been forwarded to LANL Environmental Restoration Project personnel. These comments were incorporated into the Final Environmental Restoration Report, and letters were sent to the commentors. To find more information about the LANL Environmental Restoration Project or about the restoration or remediation of the subject tracts, please contact Mr. Ted Taylor at the DOE Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico 87544; or call (505) 665-7203.

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### 2.7 General Issue 6: Environmental Justice

#### Issue:

*Commentors believed that the CT EIS did not fully evaluate the environmental justice impacts to the nearby minority populations. Commentors stated that the potential adverse impacts discussed in the CT EIS were not discussed as environmental justice impacts to the people of San Ildefonso Pueblo. Commentors believed that the CT EIS recognizes adverse impacts on traditional and cultural resources but does not see these impacts as disproportionately affecting the Pueblo of San Ildefonso and therefore does not recognize an environmental justice impact. The commentors address specific concerns about the protection of Tewa Pueblo shrines and traditional cultural practices on four of the tracts. Commentors maintain that cultural preservation land uses would protect these resources better than the other contemplated uses. Commentors viewed the potential impacts on Tewa Pueblo shrines, artifacts, and traditional cultural practices associated with the other contemplated land uses as causing a disproportionately high and adverse effect on a minority population that should be addressed in the CT EIS as an environmental justice impact.*

#### Response:

The DOE has evaluated the impacts associated with land use, transportation, infrastructure, noise, visual resources, socioeconomics, ecological resources, geology and soils, water resources, air resources, and human health and has not identified any disproportionately high and adverse human health or environmental impacts on minority or low-income populations. However, for traditional cultural properties (TCPs) the analysis has not been completed.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations," and its accompanying memorandum to the heads of departments and agencies directed each agency to take impacts to minority and low-income communities into account in their decisionmaking processes. Specifically, these impacts were to be evaluated during the NEPA process. The Council on Environmental Quality (CEQ) has oversight responsibility for Federal agencies compliance with Executive Order 12898 and NEPA. The CEQ has issued guidance on evaluating environmental justice through the NEPA process. The DOE has followed this guidance in evaluating the environmental justice issues in both this CT EIS and the 1999 Site-Wide EIS (SWEIS) for LANL from which this CT EIS tiers and references.

In accordance with CEQ guidance, this CT EIS evaluates the potential for environmental impacts that would have disproportionately high and adverse impact on the low-income or minority communities in the region (see Section 4.2.13 in Chapter 4 of the main text). Most of the potential adverse environmental impacts discussed in this CT EIS, such as those associated with utilities and threatened and endangered species, would affect all populations in the area equally, and thus, would not have a disproportionately high and adverse impact to minority or low-income communities in the region. Other potential adverse impacts, such as those associated with traffic, would affect the townsite area, which has a relatively low percentage of minority and low-income populations (see Section 3.2.13 in Chapter 3 of the main text), and thus, would not disproportionately affect low-income or minority populations.

As part of its human health impacts analysis, the LANL SWEIS looked at potential exposure through special pathways, including ingestion of game animals, fish, native vegetation, surface waters, sediments, and local produce; absorption of contaminants in sediments through the skin; and inhalation of plant

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materials. For LANL, the special pathways are important to the environmental justice analysis because some of these pathways are more important or viable to the traditional or cultural practices of minority populations in the area. Even considering these special pathways, the SWEIS did not find disproportionately high and adverse health impacts to minority or low-income populations.

Steps taken to protect minority populations and others living in the vicinity of LANL are described throughout the SWEIS. In Volume I of the SWEIS, Chapter 4 discusses the affected environment and includes descriptions of ongoing environmental surveillance and compliance programs, the worker protection program, and the emergency preparedness and response program. Chapter 5 analyzes exposure to the maximally exposed individual (MEI), recognizing that through limiting the dose to individual members of the public, the entire population is better protected. Chapter 6 addresses the programs and activities that mitigate impact to the public, as well as additional mitigation measures being considered by DOE in conjunction with the SWEIS process.

The following are specific LANL community issues and areas that are associated with the analysis of environmental justice.

- **Area Pueblos:** San Ildefonso, Santa Clara, Jemez, Cochiti, San Juan, Pojoaque, Nambé, and Tesuque
- **Predominately Hispanic Communities:** El Rancho, Jacona, Jaconita, Guachupangue, Española (Traditional Hispanic communities also can be artisan guilds, rural development organizations, and acequia associations [irrigation water distribution system associations].)
- **Topics of Concern:** Human health (LANL emissions and contaminants), economic (effects from LANL

projects), and social (project effects on the fabric of a community and TCPs)

- **TCPs:** Significant place or object associated with historical and cultural practices or beliefs of a living community that is rooted in that community's history and is important in maintaining the continuing cultural identity of the community
- **General Categories of TCPs:** Ceremonial and archaeological sites, natural features mentioned in stories and legends, plant gathering areas (plants for ceremonial, medicinal, and artisan purposes), clay procurement areas (hunting areas and acequias) (TCPs are not restricted to Native American groups. For example, traditional Hispanic communities also maintain religious practices, arts and crafts traditions, folklore, and traditional medical practices.)
- **Subsistence and Other Consumption Issues:** Cattle grazing, deer and elk hunting, plant cultivation and wild plant gathering, fishing; "special exposure pathways" (ingestion, inhalation, dermal contact); limiting access; and quantifiable data

Potential impacts to cultural resources could have a disproportionate adverse affect to the minority communities in the region. However, while archaeological and historic resources have been evaluated, the evaluation of traditional cultural properties (TCPs) or sites has not been completed. The DOE initiated consultation with the Native American Pueblos in the region on TCPs associated with the tracts in July 1998, and additional correspondence was sent on March 30, 1999, to 23 area Pueblos and tribes (see Appendix E, Section E.3.2 for additional discussion). Consultations initiated as part of the CT EIS are still ongoing.

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The DOE recognizes that TCPs could exist on the tracts and that these might be affected by the uses for these tracts identified by the recipient parties. Without the consultations the DOE cannot ascertain whether TCPs are present on an individual tract or the degree to which those TCPs could be potentially impacted. Without assessment of the impacts the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities. In the discussions of cultural resources and environmental justice for each tract, the DOE includes a statement that TCPs could be present and that they could be impacted by the land uses being evaluated. The DOE will continue with the required consultation process associated with cultural resources and TCPs.

The DOE acknowledges that there are different approaches that could be used to assess environmental justice impacts. Some groups may view any and all impacts as significant, others may accept a higher level of risk. Chestnut Law Offices, legal counsel for the Pueblo of San Ildefonso, submitted comments on behalf of the Pueblo that expressed the belief that the conveyance or transfer process would have environmental justice impacts on their population, specifically,

“...the CT EIS does not recognize the impact upon these shrines [Tewa Pueblo] and usage of the area by Native American population under the County’s proposed usages of increased recreational access, and residential and commercial development. The Pueblo views the effect on the shrines, artifacts and traditional cultural usage as a disproportionate adverse impact on a minority population...”

This comment notwithstanding, the DOE considers that it has met the objectives of Executive Order 12898 to investigate environmental justice impacts that would be

potentially high and adverse and would disproportionately affect one group over another in these Final CT EIS analyses.

#### 2.8 General Issue 7: Homesteaders Association Claims

##### Issue:

*Commentors expressed their belief that the DOE should give the land back to the families who once owned or homesteaded the land and not to the County or the Pueblo of San Ildefonso. Commentors stated that homesteaders still have a claim to the land that was taken from them in the Los Alamos area. Commentors believed that the U.S. Government took the land from the homesteaders without just compensation. Commentors believed that the title search report for the tracts of land to be conveyed or transferred was not valid or complete. Commentors also believed that the DOE has not addressed the homesteaders’ claims.*

##### Response:

The DOE has been in communication with the Homesteaders Association of the Pajarito Plateau (Homesteaders Association). The Homesteaders Association is composed of people who were the homesteaders, or owners, or descendants of the original homesteaders or owners of land in the Los Alamos area that the U.S. Government condemned or purchased in the 1940s in order to conduct the Manhattan Project.

In 1942, the Undersecretary of War directed that the land needed in the area be acquired. In April 1943, the Secretary of Agriculture granted authority to the Secretary of War for the War Department to occupy and use, for as long as the military necessity existed, federally owned land under the jurisdiction of the U.S. Forest Service. This involved withdrawal of grazing permits. The holders of the grazing permits were

## APPENDIX H COMMENT RESPONSE DOCUMENT

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compensated based on the number of grazing stock.

The process prescribed for acquiring privately owned land was by condemnation or purchase. Authority for condemnation of private lands was contained in the *Second War Powers Act*. Under the *Second War Powers Act*, the government filed a Petition in Condemnation that resulted in an Order of Possession served by the court on the land owner, who then had to vacate. To acquire the land permanently, a Declaration of Taking was filed by the government, and appraisals were made by an appointed commission. If the appraisal was not approved by both the land owner and the government, the case was settled in the U.S. District Court. The land was acquired in fee simple by filing Declaration of Taking proceedings because there was not enough time to negotiate with each owner and because condemnation proceedings were necessary to eliminate the numerous title defects that existed.

The Homesteaders Association families were compensated at that time. The

Homesteaders Association members are now interested in regaining all of these lands or receiving additional compensation for the lands. The Homesteaders Association interest includes some of the land being considered for conveyance and transfer.

While no written claim for any of the land being considered for conveyance and transfer has been submitted to the DOE, the issue was researched. Only the Rendija Canyon Tract has any land that was once the site of a homestead. Approximately 10 percent or around 90 acres (40 hectares) of the Rendija Canyon Tract was formerly privately owned.

As required by PL 105-119, the U.S. Army Corps of Engineers (COE) has researched the title to all of the land tracts and the DOE submitted the resulting title opinions in a report to Congress. The COE concluded that the U.S. Government condemned these lands properly or purchased them properly and has clear title to the land tracts being considered for conveyance and transfer.

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# APPENDIX H COMMENT RESPONSE DOCUMENT

## 3.0 COMMENT DOCUMENTS AND RESPONSES

### 3.1 Introduction

This chapter presents the documents submitted to the DOE during the 45-day public comment period on the Draft CT EIS and the transcripts of the two public hearings held on the Draft CT EIS. The DOE reviewed each document and transcript and identified the public comments provided. Each comment identified is marked in the margin with a bar and the document number, the number of the comment identified in that document, and the issue category (see Table 1.2-1 in Section 1.2 of this appendix) to which that comment was assigned. For example, Comment 06-02-26 was identified in the sixth document (6), is the second comment identified in that document (2), and was categorized as a comment in issue Category 26, Water Resources.

After categorization, the DOE responded individually to each identified comment. In most instances, the response is found on the same page as the corresponding comment. However, in cases where many comments were identified on a single page, the responses to some comments may appear on subsequent pages. Responses to comments that are identical or similar in nature refer the reader to an appropriate response provided earlier. Chapter 1 of this appendix provides tables to assist the reader in locating specific documents, comments, and responses.



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October 1999

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NUCLEAR AND CHEMICAL  
AND BIOLOGICAL DEFENSE  
PROGRAMS

ASSISTANT TO THE SECRETARY OF DEFENSE  
3050 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3050

4 MAR 1999

No comments identified.

Ms. Elizabeth Withers  
EIS Document Manager  
Los Alamos Area Office  
U.S. Department of Energy  
528 35<sup>th</sup> Street  
Los Alamos, NM 87544

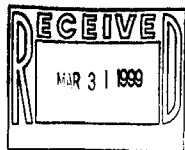
Dear Ms. Withers:

We have received the "Draft Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico" (CT EIS). Thank you for providing us the opportunity to review this document. We do not have any comments at this time.

Sincerely,

Fred Celec  
Deputy Assistant to the Secretary of Defense  
(Nuclear Matters)

cc: ODDR&E



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Final CT EIS

U.S. Department of the Interior (Office of the Secretary)  
Document 02, Page 1 of 3

October 1999



United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
Post Office Box 649  
Albuquerque, New Mexico 87103

IN REPLY REFER TO:

April 2, 1999

ER 99/169

Elizabeth Withers  
CT EIS Document Manager  
U.S. Department of Energy  
Los Alamos Area Office  
528 35th Street  
Los Alamos, New Mexico 87544

Dear Ms. Withers:

The U.S. Department of the Interior has reviewed the Draft Environmental Impact Statement (DEIS) for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and located at Los Alamos National Laboratory (LANL), Los Alamos and Santa Fe Counties, New Mexico. In this regard, the following comments are provided for your consideration during subsequent environmental documentation.

The proposed action is to convey/transfer 10 tracts of land (totaling approximately 4,796 acres) to two recipients named in Public Law 105-119 within Los Alamos and Santa Fe Counties, New Mexico. Six of these parcels are known to be inhabited by, or are adjacent to lands that are inhabited by, or contain habitat suitable for the threatened bald eagle (*Haliaeetus leucocephalus*), threatened Mexican spotted owl (*Strix occidentalis lucida*), endangered peregrine falcon (*Falco peregrinus*), and the endangered southwestern willow flycatcher (*Empidonax traillii extimus*). Under the DEIS's "Proposed Action Alternative," current resource protection and management plans would no longer remain in effect, and responsibility for planning and protection for ecological resources will pass to the receiving parties, who may not have regulations that match federal review and protection processes. The DEIS further states that federally listed species could be adversely affected by the "Proposed Action Alternative."

During development of this DEIS, several pieces of correspondence were exchanged and numerous meetings and telephone conversations occurred between the U.S. Department of Energy (DOE) and the U.S. Fish and Wildlife Service (FWS) in an attempt to address and resolve threatened and endangered species issues. In a March 23, 1999 letter to the FWS, the DOE mentioned that land uses to be implemented on the transferred lands remain unclear. DOE stated they would "re-evaluate" the need for consultation pursuant to Section 7 of the

02-01-07

02-02-07

02-03-15

Comment 02-01-07

Response:

The DOE agrees that some of the tracts inc threatened and endangered species. However, tl statement made by the commentor. The tracts c not known to have occupied nesting/denning ha endangered species (see discussion of Ecologic: Chapter 3, Section 3.2.7, of the main report).

Comment 02-02-07

Response:

The DOE has not yet made any determinati actions discussed in this CT EIS. A determinatic the tracts are apportioned between the two recip Chapter 18 of the main report).

Comment 02-03-15

Response:

The CT EIS is tiered to the 1999 Site-Wide information regarding the general area. The CT regarding the affected environment for each tra conveyance and transfer of the tracts would not species, subsequent use of the tracts by the poter impacts to key resources. The CT EIS evaluate the potential recipients for the impacts that coul Section 4.1.4 in Chapter 4 of the main report). potential recipients were not very detailed, and is discussed in bounding terms. The details of e more detailed information on potential impacts available until after the decision is made by the will receive each tract. This decision will not be of this CT EIS.

In a meeting with the U.S. Fish and Wildlif March 1, 1998, USFWS agreed that the convey

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Endangered Species Act of 1973, as amended. The DOE will need to identify all known indirect effects and make a reasonable effort to explain the effects that are not known but are "reasonably foreseeable" or can be reasonably expected (40 CFR §1508.8(b)). If there is total uncertainty regarding the future land owners or the nature of future land uses, the DOE is not required to engage in speculation regarding future plans. However, the DOE has the responsibility to make an informed judgement and to estimate future impacts on that basis, especially if DOE is aware of proposed land uses by the potential land owners. The DOE must address and analyze these uncertain, but probable, environmental consequences in its determination.

The "Proposed Action Alternative" likely will result in adverse impacts to threatened and endangered species, migratory birds, and other wildlife that occur in the area. We are concerned that proposed actions involving current LANL properties do not fully consider cumulative effects of other ongoing and proposed actions. We are currently consulting with DOE on the Site-wide EIS for continued operations at LANL, as well as LANL's Habitat Management Plans. The significance of cumulative impacts may become obscured when evaluated on a project-by-project basis. A comprehensive analysis to contrast, compare, and evaluate proposed actions and environmental consequences is necessary. Of concern to us is that all of the aforementioned proposed actions may affect the American peregrine falcon, bald eagle, Mexican spotted owl, and southwestern willow flycatcher. The analysis of potential direct impacts that would likely result from DOE's conveyance and transfer action for each tract, and indirect and cumulative impacts to listed species and other wildlife resources, including sensitive species habitat, wetlands, waters of the United States, and native wildlife and plant populations, that would likely result from the subsequent development and use of the tracts proposed in the DEIS, is incomplete. In this regard, we recommend that an appropriate quantification of direct, indirect, and cumulative effects be completed for all wildlife resources in the planning area. Indirect effects are those caused by, or resulting from, the proposed action and are later in time, but reasonably certain to occur. In addition, the DEIS does not adequately address the impacts of all interrelated and interdependent actions that are likely to occur in the planning area. Interdependent actions have no independent utility apart from the action under consideration. Interrelated actions are part of a larger action and are dependent on the larger action for their justification. We are particularly concerned about the potential adverse impacts of increased development, traffic, recreation, and other activities that result in disturbance and habitat loss or degradation.

The degree of impacts on threatened and endangered species and other natural resources depends on the resultant management and/or development of the lands proposed for transfer. The DEIS does not include a complete discussion of ongoing management practices and protections provided under the control of DOE and the potential impacts expected to occur when these lands are transferred (and possibly developed) and are no longer managed by DOE. Lands that were once vital to National security are still critical to the benefit of our State's wildlife resources. In this regard, the DEIS should address and analyze reserving and managing areas of important wildlife habitats.

02-03-15  
(Cont.)

**Comment 02-04-05**

Response:

As stated in the response to Comment 02-03-15, the land uses identified by the potential recipients of the tracts of land proposed for conveyance and transfer were not very detailed, and so the evaluation of impacts could only be discussed in bounding terms. The cumulative impacts are thus discussed in bounding terms as well. To the best of the DOE's ability, this CT EIS discusses the cumulative impacts, including non-DOE and non-Federal actions. This CT EIS tiers to the 1999 LANL Site-Wide EIS for regional information such as discussion of current DOE resource management plans. In a meeting with the USFWS on March 1, 1998, USFWS agreed that the DOE would revisit these issues after the potential recipients notified the DOE of the allocation of each tract (see letter in Chapter 18 of the main report). The DOE will revisit the assessment of cumulative impacts with respect to the *Endangered Species Act* consultation at that time as well.

**Comment 02-05-07**

Response:

As stated in the responses to Comment 02-03-15 and Comment 02-04-05, the DOE cannot ascertain for certain which party will receive which tract, and therefore, bounded the potential impacts in the CT EIS analysis. For those tracts that are transferred to the DOI, the management of the resources will become the responsibility of the DOI. For those tracts that are conveyed to the County, the management of the resources will likely be reduced to a large degree. In order to bound the impacts, the CT EIS assumes that the management of resources for all tracts would be reduced substantially. This CT EIS tiers to the 1999 LANL Site-Wide EIS for regional information such as discussion of the current DOE resource management plans.

02-04-05

02-05-07

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Until the above issues, and in particular those concerning federally-listed species, are resolved we recommend that any future proposed action be held in abeyance. To complete Endangered Species Act compliance, please contact Field Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna NE, Albuquerque, New Mexico 87113, telephone (505) 346-2545.

02-06-06

Thank you for the opportunity to provide these comments. We trust they will be of use during development of subsequent environmental analysis.

Sincerely,



Glenn B. Sekavec  
Regional Environmental Officer

**Comment 02-06-06**

Response:

The DOE is obligated fulfill its requirements under Public Law (PL) 105-119. These requirements do not allow the DOE to delay or choose not to convey or transfer a tract for any reason not specifically called out in PL 105-119 (see General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix). The DOE will follow all the other appropriate and pertinent laws and regulations as well, and will complete all necessary compliance requirements before an irreversible commitment of resources is undertaken.

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# U.S. Department of the Interior (National Park Service) Document 03, Page 1 of 2



United States Department of the Interior  
NATIONAL PARK SERVICE  
Bandelier National Monument  
HCR 1, Box 1, Suite 15  
Los Alamos, New Mexico 87544-9701  
(505) 672-3861 ext 502

IN REPLY REFER TO:  
L1419 (DOE Land Transfer/CTEIS)

APR 12 1999

Ms. Elizabeth Withers  
Conveyance and Transfer EIS Document Manager  
Los Alamos Area Office  
U.S. Department of Energy  
538 35<sup>th</sup> Street  
Los Alamos, NM 87544

Dear Ms. Withers:

Thank you for the opportunity to comment on the *Draft Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico* (CT-EIS). The document and summary were well written. Your leadership skills in facilitating the NEPA process and the creation of these documents are highly commendable, especially in view of the restrictions placed upon the DOE by P.L. 105-119.

We would like to add the following to previous input we have provided on this proposed action.

1. We are opposed to the conveyance and transfer of the TA-74 tract and the White Rock Y Tract because of the potential for future adverse impacts on the Tsankawi Unit of Bandelier National Monument.
2. The proposed action is not likely to or "cannot meet the purpose and need for agency action" according to statements made in the draft EIS. Eight action alternatives were rejected for failing to meet the agency purpose and need for action, therefore the proposed action must be rejected.
3. PL 105-119 specifies that the lands be conveyed or transferred without "consideration." However, in the draft CTEIS, floodplain protection deed restrictions are anticipated. It is inappropriate to impose one environmental safeguards and no others.
4. The draft CTEIS had too little information for us to adequately understand the potential and cumulative impacts to key resources, particularly threatened and endangered species, wildlife, and cultural resources.

03-01-06

03-02-15

03-03-14

03-04-05

Sincerely,

Roy Weaver  
Superintendent

cc: Chris Turk; Intermountain Regional Office

## Comment 03-01-06

Response:

The reader is referred to the letter presented report where the DOI expanded further on this s acknowledges the DOI's concern for protecting Monument resources under their management. requirements imposed on it by Public Law (PL) the suitability criteria for conveyance or transfer. The reader is further referred to General Issue 3, presented in Chapter 2 of this appendix where ti

## Comment 03-02-15

Response:

As stated in the response to Comment 03-0 meet the actions required of it by PL 105-119. F action is not the same as the underpinning purpo PL 105-119. As stated in PL 105-119, "The pur transfer under this section is to fulfill the obligati respect to Los Alamos National Laboratory, Ne and 94 of the *Atomic Energy Act* of 1955." The Issue 1, Purpose and Need, in Chapter 2 of this discussed.

## Comment 03-03-14

Response:

The term "without consideration" is a contra that means, essentially, "without compensation. definition has been added to Section 1.1.3 in Cha CT EIS. The DOE's authority to limit or conditi of land tracts is circumscribed by the provisions limitations are not an issue for tracts transferred Pueblo of San Ildefonso, because such an admitt result in a change in ownership (i.e., the United S title), and all applicable requirements, including

environmental safeguards, will remain in effect. In the case of conveyances to the County of Los Alamos, the DOE must convey “fee title” to the tracts of land. The DOE must work within this limitation in determining what, if any, conditions or restrictions can be included in the instruments of conveyance. This CT EIS has been changed to reflect that this principle also applies to Executive Order 11988, Floodplain Management (section 3(d)), and to Executive Order 11990, Protection of Wetlands (section 4) (for example, see Section 16.2, Mitigations Prior to Conveyance or Transfer, in Chapter 16 of the main report). This issue also is discussed in General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

Location of CT EIS revision:

A footnote defining the term “without consideration” has been added to Section 1.1.3 in Chapter 1 of the main report. A reference to Executive Orders 11988 and 11990 has been added to Chapter 16 of the main report.

**Comment 03-04-05**

Response:

The reader is referred to the response to Comment 02-03-15. As stated in Chapter 1, Section 1.6.1, of the main report, the analysis provided within the CT EIS does not have the level of detail normally associated with specific project-oriented EISs. This is largely an outgrowth of the level of uncertainty associated with the contemplated uses and the subsequent potential effects of such uses. The DOE has, however, disclosed as much available information as possible within the CT EIS analysis as it relates to the potential future tract development and use impacts.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

April 9, 1999

Elizabeth Withers  
EIS Manager  
Los Alamos Area Office  
U.S. Department of Energy  
528 35<sup>th</sup> Street  
Los Alamos, New Mexico 87544

Dear Mr. Withers:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality Regulations (CEQ) for Implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) for Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy (DOE) and Located at Los Alamos National Laboratory (LANL), Los Alamos and Santa Fe Counties, New Mexico. The DOE prepared this DEIS, as directed by Congress, (Public Law 105-119), to examine the potential environmental impacts associated with the conveyance and transfer of ten parcels of land at the LANL.

The EIS evaluates two alternatives: (1) the no action alternative, and (2) the Preferred Alternative, conveyance and transfer of ten tracts of land to the Incorporated County of Los Alamos, New Mexico, or its designee, and transfer to the Secretary of the Interior, in trust for the Pueblo of San Ildefonso, parcels of land under the jurisdictional administrative control of the LANL.

Overall, the DEIS has done a remarkably good job of describing the proposed action. The document explores and evaluates reasonable alternatives, provides evidence and analyses of impacts on the affected environment, demonstrates coordination with other agencies with special expertise or jurisdiction by law with respect to environmental impacts, provides for mitigation and monitoring, and documents efforts to involve the public.

EPA classifies your DEIS and proposed action as "EC-2," i.e., EPA has "Environmental Concerns" to the preferred Alternative since there is no assurance that the mitigation measures identified on pages 16-1 through 16-8 of the DEIS would be implemented by the transferee once transfer occurs. We suggest that DOE consider imposing deed restrictions and easements for those transfer lands having resources considered sensitive and having natural, cultural, historical

## Comment 04-01-15

Response:

Comment noted.

## Comment 04-02-14

Response:

The provisions of Public Law (PL) 105-119 conveyances to the County of Los Alamos than DOI. These differences affect the manner in which resources would be protected.

In order to bound the assessment of potential conveyance or transfer of each land tract, the presumed that environmental and cultural resources protected to the same degree as they are currently of the land. This was done to evaluate, to the extent which these resources might be impacted. How occur subsequent to conveyance or transfer of tracts dependent upon which party received which tracts development and use the recipients put the tracts will be dependent upon the timeframe over which part of the actual conveyance of the tracts, the discussions with the County with the goal of re-maintain some of the current levels of resource protection could include deed restrictions, deed notices, or regulators and the County. It is expected that subsequent transfer, the DOE's role in monitoring mitigation current understanding of the range of topics for transfer in Chapter 16 of the main report. The reader also Issue 2, Deed Restrictions, in Chapter 2 of this report discussed.

04-01-15

04-02-14



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and environmental importance. Such restrictions would better insure that subsequent use of the lands by the transferee would be environmentally and socially sustainable.

04-02-14  
(Cont.)

Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act, to inform the public of our views on proposed Federal actions. EPA appreciates the opportunity to review the DEIS. We request that you send our office one (1) copy of the Final EIS at the same time that it is sent to the Office of Federal Activities (2251A), EPA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20044.

Sincerely yours,



 Robert D. Lawrence, Chief  
Office of Planning and Coordination

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**Pueblo of San Ildefonso  
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**CHESTNUT LAW OFFICES**

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April 12, 1999

Ms. Elizabeth Withers  
CE EIS Document Manager  
Department of Energy  
Los Alamos Area Office  
528 35th Street  
Los Alamos, New Mexico 87544

RE: Comments of Pueblo of San Ildefonso on the Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the DOE and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico

Dear Ms. Withers:

Chestnut Law Offices is legal counsel for the Pueblo of San Ildefonso (the Pueblo) and submits the following comments on behalf of the Pueblo. The Pueblo generally supports DOE's proposed action alternative to convey or transfer all or portions of the identified tracts subject to the environmental remediation needed for each tract. However, the Pueblo has concerns about several items contained in the draft Environmental Impact Statement (CT EIS) and the companion Environmental Restoration Report (ER) to support the land conveyance and transfer. The Pueblo's comments and concerns are as follows:

1. **Environmental Justice Impacts on Rendija Canyon Tract:** The CT EIS determines that there could be an adverse impact upon minority woodgatherers because of restricted access under the cultural protection land use scenario proposed by the Pueblo. The CT EIS analysis fails to appreciate the value of cultural resources protection of Tewa Pueblo shrines when it only references environmental justice impacts to minority woodgatherers. Native Americans from San Ildefonso Pueblo will receive more justice with better protections under the cultural preservation use proposed by the Pueblo; wood gathering in the forest will continue as well. In fact, San Ildefonso users will be assured of more firewood and other plant resources for future generations. The CT EIS indicates that there is no data on the use of the tract by traditional wood gatherers so it appears that the statement of an adverse impact is not well founded.

The CT EIS analysis anticipates a significant change in a large part of the land area because

**Comment 05-01-08**

Response:

The DOE has not made a determination of wood gatherers. The CT EIS states that there is if the activity is prevalent and access to Rendija limiting wood gathering activity in Rendija Canyon resources, this potential benefit does not reduce the evaluation of environmental justice does not value between impacts to different resources. No data on wood gathering activities, the DOE could If the minority wood gatherers are predominant Pueblo, then access to Rendija Canyon would not should the Pueblo receive the tract.

**Comment 05-02-08**

Response:

Potential impacts to cultural resources could have an adverse effect to the minority communities in the the potential impacts to the archaeological and historical while archaeological and historic resources have been evaluation of traditional cultural properties (TCPs) completed. Consultation with the Native American TCPs associated with the tracts was initiated in July has received no specific response to date, it will not this information.

The CT EIS states that seven TCPs have been identified in Canyon Tract during previous consultations, but to identify the presence of all TCPs are incomplete additional TCPs are likely to be present and that the uses identified by the recipient parties. The degree of impact cannot be assessed. Without this assessment cannot determine whether those impacts would have had an adverse effect on any minority or low-income

A statement was added to the discussion of Rendija Canyon Tract that includes the general

05-01-08

05-02-08

**Pueblo of San Ildefonso  
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Elizabeth Withers  
April 12, 1999  
Page 2

of the proposed residential development with the introduction of additional residents but does not see this as an environmental justice impact upon the Native American population that uses the area for traditional and cultural practices. The increased access and use of natural areas could impact cultural resources in the tract by causing damage or destruction of the resources, vandalism, unauthorized collection of materials and artifacts and disturbance of traditional practices and ceremonies. In addition, transfer to the County could limit the ability to use the area for traditional practices by tribal members. Clearly, there are numerous adverse impacts to the Native American population that will result from the residential development and the increased influx of residents to the area.

05-02-08  
(Cont.)

2. Environmental Justice Impacts on White Rock Y Tract: The Pueblo agrees with the CT EIS assessment that there is the potential for increased activity in the area under the County's proposed use of the area for recreational purposes. The CT EIS notes that increased and unrestricted access could have a detrimental impact on wetland, sensitive habitat and archeological sites within the tract as well as to adjacent lands such as Bandelier National Monument and site security at TA 72. The transfer of the tract to the County removes the land from federal protections and could impact cultural resources in the tract by causing damage or destruction of the resources, vandalism, unauthorized collection of materials and artifacts and disturbance of traditional practices and ceremonies. In addition, transfer to the County could limit the ability to use the area for traditional practices by tribal members. This, as with the Rendija Canyon, is an adverse impact on the minority population (San Ildefonso Pueblo tribal members) because of the interference with traditional and cultural practices in the area as well as the increased likelihood of desecration of traditional sites and materials by non-Indians.

05-03-08

legal counsel for the Pueblo of San Ildefonso regarding the presence of TCPs on this tract. Environmental justice sections of the document also have been clarified to address the potential for environmental justice impacts related to impacts to TCPs and to include a statement that the legal counsel for the San Ildefonso Pueblo has indicated that conveyance of the Rendija Canyon Tract and the contemplated land uses may have environmental justice impacts on their population.

The reader is referred to General Issue 6, Environmental Justice, in Chapter 2 of this appendix where the issue is discussed.

Location of CT EIS revisions:

Summary, Table S-2 and Table S-3; Chapter 2, Section 2.5.1.1, Table 2.5.1-1, and Table 2.5.1-2; Chapter 4, Section 4.2.13; Chapter 5, Sections 5.1.8 and 5.3.14; and Chapter 15, Section 15.3.14.

**Comment 05-03-08**

Response:

The CT EIS states that consultations to identify the presence of TCPs are incomplete on the White Rock Y Tract. The CT EIS also states that TCPs are likely to be present, and that they may be affected by the uses identified by the recipient parties. With current information, it is not possible to assess the degree to which these TCPs may be impacted. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

05-04-10

Another environmental justice concern for this tract involves the Los Alamos Canyon because it received discharges and runoff from TA-21, the most contaminated of the tracts that are being considered for transfer. A monitoring well located in Los Alamos Canyon detected above background concentrations of tritium and uranium in the perched groundwater. (ER, p. 38). The ER states that the limited sampling done to date shows that levels are lower than those that would raise health concerns and sees the levels as decreasing over time because there is no longer a significant source of contaminate discharge into the canyons and any contaminated sediments will be dispersed over time by stream flow. (ER, p. 38). This statement appears to minimize the potential impact of contaminate levels. But then the ER acknowledges that "it is not known whether the existing contamination of sediments could limit their use as sources for cultural [medicinal and artistic] uses and ceremonial use, even with the contamination levels below those eliciting health concerns." (ER, p.38). This has a disproportionately adverse impact on the Native American population which uses this area for cultural and traditional uses. The CT EIS and ER do not adequately address the potential detrimental impact and make it difficult for the Pueblo of San Ildefonso to accurately assess the environmental remediation that may be necessary in this tract.

A statement was added to the discussion of cultural resources for the White Rock Y Tract that includes the general information provided by the legal counsel for the Pueblo of San Ildefonso regarding the presence of TCPs on the White Rock Y Tract. Environmental justice sections of the document also have been clarified to address the potential for environmental justice impacts related to impacts to TCPs and to include a statement that the legal counsel for the San Ildefonso Pueblo has indicated that conveyance of the White Rock Y Tract and the contemplated land uses may have environmental justice impacts on their population.

05-05-08

3. Environmental Justice Impacts on TA 74 Tract: The Pueblo agrees with the ER

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**Pueblo of San Ildefonso  
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The reader is referred to the response to Comment 05-02-08 and to General Issue 6, Environmental Justice, in Chapter 2 of this appendix where the issue is discussed.

Location of CT EIS revisions:

Summary, Table S-2 and Table S-3; Chapter 2, Section 2.5.1.1, Table 2.5.1-1, and Table 2.5.1-2; Chapter 4, Section 4.2.13; Chapter 12, Sections 12.1.8 and 12.3.14; and Chapter 15, Section 15.3.14.

**Comment 05-04-10**

Response:

The commentor references the Environmental Restoration Report, which is part of a parallel but separate process. The reader is referred to General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed. The reader also is referred to the response to Comment 05-03-08 for text changes regarding cultural resources and environmental justice issues at the White Rock Y Tract.

The CT EIS presents the best information currently available from the Environmental Restoration Report concerning site characterization and the environmental restoration process. Based on this information, there are no anticipated human health impacts associated with the low levels of residual contamination in Los Alamos Canyon. Consultations to identify the presence of TCPs have not been completed. Specifically, no information is available regarding areas and natural resources that may be used by Native American populations in a different manner than in the assumptions underlying the assessment of human health risks. The CT EIS currently states that TCPs are likely to be present on the tract, and the Environmental Restoration Report acknowledges that it is not known whether these residual contamination levels could limit some cultural uses. With current information, it is not possible to assess whether there are impacts, the intensity of impacts, or whether the conveyance or transfer or contemplated land uses would change any impacts. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

**Comment 05-05-08**

Response:

The CT EIS states that consultations to identify the presence of TCPs are incomplete on the TA 74 Tract. The CT EIS also states that TCPs are likely to be present and that they may be affected by the uses identified by the recipient parties. With current information, it is not possible to assess the degree to which these TCPs may be impacted. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

A statement was added to the discussion of cultural resources for the TA 74 Tract that includes the general information provided by the legal counsel for the Pueblo of San Ildefonso regarding the presence of TCPs on the TA 74 Tract. Environmental justice sections of the document also have been clarified to address the potential for environmental justice impacts related to impacts to TCPs and to include a statement that the legal counsel for the San Ildefonso Pueblo has indicated that conveyance of the TA 74 Tract and the contemplated land uses may have environmental justice impacts on their population.

The reader is referred to the response to Comment 05-03-08 and to General Issue 6, Environmental Justice, in Chapter 2 of this appendix where this issue is discussed.

Location of CT EIS revisions:

Summary, Table S-2 and Table S-3; Chapter 2, Section 2.5.1.1, Table 2.5.1-1, and Table 2.5.1-2; Chapter 4, Section 4.2.13; Chapter 13, Sections 13.1.8 and 13.3.14; and Chapter 15, Section 15.3.14.



damage or destruction of the resources, vandalism, unauthorized collection of materials and artifacts and disturbance of traditional practices and ceremonies. The EIS sees fewer impacts that may result from the limited commercial development area proposed by the Pueblo as compared with the full scale residential development. However, the CT EIS does not recognize the impact of full scale development as having a disproportionate adverse impact on the Native American population that would use the adjoining San Ildefonso Pueblo Sacred Area for cultural and traditional practices.

05-05-08  
(Cont.)

05-06-10

05-07-13

05-08-08

**Comment 05-06-10**

Response:

The commentor references the Environmental Restoration Report, which is part of a parallel but separate process. The reader is referred to General Issue 6, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed. The reader also is referred to the response to Comment 05-03-08 for text changes regarding cultural resources and environmental justice issues at the TA 74 Tract.

The CT EIS presents the best information currently available from the Environmental Restoration Report concerning site characterization and the environmental restoration process. Based on this information, there are no anticipated human health impacts associated with the low levels of residual contamination on the tract. Consultations to identify the presence of TCPs have not been completed. Specifically, no information is available regarding areas and natural resources that may be used by Native American populations in a different manner than in the assumptions underlying the assessment of human health risks. The CT EIS currently states that TCPs are likely to be present on the tract, and the Environmental Restoration Report acknowledges that it is not known whether these residual contamination levels could limit some cultural uses. With current information, it is not possible to assess whether there are impacts, the intensity of impacts, or whether the conveyance or transfer or contemplated land uses would change any impacts. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

**Comment 05-07-13**

Response:

The figure has been replaced with the correct figure. The reader is referred to Section 14.3.1 in Chapter 14 of the main report for the correct figure.

Location of CT EIS revision:

Figure 14.3.1.1-2 in Chapter 14 of the main report has been replaced with the correct figure.

**Comment 05-08-08**

Response:

The CT EIS states that TCPs are likely to be present on the tracts and adjacent areas and that the uses identified by the recipient parties could have an impact on these resources. The analysis of cultural resources correctly describes the anticipated differences in potential impacts between the two contemplated uses. Consultations to identify the TCPs that could be impacted by the conveyance or transfer or subsequent contemplated uses are incomplete. With current information, it is not possible to assess the degree to which these TCPs may be impacted. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

A statement was added to the discussion of cultural resources for the White Rock Tract that includes the general information provided by the legal counsel for the Pueblo of San Ildefonso regarding the presence of TCPs in the vicinity of the White Rock Tract. Environmental justice sections of the document also have been clarified to address the potential for environmental justice impacts related to impacts to TCPs and to include a statement that the legal counsel for the San Ildefonso Pueblo has indicated that conveyance of the White Rock Tract and the contemplated land uses may have environmental justice impacts on their population.

The reader is referred to the response to Comment 05-03-08 and to General Issue 6, Environmental Justice, in Chapter 2 of this appendix where this issue is discussed.

Location of CT EIS revisions:

Summary, Table S-2 and Table S-3; Chapter 2, Section 2.5.1.1, Table 2.5.1-1, and Table 2.5.1-2; Chapter 4, Section 4.2.13; Chapter 14, Sections 14.1.8 and 14.3.14; and Chapter 15, Section 15.3.14.

**Pueblo of San Ildefonso  
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It also appear that the ER does not adequately consider the impact that the contamination levels would have on the Native American population which would use the area for cultural and traditional practices. The ER states that the limited sampling shows that levels are well below levels that would raise health concerns with levels decreasing over time because LANL upstream operations are now subject to more stringent regulations that limit contaminate release. Despite the ER statement of low and decreasing levels of contamination DOE acknowledges that "it is not known whether the existing contamination of sediments and spring waters could limit their uses for cultural [medicinal and artistic] use and ceremonial use, even with the contamination levels orders of magnitude below those eliciting health concerns." (ER, p. 28) Yet, DOE is proposing that no canyon clean up or "no action" under the cultural preservation scenario while it recommends clean up if the tract was used for residential purposes. First, DOE's risk assessment does not give the potential exposure based on cultural and traditional uses the same weight as exposure for residential use. This is an environmental justice impact since it could have a high and adverse human health impact on the Native American population who use the area for cultural and traditional practices. Second, DOE has insufficient information on the risk assessment despite the fact that the Pueblo would use a substantial portion of the tract for the primary purpose of cultural preservation.

Conclusion: The Pueblo supports DOE's preferred alternative to transfer the identified parcels, with the understanding that the timing of the transfers to be primarily contingent upon clean up of contamination within each tract. However, the Pueblo does not agree with the statements contained in both the CT EIS and the ER about potential impact on minority populations, or lack thereof, and the proposed remediation actions and information supporting such proposed remediation. The fact that the CT EIS includes the unsubstantiated effect upon minority woodgatherers as an adverse impact but does not recognize the impact on traditional and cultural uses and protection of Tewa shrines for the same area is discriminatory and diminishes the importance of the areas to the Native American population.

The Pueblo is proposing to use the majority of these four tracts in particular for cultural preservation with the White Rock tract for limited commercial development. Under the Pueblo's proposed land usage, the Tewa Pueblo shrines in each of these tracts and nearby Pueblo lands will receive better protection and cultural and traditional practices and uses of the natural resources in these tracts will continue and flourish. Yet, the CT EIS does not recognize the impact upon these shrines and usage of the area by the Native American population under the County's proposed usages of increased recreational access, and residential and commercial development. The Pueblo views the effect on the shrines, artifacts and traditional cultural usage as a disproportionate adverse impact on a minority population that requires greater consideration than was given throughout the CT EIS.

The Pueblo is extremely concerned about the approach given throughout the CT EIS and the ER for those parcels that have been proposed for cultural preservation. The ER indicates that there is no need for further remediation activity since the contamination levels are below that which would raise a health risk or concern. Then in the same paragraph, the ER indicates that it isn't sure if these

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Final CT EIS

**Comment 05-09-10**

Response:

05-09-10

The commentor references the Environmental Restoration Report, which is part of a parallel but separate process. This comment has been forwarded to the appropriate contact at the Environmental Restoration (ER) Project, which is responsible for that report. The reader also is referred to General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where environmental restoration issues are discussed. The reader also is referred to the response to Comment 05-08-08 for text changes regarding cultural resources and environmental justice issues at the White Rock Tract.

05-10-08

The CT EIS presents the best information currently available from the Environmental Restoration Report concerning site characterization and the environmental restoration process. Prior to the conveyance or transfer, the DOE is required to remediate or restore the tracts, to the maximum extent practicable, to a level of residual contamination compatible with one of the three uses identified in Public Law (PL) 105-119. The assumption of the CT EIS is that the tracts will be cleaned up to levels consistent with the land uses contemplated by the recipient party. Precise levels of cleanup will be determined by the ER Project in consultation with the State of New Mexico, the public, and the recipients. The appropriate environmental restoration activities will be completed prior to any conveyance and transfer.

05-11-08

Based on current information, there are no anticipated human health impacts associated with the low levels of residual contamination on the White Rock Tract. Consultations to identify the presence of TCPs have not been completed. Specifically, no information is available regarding areas and natural resources that may be used by Native American populations in a different manner than in the assumptions underlying the assessment of human health risks. The CT EIS currently states that TCPs are likely to be present on the tract, and the Environmental Restoration Report acknowledges that it is not known whether these residual contamination levels could limit some cultural uses. With current information, it is not possible to assess whether there are impacts, the intensity of impacts, or whether the conveyance or transfer or contemplated land uses would change any impacts. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

05-12-09



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same "acceptable" levels are sufficient to allow the resources to be used for cultural and traditional practices. This lack of information diminishes the importance of human health and safety concerns of those Native Americans who participate in cultural and traditional practices in the specific areas. Furthermore, the ER seems to diminish the importance of the cultural and traditional uses by recommending "no further action" based on the potential disruption that remediation activities could have. The Pueblo will inform DOE about appropriate remedial actions for each tract after careful site surveys by tribal officials to determine if remediation (excavation) would an appropriate remedy in certain instances rather than making what appears to be a cursory determination on what is best for the Pueblo's proposed uses.

We look forward to working together with DOE and Los Alamos County to accomplish the transfer of identified tracts, after the concerns in these comments have been properly addressed, the tracts divided between the Pueblo and the County and the appropriate clean up has been done.

Sincerely,

CHESTNUT LAW OFFICES



Peter C. Chestnut

cc: Governor Terry Aguilar  
Leon Roybal  
David Sarracino

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Final CT EIS

**Comment 05-10-08**

Response:

The CT EIS text discussing cultural resources and environmental justice has been modified to include the general information provided in this letter regarding the presence of TCPs on four of the tracts and the potential for environmental justice impacts related to cultural or traditional uses of these tracts.

The reader is referred to the response to Comment 05-01-08, and to General Issue 5, Environmental Restoration Process; and General Issue 6, Environmental Justice; in Chapter 2 of this appendix where these issues are discussed.

Location of CT EIS revisions:

Summary, Table S-2 and Table S-3; Chapter 2, Section 2.5.1.1, Table 2.5.1-1, and Table 2.5.1-2; Chapter 4, Section 4.2.13; Chapter 5, Sections 5.1.8 and 5.3.14; Chapter 12, Sections 12.1.8 and 12.3.14; Chapter 13, Sections 13.1.8 and 13.3.4; Chapter 14, Sections 14.1.8 and 14.3.14; and Chapter 15, Section 15.3.14.

**Comment 05-11-08**

Response:

The CT EIS states that TCPs are likely to be present on the tracts and adjacent areas and that the uses identified by the recipient parties could have an impact on these resources. The analysis of cultural resources correctly describes the anticipated differences in potential impacts between contemplated uses for each tract. Consultations to identify the TCPs that could be impacted by the conveyance or transfer or subsequent contemplated uses are incomplete. With current information, it is not possible to assess the degree to which these TCPs may be impacted. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

The CT EIS text discussing cultural resources and environmental justice issues has been modified to include the general information provided in this letter regarding the presence of TCPs on four of the tracts and the potential for environmental justice impacts related to cultural or traditional uses of these tracts.

05-12-09  
(Cont.)

**Pueblo of San Ildefonso  
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Location of CT EIS revisions:

Summary, Table S-2 and Table S-3; Chapter 2, Section 2.5.1.1, Table 2.5.1-1, and Table 2.5.1-2; Chapter 4, Section 4.2.13; Chapter 5, Sections 5.1.8 and 5.3.14; Chapter 12, Sections 12.1.8 and 12.3.14; Chapter 13, Sections 13.1.8 and 13.3.4; Chapter 14, Sections 14.1.8 and 14.3.14; and Chapter 15, Section 15.3.14.

**Comment 05-12-09**

Response:

The commentor references the Environmental Restoration Report, which is part of a parallel but separate process. This comment has been forwarded to the appropriate contact at the ER Project, which is responsible for that report. The reader also is referred to General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where environmental restoration issues are discussed.

The CT EIS presents the best information currently available from the Environmental Restoration Report concerning site characterization and the environmental restoration process. Prior to the conveyance or transfer, the DOE is required to remediate or restore the tracts, to the maximum extent practicable, to a level of residual contamination compatible with one of the three uses identified in PL 105-119. The assumption of the CT EIS is that the tracts will be cleaned up to levels consistent with the land uses contemplated by the recipient party. Precise levels of cleanup will be determined by the ER Project in consultation with the State of New Mexico, the public, and the recipients. The appropriate environmental restoration activities will be completed prior to any conveyance and transfer.

Based on current information, there are no anticipated human health impacts associated with the low levels of residual contamination on the tracts. Consultations to identify the presence of TCPs have not been completed. Specifically, no information is available regarding areas and natural resources that may be used by Native American populations in a different manner than in the assumptions underlying the assessment of human health risks. The CT EIS currently states that TCPs are likely to be present on the tract, and the Environmental Restoration Report acknowledges that it is not known whether these residual contamination levels could limit some cultural uses. With current information, it is not possible to assess whether there are impacts, the intensity of impacts, or whether the conveyance or transfer or contemplated land uses would change any impacts. Without this assessment of impacts, the DOE cannot determine whether those impacts would have a disproportionately high and adverse effect on any minority or low-income communities.

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GARY E. JOHNSON  
Governor

State of New Mexico  
ENVIRONMENT DEPARTMENT  
Harold Runnels Building  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502-6110  
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PETER MAGGIOR.  
Secretary

April 12, 1999

Elizabeth Withers  
CT EIS Document Manager  
DOE, Los Alamos Area Office  
528 35<sup>th</sup> Street  
Los Alamos, N. M. 87544

Dear Ms. Withers:

**RE: DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE CONVEYANCE AND TRANSFER OF CERTAIN LAND TRACTS ADMINISTERED BY THE DEPARTMENT OF ENERGY AND LOCATED AT LOS ALAMOS NATIONAL LABORATORY, LOS ALAMOS AND SANTA FE COUNTIES, NEW MEXICO, DOE/EIS-0293; DEPARTMENT OF ENERGY, LOS ALAMOS AREA OFFICE; FEBRUARY 1999**

The following transmits New Mexico Environment Department (NMED) staff comments concerning the above-referenced Draft Environmental Impact Statement (CT EIS).

**A PROJECT SUMMARY**

The CT EIS examines potential environmental impacts associated with the conveyance and transfer of ten parcels of land at the Los Alamos National Laboratory (LANL). The tracts proposed for conveyance and transfer are situated along the north-central and northeast boundary of LANL. They include the following: TA-21 Site, DP Road Tract, DOE Los Alamos Area Office Site, Airport Tract, White Rock Site, Rendija Canyon Site, White Rock Y Site, TA-74 Site, Site 22, and the Manhattan Monument. The document evaluates two alternatives: (1) the No Action Alternative, and (2) the Conveyance and Transfer of Each Tract Alternative (the Proposed Action Alternative). The U.S. Department of Energy's (DOE) preferred alternative is a subset of the Proposed Action Alternative, namely, to convey or transfer several of the tracts in the year 2000, several of the tracts entirely or in part (portions without potential contamination issues or mission support concerns) by the year 2007, and one tract by the year 2007.

**B. GROUND WATER QUALITY**

The following supporting documents were reviewed to prepare the ground water quality comments, below: Environmental Restoration Report To Support Land Conveyance And Transfer Under Public Law 105-119 and A Preliminary Identification of Parcels of Land in Los Alamos, New Mexico for Conveyance or Transfer. Documents referenced and critical to the preparation of the CT EIS include the Hydrogeologic Workplan, Los Alamos National Laboratory (LANL, 1996) and the Site-Wide Environmental Impact Statement for Continued Operation of

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the Los Alamos National Laboratory (DOE, 1999). The documents were reviewed to determine if present ground water quality concerns were adequately addressed during the conveyance and transfer process and what impacts the process would have on future ground-water quality based on the projected land use.

- |  |                              |
|--|------------------------------|
| <p>1. Based on the past and present use of the tracts proposed for conveyance or transfer, it is most likely that the TA-21 tract (a tritium research facility), has introduced significant amounts of contaminants to deeper ground-water zones.</p>  | <p>06-01-26</p>              |
| <p>2. Ground water quality issues were not addressed on a "tract by tract" basis in the CT EIS document. In many cases, ground water underlying the tracts to be conveyed or transferred has never been investigated. Therefore, ground water characterization and/or remediation costs were not included in the assessment.</p>   | <p>06-02-26<br/>06-03-09</p> |
| <p>3. Characterization of the ground water systems (alluvial, perched, and regional) underlying LANL is addressed in the Hydrogeologic Workplan. Completion of this investigation is scheduled for the year 2006, only a year prior to the scheduled conveyance or transfer, thus making it unlikely that newly identified, site- specific or regional water quality issues could be adequately addressed.</p>   | <p>06-04-26</p>              |
| <p>4. Contaminants (uranium, tritium, high explosives, nitrates, and others) have been detected, but not defined, in the regional aquifer as well as alluvial and perched saturated zones in the regional characterization wells installed to date. One of these, the R-9 well, is in the White Rock Y Site and downgradient along the inferred ground water flow direction from the TA-21 Site. In some cases contaminant concentrations exceed state or federal maximum contaminant levels and/or health advisory guidelines.</p>  | <p>06-05-26</p>              |
| <p>5. Under the two alternative scenarios (No Action or Proposed Action) set forth in the CT EIS, the document states that there would be no new impacts to ground water quality. However, under both scenarios, increased water usage could accelerate the depletion of the main regional aquifer, possibly degrade existing ground water quality, and increase the potential for contaminant migration towards the public drinking water supply wells, requiring more expensive treatment technology.</p>  | <p>06-06-26</p>              |
| <p><b>C. SURFACE WATER QUALITY</b></p>   |                              |
| <p>1. The CT EIS refers to the Environmental Restoration Report (ER), a document that is not part of this review packet, nor is it fully discussed as part of the CT EIS. The ER, however, introduces the new "road map" which establishes the future framework for environmental restoration activity (specifically surface water monitoring) associated with potential release sites (PRSs) on properties adjacent and upstream of the land transfer parcels proposed in the CT EIS. The ER document, therefore, should be evaluated by NMED as part of this process</p> | <p>06-07-15</p>              |
| <p>2. Perhaps, the weakest element of the CT EIS with regard to surface water concerns, is a lack of guarantee that surface water will be monitored appropriately after the land transfers and the removal of the PRSs from the RCRA permit have occurred.</p>   | <p>06-08-14</p>              |

**Comment 06-01-26**

Response:

The DOE continues to monitor contamination in the different zones of the aquifer. At this time, there are no data to support this statement.

**Comment 06-02-26**

Response:

To the extent groundwater data were available on a tract-by-tract basis, these data were included in the CT EIS. The groundwater at LANL is subject to ongoing study. The statement in Chapter 4, Section 4.2.10, of the main report has been amended to include the sentence "In some cases data were not available for the individual tracts."

Location of CT EIS revisions:

The sentence, "In some cases data were not available for the individual tracts," has been added to Section 4.2.10 in Chapter 4 of the main report.

**Comment 06-03-09**

Response:

Environmental restoration characterization and remediation costs are addressed in the Environmental Restoration Report. Costs are one of the factors that are considered for the decisionmaking process. The reader is referred to General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed.

**Comment 06-04-26**

Response:

The DOE agrees with the commentor that completion of the Hydrogeologic Workplan is needed to fully understand potential groundwater concerns. New information resulting from the completion of the investigations outlined in the Hydrogeologic Workplan would not be available by the time these tracts are likely to be conveyed or transferred.

**Comment 06-05-26**

Response:

These contaminants have been detected in shallow or alluvial groundwater in the vicinity of TA 21 and in the regional aquifer. With the exception of nitrates, however, no contaminants have been detected in the regional aquifer at concentrations exceeding State or Federal maximum contaminant levels. The nitrate appears to be derived from upstream sewage effluents.

**Comment 06-06-26**

Response:

The CT EIS includes discussion of new impacts to groundwater quality. The CT EIS states that under the No Action Alternative, the conveyance and transfer of the tracts would not occur, and therefore, the impacts would be the same as those described for the existing environment. The description of the existing environment tiers from the 1999 LANL Site-Wide EIS, which describes the expected increases in water use. Furthermore, Table 15.2-1 in Chapter 15 of the main report presents the cumulative impacts of actions other than those associated with the proposed conveyance and transfer. This was done to present the reader with potential cumulative impacts independent of the proposed conveyance and transfer. In other words, the table presents the cumulative impacts associated with the No Action Alternative.

Under the Proposed Action Alternative, the CT EIS states that the proposed conveyance and transfer would not “directly” affect water quality, but that there could be “indirect” impacts. (See Section 4.1.2 in Chapter 4 of the main report for a discussion of direct versus indirect impacts.) For indirect impacts, the CT EIS states that development could contribute to overall regional water level decline and possibly result in degradation of water quality within the aquifer. For an example of this language, the reader is referred to Section 6.3.10 in Chapter 6 of the main report.

The annual testing of Los Alamos’ drinking water shows that it meets all Federal and New Mexico chemical and radiological standards. This testing is required by law and completed by the State Scientific Laboratory, an independent analytical laboratory. In addition to this regular testing of the

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community drinking water, LANL also conducts annual monitoring of eight special wells drilled into the aquifer. These test wells are used to provide early detection of water quality problems in the aquifer.

**Comment 06-07-15**

Response:

The CT EIS includes as Appendix B a summary of the information presented in the Environmental Restoration Report. The reader is referred to General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed.

The DOE provided a copy of the Environmental Restoration Report to the NMED on February 26, 1999, and received comments from NMED on the Environmental Restoration Report on April 12, 1999. These comments were considered in the preparation of the final Environmental Restoration Report. The reader should direct any additional requests regarding the Environmental Restoration Report to the contact provided in the discussion of General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed.

**Comment 06-08-14**

Response:

The monitoring of areas after cleanup has occurred is part of the RCRA closure process requirements included in the RCRA permit. Furthermore, because monitoring changes over time are an essential part of understanding the environment, the general environmental monitoring program at LANL would likely continue.

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3. Also included as part of this land transfer process and the CT EIS should be the Draft Watershed Management Plan. Proposals made in this plan should be viewed in conjunction with the CT EIS because it outlines surface water monitoring strategies that may impact watersheds in which the land transfer parcels described in this EIS are located.

06-09-26

D. AIR QUALITY

The area of the proposed land transfer is currently in attainment for all National Ambient Air Quality Standards (NAAQS). The CT EIS, however, does not adequately address cumulative impacts, especially from potential radiation exposure.

06-10-02

The cumulative impacts section of the CT EIS should include the potential impacts from proposed sources at LANL in conjunction with the proposed land transfer; e.g., those projects that are currently planned or are planned for the foreseeable future. Some of these projects are listed in section 1.5 of the CT EIS. However, the document does not consider the possibility that the Spallation Neutron Source (SNS) described in the DEIS DOE/EIS-0247 may be located at LANL. Although LANL is an alternative location for this project, the potential impacts of additional community development near the proposed SNS site should be addressed in this CT EIS.

06-11-05

E. EDITORIAL MATTERS AND RECOMMENDATION

Several editorial issues should be addressed prior to final publication. As an example: Figure 14.3.1.1-2 (page 14-16) refers to the "White Rock Tract - Cultural Preservation and Commercial Land Use" yet graphically it is a duplication of Figure 13.1.1-2 (page 3-4) Technical Area 74 Tract - Monitoring Stations and Outfall Locations, with no visual reference to the White Rock Tract at all.

06-12-13

Finally, the environmental restoration or remediation of the affected tracts should proceed under either alternative. The impact of additional waste on existing or planned disposal facilities should be considered. Efforts should be made to mitigate negative impact on habitats as the result of the development of the tracts.

06-13-09

06-14-25

06-15-14

We appreciate the opportunity to review this document, please let us know if you have any questions on the above.

Sincerely,



Gedi Cibas, Ph.D.  
Environmental Impact Review Coordinator

NMED File No. 1249ER

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Final CT EIS

Comment 06-09-26

Response:

The Draft Watershed Management Plan is being reviewed. In the process of defining the management strategies and practices, the plan could identify mitigation measures that could affect the mitigations considered for the tracts before they are actually transferred. Any mitigations identified would go through the same process as described in Chapter 16 of the main report. The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed.

Comment 06-10-02

Response:

The CT EIS addresses cumulative impacts to air resources in Chapter 15 of the main report. The discussion includes all available information on DOE, other Federal, and non-Federal activities and development planned for the area. Potential radiation exposure is addressed for each tract for both maximally exposed individuals and the expected increases in population dose. The discussion is presented in general terms because the details concerning population figures and dispersal for the tracts is not known at this time. The population dose is for the region within 50 miles (80 kilometers) of the sources. In general, it is expected that the new development would more likely result in population movement within the 50-mile (80-kilometer) region than movement of population into the region from outside.

Comment 06-11-05

Response:

The CT EIS addresses cumulative impacts to air resources in Chapter 15 of the main report. The discussion includes all available information on DOE, other Federal, and non-Federal activities and development planned for the area. A Record of Decision for the Spallation Neutron Source EIS was issued in June 1999. The Spallation Neutron Source will be located at the Oak Ridge National Laboratory, Oak Ridge, Tennessee.

3.0 COMMENT DOCUMENTS AND RESPONSES

**Comment 06-12-13**

Response:

The figure has been replaced with the correct figure. The reader is referred to Section 14.3.1 in Chapter 14 of the main report for the correct figure.

Location of CT EIS revision:

Figure 14.3.1.1-2 in Chapter 14 has been replaced with the correct figure.

**Comment 06-13-09**

Response:

The cleanup of the sites would proceed under both alternatives.

**Comment 06-14-25**

Response:

The potential impacts of the wastes that could be generated from the cleanup activities are discussed to the extent known in the assessment of environmental restoration actions for each tract in Chapters 5 through 14 of the main report. Additionally, more detailed discussion is presented in Appendix B of this CT EIS.

**Comment 06-15-14**

Response:

The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed in detail.





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Final CT EIS

**Comment 07-03-11**

Response:

While some compression of the timeframe over which the development could occur was part of the assumptions used in evaluating the impacts to utilities and other infrastructure issues (see response to Comment 07-02-19), this did not necessarily result in “overestimating the impacts.” The description of the affected environment (Chapter 3 of the main report); the discussion of the No Action Alternative in Chapters 5, 6, 7, and 9 through 14 of the main report; and the discussion of the cumulative impacts (Chapter 15 of the main report) indicate that the utilities and transportation systems are currently close to capacity limits.

Subsequent conversation between the CT EIS Document Manager and the Assistant County Administrator for Intergovernmental Relations has indicated that the corrections proposed to be supplied for use in the CT EIS analysis will not be available for incorporation in this document within a timeframe compatible with the congressional mandate for completion of the CT EIS (August 26, 1999).

**Homesteaders Association of the Pajarito Plateau  
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October 1999

**HOMESTEADERS ASSOCIATION  
OF THE PAJARITO PLATEAU**

April 12, 1999

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Elizabeth Withers,  
CT EIS Document Manager  
Department of Energy  
Los Alamos Area Office  
528 35<sup>th</sup> Street  
Los Alamos, New Mexico 87544

**Subject: DOE/EIS-0293 Draft Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico**

Dear Ms. Withers:

The Homesteaders Association of the Pajarito Plateau (herein after the Association) submits the comments that follow concerning the content of subject environmental impact statement (EIS).

**Discriminatory Action**-It is the position of the Association that subject EIS and Public Law 105-119 does not meet the requirements of Title VI of the Civil Rights Act of 1964 and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Each Federal agency such as DOE, is required to ensure that all programs and activities that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin. In addition, each agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities.

The contractual and other arrangements promulgated by Public Law 105-119 and the DOE/EIS-0293 result in differential patterns of consumption of natural resources and a disproportion distribution of wealth between the regional Hispanic Communities, Los Alamos County and surrounding pueblos. By excluding the Homesteaders Association from participating in negotiating the transfer of property, the government has perpetrated a discriminatory action based on national origin, which has an adverse economic and social impact on the minority Hispanic population of Los Alamos and neighboring communities, (EO 12898, Sec. 2-2, Federal Agency Responsibilities For Federal Programs).

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**Comment 08-01-08**

Response:

The DOE does not believe that Title VI of applies to the CT EIS NEPA process. The propc does not involve any payments nor is any contri Law 105-119 specifies the two parties to whom l the parcels. The proposed conveyance and trans mandate that requires action by the DOE; in car DOE will comply with all appropriate laws, reg

The DOE disagrees that the CT EIS fails to Executive Order 12898; however, the DOE ackr Association's opinion in the text of the CT EIS Section 2.5, Summary of Impacts, of the main r the potential environmental justice issues associ conveyance and transfer action to the extent that is referred to Sections 5.3.13, 6.3.13, 7.3.13, 8.3.12.3.13, 13.3.13, and 14.3.13 of the main report, and Need; General Issue 6, Environmental Justi Homesteaders Association Claims, in Chapter 2

08-01-08

# Homesteaders Association of the Pajarito Plateau Document 08, Page 2 of 2

Ms. Elizabeth Withers

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April 12, 1999

**Disparate treatment of the Hispanic homesteader**-Documentation and information gathered thus far by the Association reveals a troubling observation. This observation is the fact that the United States Government and the DOE has found it politically expedient to return lands back and compensate Anglo homesteaders in Hanford, Washington, Oak Ridge, Tennessee, and White Sands, New Mexico. The question this poses and that is being asked is, why does the Anglo homesteaders throughout the country gets its land back and not the northern New Mexico Hispanic homesteader? (See H.R. 806, 2/2/95 and H.R. 4022, 9/28/83).

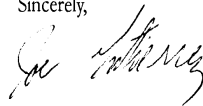
08-02-22

**Dislocation and disenfranchisement of the Hispanic population from the Pajarito Plateau**-Before the government took the land for the Manhattan Project, Hispanics comprised about 90 percent of the population on the Pajarito Plateau and the surrounding region. The taking of the land had the consequence of immediately and significantly reducing the Hispanic population on the plateau to where Hispanics only comprise about 10 percent of the population at Los Alamos today. Not only is this a travesty of the worse kind but also a crime against our espoused democratic form of government where protection of individual property rights is a first priority of the government. By denying the return of land to the homesteaders, Hispanics are systematically dislocated from their ancestral lands and denied access to participate as full partners in the economic development of northern New Mexico. Again, this denial of property rights perpetuates a vicious cycle of adverse impact to the northern New Mexico Hispanic population.

08-03-08

Thank you for the opportunity to comment on the contents of the EIS. The Association would appreciate a response to the comments above by May 10, 1999. Should there be any questions, I may be contacted at (505) 665-6891 or (505) 672-3182.

Sincerely,



Joe Gutierrez  
President

CC: New Mexico Congressional Delegation

## Comment 08-02-22

Response:

The purpose of the *Atomic Energy Community Act* of 1955 was to promote the viability of the communities serving DOE sites at Hanford, Washington; Oak Ridge, Tennessee; and Los Alamos, New Mexico. The DOE cannot answer the posed rhetorical question. A title search was performed for the tracts of land that are the subject of the proposed conveyance and transfer, and it was determined that titles to the subject lands were held by the DOE without any defects or "clouds on the titles." The Corps of Engineers' legal opinion is that the government acted appropriately when it acquired the land from private ownership by either purchase or condemnation action. The reader is referred to General Issue 7, Homesteaders Association Claims, in Chapter 2 of this appendix.

## Comment 08-03-08

Response:

Comment noted. The DOE acknowledges the opinion of the Homesteaders Association. The reader is referred to General Issue 4, Public Law Process and the CT EIS, and General Issue 6, Environmental Justice, in Chapter 2 of this appendix.



**Los Alamos County Trails and Pathways Subcommittee  
Document 09, Page 2 of 2**

October 1999

- 5. White Rock Y Site: Breakneck Trail, Los Alamos Canyon Trail
- 6. Tech. Area-74 Site: Camp Hamilton, Bayo Canyon Trail

09-01-19  
(Cont.)

Because the usefulness and integrity of the trail system depends on a high level of connectivity, the deletion of any of these historic trails would have a seriously negative impact on the entire trail system. The historic value of the trails to the community and its visitors is invaluable and should be preserved for future generations. Therefore, TAPS is requesting that DOE ensure the preservation of and access to these trails by including trail easements with the transfer agreements or by withdrawing the trail corridors from the land parcels being transferred.

Thank-you for your consideration,  
Janie O'Rourke

Chairman of  
Los Alamos County's  
Trails and Pathways Subcommittee

H-53

Final CT EIS

**Los Alamos Sportman's Club  
Document 10, Page 1 of 1**

October 1999

CONVEYANCE AND TRANSFER 1-800-791-2280 LOG

CALL TAKEN BY: Elizabeth Withers

REQUEST #

DATE OF CALL: Friday 4/2/99 TIME: 10:34 Am  
 NAME: John Hopkins  
 ORGANIZATION: Sportman's Club  
 ADDRESS:

PHONE #: 662-0495  
 FAX:  
 EMAIL:  
 INFO. REQUESTED:

wants to talk about Bendigo Canyon  
 Sportman's Club department  
 and cleanup assumptions

4/13/99 8:30am John came in and spoke with  
 me about the EIS written on Bendigo Canyon -  
 we have already agreed per Fred Chapman to change  
 the writing on the section in the EIS to read that  
 the gun club would remain in place -  
 also need to take sentence out of: responsibility  
 of cleanup party (speculative) and may or may  
 not be the gun club, also, need to know what  
 lead shot from shot guns could be spread out  
 over a distance but lead could be imbedded  
 in trees in the area, etc. also there are 3  
 areas off the gun club site in the canyon  
 where folks have been shooting cans etc. over  
 the years. Contamination may  
 be greater than thought.

REQUEST REFERED TO: Ted Taylor, ER Project  
 ACTION ITEMS: be greater than thought.

Take out of ER Report too (re: responsible party)

STATUS:

**Comment 10-01-19**

Response:

The reader is referred to the response to Co

**Comment 10-02-09**

Response:

The CT EIS has been changed to remove lar  
 responsibility falling to the Los Alamos Sportsr

Location of CT EIS revision:

Section 5.1.1.1 in Chapter 5 of the main req

10-01-19

**Comment 10-03-09**

Response:

The information about the lead shot has be  
 Environmental Restoration (ER) Project person  
 been taken into account in the estimates provide  
 Restoration Report.

10-02-09

10-03-09

**Comment 10-04-09**

Response:

The information provided has been forward  
 personnel. The information has been taken into  
 provided in the Environmental Restoration Rep

10-04-09

H-54

Final CT EIS

# National Parks and Conservation Association Document 11, Page 1 of 4

## National Parks and Conservation Association

SOUTHWEST REGIONAL OFFICE

DAVE SIMON  
*Regional Director*

April 12, 1999

Ms. Elizabeth Withers  
Los Alamos Area Office  
Department of Energy  
528 35th Street  
Los Alamos, NM 87544

Dear Ms. Withers:

The National Parks and Conservation Association (NPCA) is a 400,000-member citizens organization, founded in 1919, dedicated to the protection and enhancement of the National Park System for present and future generations. NPCA appreciates the opportunity to comment on the draft Environmental Impact Statement (CT-EIS) for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy (DOE/EIS-0293).

Public Law 105-119 directs the Secretary of Energy to convey to land currently within the Los Alamos National Laboratory (LANL) to Los Alamos County and other entities, such as nearby Pueblos, subject to compliance with the National Environmental Policy Act (NEPA). NPCA supports most of the goals of the DOE land transfers. Most of the ten parcels DOE has identified for conveyance are already partly developed, or located adjacent to developed areas, and are reasonable choices for economic development purposes.

At this point, however, NPCA does not believe that DOE has complied with NEPA and other relevant laws in this matter. NPCA is especially concerned four tracts proposed for transfer: White Rock Y, TA-74, Rendija Canyon, and the Airport tract. Development of these sites as a result of transfers from DOE could have serious, adverse effects on Bandelier and the Santa Fe National Forest. NPCA believes that the EIS has not adequately assessed the potential the environmental consequences, nor has DOE taken adequate measures to prevent and mitigate adverse impacts on nationally significant resources.



**Southwest Regional Office**

823 Gold Avenue, S.W., Albuquerque, NM 87102  
Tel: (505) 247-1221 • Fax: (505) 247-1222  
DaveNPCA@aol.com • <http://www.npca.org>

**National Office**

1776 Mass. Ave., N.W., Washington, D.C. 20036  
Tel: (202) 223-6722 • Fax: (202) 659-0650



### Comment 11-01-17

Response:

The DOE wishes to clarify the commentor' (PL) 105-119 states that:

“The Secretary of Energy shall--(1) conv consideration, to the Incorporated County Mexico (in this section referred to as the designee of the County, fee title to the pa allocated for conveyance to the County in subsection (e); and (2) transfer to the Sec in trust for the Pueblo of San Ildefonso (i to as the ‘Pueblo’), administrative jurisd that are allocated for transfer to the Secre such agreement.”

There are no other Pueblos or entities that a Furthermore, PL 105-119 does not direct the DC land tracts “subject to compliance with the Nati Act.” PL 105-119 directs the DOE to carry out the conveyance and transfer of each subject par provisions of NEPA.

11-01-17

### Comment 11-02-15

Response:

Based upon the contemplated uses identifie Ildefonso Pueblo, the DOE does not believe tha recipients will lead to “serious, adverse effects o National Forest.” The reader is referred to Gene Decisions, in Chapter 2 of this appendix where NEPA is discussed.

11-02-15

11-03-14

### Comment 11-03-14

Response:

The DOE believes that it has addressed the consequences, both direct and indirect, of the coi



# National Parks and Conservation Association

## Document 11, Page 2 of 4

October 1999

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Final CT EIS

NPCA Comments on DOE CT-EIS  
Page 2 of 4

**White Rock Y and TA 74:** Transfer of these two tracts (540 acres and 2,715 acres, respectively) would be to either Los Alamos County or to the Department of the Interior in trust for the Pueblo of San Ildefonso. Both of these tracts are directly adjacent to the Tsankawi unit of Bandelier National Monument, a unit of the National Park System. Both tracts have special, but *fragile natural and cultural resources*. Land use on these parcels is fundamentally linked to the long-term protection and integrity of the Tsankawi unit. Indeed, these lands were actually part of Bandelier National Monument until the 1950s.

As the EIS states, "Visitors are attracted to Tsankawi because of its solitude, peace and tranquility, and the opportunity to experience the archaeological resources in such a setting." The draft EIS rates the visual sensitivity of the both the TA-74 and the White Rock Y tract as "high" and the tracts fall into Scenic Class II, "indicating visual resources of high public value." (EIS, p. 12-7) The "view from Tsankawi is "breathtaking and encompasses most of the areas slated for transfer." (EIS, p. 13-6). With 41 cultural sites (seven of which are eligible for National Register listing), other archaeological deposits, a high probability of specific "traditional cultural properties," and floodplain/wetland habitat, the White Rock Y tract is clearly one of, if not the most important and sensitive of the ten proposed for transfer in terms of its natural and cultural resources.

These lands also have important cultural value to the Pueblo of San Ildefonso, which NPCA recognizes, and the CT-EIS states that the future use for the land would be for "environmental and cultural protection." NPCA supports these kinds of future uses and this management approach. We also believe that, should the lands be transferred to the Pueblo, good cooperation could be achieved between the Pueblo and the National Park Service regarding the whole area.

Nonetheless, DOE must recognize that virtually any development, and certain kinds of increased and/or unregulated public access and recreation, could have serious impacts on resources of both of these parcels and on Bandelier. While the EIS discusses some of these possibilities, NPCA believes that it fails to adequately consider the range and consequence of such development. Construction, roads, lights, utilities, and unregulated human use could destroy, damage or alter natural and cultural resources, cause visual and noise pollution to the Tsankawi unit (which is one of the most special places in the monument, particularly since it is away from the crowds in Frijoles Canyon), and otherwise degrade the visitor experience. In addition, as the EIS states, both of the candidate managing entities may lack adequate plans, expertise, and resources to fully protect and manage these lands at the present time. (EIS, pg. 12-17, 18-38)

Any transfer must simply prohibit negative impacts from happening under any circumstances. Development restrictions that completely protect Bandelier from all types of impacts (e.g. visual, noise) should be placed on the tracts as a condition of transfer. The preparation of adequate management plans -- which are coordinated with other agencies that are adjacent landowners -- and the dedication of sufficient personnel and resources to manage these lands must also be demonstrated prior to transfer. Any conveyances must commit to managing lands that (1) were

To clarify the commentor's statement, the DOE has not undertaken any actions to mitigate potential effects of the conveyance and transfer of the subject tracts pending issuance of a Record of Decision(s) and Mitigation Action Plan. The CT EIS does identify mitigation measures in Chapter 16 of the main report that could be implemented to mitigate potential adverse environmental impacts. The reader also is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed.

### Comment 11-04-06

Response:

The reader is referred to General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed.

### Comment 11-05-15

Response:

The CT EIS considers impacts from the contemplated uses of the tracts in Chapters 12 and 13 of the main report. In addition, Chapter 18 of the main report presents a letter from BNM that discusses these issues. Under neither of the land uses identified by the potential recipients would the tracts near BNM be developed; major transportation corridors, utilities, lights, and human use already exist on these tracts. Visual and noise pollution increases could potentially occur on tracts farther away from BNM that could add to adverse cumulative impacts. Cumulative impacts are addressed in Chapter 15 of the main report.

### Comment 11-06-14

Response:

Some of the tracts considered in this CT EIS will be transferred to the U.S. Department of the Interior (DOI) to be held in trust for the Pueblo of San Ildefonso. Because the land will still be under Federal administrative authority, the same environmental protection laws will still apply.

11-04-06

11-05-15

11-06-14

**National Parks and Conservation Association**  
**Document 11, Page 3 of 4**

NPCA Comments on DOE CT-EIS  
 Page 3 of 4

once part of the National Park System and (2) already carry designations as part of a National Environmental Research Park and are covered by endangered species habitat management plans according to those standards. Formal government expressions (via statements, ordinance, resolution, etc.) that these areas are to remain undeveloped should also be a pre-condition for transfer. All transfers must be executed in such a way as to require NEPA compliance, review and approval by the Secretary of the Interior and the National Park Service for any future uses and development (including recreation, utility work, road improvements, etc.) of these two tracts.

**Airport Tract:** This 205-acre parcel includes areas that have long been utilized for air transportation and other commercial purposes. Los Alamos County operates the airport under a lease agreement with DOE. Under the proposed action alternative, the airport would transfer to the new owner and would remain operational.

DOE states that "there are no direct consequences of the transfer of ownership of the tract other than those associated with the potential loss of Federal protection of cultural and ecological resources," but "indirect consequences are anticipated from the subsequent uses of the tract. (draft EIS, pg. 11-17).

NPCA basically agrees with this statement, but is concerned that DOE has underestimated some of the potential indirect consequences. For example, the draft EIS fails to identify or analyze one potential "subsequent use" that could have extremely significant consequences for Bandelier National Monument: the development of an air tour industry from this location.

The growth of "flight-seeing" operations across the nation is having a significant, negative impact on units of the National Park System. Approximately one-third of the National park System (over one hundred units) are currently reporting problems from aircraft overflights. Aircraft inject noise into the parks, which are special, sensitive auditory environments that often have extremely low ambient noise conditions. Aircraft noise can destroy natural quiet, affect wilderness values (Bandelier is 90 percent wilderness), and otherwise interfere with the sounds of nature, which is as fundamental resource to the national parks as clean air or water.

Section 11.3.4 (Noise) fails to discuss or analyze this issue at all. It should. In addition, NPCA believes that the Airport tract should not be transferred from DOE ownership and control without a restrictive covenant placed on the transfer which permanently prohibits the operation of air tours from this location that could negatively impact Bandelier.

**Rendija Canyon:** This 910-acre tract is currently undeveloped and should remain that way. Los Alamos County has proposed developing 570 acres of Rendija Canyon for 1,260 dwelling units for 3,500 people. The CT-EIS states on page 5-21 that severe impacts or loss of forest habitat would "effectively disrupt the structure and function of the existing Rendija Canyon ecosystem." Other ecological impacts include: destruction of preferred habitat for the federally listed peregrine falcon and Mexican spotted owl.

11-06-14  
 (Cont.)

11-07-16

Some of the land tracts considered in this CT EIS will be conveyed to the County of Los Alamos. While the County will not be subject to all of the environmental regulations applicable to a Federal agency, the County will still be subject to some environmental law and regulatory requirements.

The DOE cannot require the resource management of conveyed lands, nor can the DOE require that the use of transfer lands be preapproved by the National Park Service. The transfer and conveyance of the land tracts is already the subject of NEPA compliance. Future actions on properties transferred to the DOI in trust for the Pueblo of San Ildefonso also would be the subject of DOI NEPA compliance.

To provide clarification of the commentor's statement, the LANL Threatened and Endangered Species Management Plan was developed as an outgrowth of the mitigations the DOE undertook for the Dual Axis Radiographic Hydrodynamic Test (DARHT) project. There are no standards inherent in the designation of Federal land as a National Environmental Research Park that require or direct such a plan. The reader also is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed.

**Comment 11-07-16**

Response:

The development of an air tourist industry was not evaluated in this CT EIS. While gathering information for evaluation of cumulative impacts, the DOE asked other area Federal agencies and non-Federal entities for any plans that might impact the region. There was no indication that anyone is planning to develop an air tourist industry. The Airport is currently leased to the County. If any air tourist industry was seeking use of the Airport, they are not currently restricted from doing so. However, the airspace above LANL as well as the airspace above the wilderness areas is restricted, so any air industry would have to contend with limited flights. The development of such an industry would not affect or be affected by the proposed conveyance or transfer of these tracts.

**National Parks and Conservation Association**

**Document 11, Page 4 of 4**

October 1999

NPCA Comments on DOE CT-EIS  
Page 4 of 4

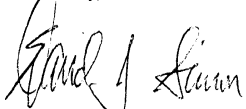
Restrictions on recreational use and public access to the national forest (page 5-28) will affect many Los Alamos residents including low-income minority residents who depend on gathering wood for fuel. There is also the possibility of increased vandalism and damage to archaeological sites from nearby residential development. The risk of catastrophic wildfire is also increased from putting more houses and humans in a high fire danger area. When considering all the potential impacts, DOE should chose the No Action Alternative and continue to manage the Rendija Canyon as a natural area.

H-58

In conclusion, NPCA believes that unequivocally and clearly protecting Bandelier National Monument from all possible adverse impacts that might arise from future use of these three tracts is a requirement of PL 105-119, the Atomic Energy Community Act, other related measures linked to helping Los Alamos achieve self-sufficiency, and the NPS Organic Act of 1916. Attracting nearly 450,000 visitors per year, Bandelier National Monument is one of the most important economic engines in the Los Alamos area -- contributing over \$10 million annually to the local economy. It cannot continue to serve that role over the long term if its resources are degraded. Therefore, DOE has an affirmative responsibility to protect Bandelier.

Thank you for the opportunity to comment on the Draft CT-EIS.

Sincerely,



David J. Simon  
Southwest Regional Director

Final CT EIS

**Comment 11-08-06**

Response:

11-08-06

The DOE's natural resource management of Rendija Canyon is passive in nature; the DOE does not have a mission to manage natural areas in the same manner as the DOI or the U.S. Department of Agriculture. The reader is referred to General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed in detail.

**Comment 11-09-17**

Response:

11-09-17

The additional referenced acts are superceded by the requirements of PL 105-119; no such "requirements" are specifically mandated as conditions of the referenced legislation. The DOE recognizes the importance of BNM, both as an area resource and as a source of tourism. However, the DOE is limited by the requirements of PL 105-119 to convey and transfer each tract of land whether or not it is of positive impact to BNM, provided the tract is suitable as defined in PL 105-119.

**Northern New Mexico Citizens' Advisory Board  
Document 12, Page 1 of 3**

**Northern New Mexico Citizen's Advisory Board  
Comments on the Draft  
Environmental Impact Statement  
for  
the Conveyance and Transfer of Certain Land Tracts  
Administered by the Department of Energy & Located at  
Los Alamos National Laboratory, Los Alamos & Santa Fe Counties, NM**

**Comment 12-01-12**

Response:

Neither the County nor the Pueblo identify potential uses for this tract. However, between and evaluated, the potential impacts of using the dormitory are bounded by the analysis provided

- 1. Page 2-26, under Land Tracts, DOE LAAO Land Use: The term "residential" appears not to include dormitories, in addition to apartments, condominiums and single family dwellings.

12-01-12

The Northern New Mexico Citizens' Advisory Board suggests that a third land use scenario be considered for the LAAO site: it could be used as a dormitory. Although the cleanup would be the same as for the other residential types listed, the existing building would be used with minimum restoration; the steam plant would remain and the additional development would not be needed.

Since the term "residential" does not include this use, a separate category may be required. The impacts would be the same as are listed for its use as a commercial site.

**Northern New Mexico Citizens' Advisory Board  
Document 12, Page 2 of 3**

October 1999

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Final CT EIS

**Northern New Mexico Citizens' Advisory Board  
Comments on the Draft  
Environmental Restoration Report to Support  
Land Conveyance & Transfer under Public Law 105-119**

1. The document does not address the impact of the land transfer cleanup project on the rest of the LANL Environmental Restoration Program schedule and priorities.  
The Northern New Mexico Citizens' Advisory Board suggests that the following information be added to the document to describe the changes that have been or will be made in the LANL ER Program to accommodate the Land Transfer. The description should include:  
Changes in priorities; slips in the schedules of other programs; cuts in other cleanup activities; and impacts on funding for other projects.
2. The preferred alternative, to transfer the lands, is chosen even though major mitigation efforts are required for some sites. If it were not for Public Law 105-119, the "No Action" alternative might have been the outcome of the EIS for several Land Transfer sites.
3. It is therefore important to emphasize to the receiving entities that DOE will clean up the land only to the level required for safety for the use originally specified. For example, if the land use is changed to residential from commercial, additional cleanup will be required.
4. Where subsequent land use is changed from the original use proposed, requiring additional cleanup, the new owner will be responsible for both the cleanup activity and the cost. This fact should be clearly stated in the document.
5. Definitions of the cleanup requirements for "residential", "recreational", and "industrial" use are needed. A new designation - "Native American traditional uses" perhaps should be added. See Item (6.) below.
6. In addition, the requirements for "recreational use" should be distinguished from "Native American traditional uses". "Recreational use" for Los Alamos County generally involves approximately eight hours of such activities as climbing, walking or sitting on the land. On the other hand, "Native American traditional uses" is a more appropriate category for the Pueblos; it may include various uses of the plants and animals of the area and may involve individuals or groups remaining on the land for considerable periods of time. The Pueblo "Native American traditional uses" clearly requires cleanup to lower levels of contaminants (i.e., less contamination) than for "recreational use".
7. The assumptions upon which the EIS is based should be stated in one consolidated place at the top of the document, namely:

12-02-09

**Comment 12-02-09**

Response:

The commentor references the Environmental Restoration Report, which is a part of a parallel but separate process. The LANL Environmental Restoration (ER) Project will evaluate the recommendations provided by the commentor and make the appropriate changes to the Environmental Restoration Report. A response has been provided directly to the commentor by the ER Project. The reader also is referred to General Issue 5, Environmental Restoration Process; General Issue 3, Basis for DOE's Decisions; and General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix where this issue is discussed.

**3.0 COMMENT DOCUMENTS AND RESPONSES**

# Northern New Mexico Citizens' Advisory Board Document 12, Page 3 of 3

## Page 2 - Comments on the Draft ER Report - by the Northern New Mexico Citizens' Advisory Board

- a) DOE has no control over the future use of the land;
  - b) The proposed development of these parcels will be treated in the EIS as if it takes place within the next ten years, even though it may actually not take place until several years later.
  - c) If Los Alamos County and San Ildefonso Pueblo disagree about the future ownership of a parcel, the land will not be transferred.
  - d) A portion of a tract can be transferred when there are reasons for not transferring the whole tract.
  - e) DOE is the party responsible for the cleanup as long as ownership rests with DOE. Thereafter, the new owner will be responsible for cleanup to higher standards than originally required.
8. In the Summary Document, page 3, the last sentence should be clarified as follows: "In general, contaminants that are found on land to be used for residential purposes must be cleaned up to lower levels (*i.e., must contain less contamination*) than the same contaminants on land to be used for commercial or industrial development . . ."
9. The document should make clear wherever appropriate that LANL has cut off active sources of contamination. That is, while work is being done to mitigate passive or residual sources, no more contamination is being added.

12-02-09  
(Cont.)

**Pajarito Group of the Sierra Club, Rio Grande Chapter  
(Letter 1)  
Document 13, Page 1 of 3**

October 1999



Ms. Elizabeth Withers  
Conveyance and Transfer EIS Document Manager  
Los Alamos Area Office  
Office of Environment  
U.S. Department of Energy  
Los Alamos, NM 87544

Subject: Conveyance and Transfer Hearing, March 25, 1999, Los Alamos, NM

Dear Ms. Withers:

On behalf of the 400 members of the Pajarito Group of the Sierra Club, Los Alamos County, NM I am pleased to make some remarks concerning the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory and the associated Draft CT-EIS. Thank you for the opportunity to do so.

The following remarks and questions are preliminary. Our final detailed comments will be submitted to you in the near future. I anticipate other Sierra Club entities will also comment.

I would like to make two comments, and then ask a few questions that I hope you can answer in this public forum.

My first comment is that the Sierra Club is quite concerned about the "NEPA-busting" precedent of PL 105-119.

My second comment concerns the drafting of the authorizing legislation, PL 105-119. Los Alamos County states (p.18-6 of the Draft CT-EIS):

"When questions arose about DOE's authority to transfer land, County elected officials and staff sat down with DOE and San Ildefonso Pueblo representatives and drafted much of what has become PL 105-119".

In other words, broad citizen involvement did not occur in drafting of the legislation. Some will argue that we were represented by our elected officials. However, given recent events concerning growth and development issues in Los Alamos County, I strongly suspect that a fair fraction of the community would feel otherwise. In arriving at a final decision about the Land Transfer DOE should consider the recent events and the controversy generated.

13-01-15

13-02-17

**Comment 13-01-15**

Response:

The DOE's disagrees with the comment that a "NEPA-busting" precedent. In enacting PL 10 the role NEPA would play in implementing the specified that the DOE not comply with NEPA. parties with a part in the decision process, inlcud Alamos, the Pueblo of San Ildefonso, and Cong explaining the environmental impacts of convey also is referred to General Issue 4, Public Law I Chapter 2 of this appendix where this issue is di

**Comment 13-02-17**

Response:

As noted in Chapter 18 of the main report, I input from the DOE, San Ildefonso Pueblo, and I is customary for Congress to consult with partie legislation. As is the case with most legislation opportunity during the legislative approval proc PL 105-119. Congress instructed the DOE to prc to evaluate the potential environmental impacts conveyance and transfer action. The process thi been prepared fulfills the intent of NEPA to inf environmental consequences in a timely manne provide input into the decisionmaking process. ' General Issue 4, Public Law Process and the CT appendix where this issue is discussed.

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Final CT EIS

MAR 25 1999  
MAR 22 1999

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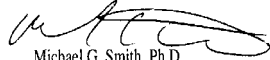
**Pajarito Group of the Sierra Club, Rio Grande Chapter  
(Letter 1)  
Document 13, Page 2 of 3**

Please answer the following questions at this time. If you can't answer them then I would appreciate a response in writing by April 5, 1999.

1. Los Alamos County stated (page 18-26) that it intended to "aggressively develop the land obtained from DOE..." In view of this statement how come the DOE did not analyze the environmental and other impacts of the worse case scenario that all 10 tracts proposed for transfer and conveyance would be developed?
2. PL 105-119 requires that the lands be conveyed and transferred "without consideration..." Why then the following statement in the Draft CT-EIS (page S-24): "In the case of conveyance of land tracts to the County, the DOE will include deed restrictions precluding any development within the 100-year floodplains or wetlands."? This statement indicates that deed restrictions can be applied. If so why were other alternative restrictions, such as easements or protection of sensitive areas, eliminated from detailed analysis?
3. In the early 1960s the National Park Service transferred lands to DOE's predecessor "with the stipulation that [the DOE] adequately protect the ruins" (Bandelier National Monument: An Administrative History, Hal Rothmann 1988). It appears that DOE has a continuing mandate to protect ruins on transferred lands. Why did DOE not analyze this alternative?
4. Does DOE accurately know the environmental restoration costs and timeframes to completion? Can DOE certify that contaminants will be cleaned up to the level of planned future use?
5. As stated above, PL 105-119 is clearly a "NEPA-busting" law. What is DOE's position on having to administer such legislation?

Thank you.

Sincerely,



Michael G. Smith, Ph.D.  
Chair, Conservation Committee  
(505) 662-2380

13-03-13

13-04-15

13-05-14

13-06-14

13-07-09

13-08-15

**Comment 13-03-13**

Response:

Answers were provided during the March 25, 1999, Los Alamos Public Hearing (Afternoon Session). The reader is referred to the response to Comment 33-03-15.

**Comment 13-04-15**

Response:

The underlying goals of the original Council on Environmental Quality (CEQ) requirement to evaluate a "worst-case scenario" were "disclosure of the fact of incomplete or unavailable information, acquisition of that information if reasonably possible, and evaluation of reasonably foreseeable significant adverse impacts even in the absence of all information." The CEQ later rescinded the "worst-case scenario" because it was "an unproductive and ineffective method of achieving those goals; one which can breed endless hypothesis and speculation." (See Section 1.6.1 in Chapter 1 of the main report.)

Under PL 105-119, the DOE has no authority to direct the future use of the property proposed for conveyance and transfer. Therefore, the DOE cannot "know" the future development. As a result, the uncertainty over the ultimate use of the 10 tracts dictates a generic, regional approach in considering the future development and use of each tract. The information pertaining to land use is provided with an emphasis on assessing significant adverse cumulative and regional effects. Section 1.6.1 in Chapter 1 of the main text discusses DOE rationale for assessing the land uses identified by the potential recipients rather than a worst-case scenario.

**Comment 13-05-14**

Response:

The reader is referred to the response for Comment 03-03-14 and General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed. The reader also is referred to the response to Comment 33-03-15.



**Comment 13-06-14**

Response:

The DOE wishes to clarify the commentor's statement. In 1963, President John F. Kennedy transferred land from Bandelier National Monument to the Atomic Energy Commission (the DOE's predecessor agency) by proclamation (see Section 1.6.1 in Chapter 1 of the main text). There is no stipulation expressly stated in that proclamation that requires "that [DOE] adequately protect the ruins," although existing (in 1963) and subsequent laws and regulations have certain requirements that the DOE is subject to regarding this issue. However, once the DOE disposes of land, any such requirements, as appropriate, transfer to the new owners or administrators. It is assumed that the alternative referred to by the commentor is the No Action Alternative, by which the DOE would continue to administer the land, and the land would be subject to continued DOE protection with regard to sensitive resources. The reader is referred to General Issue 3, Basis of DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed.

**Comment 13-07-09**

Response:

The Environmental Restoration Report seeks to bound the amounts of waste generated, the costs of the cleanup activities that will occur in the future, and the durations of cleanup actions, even though the exact details of these cleanup activities are currently only estimated. The DOE's proposed estimates of cleanup costs presented in the Environmental Restoration Report are based on site knowledge and characterization data as they exist today.

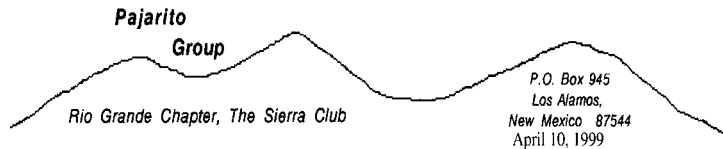
The reader is referred to the Environmental Restoration Report; Section 1.1.4.3 in Chapter 1 and Appendix B of the main CT EIS report; and General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed.

**Comment 13-08-15**

Response:

The reader is referred to the response to Comment 13-01-15.

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Ms. Elizabeth Withers  
 Conveyance and Transfer EIS Document Manager  
 Los Alamos Area Office  
 Office of Environment  
 U.S. Department of Energy  
 Los Alamos, NM 87544

Subject: Comments on the Draft Department of Energy Land Transfer and Conveyance Environmental Impact Statement (CT-EIS)

Dear Ms. Withers:

On behalf of the 400 members of the Pajarito Group of the Sierra Club, Los Alamos County, NM I am pleased to comment on the Draft Department of Energy Land Transfer and Conveyance Environmental Impact Statement (CT-EIS). Thank you for the opportunity to do so. We note that the Draft is an excellent first step in this important process and commend you and your staff on its preparation.

The Sierra Club values ecosystem health and sustainability, and community sustainability including water supply and purity, minimization of air, noise and light pollution, and quality of life issues such as traffic and the recreational opportunities available on our public lands. Furthermore, we value legislation, derived from democratic principles, that ensures equal representation, fairness and the highest standards of environmental protection. These values are the foundations for our comments.

In particular, we support the concept of a land conveyance and transfer that would include conveyance and transfer to appropriate entities including Los Alamos County, San Ildefonso Pueblo, the National Park Service and the Forest Service. We do not support the process established under PL 105-119, for many reasons that are explained in the following comments (Sections I-III).

Analysis areas of the Draft that should be addressed in the Final CT-EIS are described in Section IV. Quotes are taken from the Draft or Summary CT-EIS documents, unless otherwise stated.

**I. The DOE Land Transfer Sets A Precedent In That Public Law 105-119 Mandates A Significant Federal Action Regardless Of The Anticipated Adverse Impacts On The Environment, Federally Listed Species, Cultural Resources, And Adjacent Federal Land Protection Mandates.**

The CT-EIS and proposed action alternatives are constrained by Public Law 105-119, which mandates that the decision-maker base his decision on only three criteria, which we summarize:

1. Each tract must not be needed "to meet the national security mission";
2. Each contaminated tract must be remediatable by November 2007; and
3. Each tract must be suitable to support future uses for historic, cultural, or environmental preservation purposes; economic diversification purposes; or community self-sufficiency purposes by the named recipients."

The last criterion excludes nothing and is therefore meaningless. These three criteria must be applied to the exclusion of existing laws designed to protect the environment. The CT-EIS exposes this fact:

1. "Section 632 of the Act provides a narrow basis for the decisions to be made by the Secretary of Energy." (Page S-13).

**Comment 14-01-17**

Response:

Comment noted. Public Law (PL) 105-119 of Los Alamos and the Pueblo of San Ildefonso parcels. The reader is referred to General Issue 4 CT EIS, in Chapter 2 of this appendix where thi

**Comment 14-02-17**

Response:

PL 105-119 established the DOE's course o laws mandating actions, even actions that may r environmental impacts, without those actions be process. However, PL 105-119 directs the DOI review of the environmental impacts resulting f transfer of each parcel. The DOE determined th level of NEPA review.

PL 105-119 does not prohibit the use of the information by any of the involved parties for tl decisionmaking. On the contrary, it encourages t directing the DOE to carry out such a review. C to address a very specific issue, the self-sufficie Chapter 1, Section 1.1, Background Information a historical perspective of the development of L helps the reader to better understand the course of PL 105-119 and the recipient parties. The rea response to Comment 13-02-17.

The reader is referred to General Issue 3, B Chapter 2 of this appendix where this issue is di

14-01-17

14-02-17

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2. "There are decisions related to these parcels that the DOE will not make based upon this CT-EIS analysis. While the potential beneficial and adverse impacts from future contemplated land uses of the tracts must be understood by the DOE in reaching its decision(s) regarding the conveyance of transfer of each of the tracts, DOE will not decide upon future land uses for the 10 tracts or be responsible for mitigations not within the scope of the DOE's control." (Page S-14).

The key words in the CT-EIS which potentially absolve the DOE from a challenge to the proposed action are to "understand" and to "consider" public input. By creating the CT-EIS after public scoping, the DOE can claim that they "understand" and "considered" public input, but PL 105-119 prohibits the use of this information by the decision maker. This use of a special interest law created to benefit a few people is a violation of democratic principles and of questionable legal standing. PL 105-119 gave the DOE no choice but to prepare an EIS that violates the spirit of the National Environmental Policy Act (NEPA), that identifies public concerns to satisfy the letter of NEPA, but instructs the decision maker not to consider the majority of these public comments and to dismiss reasonable alternatives. PL 105-119 provides for the giveaway of public lands in spite of public opinion or predictable adverse impacts.

**Predictable Impacts**

**A. Impacts on the "Human Environment" and Resource Values**

DOE confesses that the proposed action alternative cannot protect the human environment as defined by NEPA and the Council for Environmental Quality (CEQ) regulations:

1. "Direct impacts of the Proposed Action, the conveyance and transfer of the tracts, are limited to the changes in responsibility for resource protection. Environmental review and protection processes and procedures for future activities would be different from those that are currently governing the subject tracts and may not be as rigorous. The LANL Threatened and Endangered Species Habitat Management Plan would no longer be in effect for those tracts occupied by or containing suitable habitat for endangered species." (Page S-20)

2. "Under the Criteria of Adverse Effects (36 CFR 800.9b), the transfer, lease, or sale of resources eligible for listing on the National Register of Historic Places (NHRP) is an adverse effect. NHRP eligible resources are present on nine of the tracts being assessed in this CT-EIS, and would be directly impacted by the Federal action. The disposition of each of the subject tracts also may affect the protection and accessibility to Native American sacred sites or sites needed for the practice of traditional religion by removing them from consideration under the American Indian Religious Freedom Act and Executive Order 13007, "Sacred Sites". In addition, the disposition of the tracts would potentially affect the treatment and disposition of any human remains, funerary objects, sacred objects, and objects of cultural patrimony." (Page S-20)

3. The draft CT-EIS states (Page S-8) that "completion of consultation requirements under the Endangered Species Act and the National Historic Preservation Act, and completion of consultation regarding Traditional Cultural Properties" are required prior to conveyance or transfer. It is unclear whether these consultations will have an impact on the decision to convey or transfer or if the consultation is being done to fulfill information processing requirements imposed by other federal laws. According to PL 105-119, the results of consultation are irrelevant to the decision to be made. These need to be expanded upon and clarified in the Final CT-EIS.

**B. Impacts to Adjacent Federally Protected Lands are Expected but These Impacts Must Be Ignored When the Decision to Transfer is Made**

In spite of the following "facts", the decision maker is not permitted to consider natural, cultural and most other environmental issues, public opinion, or anticipated adverse impacts when they make the transfer and conveyance decision on each parcel of land.

**Comment 14-03-17**

14-02-17  
(Cont.)

Response:

While the results of the consultation may not play a role in the DOE's decision to convey and transfer these tracts, the consultations will play a considerable role in the setting of mitigation measures. The reader is referred to General Issue 3, Basis for DOE's Decisions, and General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix where this issue is discussed, and to the mitigation measures discussed in Chapter 16 of the main report.

**Comment 14-04-17**

14-03-17

Response:

The potential for impacts to Federal-protected lands are discussed in the CT EIS, and all neighboring land stewards were invited to be Cooperating Agencies in the preparation of this CT EIS. To clarify the issue raised by the commentor in their Section I, B, 3 comment, the proclamation by which President John F. Kennedy transferred land to the DOE's predecessor agency does not include any stipulations regarding protection of resources. (See Section 1.6.1 in Chapter 1 of the main report. Also see response to comment 13-05-14.) By virtue of the inclusion of these stakeholder and public comments into the NEPA document, the Final CT EIS, the DOE is providing decisionmakers with public opinion, as well as the impact information for their use in reaching informed decisions.

14-04-17

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1. "Currently, LANL is bounded by the lands of several landowners and stewards with a variety of land uses." (Pages S-3, S-10) "Three of the 10 tracts are adjacent to federal lands with a strong or primary preservation mandate. Two of these tracts are "undeveloped," and the largest (TA-74) is "largely undeveloped." "There is the potential for the introduction of land uses that would be incompatible with adjacent landowners' resource protection efforts. There may be loss of recreational opportunities currently enjoyed on some tracts." (Page S-21)
2. "The indirect impacts of the conveyance and transfer of the tracts include regional changes in land use including the development of forest, grazing, and open-space land for residential and commercial uses." (Page S-21) "Development footprints for the 10 tracts include approximately 770 acres (312 hectares) of relatively undisturbed habitat". "Contemplated uses would be expected to also degrade large amounts of adjacent habitat, including preferred habitat for the American peregrine falcon and the Mexican spotted owl." (Page S-22)
3. "...3,925 acres (1,590 hectares) were acquired from the administrative control of the National Park Service (NPS) in the early 1960s." The NPS transferred these lands to the predecessor of the DOE "with the stipulation that [the DOE] adequately protect the ruins." (Bandelier National Monument: An Administrative History, Hal Rothman 1988). It is certainly appropriate to ask whether transferring these lands to another entity with no constraint on development meets the requirement to protect Otowi Pueblo and other "ruins."
4. "...local diminished viewsheds could impact resources important to maintaining a positive visitor experience on adjacent National Park Service lands." (page S-22)

5. "If development or any kind of use that permits intense or overnight use were to occur on the adjacent tracts, the National Park Service would not be able to protect those irreplaceable resources from loss due to pot hunting and vandalism." "...any attempt by the NPS to protect the Tsankawi [Unit] from nighttime vandalism and pothunting would place an insurmountable economic burden on park staffing and budget levels." (Page 18-42)

**C. Capabilities of the Recipients to Mitigate Anticipated and Unforeseen Impacts**

1. "Once the land tracts are conveyed or transferred, they will pass beyond the administrative control of DOE. All subsequent use of the land will be independent of DOE." (Page S-18)  
  
 Los Alamos County (Page 18-38) and, to our knowledge, San Ildefonso Pueblo lack the staff, skills, legal driver, structure, and funding required to protect the natural and cultural resources of the transferred lands. "The current lack of a natural resources management plan by either the County of Los Alamos or the Pueblo of San Ildefonso would impede the development of an integrated, multi-agency approach to short- or long-term natural resource management strategies. Additional transfer of the land tracts may result in a much less rigorous environmental review and protection review process for future activities as neither the County of Los Alamos or the Pueblo of San Ildefonso have regulations that would match the federal review and protection process. Cumulatively, the development could result in fragmentation of habitat and disruption of wildlife migration corridors." (Pages S-22-23)
2. Lands transferred to the Secretary of the Interior in Trust for San Ildefonso will be subject to federal laws, including NEPA. This fact affords some assurance that public input and impact mitigation will be built in should the Pueblo choose to develop its trust lands. Unfortunately, the BIA and San Ildefonso may find it difficult to provide the security and planning needed to ensure at least the current level of protection commensurate with stated future uses (cultural and natural resource preservation) of the tracts.
3. There is no provision for long-term protection of the natural and cultural values of the transferred lands. In 20 years, the pressure to develop will be intense but, except for BIA Trust Lands, there will be little to force a balanced, wise decision-making process. The County's only check and balance is informal and public pressure through the newspaper, public meetings etc. The only potential

**Comment 14-05-14**

14-04-17  
(Cont.)

Response:

While the County of Los Alamos and San Ildefonso Pueblo may not have had a robust program for resource protection in the past, they are not precluded from development of a more robust program in the future should they choose to do so. There are mitigative measures that could be implemented at reasonable costs that would preclude or decrease resources damage. The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where these issues are discussed. Also, the reader is referred to the response to Comment 11-06-14.

14-05-14

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process to force good planning is the Comprehensive Plan which is now available in draft form. It will likely be challenged by the community because of its slant towards development.

14-05-14  
(Cont.)

4. The "future uses" identified by both parties and used in the analysis are relatively meaningless. Neither party is obligated to implement the future uses they identified for the development of the CT-EIS. The County's self-sufficiency (development) need cannot be satiated by the proposed action and there can be no doubt that development of as much land as possible will continue to be pursued. This is stated by the County: "The County will attempt to expand its tax base by aggressively developing the land obtained from the DOE...". (Page 18-26)

14-06-15

5. "Before implementation of any future use of each tract, the sponsoring party would need to comply with all applicable local, State, and Federal laws and regulations. This may include the preparation of project-specific EISs, EAs, or the equivalent that may be required under State law." (Page S-16)

14-07-20

There is no equivalent protection under State laws and Los Alamos County is not subject to NEPA unless federal funds are involved. Development of lands transferred to the Secretary of Interior in Trust for San Ildefonso will be subject to federal resource protection laws, but the tribe would not be under any legal obligation to use the lands for cultural and or natural resource preservation even if they say now that is their intended use.

**II. Development Of Relatively Undisturbed Areas**

14-08-07

PL 105-119 does not provide for protection of sensitive and important habitat after conveyance or transfer occurs. Certain tracts are currently protected by the Los Alamos National Laboratory Threatened and Endangered Species Habitat Management Plan and by virtue of LANL being a DOE Environmental Research Park (to be discussed later). The Sierra Club believes that lands will lose these protections after conveyance and transfer for the following reasons:

1. "The potential recipient's eventual development of the tracts cannot be accurately determined at this time." (Page S-18) Under a worse case scenario, an estimated 4,165 acres (1,687 hectares) of relatively pristine, undeveloped lands would be subject to future development in the following tracts:

- A. The TA-74 tract is 2,715 acres (1,100 hectares).
- B. The White Rock Y Tract consists of approximately 540 acres (218 hectares).
- C. The Rendija Canyon Tract is 910 acres (369 hectares). The unpaved forest road through this tract provides access to over 12,000 acres (4,900 hectares) of USFS (public) lands.

Except for the Rendija Canyon Sportsman Club, these tracts are currently undeveloped or contain only utility lines/stations or a road corridor.

2. "Approximately 826 acres (335 hectares) of the total acreage proposed for transfer and conveyance could be developed or redeveloped for other uses." (Page S-21) "The impact analysis assumes that [the development] footprints [(826 acres)] represent an approximation of areas that would be developed but that may not include all areas that would otherwise be disturbed." "Likewise, there are no specific acreage estimates for land that may be disturbed or developed for land uses that include undefined improvements to utilities or recreation areas." (Page S-20)

3. "Under the Act, the DOE has no role in the designation of recipients nor how the parcels of land will be allocated between the recipients." (Page S-3) Under a worse case scenario, it is probable that all of these lands will be developed. Evidence to support this is provided by the County. (Page 18-26)

**III. Fundamental Flaws In The Analysis Invalidate The Proposed Action Alternative**

14-09-15

Although the DOE finds (see page S-15) that the "Proposed Action alternative has been identified as meeting DOE's purpose and need for action," the DOE and Los Alamos County both say in this document that the Proposed Action Alternative is not likely to or cannot meet the purpose and need for agency action. Therefore, the proposed action alternative must be rejected. Eight alternatives

**Comment 14-06-15**

Response:

The reader is referred to the response to Comment 13-04-15.

**Comment 14-07-20**

Response:

The DOE agrees with the commentor regarding there being no equivalent NEPA-like protections under New Mexico State law. The statement was not intended to communicate that the land would have equivalent protections if conveyed to Los Alamos County or transferred to the U.S. Department of the Interior (DOI) to hold in trust for the Pueblo of San Ildefonso. The statement was intended to communicate that there would not be a total lack of protection. Each of the potential recipients have laws, regulations, and policies with which they must comply. The context of the paragraph is that the land uses identified by the potential recipients were developed by the potential recipients in accordance with each party's policies and process. Furthermore, any actual development also would have to proceed in accordance with the recipient's policies and processes and all other Federal, State, and local laws and regulations applicable to the individual recipients at the time of their undertaking action. The New Mexico legislature has considered a State NEPA-like law in past sessions, and will likely do so again. If passed, such legislation may be applicable to County development and other actions.

**Comment 14-08-07**

Response:

The DOE agrees that the tracts might have a lesser degree of protection of environmental resources after conveyance or transfer. The CT EIS discusses this issue. The CT EIS assumes that there would be no protection of resources or no mitigations in order to bound the potential impacts. The reader is referred to General Issue 2, Deed Restrictions, and General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed. The reader also is referred to the response to Comment 13-04-15.

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identified through public scoping were considered but eliminated from detailed analysis because they "cannot meet the need for agency action." Evidence to support these findings may be found in the CT EIS as follows:

1. Socioeconomics (page S-22):

"Improvements would be expected in the Los Alamos County tax base but would probably not offset the loss of assistance payments."

2. Chapter 18. Consultations and Coordination with Los Alamos County:

"When questions arose about DOE's authority to transfer land, County elected officials and staff sat down with DOE and San Ildefonso Pueblo representatives and drafted much of what has become PL 105-119. The County is concerned that the 8,000 plus acres originally discussed for transfer has been reduced by nearly 40% to 4,646 acres, and that 65% of the remaining land is in Santa Fe County where it cannot contribute to expansion of the County's tax base. The goals of 1,500 developable acres for residential development and 500 developable acres for economic development do not appear attainable at this time, even if a significant portion of the land evaluated in the EIS is transferred to the County without significant mitigation measures."

3. Real Costs to Meet the Self-sufficiency Goal Make the Proposed Action Untenable:

"The increase in peak electrical demand is in addition to the already anticipated exceedance of the capacity of the electrical power system. Water usage demand is projected to exceed water rights. Natural gas delivery systems may have to be upgraded to handle the increased demand. The existing wastewater treatment capacity is expected to be exceeded. Solid waste production is expected to reduce the expected life of the regional landfill." (Page S-21) These additional cost components (and others) associated with growth must be addressed first. If there is not enough water, there is not enough water and development is untenable. To ignore this basic fact would constitute gross negligence.

4. Deed Restrictions

Public Law 105-119 requires that the lands be conveyed and transferred if they meet the three criteria stated earlier. This mandate is the primary justification for eliminating most of the action alternatives proposed through public scoping. However, it appears that alternatives with deed restrictions might be permissible: "In the case of conveyance of land tracts to the County, the DOE will include deed restrictions precluding any development within the 100-year floodplains or wetlands." (page S-24) Alternatives that identified restrictions, easements, or retention of sensitive areas to protect sensitive resources and or to mitigate conflict with surrounding land uses were eliminated from detailed analysis. Giving unequal consideration creates the appearance of bias which arguably invalidates the NEPA analysis.

5. The EIS and Proposed Action Raise Potentially False and Unreasonable Expectations that the Purpose and Need will be Met

The DOE cannot certify that contaminants clean-up will be done to the level of the planned future use identified so this means that the intended use analyses relative to self-sufficiency are relatively meaningless. The magnitude of clean-up costs is not stated. If clean-up cannot be accomplished at reasonable cost, the proposed action alternative must be rejected because the purpose and need for action cannot be met.

**IV. Issues Not Adequately Or Mistakenly Addressed In The Draft CT-EIS**

**A. Impacts to the Los Alamos National Environmental Research Park (NERP)**

LANL lands being considered for conveyance and transfer are protected under the NERP designation. The DOE states that environmental and ecological research at its NERP parks indirectly

14-09-15  
(Cont.)

14-10-07

**Comment 14-09-15**

Response:

The DOE believes that the Proposed Action Alternative meets the purpose and need for agency action. The purpose and need for agency action is to be responsive to the requirements of PL 105-119. The purpose and need for agency action is not the same as the intended purpose of PL 105-119. The reader is referred to General Issue 1, Purpose and Need, in Chapter 2 of this appendix where this issue is discussed.

The DOE recognizes that not all of the development discussed in the CT EIS may occur. The CT EIS assumes that all the contemplated development would occur in order to bound the impacts. The DOE recognizes that factors such as utilities and roads may restrict or inhibit the amount of development. If so, the impacts would be less than those presented in this CT EIS. The reader is referred to the response to Comment 03-04-15 and General Issue 2, Deed Restrictions, and General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix for discussion of deed restrictions and other possible land use controls.

The CT EIS includes a statement from the County expressing their opinion on the economic self-sufficiency or sustainability aspects of the potential conveyance of land. This statement reflects the County's position and not that of any other entity(s). The Pueblo has not provided a comment on this issue. The reader is referred to General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix. The text of the CT EIS was changed to clarify the source of the statements on economic self-sufficiency.

Location of CT EIS revisions:

Summary, Table S-2; Chapter 2, Section 2.5.1.2 and Table 2.5.1-1; and Chapter 15, Section 15.3.6 and Table 15.3-1.

**Comment 14-10-07**

Response:

PL 105-119 directs that those tracts of land not required to meet the DOE's national security mission should be evaluated for suitability for

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supports DOE's national security mission (DOE National Environmental Research Parks, July 1994, DOE/ER-0615P). However, the Draft CT-EIS does not address the impacts of development after conveyance and transfer on the NERP. This is clearly an ecological and socioeconomic impact. The CT-EIS should analyze these impacts. The analysis should consider the value of the NERP in regional and national contexts.

### **B. Threatened and Endangered (T&E) Species Concerns and LANL Lands Protected by the Threatened and Endangered Species Habitat Management Plan (HMP)**

LANL lands being considered for conveyance and transfer are also protected and managed under the HMB, which, like the NERP, supports DOE's national mission. Several of the tracts contain core habitat areas, while others only contain buffer or foraging areas, but this distinction was not consistently made in the discussion of the effects of the proposed action. The Draft CT-EIS does not adequately address the impacts of development after conveyance and transfer on either the habitat or HMP. The analysis should consider direct effects of development on any conveyed or transferred habitat, and indirect effects on habitat remaining under DOE management and other publicly managed habitat.

The Draft CT-EIS does not state that field or literature surveys were conducted for the T&E species of concern. We assume they were not. Field and literature surveys should be performed and the data reported in the final CT-EIS. This data will probably show that additional impacts to sensitive ecosystems and T&E species need to be reported in the final CT-EIS.

### **C. Impacts on the Bandelier and Dome Wilderness Areas (Class I Airshed)**

In spite of a finding that more commuter traffic will increase emissions (potential increases from commercial and residential development are not addressed), there is no "consideration" of this impact on the Class I airshed mandated under the Clean Air Act and amendments for the Bandelier and Dome Wilderness areas.

### **D. Environmental Restoration of the Sportsmen's Club in Rendija Canyon**

The Draft CT-EIS states that the Sportsmens Club is responsible for environmental restoration on the Rendija Canyon lands it leases from the DOE. (Page 5-3) This is most certainly a mistake. PL 105-119 is quite clear in its guidance that DOE is responsible for all environmental restoration of contaminated tracts. The final CT-EIS should correct this mistake. Corrections should include the costs and environmental impacts of restoration, e.g. effects of soil removal on habitat.

### **E. Los Alamos County Socioeconomic Impacts of Development**

Los Alamos County voters recently rejected a proposed sale to a developer of 2.1 acres of County-owned wilderness lands by a 61.6% to 38.4% margin (Los Alamos Monitor, March 31, 1999). In the past voters also rejected the proposed West Gate, Deer Trap Mesa and Rendija Canyon developments. These issues have been well documented in the newspapers.

It is also well documented that the County Planning Department and some County Council members favor development (e.g. Los Alamos Monitor, March 24, 1999, "We must deal with the housing crisis" op-ed, Joe King).

The CT-EIS does not discuss the historical view of development in Los Alamos County. It is obvious that the comprehensive development of thousands of acres of wilderness lands will be opposed by a significant number of Los Alamos residents. The CT-EIS should discuss the socioeconomic impacts of comprehensive development and the probable fractures it will create within the community culture.

### **F. Incomplete Analysis of Development**

An environmental impact statement is supposed to identify all potential impacts of the proposed action. It is disturbing that the Draft CT-EIS does not analyze the worst case scenario that all the tracts are developed in light of Los Alamos County's statement that it will "aggressively develop lands obtained from the DOE..." (Page 18-26).

14-10-07  
(Cont.)

14-11-07

14-12-20

14-13-09

14-14-21

14-15-15

conveyance and transfer to the potential recipients. The indirect support that the research at National Environmental Research Parks (NERPs) provide to the DOE's national security mission is not required to meet the DOE's congressionally identified mission. Such research serves to enhance the understanding of human interaction with nature with regard to Federal installations.

The NERP designation is an administrative designation that does not confer any specific protections to sensitive resources. Therefore, the removal of land from NERP status is an administrative action that does not result in any environmental impacts, and therefore, was not discussed in this CT EIS.

### **Comment 14-11-07**

Response:

The DOE believes that the CT EIS adequately considers the potential impacts to sensitive habitats as they are currently defined, both from direct and indirect actions. The DOE can fully support its mission requirements and its general stewardship responsibilities to maintain special habitat. The 1999 LANL Site-Wide EIS discusses the DOE resource management plans, including the recently implemented LANL Threatened and Endangered Species Habitat Management Plan. The Site-Wide EIS considered the future mission requirements, including the potential for activities planned for areas that are not currently developed. No impacts to LANL operations are anticipated by the implementation of the DOE's Preferred Alternative for conveyance and transfer actions. Information on core and buffer areas has been added to the ecological resource sections for each tract.

The LANL Threatened and Endangered Species Habitat Management Plan is unaffected by the conveyance and transfer of land away from LANL. Essentially, the plan is a management tool for guiding LANL operational effects such that they would not likely result in adverse impact to threatened and endangered species or their habitat.

The DOE has performed both field and literature surveys for threatened and endangered species on all 10 subject tracts. Data results are included in the CT EIS analysis.

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Location of CT EIS revisions:

Information on core and buffer areas has been added to the ecological resource sections for each tract (see Sections 5.1.7, 5.3.7, 6.1.7, 6.3.7, 7.1.7, 7.3.7, 8.1, 9.1.7, 9.3.7, 10.1.7, 10.3.7, 11.1.7, 11.3.7, 12.1.7, 12.3.7, 13.1.7, 13.3.7, and 14.1.7).

**Comment 14-12-20**

Response:

The potential increase in commuter traffic and the resulting increase in emissions were evaluated for the requirement to perform a conformity analysis. Because the region is not a nonattainment area and the climatic conditions do not promote air inversions, there are no anticipated impacts.

**Comment 14-13-09**

Response:

The CT EIS has been revised to remove this statement. The reader is referred to the response to Comment 10-02-09. Information about the cleanup of Rendija Canyon is included in Appendix B of the CT EIS to the extent that it is known or anticipated. The reader also is referred to the response to Comment 13-07-09.

**Comment 14-14-21**

Response:

The CT EIS analyzes the socioeconomic impacts of the identified development scenarios. While the review of environmental impacts under NEPA does not include the analysis of political history or impacts, it does include consideration of the controversy over the potential impacts as part of determining their significance.

**Comment 14-15-15**

Response:

The underlying goals of the original Council on Environmental Quality (CEQ) requirement to evaluate a “worst-case scenario” were “disclosure of



**Pajarito Group of the Sierra Club, Rio Grande Chapter  
(Letter 2)  
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October 1999

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Final CT EIS

When asked why the DOE did not analyze the worst case scenario (Public Meeting in Los Alamos, March 25, 1999, 2:00 PM) you (Ms. Elizabeth Withers) replied (paraphrased) that a reasonable approximation was made. This approximation violates the spirit of NEPA, especially since PL 105-119 does not ensure that the recipient's projected uses will be adhered to after conveyance and transfer. The CT-EIS should assume that all the tracts will be developed. Furthermore, it should analyze the impacts for a range of developments: low-density housing, high density housing, light industrial use, heavy industrial use and combinations of these. Failure to do so constitutes gross negligence under NEPA.

14-15-15  
(Cont.)

**G. Natural Resource Planning and Habitat Conservation Planning**

14-16-07

The Draft CT-EIS does not discuss natural resource or habitat conservation planning. The final CT-EIS should discuss these planning activities in light of Los Alamos County's stated lack of resources to deal with sensitive habitat, threatened and endangered species, and cultural resources. (Page 18-38). The final document should discuss potential plans, costs, and impacts of the recipients not implementing a responsible plan within one year after conveyance or transfer. The document should also discuss the potential restrictions, barriers towards implementing them, and solutions that overcome these barriers.

**H. Release of Hazardous and Radiological Materials from TA-21**

14-17-09

The Draft CT-EIS does not address issues related to potential biological, or associated effects, of the long-term release of hazardous or radioactive materials from TA-21. The final document should address these issues, long-term analysis, including analysis of the plants, animals, and other living species, and potential remediation plans.

**I. Indirect Impacts of Relocation of TA-21 and LAOO Tract Employees and Operations**

14-18-12

The Draft CT-EIS does not discuss the effects of having to re-locate employees and operations currently housed and performed at TA-21 and LAOO. The final document should discuss the indirect impacts of re-locating employees and operations, including the environmental impacts due to new construction and the socioeconomic impacts of re-location.

**J. Indirect Impacts of Re-locating White Rock Y Rock Climbing**

14-19-19

The biological community is only beginning to document and appreciate the environmental impacts that rock climbers have on the ecology of cliff systems (Science, 283, 1623, March 12, 1999). The White Rock Y tract includes a cliff system that is heavily used by rock climbers. It is possible that this climbing area may be lost under various scenarios. The DOE should contact the Los Alamos Mountaineering Club to determine if other sites are available, and then document the environmental impacts on these sites cliff ecosystems of rock climbing. We note that this is an indirect effect of the Land Transfer and Conveyance.

**K. Protections Afforded to Conveyed and Transferred Lands**

14-20-20

Many of the proposed tracts for conveyance and transfer are currently protected under federal regulations. It is unclear what protections are afforded after conveyance and transfer, especially lands in trust. The Final CT-EIS should discuss the protections that these lands will have, the protections they lose, and the environmental and socioeconomic impacts of these losses. The Final CT-EIS should also discuss consultations between the recipients and federal and state agencies, such as Fish & Wildlife, that will have to be performed, the timing of these consultations, and the potential results with respect to DOE's final decision and mitigation of impacts.

**V. Concluding Remarks**

14-21-15

The Sierra Club is concerned about the broad implications of the Land Transfer and Conveyance:

the fact of incomplete or unavailable information, acquisition of that information if reasonably possible, and evaluation of reasonably foreseeable significant adverse impacts even in the absence of all information." The CEQ later rescinded the "worst-case scenario" because it was "an unproductive and ineffective method of achieving those goals; one which can breed endless hypothesis and speculation." (See Section 1.6.1 in Chapter 1 of the main report.)

Under PL 105-119, the DOE has no authority to direct the future use of the property proposed for conveyance and transfer. Therefore, the DOE cannot "know" the future development. As a result, the uncertainty over the ultimate use of the 10 tracts dictates a generic regional approach in considering the future development and use of each tract. The information pertaining to land use is provided with an emphasis on assessing significant adverse cumulative and regional effects. Section 1.6.1 in Chapter 1 of the main report discusses DOE rationale for assessing the land uses identified by the potential recipients rather than a worst-case scenario.

**Comment 14-16-07**

Response:

The development of resource management plans, their details, and their implementation are part of the mitigation process discussed in Chapter 16 of the main report. The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed.

**Comment 14-17-09**

Response:

The CT EIS considers the impacts from the operations at TA 21 to the public and the environmental components as a part of the Affected Environment in Chapter 3 and the No Action Alternative in Chapter 10 (Section 10.2) of the main report. The tracts will be cleaned up before they will be considered to have met the suitability criteria to be conveyed or transferred. The Environmental Restoration Project will address the impacts anticipated from cleanup activities in detail through the NEPA process when those actions are ripe for decision. The assessment of risk associated with the contamination and cleanup are part of the overall process overseen by the regulators.

**Pajarito Group of the Sierra Club, Rio Grande Chapter  
(Letter 2)  
Document 14, Page 9 of 11**

**Comment 14-18-12**

Response:

The CT EIS discusses the potential relocation of DOE and LANL personnel that could result from the conveyance and transfer of the tract as direct impacts to the extent plans are known or can be reasonably anticipated (see Chapter 6 of the main report). The impacts of relocating personnel will be assessed through the NEPA process when these actions are ripe for decision.

**Comment 14-19-19**

Response:

Rock climbing activities at the White Rock Y Tract are currently unauthorized by the DOE. If the tract is conveyed or transferred to a recipient who does not authorize access, and the rock climbers move on to a new site, the climbers would have to get permission to access the new area. The authority approving the use of the new rock climbing area would be responsible for the assessment of impacts according to applicable laws.

**Comment 14-20-20**

Response:

The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where this issue is discussed.

**Comment 14-21-15**

Response:

The reader is referred to the response to Comment 14-02-17; General Issue 3, Basis for DOE's Decisions; and General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix where these issues are discussed.

**Pajarito Group of the Sierra Club, Rio Grande Chapter  
(Letter 2)  
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October 1999

H-74

Final CT EIS

1. PL 105-119 permits the abuse of the NEPA process. We have documented how the legislation permits this. The effect of this particular analysis as mandated by Congress is to eliminate the value and soul of the NEPA process - as CEQ Regulations state, the heart of the environmental impact statement is the rigorous exploration and objective evaluation of all reasonable alternatives. This Land Transfer EIS process does not meet the spirit nor the intent of NEPA. The document is an EIS in name only and only pretends to encourage and facilitate public involvement in the decision making process. Narrowly defining the question narrowly defines the answer.

We have also documented instances where the Draft CT-EIS fails to address all of the ecological impacts; there are certainly many more. If we allow the NEPA process to be abused now where will it stop? Congressmen will continue to waive federal NEPA requirements through legislation that benefits their pet projects.

2. The Draft CT-EIS is fairly clear on the comprehensive impacts, especially of development, of the Proposed Action. However, the CT-EIS does not document impacts of development of tracts that the recipients have proposed for environmental or cultural preservation and PL 105-119 does not prohibit development of these tracts in the future.

3. We have documented that the proposed recipients do not have the resources to protect sensitive and valuable habitats and species after conveyance and transfer, especially of the Rendija Canyon, TA-74 and White Rock Y tracts. It is also likely that the recipients can't protect valuable nesting habitats and other ecologically important areas adjacent to the DP Road and Airport tracts.

4. Remediation of TA-21 to an acceptable public standard is probably impossible by 2007. The recipients do not have the resources to attempt remediation; nor do they have the resources to protect the public. Furthermore, what developer would choose to buy this land? It would be irresponsible for DOE to transfer or convey this to either recipient.

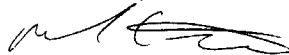
5. The Environmental Restoration Program at Los Alamos National Laboratory has documented that radiological and hazardous chemical contaminated sediments are being transported through the canyon's surface water system, including Los Alamos and Pueblo Canyons. Contaminants are also being transported through the aquifer. The Department of the Interior does not have the mandate or resources to remediate contaminated lands, or to protect the public in case of future problems associated with contamination. It would be irresponsible for DOE to convey contaminated lands such as TA-21, or lands that may potentially be contaminated in the future such as the White Rock Y and TA-74, to the Department of Interior.

The Draft CT-EIS provides sufficient justification for DOE to take the No Action Alternative for the Rendija Canyon, TA-74, White Rock Y, and TA-21 tracts. Additional impacts (Section IV), when completed, will provide further justification for the selection of the No Action Alternative for these tracts. Furthermore, the broad implications of PL 105-119 are sufficient for DOE to adopt the No Action Alternative for all of the proposed tracts.

The derivation of PL 105-119 did not ensure equal representation. The result is that it lacks reasonable alternatives and the highest standards of environmental protection, which we have sufficiently documented. The DOE should not be a party to legislation that does not protect the environment, its critical habitats, and potentially compromises DOE's ability to perform its national security missions.

We look forward to a final CT-EIS that addresses all of the issues and points we have raised. Thank you.

Sincerely,



Michael G. Smith  
Chair, Conservation Committee

**Comment 14-22-12**

14-21-15  
(Cont.)

Response:

Because both of the potential recipients identified environmental and cultural preservation as the contemplated land uses for these tracts, the DOE assessed the impacts of that land use. Under PL 105-119, the DOE has no authority to direct future use of the property proposed for conveyance and transfer. Therefore, the DOE cannot "know" the future development. The DOE, therefore, assessed the land uses identified by the potential recipients rather than a worst-case scenario (see response to Comment 13-04-15 and Section 1.6.1 in Chapter 1 of the main text).

**Comment 14-23-14**

14-22-12

14-23-14

Response:

In order to bound the assessment of potential impacts resulting from the conveyance or transfer of each land tract, it is assumed in this CT EIS that environmental and cultural resources would no longer be protected to the same degree as they are currently under DOE administration of the land. This was done to fully evaluate the level to which these resources might be impacted. However, as part of the actual conveyance of the tracts to the County, the DOE will engage in discussions with the County with the goal of reaching agreements that would maintain some of the current level of protection. In the case of transfers to the DOI, the land would still be owned by the U.S. Government. Thus, all applicable requirements governing activities on Federal land, including those for the protection of biological and cultural resources, would remain in effect.

14-24-06

14-25-09

14-26-09

14-27-18

PL 105-119 does not allow the DOE to retain any of the tracts for reasons related to the potential recipients' ability to protect environmental and cultural resources, nor does PL 105-119 allow for delay of the conveyance or transfer until the potential recipients can protect these resources. Furthermore, the DOE cannot make any eventual mitigation measures a "precondition" for conveyance or transfer. The reader is referred to General Issue 3, Basis for DOE's Decisions, and General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

**Pajarito Group of the Sierra Club, Rio Grande Chapter  
(Letter 2)  
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cc: President Bill Clinton  
Senator Pete Domenici  
Senator Jeff Bingaman  
Representative Tom Udall  
DOE Secretary Bill Richardson  
Lynne Sebastian, New Mexico State Historic Preservation Officer  
Chris Nagano, Endangered Species Chief, United States Fish & Wildlife Service  
Council for Environmental Quality

**Comment 14-24-06**

Response:

The CT EIS presents the mission need for all or part of TA 21 through 2007, which is reflected in the Preferred Alternative. The Environmental Restoration Report is addressing potential timelines for cleanup. The continuance of operations may affect the schedule to some degree. If the DOE cannot clean up all or part of the tract by 2007 or if it requires the use of the land for mission support, then those parts would not be conveyed or transferred under PL 105-119. The DOE disagrees that it would be irresponsible to convey or transfer this tract after appropriate remediation has been completed.

**Comment 14-25-09**

Response:

The reader is referred to General Issue 3, Basis for DOE's Decisions, and General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where these issues are discussed.

**Comment 14-26-09**

Response:

The reader is referred to General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed.

**Comment 14-27-18**

Response:

The reader is referred to General Issue 3, Basis for DOE's Decisions, and General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix where these issues are discussed. The reader also is referred to the responses to Comments 13-01-15 and 13-02-17.

**Sangre de Cristo Audubon Society  
Document 15, Page 1 of 2**

October 1999

*Sangre de Cristo Audubon Society*

A Chapter of the National Audubon Society  
P.O. Box 22083  
Santa Fe, NM 87502-2083

April 6, 1999

Elizabeth Withers  
Los Alamos Area Office  
United States Department of Energy  
528 35th St.  
Los Alamos, NM 87544

Dear Ms. Withers:

I am writing in regards to the Draft Land Conveyance and Transfer Environmental Impact Statement (DRAFT CT-EIS) DOE/EIS-0293. Many members of Sangre de Cristo Audubon live in the Los Alamos area and many more use the open spaces around the community for recreation, nature study, and even scientific studies. We are therefore concerned about the impact of activities described in the Draft CT-EIS on the natural features of the area and particularly on the wildlife resources that inhabit the area, including several threatened and endangered species.

We are extremely concerned about the disposition of the Rendija Canyon tract. This area is presently in a largely natural state, with access restricted somewhat by the presence of the Sportsman's club, whose lease will expire in 2001. The proposed development of this tract for housing, as predicted by the Draft CT-EIS, would have a major impact on the natural environment. This impact would extend beyond the 910 acre area of the tract itself, as any development would require a new access road, presently envisioned as being built down the very narrow portion of Rendija Canyon to the west of the tract.

As the DRAFT CT-EIS points out, one of the proposed land-uses for this tract, and the most likely given the purpose of the project, would have a major effect on the ecological resources of the area to the extent that it would "effectively disrupt the structure and function of the existing Rendija Canyon ecosystem" (p. 5-21, sect 5.3.7.1). As pointed out in the analysis, these effects would extend beyond the tract itself to include increased disturbance to foraging and nesting habitat for the endangered Peregrine Falcon and Mexican Spotted Owl in Guaje Canyon as well as Rendija Canyon.

Rendija Canyon contains an ephemeral stream and wetland areas that would be impacted either directly or indirectly by development in the area. Development upstream of the Rendija Tract (Ponderosa Estates) has resulted in significant sedimentation in the streambed, and the same can be anticipated if development were pursued on this tract.

**Comment 15-01-06**

Response:

The reader is referred to General Issue 3, B Chapter 2 of this appendix where this issue is di

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Final CT EIS

15-01-06

# Sangre de Cristo Audubon Society Document 15, Page 2 of 2

For these reasons, we believe that the analysis suggests that the appropriate course of action is to choose the No Action Alternative for the Rendija Canyon tract.

We are also concerned about the possible effects of development in the White Rock Y and TA-74 tracts. This lands are of significant interest to the Pueblo of San Ildefonso and we believe that the Pueblo is likely to conserve the natural and cultural resources of these areas should they be conveyed to the Department of Interior in trust for the Pueblo. However, should either of these tracts be made available to development, the impacts could be significant. In addition to the direct effects on wildlife and cultural resources of such development, we are concerned about the potential impact of such development on the natural and cultural resources at the Tsankawi unit of Bandelier National Monument.

**We therefore believe that should ownership of the White Rock Y and TA-74 tracts be conveyed as suggested by the action alternative, significant restrictions on development be included in the conveyance to protect Bandelier National Monument from visual and noise impacts.**

Finally, with respect to some of the tracts within the townsite of Los Alamos where impacts to natural resources are not an issue, we are concerned that the cost of this project, in terms of the requirements for environmental remediation to a level suitable for public development, far exceed the long-term value of continued assistance payments to the County of Los Alamos. These areas could be remediated to a lesser standard and retained for government use more cost-effectively even with a continuation of assistance payments.

We strongly urge you to consider these changes in the preparation of the Final CT-EIS.

Sincerely,



Bernard Foy, President  
72 Verano Loop  
Santa Fe NM 87505

15-01-06  
(Cont.)

### Comment 15-02-06

Response:

The reader is referred to General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed. Neither of the recipients has identified contemplated development on these two tracts, and therefore, this use was not analyzed in the CT EIS.

### Comment 15-03-14

Response:

As discussed in General Issue 2, Deed Restrictions, in Chapter 2 of this appendix, the DOE will engage in discussions with the County with the goal of reaching agreements that would maintain some of the current levels of protection. As for the U.S. Department of the Interior, the land would still be owned by the U.S. Government. Thus, the applicable requirements governing activities on Federal land, including those for the protection of biological and cultural resources, would remain in effect. The reader also is referred to General Issue 3, Basis for DOE's Decisions, for further discussions.

### Comment 15-04-06

Response:

The decision process regarding whether a particular tract of land will be conveyed or transferred was defined in Public Law 105-119. The reader is referred to General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix where this issue is discussed.

15-02-06

15-03-14

15-04-06

**Diane Albert**  
**Document 16, Page 1 of 1**

October 1999

2059-D 41<sup>st</sup> St.  
Los Alamos, NM 87544  
March 29, 1999

Elizabeth Withers  
DOE Los Alamos Area Office  
528 35<sup>th</sup> St.  
Los Alamos, NM 87544

Dear Ms. Withers:

I attended the *Public Information Meeting on the Environmental Restoration Report to Support Land Conveyance and Transfer under Public Law 105-119* at Fuller Lodge, Los Alamos, on March 24. Thank you very much for giving me the opportunity to speak and to express my views in writing.

As I mentioned that day during the public comment period, I am quite concerned about the impacts that improper development of the White Rock Y / TA-74 tracts could have on the Tsankawi unit of Bandelier National Monument, specifically, and on the visual beauty of the entire area, in general.

The stunning views that we are so fortunate to enjoy from Inspiration Point, Anderson Overlook, the White Rock Overlook, and the mesas surrounding the Tsankawi unit are indeed a priceless resource. These vistas DEFINE Los Alamos, my home: they are an integral part of our environmental, cultural, and esthetic heritage. It is imperative that we preserve the visual beauty of the area, as well as *other* environmental resources.

I urge you to consider a holistic approach when you transfer these parcels. Development within the parcels affects surrounding areas outside the boundaries of the individual parcels. Inappropriate development on the borders of National Park Units leads to a degradation of visitors' experiences at the parks, and an overall degradation of our quality of life.

To safeguard the Tsankawi unit *and* the vista to the east of Los Alamos, I urge you to place development restrictions that completely protect this area from negative visual impacts. Please place these restrictions upon the White Rock Y / TA 74 tracts before transferring them to Los Alamos County or the Department of the Interior.

Sincerely,



Diane Albert

**Comment 16-01-24**

Response:

The CT EIS evaluates the visual impacts at individual tracts in Chapter 15, Cumulative Impacts are assessed against the views in the air development plans identified by the potential rec or TA 74 Tracts. For discussion of potential mi easements, the reader is referred to General Issu Chapter 2 of this appendix and Chapter 16 of the is discussed.

16-01-24

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Final CT EIS

**Genevieve Barrett**  
**Document 17, Page 1 of 1**

Elizabeth Winters  
DOE Los Alamos Area Office  
528 35<sup>th</sup> St.  
Los Alamos, NM 87544

March 30, 1999

Dear Ms. Winters,

Concerning the transfer of land from the DOE to local jurisdiction:

**White Rock Y/TA 74 Parcel:**

Because this land is adjacent to Bandelier National Monument, **development restrictions should be enforced to protect the visual and cultural integrity of the Monument.** Upon transfer, the DOE should make sure to provide for the protection of this land.

17-01-14

**Rendija Canyon:**

Rendija Canyon, currently undeveloped and an important link in the forest habitat of the Pajarito Plateau, should remain so. **Transfer of this site should NOT be considered.** DOE should choose the No Action Alternative and continue to manage the area as a natural area.

17-02-06

Please note the public sentiment regarding these land transfers.

Thank you,



Genevieve Barrett  
2479 44<sup>th</sup> St.  
Los Alamos, NM 87544

**Comment 17-01-14**

Response:

There are no widespread development plan recipients for the White Rock Y or the TA 74 T to the response to Comment 11-05-15 for a disc Bandelier National Monument. The reader also i Deed Restrictions, in Chapter 2 of this appendix

**Comment 17-02-06**

Response:

The reader is referred to General Issue 3, B Chapter 2 of this appendix where this issue is di



Larry Bryant  
Document 18, Page 1 of 2

October 1999

1034A 48th St.  
Los Alamos, NM 87544  
March 30, 1999

Ms. Elizabeth Withers  
DOE Los Alamos Area Office  
528 35th St.  
Los Alamos, NM 87544

Dear Ms. Withers:

I am writing to you concerning the ten proposed DOE land transfer parcels in and around Los Alamos. I endorse most of these transfers as being probably helpful to the economic development of the Los Alamos area.

18-01-06

I do request that three of these parcels have protective stipulations attached to them to safeguard our environment - the most powerful economic factor we have going for us - the reason most people wish to live here or to visit here.

18-02-14

The Tsankawi portion of Bandelier National Monument is a spectacular place for enjoying nature, solitude and connecting with the past. I ask that the adjoining White Rock V tract be specified to have no visual or noise pollution impacts on Tsankawi.

Comment 18-01-06

Response:

Comment noted.

Comment 18-02-14

Response:

The reader is referred to General Issue 2, De Issue 3, Basis for DOE's Decisions, in Chapter . issue is discussed.

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Final CT EIS

**Larry Bryant**  
**Document 18, Page 2 of 2**

*The Gajo Canyon tract, with its small water flow is a haven for wild life. I ask that it be retained in a natural, undeveloped state, regardless of the controlling entity.*

18-02-14  
(Cont.)

*The Rendija Canyon tract has several problems. The frequent gunfire from the Los Alamos Sportsman Club makes it undesirable and unsafe as a potential housing area. Such a development would also add an additional burden on the Diamond Grove Thoroughfare. Finally, such a development would degrade further the living space of wild life in this area. I request that this tract not be developed any further, or at a minimum, have a greatly reduced development limit placed on it.*

18-03-12

*Thank you for this opportunity to submit my input to this important matter.*

*Sincerely,*  
*Larry Bryant*  
662-4814

**Comment 18-03-12**

Response:

The reader is referred to General Issue 2, Deed Restrictions, and General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where this issue is discussed.

**Trudy and Terry Filer  
Document 19, Page 1 of 1**

October 1999

Elizabeth Withers  
DOE Los Alamos area office  
528 35<sup>th</sup> St.  
Los Alamos, N.M. 87544



I support most of the goals of the DOE land transfer. Most of the parcels are partly developed and are good choices for economic developmental purposes. However, I am concerned about three tracts: The White Rock Y, Bendija Canyon and TA74 (Coyote & Barranca Canyons). I feel that development of these sites could have serious, adverse effects on Bandelier and the Santa Fe National Forest.

H-82

I oppose the transfer of the White Rock Y and TA74 land tracts to the County of Los Alamos. I believe that they should be transferred to the Pueblo of San Ildefonso who is more likely to respect the cultural value of these sites and keep them in harmony with Bandelier National Monument. To completely safeguard Bandelier from potential impacts, developmental restrictions should be placed on these tracts as a condition to their transfer to Interior.

I oppose the development of Bendija Canyon. Since Los Alamos County proposes developing the Canyon for 1200 dwelling units, then the DOE should chose the no action alternative and retain this tract as a natural area. Development would have severe impact on the existing Bendija Canyon ecosystem.

Yours sincerely,  
Trudy A Filer Terry D. Filer  
559 Grand Canyon 559 GRAND CANYON  
White Rock NM White Rock, NM

Final CT EIS

**Comment 19-01-06**

Response:

Comment noted. The CT EIS discusses the surrounding land owners (see Chapter 15, Cum report).

19-01-06

**Comment 19-02-06**

Response:

The reader is referred to General Issue 3, B Chapter 2 of this appendix where this issue is di

**Comment 19-03-14**

Response:

Comment noted. If land was transferred to Interior (DOI), in trust for San Ildefonso Pueblo owned by the U.S. Government. Only the admin be transferred from one Federal agency to another requirements governing activities on Federal land Responsibility for interpreting and applying the with the DOI.

19-02-06

19-03-14

The reader is referred to General Issue 2, De of this appendix where this issue is discussed.

**Comment 19-04-06**

Response:

Comment noted. If the criteria set by Public the tract, or the part of the tract that meets those transferred.

19-04-06

The reader is referred to General Issue 3, B Chapter 2 of this appendix where this issue is di

**John and Adele Hopkins  
Document 20, Page 1 of 4**

**John & Adele Hopkins  
1251 41st., Los Alamos, NM 87544 (505)662-0495**

Wednesday, March 24, 1999

Ms. Elizabeth Withers  
DOE, Los Alamos Area Office  
Los Alamos, NM

Dear Ms. Withers,

There is a significant error in DOE/EIS - 0293, and that is the assumption that Los Alamos community or County government favors or intends to close the shooting range in Rendija Canyon. Quite the contrary. This range plays a major role in the recreational plans for the future of Los Alamos and all plans for possible development in the canyon specify that the range and the recreational character of Rendija Canyon should and would be preserved. It should be appreciated that the Los Alamos police department use the range for practice and qualification on a regular basis. In addition the range, which is one of the few remaining in the northern Rio Grande region, plays a role in the efforts of the community to promote Los Alamos as a tourist destination. In fact the state championship sporting clays tournament will be held for the first time in Los Alamos this year. The shooting facility is also instrumental in teaching the youngsters of Los Alamos, Santa Fe, Espanola, and Jemez Springs firearms safety and is used in the hunter safety courses that are required of young hunters in New Mexico. The Los Alamos community feels that firearms safety is very important and relies on the range for those courses.

The preservation of the range is clearly spelled out in the 1987 Los Alamos comprehensive plan. It is indeed unfortunate that this significant error was not caught before the EIS went to press. The document should be altered to reflect the real intentions of the County of Los Alamos.

Sincerely,

*John C. Hopkins*  
John and Adele Hopkins

20-01-19

**Comment 20-01-19**

Response:

The lease for the part of the Los Alamos Sportman's Club shooting range is located in effect through December 31, 1999. The other part of the Los Alamos Sportman's Club shooting range, The Rendija Canyon Tract must be cleaned up and the lease transferred. If the cleanup and conveyance or termination is not completed before the end of the leases, the potential for litigation has been stated that they would honor the terms of an agreement that has been stated that they would negotiate a new lease expires.

However, the tract may not be cleaned up because the decision regarding the continuance of the lease would be up to the Club. During the cleanup, Los Alamos Sportman's Club activities are likely to be suspended. Between the completion of the cleanup of the Los Alamos Sportman's Club and the actual conveyance of the tract, activities may not allow activities to resume. After conveyance, the continuance or resumption of the activities at the Club would be up to the recipient party.

Because the timeframe over which the cleanup and subsequent use of each of the tracts is not well defined, it is assumed that the transfer and any subsequent development over the next 10 years (see Section 4.1.3 in Chapter 4) will be in certain cases this assumption had the effect of causing the delay of consequences that might be expected over a 20-year timeframe. In addition, the CT EIS strove to disallow certain uses and not identify the contemplated land use recipients. These two factors resulted in some of the potential future of the Los Alamos Sportsman's Club shooting range 5.3.4 in Chapter 5 of the main report. The approach has been clarified to state that the Los Alamos Sportman's Club is located at the current site for many years to come and the use of the area for munitions-related recreation



**John and Adele Hopkins  
Document 20, Page 2 of 4**

October 1999

H-84

Final CT EIS

**Why the Sportsman's Club land should be transferred  
to Los Alamos County.**

John Hopkins, Don McCoy, and Steve Stoddard  
1998

The Los Alamos Sportsman's Club is a nonprofit organization governed by an elected board of volunteers. It has no paid employees. The Club offers outdoor and indoor pistol ranges, skeet, trap, and sporting clays ranges, and 100, 200, and 300 yard ranges for conventional and blackpowder rifle shooting. The club also has archery ranges and a picnic site.

The ranges are on property currently leased from the Department of Energy. With the current DOE policy of land transfer to Los Alamos County for self sufficiency, the Los Alamos Sportsman's Club recommends the land be transferred to the county. The Club would then lease the land from the county

The Los Alamos Sportsman's Club range is a major recreational facility for approximately 500 people, mostly from Los Alamos but also from Santa Fe, Espanola, Jemez Springs, and others communities in northern New Mexico. Many other formal and informal ranges in the Rio Grande Valley have been closed over the past few years because of Forest Service edict or real estate development. This is one of the few remaining ranges and encourages responsible use of firearms rather than unstructured shooting in the neighboring forests.

The range is used by the Los Alamos police for training and qualification approximately four times per year.

There is an economic benefit to the community with registered shotgun, rifle and pistol matches attracting shooters from throughout the southwest.

The Sportsman's Club contributes to the northern New Mexico communities by teaching hunter safety courses to young adults and gun safety and target shooting to children. As a result the firearms safety record of Los Alamos, a community with many firearms in the home, is outstanding. There are many other firearms courses taught throughout the year in target shooting and in the responsible use of firearms for self defense.

As a shooting range it has been contaminated with lead since the W.W.II days when it was used as a range by the army. It would be nearly impossible, or very expensive, to clean up to current standards for any other use without destroying much of the forest area that has served as the impact area for the shotgun ranges.

The county will have to have control of the road through Rendija Canyon to service the county wells in Guaje Canyon and for the right-of-way for the Los Alamos water lines. The range straddles the road at the Los Alamos end of the canyon, just northeast of the townsite. The range lies completely within Los Alamos County.

the contemplated residential development to the east of the Los Alamos Sportsman's Club. At some time in the future, the Los Alamos Sportsman's Club would likely be required to relocate if residential land use is implemented.

Location of CT EIS revisions:

Chapter 5, Sections 5.3.1 and 5.3.4.

**John and Adele Hopkins  
Document 20, Page 3 of 4**

October 1999

The road through Rendija Canyon to Guaje Canyon joins State Road 4 near Totavi and has always been an emergency evacuation route from Los Alamos in the event of a major disaster that could close the main hill road or the Jemez mountain road.

The Sportsman's Club members share Rendija Canyon with others interested in outdoor recreation. The canyon serves in a sense as a buffer zone close to Los Alamos for hiking, picnicking, and target shooting. The area, because of its close proximity to the town site, is used extensively by many local residents.

The Rendija Canyon shooting range land has been considered in several County studies for possible development. It has, so far, always been rejected as not feasible because of the enormous expense in both cleanup and utilities. There is no reason to feel that that conclusion would change in the near term.

file: lasc7

H-85

Final CT EIS

**John and Adele Hopkins  
Document 20, Page 4 of 4**

October 1999

Elizabeth Withers

John Hopkins 3/24/99

The shooting range in Rendija Canyon goes back a long ways. It was a range long before the present lease was signed in 1966. There is some evidence that the public range was started during the waning days of the Oppenheimer administration. That would put it around 1945 or '46. If so that would put it in an era when the Federal Government was trying to improve the amenities of this little community to encourage the civilians scientists, engineers and technicians to stay. It was clearly on Federal land and was sanctioned formally or informally by the government, and its initial use as shooting range was under the auspices of the Federal government.

lasc8

H-86

Final CT EIS

**Judy Hutson**  
**Document 21, Page 1 of 1**

April 5, 1999  
2497B 36th Street  
Los Alamos, NM 87544

To: Elizabeth Withers, CT EIS Document Manager

This letter is to comment on the proposed transfer of land from the DOE to Los Alamos County and to the Secretary of the Interior in trust for San Ildefonso Pueblo.

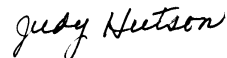
It appears that the land transfer could occur "with no strings attached". If this occurs, there is no guarantee that valuable archaeological and natural resources will be protected. That would be a big mistake. Los Alamos County has stated that it does not have the ability to protect these resources.

One major concern is the County's plan to develop Rendija canyon, in spite of the adverse environmental impact that this would cause. A development of the magnitude planned would impact the available water as well. The water supply in New Mexico is limited, and should be considered when any development is planned. Development in other canyons, such as in those of TA 74, would also damage the environment. Land adjacent to Tsankawi, if developed, would adversely affect the solitude and beauty of Tsankawi.

Areas that have already been developed (Laboratory buildings and sites) such as DP road, would not suffer as great environmental damage if they were developed.

The DOE should not transfer public land with no strings attached, when that means that there could, and almost certainly will, be environmental and archaeological damage.

Sincerely yours,



Judy Hutson

**Comment 21-01-14**

Response:

While the requirements for protection of re: the County are less stringent than those applical Department of the Interior (DOI), there are som The CT EIS discusses the impacts of the land us recipients without taking into account the requir protection applicable to the DOI. The CT EIS t potential impacts by assuming that no mitigatio implemented. However, this is recognized as be: because lands received in transfer by the DOI wc agency protection, and the County also is requir protection for Federal-listed threatened and enda referred to General Issue 2, Deed Restrictions, a DOE's Decisions, in Chapter 2 of this appendix discussed.

21-01-14



**Jennifer A. Johnson**  
**Document 22, Page 1 of 1**

October 1999

From: "Yomi" <yomi@roadrunner.com@internet.al.gov>  
To: "Elizabeth Withers" <ewithers@doe.lanl.gov@interne...>  
Date: 4/12/99 3:02pm  
Subject: CT EIS comments

Dear Ms. Withers,

I appreciate the opportunity to comment on the "Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy..." Draft Environmental Statement.

I spoke to you at the public hearing concerning the attachment of deed restrictions by the DOE to certain areas of the proposed lands to be transferred. I feel it is imperative that placing restrictions on the use of the land or specifying the type of use for the land should be explicit. Because of the limited legal and administrative ability imparted by this act to manage, preserve, and protect resources, the land should revert back to DOE if the recipients do not develop the land in an environmentally suitable manner.

I feel the future uses listed in the Act do not include adequate recognition of nor protection for recreational, aesthetic, wildlife, religious or cultural uses and that they are geared toward development. Several County Councilor's have, in the past, stated their belief that the need of developers to not be impacted economically outweighs the public's need for preserved access to recreational lands.

The whole process that was developed for this land transfer is flawed. The Act is basically a rider that was attached to a budget bill. It was passed with limited discussion of its merits. Further, the EIS states that the need for financial sustainability of Los Alamos County and San Ildefonso Pueblo will not be met through this Act.

The lack of public redress for eventual actions allowed by this Act is a bad precedent and I think demonstrates the arrogance of Congress with regards to the public's needs and desires.

Finally, other entities who have a critical stake in and may be severely impacted by development of some of the lands being considered for transfer were, because of the process, not given the chance to acquire the lands. In the past some of the proposed lands were, and very likely should still be, part of Bandelier National Monument.

Sincerely,

Jennifer A. Johnson  
PO Box 327  
Los Alamos, NM 87544  
(505) 662-3023  
yomi@roadrunner.com

H-88

Final CT EIS

**Comment 22-01-14**

Response:

Under Public Law (PL) 105-119, the DOE future land use. The DOE does not believe that conveyance deed is appropriate under the reader is referred to General Issue 2, Deed Restraints appendix where this issue is discussed.

**Comment 22-02-12**

Response:

Comment noted. The reader is referred to General Issue 2, Deed Restraints, in Chapter 2 of this appendix where this issue is discussed.

**Comment 22-03-17**

Response:

The CT EIS includes a statement of opinion on economic self-sufficiency or sustainability aspects of conveyance of land. This statement reflects the Commission's view of any other entity(s). The Pueblo has not provided input on this issue. The reader is referred to General Issue 4, Public Law Process, in Chapter 2 of this appendix. The text of the CT EIS regarding the source of statements on economic self-sufficiency is located in the following sections:

Location of CT EIS revisions:

Summary, Table S-2; Chapter 2, Table 2.5.15.3.1.

**Comment 22-04-17**

Response:

The 1963 Presidential Proclamation, which established the Bandelier National Monument (BNM) to the Department of Atomic Energy Commission) stated that the lands studied and were considered to be unnecessary if they did not meet the requirements and were therefore, not needed as a condition of the study (see 1.6.1 in Chapter 1 of the main text). The reader is referred to General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix where this issue is discussed.

**Terrell H. Johnson**  
**Document 23, Page 1 of 1**

Terrell H. Johnson  
PO Box 327  
Los Alamos, NM 87544  
April 12, 1999

Elizabeth Withers, CT EIS Document Manager  
DOE, Los Alamos Area Office  
528 35<sup>th</sup> Street  
Los Alamos, NM 87544

Dear Elizabeth:

The draft CT EIS fairly states the impacts of conveyance and transfer of the DOE lands under consideration, but likewise makes it clear that the process established under the appropriations act (PL 105-119) is fatally flawed. Therefore, I support the No Action alternative. This is not to say that no land should be transferred, but that none should be transferred under this legislation. Any parcel of excess DOE land should be considered for transfer only with a full range of possible alternatives, to ensure that the public interest will be served. There are two primary reasons the legislation is flawed and should not be implemented:

- 1) Land availability assumptions made when the legislation was drafted are invalid, and consequently the maximum possible transfer will not meet the County's objectives for budgetary self-sufficiency, nor DOE obligations under the Atomic Energy Community Act, which was the objective of the legislation in the first place;
- 2) The legislation permits two parties to privately determine the future fate of public lands, without consideration of effects on other public lands, wildlife or archeological resources, or the general public interest.

However, in case the DOE should decide to proceed with the flawed land transfer process of PL 105-119, the DOE should at least impose deed restrictions or retain conservation easements to protect key wildlife and archeological resources and to buffer the Tsankawi unit of Bandelier from incompatible land uses. The draft EIS does not recognize an essential fact: transfer of land without protection of its wildlife resources reduces the viability of similar resources on DOE land. Because land that will be retained by DOE is ecologically inseparable from surrounding land, transfer without protection would effectively reduce DOE options for managing its retained wildlife resources and thereby impose more restrictions on mission activities. Deed restrictions or conservation easements should be applied to all core or buffer habitat areas identified in the DOE's approved *threatened and endangered species Habitat Management Plan (HMP)*. Also, the EIS should clearly state what categories of habitat (core, buffer, or foraging) occur within each parcel that is being considered for transfer. The draft always states where threatened and endangered species habitat occurs, but is inconsistent in categorizing it.

Thank you for the opportunity to comment.

Sincerely,  
*Terrell H. Johnson*

**Comment 23-01-17**

Response:

The DOE is obligated to fulfill its requirements under Law 105-119. The reader is referred to General Issue 3, Basis for DOE's Decisions; and Process and the CT EIS, in Chapter 2 of this appendix discussed in detail. It should be noted that the lands of conveyance and transfer are not lands that have "excess" properties.

**Comment 23-02-14**

Response:

The reader is referred to General Issue 2, D of this appendix where this issue is discussed.

**Comment 23-03-07**

Response:

The DOE disagrees with the assertion that the impacts to neighboring lands. The CT EIS takes into consideration the effects of the conveyance and transfer on neighboring lands, including consideration of cumulative effects. The DOE's requirements and its responsibilities to maintain the LANL Site-Wide EIS discusses the DOE resource requirements including the recently implemented LANL Threatened Species Habitat Management Plan. The Site-Wide EIS discusses the mission requirements, including the potential for effects that are not currently developed. No effects to be anticipated by the implementation of the DOE's conveyance and transfer actions. Information on the effects of conveyance and transfer actions has been added to the ecological resource sections of the EIS. The reader is referred to General Issue 2, Deed Restrictions.

Location of CT EIS revisions:

Sections 5.1.7, 5.3.7, 6.1.7, 6.3.7, 7.1.7, 7.3.7, 10.3.7, 11.1.7, 11.3.7, 12.1.7, 12.3.7, 13.1.7, 13.3.7 amended to include discussion of core and buffer

23-01-17

23-02-14

23-03-07

**Milton G. Lockhart**  
**Document 24, Page 1 of 2**

October 1999

From: CTEIS <cteis@doeal.gov>  
To: "cteis@doe.lanl.gov" <cteis@doe.lanl.gov>  
Date: 3/25/99 6:47pm  
Subject: FW: Draft EIS, PL 105-119



>  
>-----  
>From: Milton G. Lockhart  
>Sent: Thursday, March 25, 1999 6:46:01 PM  
>To: CTEIS  
>Subject: Draft EIS, PL 105-119  
>Auto forwarded by a Rule  
>

I am furnishing these comments in addition to my oral comments at the 3/25/99 hearing on the draft EIS under PL 105-119.

Housing is and will continue to be a scarce resource NECESSARY for economic development in Los Alamos County. If land (such as the White Rock Y Tract or TA 74 Tract) is transferred to San Ildefonso Pueblo, residential use can be accomplished overnight by action of the Pueblo Council. Land transferred to Los Alamos County can be made residential by ordinance (subject to referendum). These are the underlying assumptions for my recommendation that the EIS include consideration of the effects of residential use for ALL TRACTS except the Manhattan Monument Tract.

24-01-12

Comments at the 3/25/99 hearing indicated that Rendija Canyon should not be developed in order to continue public access to the Santa Fe National Forest (environmental justice issue), to reduce loss due to wildfire, and to prevent loss of habitat for the peregrine falcon and Mexican spotted owl. My response to these concerns is that THE major driver for land transfer was economic development in Los Alamos County to offset the loss of DOE assistance payments; the peregrine falcon and spotted owl are rarely seen in Los Alamos County, let alone Rendija Canyon; Rendija Canyon is the largest site available for residential development of the tracts identified for transfer; the possibility of WILDFIRE IN RENDIJA CANYON would be

24-02-06

**Comment 24-01-12**

Response:

Section 1.6.1 in Chapter 1 of the main text assessing the land uses identified by the potential Law 105-119, the DOE has no authority to direct property proposed for conveyance and transfer. "know" the future development. As a result, the use of the 10 tracts dictates that a generic, region considering the future development and use of each pertaining to land use is provided with an emphasis on adverse cumulative and regional effects.

**Comment 24-02-06**

Response:

Comment noted. The reader is referred to the Restrictions, in Chapter 2 of this appendix.

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Final CT EIS

**Milton G. Lockhart  
Document 24, Page 2 of 2**

REDUCED BY DEVELOPMENT due to fuel reduction and fire breaks created by streets.  
Limiting development, or any other allowable land use stated in PL 105-119,  
on ANY tract for  
the reasons stated in the 3/25 hearing is contradictory to the transfer purposes stated in PL 105-119. The reservations stated at the 3/25 hearing (access, environmental justice, wildfire, habitat) are addressed in the EIS. These problems SHOULD BE SOLVED in land use planning by Los Alamos County or San Ildefonso Pueblo, not the EIS or Record of Decision.

Comments at the 3/25 hearing stated concerns with visual pollution from development on the White Rock Y and TA 74 Tracts. The use of these tracts MUST be left to the recipient under PL 105-119. The EIS should address possible visual pollution from Bandelier National Monument, but that should not impact the Record of Decision.

You have done a superb job in the Draft EIS.

24-02-06 (Cont.)

24-03-06

**Comment 24-03-06**

Response:

Comment noted. The CT EIS does evaluate the visual impacts of the identified development. The reader is referred to the response to Comment 11-05-15.

**Bob Meade**  
**Document 25, Page 1 of 1**

October 1999

*Los Alamos*  
*April,*

*Elizabeth Withers*  
*POE Los Alamos Area Office*  
*578 35 St.*  
*Los Alamos, N.M. 87544*

*Dear Ms. Withers*

*I am writing to urge the DOE*  
*to please restrictions on the white*  
*Rock Y/TA74 tract of land about to*  
*be transferred to Los Alamos County.*  
*These restrictions should completely*  
*protect Bandelier.*

25-01-14

*Also I would ask the DOE to*  
*continue to manage the Rendija Canyon*  
*and the ~~TA~~ Boyo and Bomanas Canyons*  
*tracts.*

25-02-17

*Thank You*  
*Bob Meade*  
*3702 A Walnut*  
*Los Alamos, N.M.*  
*87544*

H-92

Final CT EIS

**Comment 25-01-14**

Response:

The reader is referred to General Issue 2, De  
of this appendix where this issue is discussed.

**Comment 25-02-17**

Response:

The reader is referred to General Issue 3, B  
Chapter 2 of this appendix where this issue is di

Mike R. Montoya  
Document 26, Page 1 of 1

Comment Form -- Continuation Sheet

Mike R. Montoya  
Need Information: Land Lease

Mike Montoya  
P.O. Box 184  
Española New Mexico  
87532

Would like to know if DOE would  
lease land to an individual's private property.

26-01-12

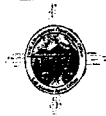
Comment 26-01-12

Response:

The commentor is referring to the lease of ar are the subject of this CT EIS. The DOE has lea of Los Alamos. The Research Park has been le: Economic Development Corporation (as design this action). While the Research Park will rema Government under the administrative control of should contact the County or their designee for sublease.

With regard to leasing other property admin will consider such requests in light of its missio proposed use of the land by the potential leasee required the DOE to include all tracts of land at longer needed to support the national defense m other suitability requirements. The DOE LAAC provided an individual written response to Mr. ]

Name \_\_\_\_\_ (optional)  
Organization \_\_\_\_\_  
Address \_\_\_\_\_ (optional)  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone number \_\_\_\_\_ (optional)  
E-mail address \_\_\_\_\_ (optional)



**Rebecca H. Shankland**  
**Document 27, Page 1 of 1**

October 1999

From: Shanklands <shankland@roadrunner.com@internet.al.gov>  
To: LAAO.SMTPNLM("ewithers@lanl.gov@internet.al.gov")  
Date: 4/12/99 1:46pm  
Subject: DOE Land Transfer

6 Mariposa Court  
Los Alamos, NM 87544-3821  
10 April 1999

Dear Ms. Withers:

I was unable to attend the Public Hearing on the proposed land transfer from DOE to Los Alamos County and San Ildefonso Pueblo, so I would like to express my views by e-mail.

My chief concern is that the transfer of DOE land will occur without any environmental or public-use safeguards. Many of the parcels have been protected from development as long as they were in DOE hands; now they will lose those safeguards and be attractive for commercial or residential use in accordance with DOE's desire to let Los Alamos County become self-sufficient.

I hope that values of open-space, recreation, historical and archaeological interest will be protected in the transfer. Shouldn't the DOE put some restrictions on the land it transfers? For example, I would like to see historic and current trails maintained, perhaps as easements on the donated land.

Thank you for your attention to this major problem of the land transfer.

Sincerely yours,

Rebecca H. Shankland

**Comment 27-01-14**

Response:

The reader is referred to General Issue 2, De of this appendix where this issue is discussed. A the response to Comment 09-01-19 for discussi

27-01-14

H-94

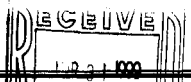
Final CT EIS

Al Shapolia  
Document 28, Page 1 of 1

October 1999

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Final CT EIS



**Comment Form**

The U.S. Department of Energy is interested in your comments on the *Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico: Draft Environmental Impact Statement.*

There are several ways to provide comments on this document, and these include:

- Attending public meetings and giving your comments directly to DOE officials.
- Returning this comment form to the registration desk at the public meetings.
- Returning this comment form or other written comments to the address on the back of this form.
- Faxing your comments to (505) 665-4872.
- Calling toll-free (1-800-791-2280) and leaving your comments via voice mail.
- Commenting via electronic mail to this address: cteis@doeal.gov.

**Comments:**

*As you may have heard, San Ildefonso has Tritium, Cesium and other Nuclear Caca in their Water. Is the land being transferred? Clean or is it full of Chemicals and/or Nuclear Caca going to people unaware of its contents?*

28-01-09

Thank you for your input. Please use additional sheets if necessary and attach them to this form.

Name  (optional)  Please add my name to the C&T EIS mailing list.  
 Organize: Al Shapolia  Please take my name off the C&T EIS mailing list.  
 Address Rt. #11 Box 210-X #102 (optional)  
Santa Fe, New Mexico 87501  
 City \_\_\_\_\_  
 Phone number \_\_\_\_\_ (optional)  
 E-mail address \_\_\_\_\_ (optional)



**Comment 28-01-09**

Response:

As required by Public Law 105-119, each tract to be remediated before being conveyed or transferred. You will be notified of any residual contamination present before the deed is completed and the level of such contamination. The deed for any tract that is conveyed. The real issue is, Environmental Restoration Process, in Issue 5,



October 1999

Elizabeth A. Souder

March 29, 1999

Mr. Elizabeth Withers  
Office of DOE  
Las Alamos, N.M. 87544

Dear Mr Withers,

I am very concerned about the possible transfer of land at both White Rock (1/4 & 74) and tracts in Rendija + + A 74 (Bajo and Baranero Canyon) to the County for any development. These are all environmentally and culturally sensitive areas.

Please chose the No Action Alternative and continue to have these lands managed as natural areas.

29-01-06



Sincerely  
Elizabeth A. Souder  
662-5686

Comment 29-01-06

Response:

The reader is referred to General Issue 3, B Chapter 2 of this appendix where this issue is identified a contemplated intention to undertake of either tract.

H-96

Final CT EIS

**Richard Weinstein**  
**Document 30, Page 1 of 1**

**From:** "Richard Weinstein" <justicemartin@email.msn.com>  
**To:** LAAO.LAAO WPO(ADUBOIS)  
**Date:** 3/23/99 10:52am  
**Subject:** My Comments for DOE on Land Transfer Proposal

Dear Ms. Dubois:

As per our conversation below is the message which I was unable to send to Ted Taylor last week and today. Please advise Elizabeth Withers and Mr. Taylor of this correspondence. If I can be of any further assistance please let me know. My own web page is riverplaces.com/envirolaw where there are a number of articles which may be of interest to you.

Yours truly,

Richard M. Weinstein

Dear Mr. Taylor:

My e-mail was down for a few days after I unsuccessfully sent a message to you on Tuesday, March 16, 1999. This was the message I tried to send.

Dear Mr. Taylor:

Thank you for having Dave Gurule, Area Mgr., send me the Draft Environmental Restoration Report to Support Land Conveyance and Transfer under P.L. 105-119. I began reviewing the document and have concluded that since you are basically applying EPA's brownfield's policy to an environmental restoration of a RCRA regulated sites, I also need to see the RCRA/HWSA permit setting forth the correction action plan, referenced in the document, particularly as it applies to Parcel TA-21 which seems to involve an extensive amount of ground water contamination, before I can complete my review and provide my comments. I should note that I have only seen brownfield's policy applied in the case of CERCLA regulated sites ie. abandoned hazardous waste sites.

I also would think that it would be advisable that the RCRA permit would be made part of the document as an appendix, perhaps. Finally, I have a real problem with DOE's rationale expressed on Page 4, first full paragraph, of equating "the cultural and environmental preservation land scenario" presumably with the end use for the Pueblo grantee in particularly, with a proposed industrial end use cleanup and also wonder whether other interested parties have the same misgivings.

Yours truly,

Richard M. Weinstein,  
Esq.  
justicemartin@msn.com

Could you please forward this message to the Northern New Mexico Citizen's Advisory Board since I do not have their e-mail address but I did receive a green card notifying me of the public meetings scheduled for tomorrow.

**Comment 30-01-09**

Response:

The commentor references the Environment is a part of a parallel but separate process. The Issue 5, Environmental Restoration Process, in where this issue is discussed. This comment has Environmental Restoration (ER) Project for con of the Environmental Restoration Report.

30-01-09

**Pojoaque Public Hearing (Afternoon Session)  
Document 31, Page 30 of 46**

October 1999

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Final CT EIS

1 MR. SPINGLER: Seven. Either one, but  
2 seven. I'm just saying of the ten we are concerned with  
3 three.

4 THE MODERATOR: I just want to make sure.  
5 You got the names, so I won't list them up here.  
6 Other comments or questions?

7 MS. WITHERS: Why don't we go ahead and  
8 close out our question period and go ahead and start  
9 taking comments on the environmental impacts if folks are  
10 agreeable.

11 MR. MARTINEZ: Let me also add that if  
12 there are any questions that any of you would like to talk  
13 to us personally on, you can sure catch us at the break.  
14 We'll be here all day, until nine o'clock. You can catch  
15 us at the breaks in between. But from this point on we  
16 are going to be taking comments on the record form the  
17 Environmental Impact Statement, and they will be addressed  
18 in the final report. You will have an answer in the final  
19 report to your questions, what we did with them, if we did  
20 anything with them. If we didn't, why we didn't. And so  
21 feel free to catch us during the break if we didn't get  
22 all the questions.

23 THE MODERATOR: Let me make sure I'm clear,  
24 if I were someone that already said something, does this  
25 mean I have to restate it as a comment or are these

31-12-06  
(Cont.)

**Pojoaque Public Hearing (Afternoon Session)  
Document 31, Page 31 of 46**

1 considered also comments?

2 MS. WITHERS: So far I haven't really heard  
3 specific comments directed at the Environmental Impact  
4 Statement.

5 MR. SPINGLER: Mine was meant as a  
6 comment.

7 MR. MARTINEZ: Okay.

8 MS. WITHERS: Okay. Then we will start  
9 with yours.

10 MR. SPINGLER: All the other ones were  
11 comments. That's a question.

12 THE MODERATOR: I just didn't want anybody  
13 sitting in the audience wondering if they had to restate  
14 something.

15 MR. STODDARD: I would like to have my  
16 question stand as a question if we can.

17 THE MODERATOR: The only reason I'm looking  
18 at you --

19 MS. WITHERS: It's probably a good idea for  
20 the record that you go ahead and make sure that we have  
21 associated your name with the comment.

22 MR. FERGUSON: Elizabeth, just a request  
23 for purposes of those of us who will have to review the  
24 record and make sure the EIS adequately reflects all the  
25 comments. If the gentleman from the Sierra Club plans to

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1 submit detailed comments on reasons why the three tracts  
2 are opposed by his organization, that would be very  
3 helpful. If he doesn't plan to do it in writing, if he  
4 could do it today or follow it up somehow.

5 Right now it doesn't stand as a comment on the  
6 EIS per se. It stands as a comment on the final Record of  
7 Decision. And that may sound like a distinction without a  
8 difference, but, believe me, in terms of how the process  
9 is supposed to play out, that is a distinction. The kind  
10 of comments he has just made, it would essentially be a  
11 comment noted. There is nothing the Department can do in  
12 improving the document based on his opposition to three of  
13 the ten parcels, but if he has specific environmentally-  
14 related comments that go to what the document has said and  
15 thinks it needs to be said differently or in more detail,  
16 then that's helpful.

17 MR. SPINGLER: And we will submit that in  
18 writing.

19 THE MODERATOR: Let me clarify, you want me  
20 to go through and put a C by those things that are true  
21 comments? I'm just not sure.

22 MS. WITHERS: I think --

23 MR. MARTINEZ: What we are going to do is  
24 we is going to submit them in writing.

25 THE MODERATOR: That was only one. There

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**Comment 31-13-19**

Response:

In addition to the response given during the public hearing that is presented in the transcript on the left, the reader is referred to the responses presented in Document 20 and for Comment 31-06-19 above.

1 was another gentleman, about the Sportsmen's, and I just  
2 didn't want you to end up with something that -- if that  
3 was a comment about the Sportsmen's Club.

4 MR. STODDARD: Yes, in reading the document  
5 it sounds like it's a done deal, Los Alamos Sportsmen's  
6 Club is no longer. And that's my principal concern.

7 THE MODERATOR: And I guess the only thing,  
8 to follow up on your point, is that specific enough, his  
9 comment the way he said it, not necessarily the way I  
10 wrote it, for you to be able to act on that or does he  
11 need to submit something in writing?

12 MR. FERGUSON: Personally what I heard I  
13 think is sufficient to be responded to. I think it goes  
14 largely to the description of the process as opposed to  
15 the impacts of the transfer, but I think that can be  
16 connoted in term of the status of existing leases and the  
17 clarifying that either the Pueblo or the County will  
18 essentially be free to act on the status of any existing  
19 encumbrance when they receive the parcel.

20 MR. STODDARD: That is the essence of it.  
21 I am a little concerned that anybody reading it would  
22 think a decision has already been made that the  
23 Sportsmen's Club will no longer be, and I don't think that  
24 is the intention of the County, if they become the  
25 ultimate owner, to abolish the Sportsmen's Club at all,

31-13-19

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1 and our discussions with them bear that out. That is also  
2 part of the Comprehensive Plan of 1987.  
3 THE MODERATOR: I think we had a question  
4 here.  
5 A SPEAKER: I have a comment to make. I  
6 want it known that the Pajarito Plateau Homesteaders are  
7 claimants of some of the land.  
8 THE MODERATOR: Let me make sure I got it.  
9 Say it again, sir.  
10 A SPEAKER: I want it known that the  
11 Pajarito Plateau Homesteaders are claimants.  
12 THE MODERATOR: Okay. Any other comments?  
13 A SPEAKER: That's it.  
14 A SPEAKER: A question. Is there a  
15 schedule of activity and time frame for completion and all  
16 the milestones to be completed before the EIS is issued  
17 that is available to us, a written document that shows  
18 that schedule?  
19 MR. MARTINEZ: There is one in the public  
20 survey.  
21 MS. WITHERS: I have a schedule. It's not  
22 necessarily published. I would be happy to furnish that  
23 to you.  
24 A SPEAKER: What is your target completion  
25 date.

31-13-19  
(Cont.)

31-14-22

31-15-15

**Comment 31-14-22**

Response:

Comment noted. The reader is referred to General Issue 7, Homesteaders Association Claims, in Chapter 2 of this appendix.

**Comment 31-15-15**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. In addition, the reader is referred to Section 1.1.3 in Chapter 1 of the main report, which presents the timeline for the overall conveyance and transfer process.

**Pojoaque Public Hearing (Afternoon Session)  
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1 MS. WITHERS: The target completion date  
2 for furnishing the Final Environmental Impact Statement is  
3 August of '99. I would plan to -- our comment period ends  
4 on April 12th, and then we will be taking the comments  
5 that we have received and actually start making changes to  
6 the document as appropriate, and turn around and plan to  
7 have published, or printed and issued, the Final Draft  
8 Document in the first part of August.

9 A SPEAKER: Do you have a mailing list that  
10 you have begun to distribute to people like this?

11 MS. WITHERS: Yes, we do, and if you would  
12 like to add your name to the mailing list, catch me after  
13 this and give me your name and I'll be happy to add it to  
14 the list, or you can call the 1-800 number that is posted  
15 on the wall up there and give me your name and address and  
16 I'll add your address to the list. That would be super.

17 THE MODERATOR: Thank you for leaning into  
18 the mike. I think it's easier for people to hear if you  
19 are just an inch or two away from the mike so people can  
20 hear. Any other comments, questions?

21 MR. FERGUSON: This is Steve Ferguson  
22 again. I'm with DOE headquarters. I've spoken a little  
23 bit already. I think I need to clarify the answer  
24 Elizabeth gave to the gentleman from the Sierra Club's  
25 question about the viability of the no action

31-15-15  
(Cont.)

31-16-03

**Comment 31-16-03**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. In addition, this issue is discussed in more detail in General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix.



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1 alternative. I think it's incorrect if people have the  
2 impression the Department has very much discretion in the  
3 decision on whether to convey or transfer these parcels.  
4 That discretion largely rests in whether the criteria laid  
5 out in the statute that was described earlier are met or  
6 not. If those criteria are met, then the statute says the  
7 Department shall convey.

8 Now, having said that, as Elizabeth also pointed  
9 out, the process is supposed to be interactive with  
10 congress, in the sense that we have to provide a plan to  
11 them for how the transfer or transfers would be made, and  
12 that plan would be based on the information contained in  
13 the Environmental Impact Statement and the Environmental  
14 Restoration Report, among other pieces of information.

15 So I think it's fair to say that there is  
16 opportunity for the Department's discretion to be changed,  
17 but congress is the vehicle for that discretion to be  
18 altered at this point on either a total ten-parcel basis  
19 or a parcel-by-parcel basis. We are limited by what the  
20 statute gives us in the way of discretion.

21 THE MODERATOR: Thank you. Any other  
22 comments?

23 MR. SPINGLER: I think the answer was no.  
24 Is that right?

25 THE MODERATOR: Thank you for clarifying.

31-16-03  
(Cont.)

**Pojoaque Public Hearing (Afternoon Session)  
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1 MR. SPINGLER: My question was is no action  
 2 a viable alternative and I think you are answering no,  
 3 it's not a viable alternative.  
 4 MR. FERGUSON: It depends on whether the  
 5 criteria are met or not.  
 6 MR. SPINGLER: Right, but --  
 7 MR. FERGUSON: I think "no" is too  
 8 simplistic an answer as well. The answer is it depends  
 9 and that's what the process is all about.  
 10 THE MODERATOR: So if the criteria are not  
 11 met then the answer is no. If they're met, the answer is  
 12 yes. I just want --  
 13 MR. SPINGLER: I can't imagine the criteria  
 14 that wouldn't be met. As a for instance, how would the  
 15 answer ever be, no, we're not going to transfer, based on  
 16 the criteria?  
 17 MS. WITHERS: If we couldn't  
 18 environmentally clean up the tract would be one way. Also  
 19 if we recognized a mission support need for the piece of  
 20 property, then that would be another way.  
 21 MR. MARTINEZ: Or if the County and the  
 22 Pueblo did not agree, then it would not be transferred.  
 23 THE MODERATOR: I think that helped other  
 24 people as well. Thank you for clarifying. Was there a  
 25 question somewhere here? Comment? Yes.

31-16-03  
(Cont.)

**Pojoaque Public Hearing (Afternoon Session)  
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1 MR. GONZALES: I would like to address a  
2 question to the gentleman over there. Sir, are you with  
3 the Sierra Club?  
4 MR. SPINGLER: Yes, sir.  
5 MR. MR. GONZALES: Do you know about the  
6 Earth Justice Legal Defense Fund?  
7 MR. SPINGLER: No.  
8 MR. GONZALES: It's part of -- used to be  
9 Sierra Club. The offices are in San Francisco. And I  
10 have been --  
11 MR. SPINGLER: I'm just part of a little  
12 group, the Pajarito Group with the Sierra Club.  
13 MR. GONZALES: They used to handle  
14 everything, but this Earth Justice Legal Defense Fund is  
15 different now. And they kind of promised to help us but  
16 they haven't yet.  
17 MR. SPINGLER: I'm not familiar with that.  
18 THE MODERATOR: That wasn't a comment for  
19 the record, you were just clarifying?  
20 MR. GONZALES: Yes.  
21 THE MODERATOR: Any other comments?  
22 MR. MARTINEZ: Why don't we take a  
23 five-minute break and kind of mull over what we've heard  
24 so far, and then we will reconvene and continue taking  
25 comments. That will give you a chance to refresh

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3.0 COMMENT DOCUMENTS AND RESPONSES

**Pojoaque Public Hearing (Afternoon Session)  
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1 yourselves and have some more comments.  
2 THE MODERATOR: Go to the environmental  
3 restoration open house next door. So we will check in  
4 five minutes if there are more comments.  
5 (There was a brief recess.)

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**Pojoaque Public Hearing (Afternoon Session)  
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1 THE MODERATOR: Let's reconvene. The  
2 situation is, there were no comments. We waited for a  
3 while before we took a break and there were no additional  
4 comments, but we want to make sure, if anyone came in  
5 late, or if they had anything they thought of during the  
6 break. Are there other comments about the Draft  
7 Environmental Impact Statement you want to say here?

8 Remember you can also write them on the card,  
9 you can call this number, you can e-mail them, but if  
10 there is anything you want to say here we want to make  
11 sure we have at least asked that question again.

12 Not hearing any, waiting I think five or six  
13 seconds there, I'm going to -- Dennis, did you have  
14 anything to add?

15 MR. MARTINEZ: Not for me.

16 MS. WITHERS: No, I don't believe so. Why  
17 don't we convene then in about 30 minutes. We'll again  
18 reconvene and ask the question again, and perhaps if  
19 anyone new joins us then we can proceed from there.

20 THE MODERATOR: So the decision was we will  
21 take a break for about 30 minutes. If someone new shows  
22 up we will reconvene. We will convene anyway at that  
23 point to see if there are any comments. So that would be  
24 at 3:45 approximately. And we will see if there are  
25 additional comments.

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1 Thank you very much to those of you present.  
2 (There was a brief recess.)  
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**Pojoaque Public Hearing (Afternoon Session)  
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1 THE MODERATOR: All right. We said we  
2 would reconvene in a half hour and it's a little past  
3 that, 10 to 4:00. Those of you who were not here earlier,  
4 we began at two as scheduled and we heard some  
5 presentations about the basic background information. We  
6 also took some comments, took a couple of breaks, and we  
7 have one person I believe signed up to make another  
8 comment, so I want to reconvene now.

9 The intent of this, of course, is to input to  
10 the Draft Environmental Impact Statement and to get any  
11 comments about the Environmental Impact Statement. So, if  
12 there is anyone -- I believe there was one person signed  
13 up.

14 Yes, sir.

15 MR. TAFOYA: My name is Darrell Tafoya. I  
16 work for the Bureau of Indian Affairs. I'm the realty  
17 officer. My comments are under the remediation program,  
18 the cleanup. And we have regulations under CFR 25-151 how  
19 we accept land, how it needs to be done. And under other  
20 circumstances when we get together with acquiring  
21 property, we always ask for a report, environmental, they  
22 call it a Phase 1-EA, to check and see if everything is up  
23 to par, and if it isn't, then you go to Phase 2. And then  
24 if still it isn't, you go to 3. But the Bureau will not  
25 take it if it's not clean to the highest.

**Comment 31-17-09**

Response:

The commentor referred to the Bureau of Indian Affairs, U.S. Department of the Interior (DOI) regulation at 25 Code of Federal Regulations (CFR) Part 151, Land Acquisitions. This regulation sets forth policies and procedures that apply to the DOI when it acquires land in trust for Native American tribes and individuals. The DOE intends to work not only with the DOI, but also with environmental regulatory authorities, to identify the degree of environmental restoration or remediation, if any, that is required for each parcel of land that may be transferred. Under Public Law 105-119, the DOE may not transfer any parcel that requires environmental restoration or remediation before such remediation or restoration, to the maximum extent practicable to meet at least one of the land uses identified by Public Law 105-119, has occurred.

31-17-09

**Pojoaque Public Hearing (Afternoon Session)  
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1           What I'm talking about now is that I understand  
2 that it will be clean to different areas of usage, but the  
3 Bureau needs for it to be at the highest, meaning what the  
4 state regulations are. And I think it is residential.  
5 And any of the land that is going to be transferred to the  
6 Bureau for Ildefonso, it needs to be to the highest,  
7 meaning whatever the state regulation is.  
8           Because if we accept it lower than that, the  
9 liability issue is still on DOE, but the liability also  
10 falls on the Bureau of Indian Affairs. And that's why I  
11 made this comment. And I wanted to make this comment  
12 before. I have been to your meetings and advised you of  
13 the same thing, but I wanted to make this comment so you  
14 will be able to put it in there, because I feel if we want  
15 something done right, instead of throwing the ball back  
16 and forth, what we might be doing, we might as well do it  
17 right now, so when we get to the point where we are going  
18 to transfer it it is satisfactory with the Bureau and  
19 DOE.  
20           That's all I have to say.  
21           THE MODERATOR: Let me make sure, the  
22 Public Law number again, or the regulation?  
23           MR. TAFOYA: CFR 25-151.  
24           THE MODERATOR: 25-151, if I heard  
25 correctly. We have someone here taking down your actual

31-17-09  
(Cont.)



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1 words, but I want to be sure that people in the audience  
2 heard. Bureau of Indiana Affairs, you said you have a  
3 process with three phases. What your point was, for this  
4 land to be transferred it needs to be cleaned up to the  
5 highest level because there are liability implications.

6 Okay. Any other comments? Not hearing any,  
7 then, Dennis, how do you want to handle it? It's almost  
8 4:00.

9 MS. WITHERS: Why don't we reconvene at  
10 4:30 and we'll ask once again if there are any other folks  
11 that have comments.

12 THE MODERATOR: Okay. Thank you very  
13 much.

14 (There was a brief recess.)  
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31-17-09  
(Cont.)

**Pojoaque Public Hearing (Afternoon Session)  
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1 THE MODERATOR: Let me reconvene this  
2 comment session. All I want to do is make sure is we've  
3 done a public announcement, that if there is anyone in the  
4 room who has a comment to make about the Draft  
5 Environmental Impact Statement, please let us know. Not  
6 hearing anything, after a good five seconds, I will assume  
7 there is no comment.

8 And there will be another session from six to  
9 nine tonight, the same place, so if there are comments  
10 please come then. Otherwise, Elizabeth, do you want to  
11 adjourn?

12 MS. WITHERS: Why don't we adjourn the  
13 meeting.

14 THE MODERATOR: We will adjourn this  
15 afternoon session now. It's 4:30. Thank you.

16 (The meeting was adjourned at 4:30 p.m.)

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COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

REPORTER'S CERTIFICATE

I, the undersigned Court Reporter and Notary Public, HEREBY CERTIFY that I reported in stenographic shorthand the proceedings set forth herein, and the foregoing is a true and correct transcript of the proceeding to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

\_\_\_\_\_  
BARBARA K. HARRIS, RPR-CM  
Certified Court Reporter #114  
My Commission Expires: 12/31/99

**Pojoaque Public Hearing (Evening Session)**  
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HEARING ON THE  
DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE CONVEYANCE AND TRANSFER OF  
CERTAIN LAND TRACTS ADMINISTERED BY  
THE DEPARTMENT OF ENERGY AND  
LOCATED AT LOS ALAMOS NATIONAL LABORATORY,  
LOS ALAMOS AND SANTA FE COUNTIES, NEW MEXICO

March 24, 1999  
Pojoaque, New Mexico  
6:00 p.m.

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REPORTED BY: BARBARA HARRIS, CM/RPR NM CCR #114  
American Reporting  
201 Twelfth Street, Northwest  
Albuquerque, New Mexico 87102

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APPEARANCES

For the DOE:

MR. DENNIS MARTINEZ

MS. ELIZABETH WITHERS

Moderator:

MR. STEVE WILKES

Interpreter:

Mr. Arturo Sandoval

\* \* \* \* \*

**Pojoaque Public Hearing (Evening Session)  
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1 MR. MARTINEZ: Good evening. I guess we  
2 can get started now. My name is Dennis Martinez, Deputy  
3 Area Manager for the Los Alamos Area Office.

4 The purpose of our meeting tonight is to discuss  
5 the Environmental Impact Statement Draft Report that is  
6 out and get public comments from you. In the next room  
7 here we have folks that will be prepared to provide you  
8 with information on the Draft Environmental Restoration  
9 Report that is out. And so I would like to maybe kick off  
10 and start out by giving you an overview. I see some new  
11 faces and some familiar faces, but if you can bear with  
12 me, I will give you an overview of why we're doing this  
13 and exactly what we're doing, and then we will have  
14 Elizabeth discuss the Environmental Impact Statement and  
15 the reason we're here tonight.

16 We are here because congress passed a Public  
17 Law, 105-119, back in November of '97, and that law  
18 requires the Secretary of Energy to convey without  
19 consideration certain lands in Los Alamos to the  
20 incorporated County of Los Alamos and to the Secretary of  
21 Interior in trust for San Ildefonso Pueblo.

22 And the law had some criteria in it. The lands  
23 that were selected had to be usable for historic,  
24 cultural, environmental preservation, economic  
25 diversification, and community self-sufficiency purposes.

**Pojoaque Public Hearing (Evening Session)  
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1 And so that is why we're here this evening.  
2 Again, this is a legislated type of process.  
3 This is not a Departmental-initiated action.  
4 These are the steps, and I recognize that you  
5 probably can't read them from the back of the room, but  
6 these are the steps that the public law outlines. We have  
7 this available in handouts out at the front table.  
8 The first thing that the Department had to do  
9 was to identify suitable parcels that met the criteria and  
10 the law, and basically they had to be usable for the  
11 purposes I said earlier and no longer needed for the  
12 national defense mission.  
13 That identification was done and a report was  
14 submitted to congress February '98, that identified these  
15 parcels. There was actually ten parcels in the report,  
16 and we only see nine here, because there are two very  
17 small ones included on one map here. So there is actually  
18 ten sites identified in the actual report to congress.  
19 There is a total of 4646 acres that were identified.  
20 The next thing that was required was for the  
21 Department to complete a title search on these parcels.  
22 And what the Department did was to contract with U.S. Army  
23 Corps of Engineers, who has extensive experience in Los  
24 Alamos from past history, and they performed a title  
25 search this last year and we submitted that title search

**Pojoaque Public Hearing (Evening Session)  
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1 to congress, actually the first part of this year, around  
2 the January time frame of '99. So that's complete.  
3       The next piece, and this is why we're here  
4 today, is the Department has to complete an Environmental  
5 Impact Statement and an Environmental Restoration Report,  
6 and we have to submit a report to congress in August of  
7 1999 of what the results of those two reports are. These  
8 are reports that will be used in making the decisions as  
9 to which of these parcels, if any, or parts of parcels  
10 will be transferred. At this point we haven't determined  
11 that. This is all pre-decisional, and not until we get up  
12 to the August time frame will we actually know what the  
13 feasibility is of transferring any of these or parts of  
14 these.  
15       The next step that will happen after the August  
16 submission to congress is that San Ildefonso Pueblo and  
17 Los Alamos County are required under this law to come to  
18 agreement by November of '99 on how they would allocate  
19 these parcels.  
20       THE MODERATOR: Folks in the back are  
21 having a hard time hearing.  
22       MR. MARTINEZ: The San Ildefonso Pueblo and  
23 Los Alamos County have to agree by November of '99 how  
24 they would split these parcels or allocate them among  
25 themselves. The Department of Energy is not involved in



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1 that decision. That is strictly between those two  
2 parties. And as of this date I don't have a status  
3 report, I don't know where they are in their  
4 negotiations.

5 The next item that we have to complete is the  
6 Department has to prepare a Conveyance and Transfer Plan  
7 and submit that to congress by February of 2000. That  
8 plan would detail out what would be transferred, what the  
9 time frames are, how much funding is required, et cetera,  
10 the fine details. That would take place next.

11 The first parcels -- as a result of all this  
12 work we should be able to identify which those are -- the  
13 first parcels to transfer after doing all these steps, and  
14 those first parcels should be -- we are required to  
15 transfer them by February of 2000. Those first pieces of  
16 property have to go by that time. After that it becomes a  
17 -- I'm sorry, I gave you the wrong date. The first  
18 parcels have to transfer by November of 2000.

19 After that it becomes a long-term project and we  
20 have until November 2007 to complete the environmental  
21 restoration and remediation work, and transfer the parcels  
22 as we get that work done piecemeal.

23 So that's the public law. That's the overall  
24 process that we're going through. There are some  
25 intermediate steps. One of them of, course, is to hold

**Pojoaque Public Hearing (Evening Session)  
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1 the public hearings and get comments on the Environmental  
2 Impact Statement, and that's the piece that Elizabeth will  
3 talk to you about now.

4 Elizabeth Withers.

5 MS. WITHERS: Thank you. My name is  
6 Elizabeth Withers, and I'm the document manager for the  
7 Environmental Impact Statement that the Department of  
8 Energy is performing at this time. That's a nice fancy  
9 way of saying that I get to make sure that the document is  
10 actually completed, and completed on time.

11 The Department of Energy, as Dennis has already  
12 pointed out, approved Public Law 105-119. It's required  
13 to consider the environmental impacts of conveying and  
14 transferring these tracts pursuant to the National  
15 Environmental Policy Act.

16 To this end, the Department of Energy determined  
17 back last year in the winter of 1998 that an Environmental  
18 Impact Statement was the appropriate level of NEPA  
19 analysis and documentation to meet our regulatory  
20 compliance requirements.

21 The first action that we did then was to go  
22 ahead and issue a Notice of Intent to prepare an  
23 Environmental Impact Statement through the Federal  
24 Register in May of 1998. At that time we also held a  
25 scoping period in which we invited the public and our

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1 stakeholders to help us actually scope the Environmental  
2 Impact Statement. We asked them to provide us with  
3 information on the alternatives to be considered under the  
4 analysis on the environmental issues and concerns to be  
5 analyzed and other such pertinent information.

6       After the scoping period was ended, then we took  
7 all of the comments that we got during that scoping  
8 period, and we used them to actually prepare the  
9 document. We worked with our cooperating agencies over  
10 the summer, fall, and winter on doing the analysis and  
11 drafting the document. For this Environmental Impact  
12 Statement our cooperating agencies were the County of Los  
13 Alamos, San Ildefonso Pueblo, Bandelier National Monument,  
14 U.S. Forest Service, the Bureau of Indian Affairs, and  
15 the Bureau of Land Management.

16       So we had six cooperating agencies, and the  
17 actions that they performed with us consisted mostly of  
18 supplying us with information to be used in the analysis,  
19 and actually reviewing and offering comments on the  
20 internal working draft document.

21       Then in February of this year, 1999, we went  
22 ahead and were able to issue the Draft Environmental  
23 Impact Statement, so that was just last month.

24       On February 26 we issued a notice of a general  
25 availability for the public and stakeholders, and at the

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1 same time we mailed out over 200 documents to individuals,  
2 organizations, and other stakeholders who had already  
3 identified themselves as being interested in reviewing the  
4 document.  
5       The document is also available now on the  
6 Worldwide Web. If anyone would like to get that address,  
7 it's in that package that you could pick up on the front  
8 desk outside. Additionally, the document is available in  
9 the DOE public reading rooms, in Los Alamos and Santa Fe,  
10 and in the LANL outreach offices in Santa Fe and then  
11 Espanola.  
12       There is a lot of traffic coming in here. Come  
13 on, folks, there is a lot of room up here.  
14       The Draft Environmental Impact Statement then is  
15 out for public review, and our comment period extends from  
16 the February 26 Notice of Availability of the document to  
17 April 12. It's a 45-day public review period. And we  
18 hope that everyone here tonight will offer up comments if  
19 you have them. They can also be offered up to us through  
20 a variety of other different ways.  
21       We have established an Internet -- excuse me, an  
22 e-mail address, and that address is cteis@doeal.gov.  
23 That's up here on the wall. We also have a 1-800 number.  
24 If people would like to give us oral comments, they can  
25 leave a message at the 1-800 number as well.

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1           Additionally, of course, I will accept letters  
2 and memos that are written to the Los Alamos Area Office  
3 in Los Alamos for the Department of Energy.  
4           Additionally, we will be, of course, accepting  
5 your public comments orally here tonight. We have a court  
6 recorder who is getting everything down verbatim, and then  
7 she will give us a transcript of the meeting and we will  
8 be able to use that in our comment response.  
9           This document will also be available to everyone  
10 in the public reading rooms after we're finished.  
11          The actions that we are analyzing in this  
12 Environmental Impact Statement include the No Action  
13 Alternative, which is to not convey or transfer any of  
14 these tracts, as well as the Proposed Action Alternative,  
15 which is to convey or transfer each of the ten tracts of  
16 land identified as potentially suitable in the DOE's  
17 report, and that was the one that Dennis mentioned earlier  
18 was turned into congress in February of this year, or last  
19 year rather, which would be individually either conveyed  
20 or transferred in whole or in part, either to the County  
21 or to the Secretary of the Interior in trust for San  
22 Ildefonso Pueblo.  
23          We do have a preferred alternative that we have  
24 identified in the Environmental Impact Statement, which is  
25 more or less a subset of the proposed action, and that

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1 generally is to then convey those sites that could be  
2 possibly cleaned up in a relatively short period of time  
3 because, as Dennis mentioned, that is one of the criteria  
4 for being able to convey or transfer these tracts, is that  
5 they must be cleaned up first.

6         We think that probably there are only a couple  
7 of sites that are going to be immediately, or in a short  
8 term, available for conveyance and transfer, and that is  
9 Miscellaneous Manhattan Monument Tract and Miscellaneous  
10 Site 22 Tract. Other tracts will take longer to effect  
11 the cleanup and so they are more in the out years.

12         And, finally, TA-21 is the most heavily  
13 contaminated tract and it will take longer to perform the  
14 cleanup on it.

15         Generally speaking, in the Environmental Impact  
16 Statement, the impact associated with the direct actions  
17 that the Department of Energy will take are relatively  
18 minor. They consist mostly of transferring our offices to  
19 other locations and our employees to other locations in  
20 already established areas. However, the potential for  
21 impacts associated with the future land use by either San  
22 Ildefonso Pueblo or the County of Los Alamos are  
23 considerably more significant.

24         The Final Environmental Impact Statement then  
25 will be produced after we have gotten all of the comments

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1 at the end of the public comment period after April 12th.  
2 We will then take all of our comments and then start  
3 making actual changes to the document based on those  
4 documents. For those comments that are received after  
5 April 12th, we will try to incorporate those to the extent  
6 possible, but we are on a very short timeline because the  
7 Final Environmental Impact Statement is due to be issued  
8 around the first part of August, so that's not very far  
9 away.  
10 Then the next step will be to consider a Record  
11 of Decision. Normally you are not allowed to produce a  
12 Record of Decision on an action until at least 30 days  
13 have gone by after the issuance of the Final Environmental  
14 Impact Statement. In this case, because of the way the  
15 law reads, we will probably have a delay of several months  
16 until the Department of Energy issues the plan for the  
17 conveyance and transfer in about the February 2000 time  
18 frame.  
19 There could be multiple Records of Decision  
20 because of the actions that could take place over the next  
21 ten years.  
22 The information that is obtained from the Final  
23 Environmental Impact Statement, together with the  
24 information from the Environmental Restoration Report,  
25 will be rolled into a combined data report which will be

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1 furnished to congress at the end of August of this year.  
2 I think that at this point in time I will go  
3 ahead and turn the meeting over to our moderator, Steve  
4 Wilkes, and he will then take questions and comments from  
5 the audience, and we will start the meeting. Thank you.  
6 THE MODERATOR: I'm not sure I need this.  
7 I will try to project. If I need it, please just give me  
8 a signal.  
9 A couple of things before we get started. As  
10 Elizabeth said, I'm Steve Wilkes. I'm the one moderating  
11 this. And I'm independently employed, I'm not one of the  
12 DOE employees, but I have been asked to facilitate this  
13 meeting.  
14 You heard about speaker sign-ups out here in the  
15 hallway. Please do that. We have, as you heard, Barbara  
16 Harris here, our court reporter.  
17 Written comments can be given at any time using  
18 the forms that are supplied or your own. You heard about  
19 the 1-800 number. I just want to remind you of the  
20 e-mail. There are many ways to do this.  
21 In addition, tenemos un interprete, Arturo  
22 Sandoval. If you need an interpreter, please do so.  
23 Cookies and beverages I think this evening are still in  
24 the room next door.  
25 Just so you know, concurrently there is an



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1 informational open house about environmental restoration  
2 which is a related but a separate issue, separate set of  
3 issues, if you will. It's right on the other side of this  
4 partition. So feel free to go over there. We will be  
5 taking a break so you will be able to get over there. It  
6 is not a hearing. They are not recording comments. It is  
7 just an open house. You can ask questions and see  
8 displays. Feel free to go there.  
9 Fact sheets Elizabeth referred to and the  
10 summary. The noise wall here is a little porous, so what  
11 I will ask you to do, when you have a question -- this  
12 afternoon one of the things we noticed was Elizabeth and  
13 Dennis have microphones for giving the answers but some  
14 people couldn't hear the question. So what I will be  
15 doing is we will just be handing this to you. When you  
16 have a question or comment, would you please use this.  
17 Just keep it a couple of inches away from your mouth,  
18 that's all. It can be fairly close and everyone can hear  
19 you. All right? We will move this out.  
20 Now, we had three objectives for this meeting.  
21 One was to do just what Elizabeth and Dennis did, and that  
22 is to make sure you are clear on the background, how we  
23 got to where we are, what happened before this, what's  
24 going to happen after this, how the whole thing got  
25 started. That's one of the desired outcomes.

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1 The second was to capture a clear, accurate,  
2 complete record of public comments on the Draft  
3 Environmental Impact Statement.

4 And the third is really for you to be able to  
5 walk out of here and everyone be able to say I had a  
6 chance to get heard, and if I had something to say, I got  
7 heard. So those are our three desired outcomes for this.

8 If I heard correctly, a full transcript if  
9 someone is interested in a full transcript of what the  
10 comments are, that will be available. And, Elizabeth,  
11 where will that be available?

12 MS. WITHERS: The DOE public reading rooms  
13 in both Los Alamos and Albuquerque.

14 THE MODERATOR: And approximately what time  
15 frame?

16 (WHEREUPON, there were proceedings held  
17 off the record.)

18 MS. WITHERS: Let's make that a week and a  
19 half from today.

20 THE MODERATOR: All right. Then unless  
21 there are other questions about how we're going to  
22 proceed, this afternoon we spent time trying to get  
23 questions. There were some questions and comments mixed  
24 in. Shall we try do capture them all?

25 MS. WITHERS: Yes.

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**Comment 32-01-08**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. In addition, this issue is discussed in more detail in General Issue 6, Environmental Justice, in Chapter 2 of this appendix.

1 THE MODERATOR: If you have clarifying  
2 questions or comments, if you have them, I will try to  
3 note the key words. I am not pretending to have an  
4 accurate and complete record here, that's why we have a  
5 court reporter, but I at least want to capture the key  
6 words, so if someone else has a point to make they can see  
7 whether the point has already been made by looking up  
8 here.  
9 So any questions, comments, about the Draft  
10 Environmental Impact Statement?  
11 MS. WITHERS: This is a great crowd.  
12 THE MODERATOR: Take your time. Yes.  
13 MR. GUTIERREZ: A thought does come to  
14 mind, if I may. I think I can project my voice. But  
15 relative to the Environmental Impact Statement, a rather  
16 important part of it is the environmental justice section  
17 of it, and I was wondering if perhaps someone could  
18 comment about how much treatment or how much study, what's  
19 been the depth of study regarding the environmental  
20 justice issue in the Environmental Impact Statement.  
21 MS. WITHERS: We did use the recently  
22 published Los Alamos National Laboratory's site-wide  
23 Environmental Impact Statement to tier off of when we were  
24 developing this analysis, and so there was quite a  
25 considerable amount of analysis on environmental justice

32-01-08

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1 in that document. And then we considered from that then  
 2 the potential for impacts associated strictly with  
 3 conveyance and transfer.  
 4 And there were, I would say, a rather moderate  
 5 amount of additional analysis that went in on top of what  
 6 had already been done for the Environmental Assessment --  
 7 I mean Impact Statement under the site-wide Environmental  
 8 Impact Statement.  
 9 MR. GUTIERREZ: Does the document out here  
 10 contain a full analysis or would we have to refer to  
 11 supplemental material to get the full scope and  
 12 understanding of what is included in the analysis?  
 13 MS. WITHERS: There should be enough  
 14 information in this EIS that you should be able to  
 15 understand the bulk of the analysis. We tried to tier off  
 16 and include enough information in a summary form from the  
 17 Site-Wide EIS and then add the additional information on  
 18 top of that. So it should be in this document.  
 19 MR. GUTIERREZ: Was there any kind of  
 20 adverse findings relatively to the environmental justice  
 21 issue?  
 22 MS. WITHERS: No, there wasn't, as the law  
 23 is defined.  
 24 MR. GUTIERREZ: Thank you.  
 25 THE MODERATOR: If you want to have your

32-01-08  
(Cont.)

32-02-08

**Comment 32-02-08**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. To clarify the response, the requirements to evaluate environmental justice issues derive from Executive Order 12898, not legislation. In addition, this issue is discussed in more detail in General Issue 6, Environmental Justice, in Chapter 2 of this appendix.

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1 name -- I forgot to mention that, if you want your name in  
2 the record.

3 MR. GUTIERREZ: I'm Joe Gutierrez. I'm  
4 representing the Homesteaders Association of the Pajarita  
5 Plateau, and I believe that's sufficient.

6 THE MODERATOR: You don't have to give your  
7 name, if you want to not give it, but if you want it in  
8 the record, please do. Anyone else? Comments? No  
9 clarifying questions, things you heard you didn't  
10 understand? Please take your time.

11 Well, not hearing any, do you want to take a  
12 short break and let people maybe talk with each other and  
13 go into the environmental restoration room?

14 MR. MARTINEZ: Do you want to take maybe  
15 ten minutes and then reconvene, and if you think of  
16 something else you want to bring up, we will be glad to  
17 hear those.

18 THE MODERATOR: The way we have done this  
19 this afternoon is if we have gotten all the comments, then  
20 we've taken a break and sometimes new people have  
21 arrived. We are scheduled from six to nine. We have  
22 tried to reconvene periodically to see if new people have  
23 come in because they couldn't be here at the beginning and  
24 make sure everybody has an opportunity.

25 How long, Dennis?

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1 MR. MARTINEZ: Let's do ten minutes at  
2 first, and then maybe we will lengthen it if we don't have  
3 any comments after that.  
4 THE MODERATOR: So we will reconvene in ten  
5 minutes.  
6 (There was a brief recess.)  
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1 THE MODERATOR: We said we would take ten  
2 minutes or so and it has been that. Let's see if there  
3 are any comments now. Let me make sure everyone is in  
4 from right outside and then I will close the door so we  
5 can hear. Thanks.

6 If you just came in, we heard some brief  
7 background information about the Environmental Impact  
8 Statement process, the public law. We had some time for  
9 public comments or questions. We only got one with a  
10 couple of follow-up questions. We took a break, a ten-  
11 minute break, to see if other people were going to arrive  
12 or if other questions emerged.

13 So what we would like to do now is reconvene for  
14 public input to the Draft Environmental Impact Statement.  
15 Are there any comments, any questions? Yes.

16 MS. ESPINOSA: My name is Judy Espinosa.  
17 And I want to comment on, you were talking about Public  
18 Law 105-119. Public law, that leads me to believe that  
19 everybody has a voice in it. Why weren't all the people  
20 involved in this issue called to the table? Los Alamos  
21 County is getting a piecemeal. It's like welfare. In  
22 order to become self-sufficient and not -- so they won't  
23 have to get all this federal subsidy, why is this being --  
24 why is this being done when they had no right to this  
25 land?

**Comment 32-03-17**

Response:

To elaborate on the response given during the public hearing that is presented in the transcript on the left, a footnote to Section 1.1.3 in Chapter 1 of the main report was provided to explain why Congress included the Pueblo of San Ildefonso as one of the potential recipients. Section 1.1.2 of Chapter 1 in the main report discusses the reasons the County of Los Alamos was included as one of the potential recipients. In addition, this issue is discussed in more detail in General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix.

Location of CT EIS revision:

Chapter 1, Section 1.1.3.

32-03-17

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1 I think when there was going to be a transfer of  
 2 land all people involved, including people that own that  
 3 land and still have a right to that land, should have been  
 4 called to that table. There should have been more than  
 5 just two parties. That is what public law is all about,  
 6 justice and equality.

7 THE MODERATOR: Any responses to that? Any  
 8 answers?

9 MR. MARTINEZ: All I can say, Judy, is I  
 10 don't know exactly what went into the public law, why they  
 11 did it, but we do have page I-8 in the -- we do have page  
 12 I-8 in the Environmental Impact Statement Draft Report  
 13 that has an excerpt out of the congressional language on  
 14 how they developed that law, that talks a little bit about  
 15 how they selected Los Alamos County, and how they selected  
 16 San Ildefonso Pueblo. So I don't know if you have seen  
 17 that information before. It's a couple of columns.  
 18 During the break, if you want, we can highlight that and  
 19 give you a copy of it.

20 THE MODERATOR: Yes.

21 MS. ESPINOSA: Just one additional  
 22 comment. You know, ever since they started talking about  
 23 doing this transfer two or three years ago, we started  
 24 attending the advisory board meetings and we got real  
 25 involved, and that's how we started getting involved with

32-03-17  
(Cont.)

32-04-22

**Comment 32-04-22**

Response:

Comment noted. The reader is referred to the responses provided to comments provided in Document 08 of this appendix. In addition, this issue also is discussed in General Issue 7, Homesteaders Association Claims, in Chapter 2 of this appendix. The reader also is referred to the response to Comment 13-02-17 for further discussion.



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22

1 trying to get our representatives and Los Alamos aware of  
2 -- DOE aware of the fact that there were other people who  
3 had claims to this land. And we feel like we are totally  
4 ignored. We are just not getting anywhere, and yet other  
5 people are getting their share, and I'm really glad they  
6 are, but I think there is already precedence that has been  
7 set in many places, and I think that needs to be done  
8 before you start doing a ground breaking or any transfer  
9 of land.  
10 THE MODERATOR: When you say "we," just so  
11 we are clear for the record, who are you saying?  
12 Homesteaders?  
13 MS. ESPINOSA: Homesteaders of the Pajarito  
14 Plateau.  
15 THE MODERATOR: That's what I wanted to  
16 make sure. Any other questions or comments, or answers to  
17 what you just heard? Any comments people would like  
18 entered into the record or questions you would like  
19 answered?  
20 A SPEAKER: I have a little comment. I  
21 know my grandfather lived there at Los Alamos and he was  
22 one of the original homesteaders. At that time they got  
23 thrown out, they weren't given too much time. I know my  
24 grandfather had cattle, and they go back to Los Alamos.  
25 And what would happen is a car would take -- they had to

32-04-22  
(Cont.)

32-05-22

**Comment 32-05-22**

Response:

Comment noted. The reader is referred to the responses provided to comments in Document 08 of this appendix. In addition, this issue is discussed in General Issue 7, Homesteaders Association Claims, in Chapter 2 of this appendix.

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1 destroy the cattle. Okay.  
 2 Another thing, too, was a lot of our  
 3 homesteaders, their sons and daughters, like my  
 4 grandfather, served his country, when they let their land  
 5 go at Los Alamos. My aunts and uncles also went to war.  
 6 And when they came back, a lot of their jobs were not  
 7 offered to them. And for some reason or other I think  
 8 they need to have their land back.  
 9 Another comment is you're having an opening, on  
 10 the 29th, next week, the industrial park? And also they  
 11 have -- is it true that also they already have real estate  
 12 heirs on that -- that's already for management on that,  
 13 and also other parties that are financing a lot of that  
 14 stuff?  
 15 MR. MARTINEZ: The way the research park is  
 16 working, it's a lease management. There isn't any  
 17 property being transferred. The DOE will still have  
 18 administrative control. The DOE doesn't own property.  
 19 The taxpayers own the property. DOE has administrative  
 20 control of that and still will after that. So what is  
 21 happening is a lease arrangement, and there is financing  
 22 taking place. And the building will be put up and they  
 23 will be leasing it to different types of companies that  
 24 will come in and do research work, that work with the  
 25 laboratory programs.

32-05-22  
(Cont.)

32-06-12

**Comment 32-06-12**

Response:

To elaborate on the response given during the public hearing that is presented in the transcript on the left, a small part of the area called the Research Park or "industrial park" that is being leased to the Los Alamos Economic Development Corporation (as designated by the County to pursue this action) is associated with an old homestead. However, the Research Park is not being conveyed to the County. The Research Park will remain the property of the U.S. Government under the administrative control of the DOE. The reader is referred to the response to Comment 26-01-12.

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1           A SPEAKER: Can anybody in the public come  
2 over and, say, can they lease land or not? Let's say I  
3 myself want to go get a lease, is that possible, to any of  
4 the DOE land that is available?  
5           MR. MARTINEZ: I don't actually know the  
6 answer to that question. I mean, there is precedent with  
7 this one, but I don't know specifically the answer to that  
8 question.  
9           A SPEAKER: Thank you.  
10          MR. MARTINEZ: If you want to give me a  
11 comment card afterwards, remind me of that, I can respond  
12 to you directly, and I can check that out.  
13          THE MODERATOR: Do you want your name in  
14 the record?  
15          A SPEAKER: No.  
16          THE MODERATOR: Any other comments,  
17 questions? Take your time.  
18          A SPEAKER: If there are no questions, you  
19 don't mind if I came in a little late, to go ahead and  
20 just go ahead and get the issue on your plan, on the  
21 Department's plans, for those of us who just came in a  
22 little late?  
23          THE MODERATOR: Why don't you say this so  
24 everybody can hear it. Do you want to use the mike?  
25          A SPEAKER: No. What is the agenda of this

32-07-12

**Comment 32-07-12**

Response:

Any member of the public can negotiate with the Los Alamos Economic Development Corporation to sublet part of the Research Park. Also, any member of the private sector can request a lease arrangement to land under Federal agency administrative control. It would be up to the DOE, in this case, to determine if there was any land available that could be put to the leasee's intended use without compromising the DOE's mission support activities at LANL. The reader also is referred to the response to Comment 26-01-12.

**3.0 COMMENT DOCUMENTS AND RESPONSES**

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1 meeting, in other words?  
 2 THE MODERATOR: Okay, I'm sorry.  
 3 A SPEAKER: Please.  
 4 THE MODERATOR: The agenda of the meeting,  
 5 we had three desired outcomes. One was that people would  
 6 know the background, where this came from, in other words,  
 7 why you're here today, what happened before to get this  
 8 meeting to this place, and to get an Environmental Impact  
 9 Statement written; also what's going to happen afterwards,  
 10 so a lot of the background information.  
 11 The second thing that we are after during this  
 12 meeting was to get public comments to the actual  
 13 document. And, Elizabeth, you have one in front of you  
 14 there. Right? The Draft Environmental Impact Statement,  
 15 to get public comments, input to that. Since it's still  
 16 in draft stage, the Department of Energy wanted to hear,  
 17 make sure they had the public comments.  
 18 So those are the first two desired outcomes.  
 19 The third was to make sure that everybody could walk out  
 20 of here saying whatever they had to say got heard. So  
 21 that is what the meeting is, was set up to do.  
 22 A SPEAKER: How often do you plan on having  
 23 these meetings and what are going to be the locations?  
 24 THE MODERATOR: Elizabeth, do you want to  
 25 answer that?

**Comment 32-08-15**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

32-08-15

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1 MS. WITHERS: Certainly. Actually we have  
2 a board down here that describes the two meeting places  
3 that we are going to have. Our next meeting is tomorrow  
4 at the Fuller Lodge in Los Alamos on Central Street, and  
5 we are having two sessions. The first one starts at two  
6 o'clock and goes until five, and then the second session  
7 is like tonight, it starts at six and goes until nine.

8 THE MODERATOR: Does that help? I'm sorry,  
9 I misunderstood your question. I couldn't quite hear it  
10 at first.

11 A SPEAKER: And in your anticipation, how  
12 long do you figure this EIS study is going to go on?

13 MS. WITHERS: The public comment period  
14 started on February 26, when we issued a notice of general  
15 availability for the document to the public, and it will  
16 end then on April 12th. It's a 45-day comment and review  
17 period. And then we will be taking the comments that we  
18 receive during this time period and we will use them then  
19 to actually make changes to the draft document, and then  
20 we will be issuing a final document in August, early  
21 August, of this year.

22 THE MODERATOR: Any other questions,  
23 comments?

24 MS. ESPINOSA: Is anything going to be done  
25 with our comments, or are we just talking rhetoric here?

32-08-15  
(Cont.)

32-09-15

32-10-15

**Comment 32-09-15**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. In addition, the reader is referred to Section 1.1.3 in Chapter 1 of the main report, where a table presents a schedule of the overall conveyance and transfer process.

**Comment 32-10-15**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

**Pojoaque Public Hearing (Evening Session)  
Document 32, Page 27 of 34**

1 MS. WITHERS: Yes, your comments will be  
2 used to make changes to the draft document wherever it's  
3 necessary, either for folks that provide us with  
4 additional information, or make corrections to information  
5 that is incorrect. Whatever the case is, we will be  
6 making changes to the document as appropriate.  
7 And we will also be publishing, at the same time  
8 we put out a Final Environmental Impact Statement, a  
9 document that will then verbatim show what the comments  
10 were and explain how they either got incorporated into the  
11 final document or else, as appropriate, if we didn't  
12 actually use the comments to change the document, we will  
13 include an explanation then as to why we didn't use the  
14 comment to change the document.  
15 If there were questions asked we will try to  
16 answer them.  
17 THE MODERATOR: Did you have another  
18 question?  
19 MS. ESPINOSA: No.  
20 THE MODERATOR: Let me see if I am --  
21 obviously there are a number of comments here about  
22 homesteader rights, claims and so forth. Are those  
23 comments -- let me be real specific. I will put you two  
24 on the spot, if you don't mind, for just a second.  
25 MS. WITHERS: All right.

32-10-15  
(Cont.)

**Pojoaque Public Hearing (Evening Session)  
Document 32, Page 28 of 34**

1 THE MODERATOR: Will those comments be --  
2 how will those types of comments be dealt with when you  
3 are reviewing the draft? Is it part of the scope of this  
4 or is it not?

5 MS. WITHERS: That is kind of a general  
6 question. Some of the specific comments that we have  
7 received, actual changes will be made to the document.  
8 And I have had several thoughts on this, and I have  
9 recognized that there have been some comments that we  
10 probably will utilize to make changes to the document  
11 itself, but we will be including in our comment response  
12 document all of the comments and they will be put in there  
13 as we get them exactly. And what we had planned, just to  
14 use as an example, would be to split a page and we would  
15 have the actual comment on one side and then the answer or  
16 rationale for not using or changing the document on the  
17 other side.

18 If we actually change the document we will  
19 literally track it through the documents as to where we  
20 put changes that were made because of the comment. So you  
21 will be seeing that along with the Final Environmental  
22 Impact Statement.

23 THE MODERATOR: The reason I asked the  
24 question is I had the sense that people were wondering  
25 what would it look like if they are actually using these

**Pojoaque Public Hearing (Evening Session)  
Document 32, Page 29 of 34**

1 or not using them. Thank you, Elizabeth.  
 2 Other comments, questions?  
 3 A SPEAKER: I would like to enter a comment  
 4 for the record, and this is, again, I ask that it be  
 5 specifically included in the Environmental Impact  
 6 Statement. The validity of the Environmental Impact  
 7 Statement to proceed right now, or rather the key element,  
 8 is that in fact a title search report is considered valid  
 9 and complete. That's under contest. And there will be  
 10 further information coming forward to DOE on that  
 11 contest.  
 12 So I think the public needs to understand that  
 13 that is a critical stage. The fact that a title search  
 14 report has been submitted to the Armed Services Committee  
 15 doesn't mean that that title search report has been  
 16 accepted. There has been no acceptance of it to date.  
 17 The issue of the homesteaders' claim has not been  
 18 addressed.  
 19 So, again, that's another aspect of my comment.  
 20 But what I want to enter into the record is this  
 21 statement: The DOE has continued to ignore the claims  
 22 submitted. In fact, their statement is that there has  
 23 been no claim submitted.  
 24 For the record and in front of the public, I  
 25 want to state that the homesteaders hereby do, in fact,

32-11-15

**Comment 32-11-15**

Response:

(The DOE received a letter on July 28, 1999, where Joe Gutierrez, President of the Homesteaders Association of the Pajarito Plateau, identified himself as the speaker referenced in the transcript to the left.) The comment was addressed during the public hearing held earlier in the day as transcribed in Document 31 of this appendix. Specifically, the reader is referred to the response to Comment 31-09-22. The reader also is referred to General Issue 7, Homesteaders Association Claims, in Chapter 2 of this appendix. The commentor's reference to legislation passed in 1944 is unclear. No such legislation could be found. The nature of legislation is such that it is a matter of public record and could not be restricted from public notice as a "Top Secret" document.



**Pojoaque Public Hearing (Evening Session)  
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32-11-15  
(Cont.)

1 lay claim to all lands being transferred or being  
2 considered for transfer, either in the immediate future or  
3 within the next ten-year period.

4 And we phrase that statement like that because  
5 the legislation that was passed in 1944 did, in fact,  
6 preserve the rights of the homesteaders for them to obtain  
7 their land. That has been ignored. That particular  
8 legislation was stamped top secret and kept away from the  
9 public up until just recently.

10 So again, for the record, we lay claim to all of  
11 the land and all of the tracts that are being considered.  
12 Thank you.

13 THE MODERATOR: Any other comments,  
14 questions? Not hearing any, do you want to set another  
15 time to reconvene in case some people come in late or how  
16 do you want to handle this?

17 MR. MARTINEZ: Twenty minutes.

18 THE MODERATOR: If you just came in, the  
19 environmental restoration open house is next door. It's  
20 not a hearing, it's a place you can go to get information  
21 about restoring the environment.

22 We will reconvene at approximately 20 after  
23 7:00. There is also coffee and cookies and other drinks  
24 next door.

25 (There was a brief recess.)

**Pojoaque Public Hearing (Evening Session)  
Document 32, Page 31 of 34**

1 THE MODERATOR: Please, if you just  
2 arrived, we just took a 20-minute break. We are going to  
3 start the meeting. I will try to answer the questions,  
4 anticipate a few. If you just arrived, we did hear the  
5 background to this Environmental Impact Statement, the  
6 need for it, the legal mandate, the law, the process that  
7 the Environmental Impact Statement will be going through  
8 in its development, what meetings have been held, what  
9 meetings are going to be held, when things are going to  
10 end and so forth. And we are at the point of taking  
11 public input to that Draft Environmental Impact  
12 Statement.

13 So that's what I would like to do is reconvene  
14 now and see if there are any comments that you would like  
15 to have go into the public record about the Draft  
16 Environmental Impact Statement.

17 Anyone? Not seeing any hands or hearing anyone,  
18 I'll give you a few more seconds. We'll see where we go  
19 from here. Any comments? Any clarifying questions?

20 If not, then, Dennis, what would you like to  
21 do?

22 MS. WITHERS: Why don't we reconvene at  
23 eight o'clock. It's about 7:30 now roughly.

24 THE MODERATOR: We will then take another  
25 break, give other people a chance to get here. Some

**Pojoaque Public Hearing (Evening Session)  
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1 people may have been detained. Also, if you hear from  
2 other folks, reference the two meetings tomorrow in Los  
3 Alamos. So at eight o'clock we'll convene.  
4 (There was a brief recess.)  
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**Pojoaque Public Hearing (Evening Session)  
Document 32, Page 33 of 34**

1 THE MODERATOR: We said we will reconvene  
2 at eight o'clock. I believe it is eight. We are  
3 reconvening the meeting to get public input into the Draft  
4 Environmental Impact Statement. If you just walked in, we  
5 gave some background about the statement, the law that  
6 mandated it, if you will, acquired it, what the process  
7 has been like. We are now taking public comment.  
8 Is there anyone who has not had an opportunity  
9 to give comment to the Draft Environmental Impact  
10 Statement or ask clarifying questions? We would like to  
11 take those now.  
12 Not hearing any, I'll ask Elizabeth, Dennis,  
13 what would you like to do?  
14 MR. MARTINEZ: Does anybody object if we  
15 call it a night or do you want us to wait another 30  
16 minutes and see if anyone else comes in with more  
17 comments? What is the pleasure of the group? Any  
18 objection, raise your hand.  
19 (Negative response.)  
20 Okay.  
21 THE MODERATOR: Thank you for coming. The  
22 next meeting will be at two o'clock tomorrow in Los Alamos  
23 at the Fuller Lodge. And remember the 1-800 number up  
24 here, or e-mail. Thank you. Goodnight.  
25 (The meeting was adjourned at 8:05 p.m.)

**Pojoaque Public Hearing (Evening Session)  
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COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

REPORTER'S CERTIFICATE

I, the undersigned Court Reporter and Notary Public, HEREBY CERTIFY that I reported in stenographic shorthand the proceedings set forth herein, and the foregoing is a true and correct transcript of the proceeding to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

---

BARBARA K. HARRIS, RPR-CM  
Certified Court Reporter #114  
My Commission Expires: 12/31/99

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HEARING ON THE  
DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE CONVEYANCE AND TRANSFER OF  
CERTAIN LAND TRACTS ADMINISTERED BY  
THE DEPARTMENT OF ENERGY AND  
LOCATED AT LOS ALAMOS NATIONAL LABORATORY,  
LOS ALAMOS AND SANTA FE COUNTIES, NEW MEXICO

March 25, 1999  
Los Alamos New Mexico  
2:00 p.m.

REPORTED BY: BARBARA HARRIS, CM/RPR NM CCR #114  
American Reporting  
201 Twelfth Street, Northwest  
Albuquerque, New Mexico 87102

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APPEARANCES

For the DOE:

MR. DENNIS MARTINEZ

MS. ELIZABETH WITHERS

Moderator:

MR. STEVE WILKES

Interpreter:

MR. ARTURO SANDOVAL

\* \* \* \* \*

**Los Alamos Public Hearing (Afternoon Session)  
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1 MR. MARTINEZ: Thank you for coming. My  
2 name is Dennis Martinez. I'm Deputy Area Manager of the  
3 Los Alamos Area Office with DOE. And we are here today to  
4 present information to you on the Environmental Impact  
5 Statement that we have done on the project that we call  
6 Los Alamos Land Transfer.

7 I'll start off by giving a general overview of  
8 the public law and why we're doing what we're doing and  
9 what exactly we're doing, and then I will introduce  
10 Elizabeth Withers to my right here, who is our document  
11 manager for the Environmental Impact Statement, and she  
12 will run you through a little more of the detail of that  
13 product. And then we will open it up for questions and  
14 answers and then comments for the record.

15 I also want to mention that in the other room  
16 out here to my left as you came in we have environmental  
17 restoration folks from the laboratory and the DOE who have  
18 set up an informational room that has things for you to  
19 look at that relates to the type of restoration and  
20 remediation that is being identified in a draft report  
21 with respect to these same parcels.

22 So with your indulgence, some of the folks I see  
23 have sat through this before, I will run through my  
24 introduction and overview as quickly as I can and we will  
25 have Elizabeth talk to you about the EIS.



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1           Basically this is why we're here. Public Law  
2 105-119 was passed in November '97, and it directed the  
3 Secretary of Energy to identify and transfer certain land  
4 parcels in Los Alamos to San Ildefonso and to Los Alamos  
5 County. There was criteria contained in that public law  
6 that said that the property that was identified had to be  
7 of a type that could be conveyed or transferred and be  
8 used by the recipients for historic, cultural, or  
9 environmental preservation purposes, economic  
10 diversification purposes, or community self-sufficiency  
11 purposes. And, in addition, those parcels had to be of a  
12 type that the Department felt were not needed for the  
13 national security mission, at least in the next ten  
14 years.

15           The law that I'm talking about had this  
16 schedule, and I know that you can't see it from the back,  
17 probably from two rows up is about as far as you can see  
18 it, but it's available in handouts that we have in the  
19 back. I'll walk you through that.

20           The first step that the Department was required  
21 to complete was to issue a report to congress by February  
22 of '98 that identified the parcels that met this criteria  
23 that I mentioned a few minutes ago. And we did that. We  
24 prepared a report that identified ten parcels. They're  
25 shown on this map. There is only nine here because two

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1 small sites are included on one map. It's a total of 4646  
2 acres, and it's pretty much spread throughout Los Alamos.  
3 There is some near the townsite and some near White Rock  
4 and some in Rendija Canyon, so it's not all centralized,  
5 it's in different places.

6 A report was issued to congress. The next step  
7 the Department of Energy was required to do was to  
8 complete a title search on the parcels. And we engaged  
9 the United States Army Corps of Engineers, who has  
10 considerable expertise in Los Alamos and has considerable  
11 records and knowledge, and they prepared this title search  
12 for us. And we submitted that to congress about in the  
13 January time frame of this year, early January.

14 That title report basically confirms that in the  
15 Corps of Engineers' opinion the Department of Energy does  
16 have free and clear title to those parcels.

17 We have also had some boundary surveys completed  
18 on the parcels. Interior surveys have not been done yet.

19 The next two major items, I'm going to skip down  
20 here now because Elizabeth will talk about this process,  
21 the next two major items, in August '99 we have to  
22 complete the Environmental Impact Statement and  
23 Environmental Restoration Study, and we have to report to  
24 congress what the results of those two studies say and  
25 send that up there by August of '99.

Los Alamos Public Hearing (Afternoon Session)  
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1 And why we're here today is for public hearings  
2 on the Environmental Impact Statement Draft that's out.  
3 The next thing that will happen after August is  
4 that San Ildefonso and Los Alamos County have to submit to  
5 the Department of Energy an agreement of how they intend  
6 to allocate the parcels among themselves, and that  
7 agreement is due to the Department by November of '99.  
8 After that, the Department of Energy, upon  
9 receipt of that, will submit, will prepare and submit a  
10 conveyance and transfer plan to congress by February of  
11 the year 2000, and that plan, of course, should have the  
12 details in there of what's planned for restoration and  
13 mediation, what is the plan for surveying, what the time  
14 lines are, when everything is expected to be transferred,  
15 identify funding. Pretty much everything should be in  
16 that document.  
17 The next thing that will happen is November of  
18 2000 the Department is required to transfer the first  
19 available parcels, those that we can identify at that time  
20 that are transferrable and ready to go. Those first  
21 parcels will go at that time.  
22 And then after that it becomes a long-term  
23 project. We have until November 2007 to complete  
24 environmental restoration and remediation on the remaining  
25 parcels, do title and survey work, and everything that has

**Los Alamos Public Hearing (Afternoon Session)  
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1 to be done, and transfer those out. Anything that can not  
2 be completed due to funding, due to whatever problem by  
3 November 2007, will not be transferred.

4 Again, if San Ildefonso and Los Alamos County  
5 cannot agree how to split a parcel, or any of the parcels,  
6 then there will be no transfer. And so that's what our  
7 schedule looks like. I'll leave this up here because I  
8 think Elizabeth wants to use it, and I will introduce  
9 Elizabeth Withers. She's our document manager. She is  
10 responsible and in charge of the EIS.

11 MS. WITHERS: As Dennis has pointed out per  
12 this log, the Department of Energy has a requirement to  
13 consider the environmental impacts that could be  
14 associated with the conveyance and transfer of these  
15 tracts, pursuant to the National Environmental Policy  
16 Act.

17 In early 1998 the Department determined that an  
18 Environmental Impact Statement was the appropriate level  
19 of both analysis and documentation to meet our regulatory  
20 requirement needs.

21 In May of 1998 we issued a Notice of Intent to  
22 prepare an Environmental Impact Statement, and at that  
23 same time we held public comment meetings with regard to  
24 the scoping of the actual Environmental Impact Statement.  
25 We asked the public to comment and give us their advice

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1 and information on such items related to the impact  
2 statement, as to what type of alternatives we should  
3 consider analyzing, what type of environmental issues or  
4 concerns were specific to the area residents in the Los  
5 Alamos area, and other such important issues.  
6 Then we took that information that we got from  
7 the scoping period and we used those over the next several  
8 months, the summer, fall, and winter, to actually develop  
9 the Environmental Impact Statement and to perform the  
10 analysis that we needed. We did this working with our  
11 cooperating agencies. For this Environmental Impact  
12 Statement the cooperating agencies included San Ildefonso  
13 Pueblo, the County of Los Alamos, the U.S. Forest Service,  
14 Bandelier National Monument, the Bureau of Indian Affairs,  
15 and also the Bureau of Land Management.  
16 We worked through the winter and we were  
17 actually able then to produce the Draft Environmental  
18 Impact Statement in February of this year. We published  
19 it and issued it at the end of February. On February 26  
20 we issued a notice of general availability for the  
21 document in the Federal Register. At the same time we  
22 mailed out about two to three hundred documents to various  
23 individuals, organizations, and other stakeholders that  
24 have identified that they wish to review the document.  
25 If you would like to receive a copy and you

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1 haven't already gotten one, we have extra copies available  
2 on the front entry table there as you were coming in the  
3 door. Please help yourself to those.

4       There are also summaries of the documents, and  
5 please get either one or both of them, as you will.  
6 Additionally, I have a sign-up, or I don't know about a  
7 sign-up sheet, but an information sheet on the back there  
8 on the wall that tells you how you can contact me in order  
9 to get other copies sent to you or to get copies sent to  
10 someone else if you wish.

11       The draft document is also available on the  
12 Worldwide Web, which the address is up on that list as  
13 well.

14       In the draft document we considered a couple of  
15 different alternatives. One of them is an Action  
16 Alternative and one of them is a No Action Alternative.  
17 Under the No Action Alternative we would not convey or  
18 transfer the tracts of land. Under the Action Alternative  
19 we would consider each of the ten tracts of land that has  
20 been identified as being potentially suitable for transfer  
21 and would either individually convey them, in whole or in  
22 part, to the County of Los Alamos or to the Secretary of  
23 the Interior in trust for San Ildefonso Pueblo.

24       Additionally, we have identified out of the  
25 proposed action and the preferred alternative, which is a

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1 subset of that, we have identified that in all  
2 probability, related to the environmental restoration  
3 actions that are required, we will be able to transfer a  
4 couple of smaller tracts in a fairly short time frame,  
5 probably in the year 2000 or soon thereafter. The bulk of  
6 the tracts probably would be somewhat after that.

7 We know that this is a duration of process that  
8 will have to be followed for those, so it will probably be  
9 after the year 2000 that those get transferred, but we  
10 would expect to transfer them, again in whole or in part,  
11 before the end of the year 2000.

12 For TA-21, which has a lot of contamination, we  
13 recognize that we probably won't be able to transfer all  
14 of the tract, although that is still under consideration,  
15 and in all likelihood it may be that we would only be able  
16 to transfer part of it out more toward the end of the  
17 period, the end of the year 2007.

18 We are in the middle, about in the middle of the  
19 comment and review period. As I said, we issued the  
20 notice of general availability for the document in  
21 February. The comment and review period ends April 12th.  
22 It's a 45-day comment and review period.

23 We will take the comments that we receive during  
24 this period and we will actually use them to make changes  
25 to the draft document, to produce the final document. We

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1 will receive any comments -- any comments that we receive  
2 after the 12th I'll try to get them incorporated as much  
3 as I can, but we're on a very, very short schedule. We  
4 are actually trying to produce the Final Environmental  
5 Impact Statement the first part of August.

6 We will be, together with that, producing a  
7 comment response document, which will explain exactly how  
8 the comments that we receive during this scoping period,  
9 or this comment period, rather, have been used to change  
10 the document or to add to the document, and if we don't  
11 for some reason use the comment then we'll explain why  
12 not. Also in there, as we go through the evening, you'll  
13 see that folks ask questions and we will go ahead and  
14 provide the answer in that document as well.

15 As Dennis has stated, we do have a plan at the  
16 end of the summer, and at the end of August 26, to be  
17 exact, to roll the information from the Environmental  
18 Impact Statement together with the information that we  
19 receive from the Environmental Restoration Report and  
20 produce a combined data report to congress.

21 Then both receiving parties have to tell us, the  
22 DOE, what the allocation of parcels is to be. And about  
23 the year 2000, in February or so, we will be then issuing  
24 a report or plan on how we plan to transfer and convey  
25 these tracts, and probably at about the same time we will



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1 issue a Record of Decision to go along with it.  
2 Now, there could be multiple Records of Decision  
3 as we go out in time and as tracts are made suitable for  
4 conveyance and transfer. So in all likelihood there will  
5 be at least one more Record of Decision if not multiple  
6 Records of Decision.

7 And with this, I'm going to go ahead and turn  
8 the meeting over to our moderator, Steve Wilkes, and he  
9 will accept questions and answers and comments.

10 THE MODERATOR: Thank you, Elizabeth. What  
11 I would like to do first is say we have three desired  
12 outcomes for this afternoon. And one of them we hope has  
13 at least been partially met, and that is that everyone  
14 leaves here with a pretty clear understanding of how we  
15 got to this meeting, what came before, how this whole  
16 process got started, the public law, and what's going to  
17 happen afterwards. That was one of the desired outcomes.

18 The second desired outcome really has to do with  
19 getting a clear, accurate, complete record of public  
20 comment to the Draft Environmental Impact Statement.

21 And the third is really one that you, each one  
22 of you, walk out of here saying everybody had a chance to  
23 get heard and you felt like you got heard.

24 Now, the first one Elizabeth and Dennis did,  
25 they gave you a fair amount of information. As they said,

1 there is more information, printed material, if you want  
2 more background information.  
3 Let me, before we get started, let me move a few  
4 things, but as you heard, I am the moderator. I am  
5 independently employed, not with the Department of  
6 Energy. This is the work I do is moderate meetings.  
7 A couple of points: You heard several ways you  
8 can get input to the Draft Environmental Impact Statement,  
9 and I just realized I don't have the 1-800 number or the  
10 e-mail address. Is it back there? Oh, thank you. Right  
11 back there, on the back wall, there are several ways. And  
12 on the back wall just before you go out of the room is the  
13 1-800 number. So you can give oral comments there, e-mail  
14 comments. Oh, thank you, and I will write those up. If  
15 you want it, it's 1-800-7791-2280, and the e-mail address,  
16 I'll just let you read off of the wall back there.  
17 We also have, as you heard, a court reporter  
18 here. Barbara Harris will be recording the comments. I  
19 will be taking some notes in just a minute, just some key  
20 words so we can keep track of what kinds of questions have  
21 been asked. Mine are not the complete record. It's just  
22 to keep the conversation clear and let people know if  
23 their point has already been said.  
24 There are some written comment cards in the back  
25 as well. I think those are all the ways people can have

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1 input. As you heard, there is a separate room where there  
2 is the environmental restoration information open house.  
3 It is not a hearing. It is a place for you to go get  
4 questions answered about environmental restoration and  
5 learn more about that. No formal comments are recorded in  
6 there. They are only in here in terms of the  
7 Environmental Impact Statement.  
8       There are also cookies and beverages out there  
9 that you may have seen when you came in.  
10       Let's see if I covered everything. We do have  
11 this microphone if we have difficulty hearing. We noticed  
12 yesterday some people had difficulty hearing the  
13 questions. We have microphones for the answers. We want  
14 to make sure everyone hears the questions and the  
15 comments. If you put it close to your mouth we should be  
16 able to hear.  
17       As you heard, the purpose is to give impact to  
18 the Environmental Draft Statement, and that's what I would  
19 like to move us into now.  
20       Tenemos un interprete, Arturo Sandoval. We  
21 have an interpreter here. If you need assistance with  
22 Spanish, he can help you out. He has been talking with  
23 folks to see if there is anyone.  
24       (Interpreter speaking in Spanish.)  
25       THE INTERPRETER: It looks like they are

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1 all at least monolingual.

2 THE MODERATOR: All right. Thank you,  
3 Arturo. Then I think we are ready to move into getting  
4 comments. And I will record those. We have a few folks  
5 who have signed up, and we can start out.

6 Glenn Lockhart. Let me hand you this mike  
7 because I think I can be heard.

8 MR. LOCKHART: Thank you. Glen Lockhart.  
9 My comments on the Draft EIS is not allowing for  
10 residential use in all tracts. Once the land is  
11 transferred out of DOE control, unless there is a deed  
12 covenant, the recipient presumably can change the land  
13 use.

14 I would recommend putting residential use in all  
15 tracts except possibly for the Manhattan Memorial Tract.  
16 Thank you.

17 THE MODERATOR: The next person with a  
18 comment I think was, is it Jamie or Janie? Janie?

19 MS. O'ROURKE: Janie O'Rourke. My name is  
20 Janie O'Rourke, and my concerns have to do with trails,  
21 historic trails in the county. And actually in almost  
22 every parcel there are pieces and sections of historic  
23 trails. One or two there aren't, near the pond.

24 So my concern is that we have been working for  
25 several years, through both volunteer work and through the

33-01-12

33-02-19

**Comment 33-01-12**

Response:

Section 1.6.1 in Chapter 1 of the main text discusses the DOE rationale for assessing the land uses identified by the potential recipients. Under Public Law (PL) 105-119, the DOE has no authority to direct future use of the property proposed for conveyance and transfer. Therefore, the DOE cannot “know” the future development. As a result, the uncertainty over the ultimate use of the 10 tracts dictates that a generic, regional approach be taken in considering the future use and development of each tract. The reader is referred to the response to Comment 31-08-12. The reader also is referred to Section 4.1.4 in Chapter 4 of the main report for a discussion of global development assumptions. The reader is further referred to the responses provided to the comments in Document 24 of this appendix.

**Comment 33-02-19**

Response:

The reader is referred to the responses provided to the comments in Document 09 of this appendix.

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1 county parks and recreation subcommittee, to establish a  
2 countywide trail system. And this trail system is based  
3 on historic trails, and so it's very important to us that  
4 we preserve the trail itself and access to that trail,  
5 because the trails -- a trail system is only valuable if  
6 the trails connect.

7 So when you start losing little bits and pieces  
8 of trails then you no longer have a trail system. And, of  
9 course, it's the historic trails that especially interest  
10 us. The trails are used for both recreational and  
11 commuting uses in Los Alamos County. So I don't know if I  
12 need to speak specifically about each of the tracts and  
13 the names of the trails, but, let's see.

14 THE MODERATOR: If you have anything in  
15 writing, you can just turn that in.

16 MS. O'ROURKE: Why don't I do that.

17 THE MODERATOR: You can go through it if  
18 you like.

19 MS. O'ROURKE: I would rather do that.

20 THE MODERATOR: If she has it in writing,  
21 she --

22 MS. WITHERS: She can get it to me and I  
23 will be sure that it is made part of the record.

24 THE MODERATOR: Thanks, Janie. Next on our  
25 list is Gordon Spingler.

33-02-19  
(Cont.)

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1 MR. SPINGLER: I have a letter here and  
 2 I'll just read the letter. It's addressed to Elizabeth.  
 3 "Dear Ms. Withers: On behalf of the 400 members  
 4 of the Pajarito Group of the Sierra Club, Los Alamos  
 5 County, I am pleased to make some remarks concerning the  
 6 conveyance and transfer of certain land tracts  
 7 administered by the Department of Energy and located at  
 8 Los Alamos National Laboratory and the associated Draft CT  
 9 EIS. Thank you for the opportunity to do so.  
 10 "The following remarks and questions are  
 11 preliminary. Our final detailed comments will be  
 12 submitted to you in the near future. I anticipate other  
 13 Sierra Club entities will also comment."  
 14 I didn't write this in the letter, this is  
 15 something I just thought about. I would like to  
 16 compliment the DOE on the draft. It's a very good first  
 17 start.  
 18 Okay. So first I would like to make two  
 19 comments and then ask five questions that I hope you can  
 20 answer today. My first comment is that the Sierra Club is  
 21 quite concerned about the "NEPA busting" precedent of  
 22 PL 105-119.  
 23 My second comment concerns the drafting of the  
 24 authorizing legislation PL 105-119. Los Alamos County  
 25 states page 18-6 of the draft, "When questions arose about

33-03-15

Comment 33-03-15

Response:

The letter mentioned in this transcript is presented as Document 13 of this appendix. In addition to the response provided during the hearing, the reader is referred to that document for the responses to the individual comments presented here.

To clarify a statement made regarding the placement of a deed restriction on building within floodplains, the DOE may not place deed restrictions on lands conveyed to the County of Los Alamos; instead, the DOE may defer to the County ordinances already in place. In addition, the parties may reach separate agreements concerning uses of the tracts. Also see General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

1 DOE's authority to transfer land, county elected officials  
2 and staff sat down with DOE and San Ildefonso Pueblo  
3 representatives and drafted much of what has become  
4 PL 105-119." In other words, broad citizen involvement  
5 did not occur in drafting of the legislation. Some will  
6 argue that we were represented by our elected officials.  
7       However, given recent events concerning growth  
8 and development issues in Los Alamos County, I strongly  
9 suspect that a fair fraction of the community would feel  
10 otherwise.  
11       In arriving at a final decision about the land  
12 transfer, DOE should consider the recent events and the  
13 controversy generated.  
14       Please answer the following questions at this  
15 time. If you can't answer them, then I would appreciate a  
16 response in writing by April 5th, 1999, if possible.  
17       Question number 1: Los Alamos County stated at  
18 page 18-26 that it intended to "aggressively develop the  
19 land obtained from DOE."  
20       In view of this statement, how come the DOE did  
21 not analyze the environmental and other impacts of the  
22 worst case scenario that all ten tracts proposed for  
23 transfer and conveyance would be developed?  
24       MS. WITHERS: Would you like me to jump in  
25 now and answer, or would you like to read all of them?

33-03-15  
(Cont.)

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1 MR. SPINGLER: No, I think we should go  
 2 through each question.  
 3 MS. WITHERS: Great. The reason that we  
 4 chose to analyze the particular future land uses that we  
 5 did is because we asked the County and San Ildefonso  
 6 Pueblo to identify for us their contemplated future uses  
 7 for each tract. So both parties submitted to us for each  
 8 of the ten tracts what they proposed to do with them into  
 9 the future. And so that's what we used to analyze in our  
 10 Environmental Impact Statement. As opposed to doing a  
 11 worst case scenario we chose to do a reasonable case  
 12 scenario, and that was based on their own input.  
 13 MR. SPINGLER: Question number 2:  
 14 PL 105-119 requires that the lands be conveyed and  
 15 transferred "without consideration." Why then the  
 16 following statement in the draft CT EIS page S-24? "In  
 17 the case of conveyance of land tracts to the County, the  
 18 DOE will include deed restrictions precluding any  
 19 development within the 100-year flood plains or  
 20 wetlands."  
 21 This statement indicates that deed restrictions  
 22 can be applied. If so, why were other alternative  
 23 restrictions, such as easements or protection of sensitive  
 24 areas, eliminated from detailed analysis?  
 25 MS. WITHERS: They are not necessarily

33-03-15  
 (Cont.)



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1 eliminated from the range of possibilities into the  
2 future, although all of that is very speculative at this  
3 point. We can have a range of mitigations that we agree  
4 to, and it will probably have to be a mutual agreement as  
5 to the appropriate mitigations for the protection of  
6 threatened and endangered species habitat, but I would say  
7 that deed restrictions would probably be a last resort on  
8 that.

9 To say that we -- in the EIS we did say that we  
10 would put a deed restriction on building within the flood  
11 plains. That dovetails with already existing County  
12 ordinances against building into the flood plain areas  
13 that are already in place. It's more or less a  
14 reinforcement of that existing regulation.

15 MR. SPINGLER: Question three: In the  
16 early 1960s the National Park Service transferred lands to  
17 DOE's predecessor "with the stipulation that DOE  
18 adequately protect the ruins." This quote comes from the  
19 book Bandelier National Monument, An Administrative  
20 History, Hal Rothman, 1998. It appears that DOE has a  
21 continuing mandate to protect ruins on transferred lands.  
22 Why did DOE not analyze this alternative?

23 MS. WITHERS: Again the cultural resources  
24 and traditional cultural properties are something that we  
25 are going to have to work out a mitigation on, working

33-03-15  
(Cont.)

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1 with the County, working with San Ildefonso Pueblo, and  
2 working with the State Historic Preservation Officer and  
3 the Administrative Council. We note that going into  
4 this.

5       It isn't necessarily, again, something that we  
6 were trying to avoid or anything, it's rather a function  
7 of who will ultimately receive which tract as to just what  
8 we need to do. And so that piece is going to have to wait  
9 until we find out from San Ildefonso and Los Alamos County  
10 as to what the division of the tracts is going to be in  
11 the future.

12       MR. SPINGLER: Question number 4: Does DOE  
13 accurately know the environmental restoration cost and  
14 time frames to completion? Can DOE certify that  
15 contaminants will be cleaned up to the level of planned  
16 future use?

17       MS. WITHERS: I'm going to jump in here and  
18 try to answer that, although perhaps a better answer to  
19 that would be obtained from our folks next door. At this  
20 time we don't know down to the exact detail just what all  
21 the environmental restoration actions would be, and  
22 exactly how much they would cost. There is a separate  
23 process that we have to go through with the state in order  
24 to work out with our regulator just exactly what the  
25 mitigation of each site would be, and so that process is

33-03-15  
(Cont.)

1 on a separate timeline from the EIS. So that's being  
2 worked on, and will be worked on for each tract as we go  
3 along.

4 MR. SPINGLER: And my last question, as  
5 stated above, PL 105-119 is clearly "a NEPA busting" law.  
6 What is DOE's position on having to administer such  
7 legislation?

8 MS. WITHERS: The law requires us to look  
9 at the potential for impacts under the National  
10 Environmental Policy Act. The actual overriding decision  
11 to convey or transfer tracts was made by the law. That's  
12 the first statement in the law, that DOE shall convey and  
13 transfer the lands.

14 The fact that we need to look at the potential  
15 for impact I think probably speaks to the furtherance of  
16 the background or purpose, if you will, of the National  
17 Environmental Policy Act, which is to give information to  
18 decision makers to help disseminate, if you will, to the  
19 community the information about the potential impacts.  
20 DOE doesn't get to, under this law, determine what the  
21 future use of these tracts would be individually, so  
22 that's something that is going to be decided in the  
23 communities of the recipients.

24 So I think for the benefit of the members of the  
25 communities, we are doing the Environmental Impact

33-03-15  
(Cont.)

1 Statement, as much for their benefit as anything else.  
 2 Steve, would you like to speak to that? Steve  
 3 Ferguson here is with us from general counsel at DOE  
 4 headquarters.  
 5 MR. FERGUSON: I totally agree with  
 6 everything you said, Elizabeth. I would just add from our  
 7 perspective that our office would not consider this "a  
 8 NEPA busting law" in any respect. Congress has the final  
 9 say and supervision and they could have established a  
 10 process here that totally circumvented or eliminated the  
 11 requirement to comply with NEPA. They chose instead to do  
 12 exactly what you said and dovetailed two processes  
 13 together where, at the outset, essentially giving the  
 14 Department very specific direction on how to proceed and  
 15 what the end result should be but, at the same time,  
 16 providing for a process where the public is fully informed  
 17 and involved. It's a balance that congress has  
 18 prescribed, and it's our job, the Department's job, to  
 19 carry out to the best of our ability.  
 20 MS. WITHERS: Thank you.  
 21 THE MODERATOR: Now I did not, like I said,  
 22 I did not get all the details of your question. I just  
 23 tried to capture some key words, so in case somebody came  
 24 in so we could go back and say those comments have been  
 25 addressed. Your full comments have been recorded and you

33-03-15  
(Cont.)

1 have the written ones as well.  
2 The next one on our list, is it Albert is the  
3 last name?  
4 MS. ALBERT: Diane Albert.  
5 THE MODERATOR: Sorry, Diane.  
6 MS. ALBERT: My name is Diane Albert and  
7 I'm a member of the Friends of Bandelier, Board of the  
8 Friends of Bandelier, and my concerns are with the White  
9 Rock Y and TA-74 tracts. And I guess my main concern is  
10 when I looked at this document they talk about  
11 environmental and cultural issues, and pretty much what  
12 you focus on are sites within those tracts, but what I'm  
13 concerned about are the visual impacts that development  
14 might have on Tsankawi, which is a really special part of  
15 Bandelier.  
16 And what I'm wondering is, it's my understanding  
17 that you plan to convey these lands with no strings  
18 attached, and my concern is if there is any kind of  
19 development restrictions that you could place that would  
20 protect Bandelier from any visual impacts.  
21 MS. WITHERS: Right now at the current time  
22 both parties have indicated that their planned future use  
23 for those two tracts are either cultural preservation or  
24 environmental preservation. On the part of one party  
25 there could be some enhanced use of the tracts as far as

33-04-24

33-05-14

**Comment 33-04-24**

Response:

The commentor provided the DOE with a comment letter that includes the comment presented in the transcript on the left. The reader is referred to Document 16 in this appendix for responses to the comments.

**Comment 33-05-14**

Response:

The commentor provided the DOE with a comment letter that includes the comment presented in the transcript on the left. In addition to the response provided in the public hearing presented in the transcript on the left, the reader is referred to Document 16 of this appendix for responses to the comments.

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Comment 33-06-24

Response:

The potential visual impacts to Bandelier National Monument are discussed in the CT EIS (see Sections 12.1.5, 12.3.5, 13.1.5, and 13.3.5 of the main report). Moreover, the concerns of the National Park Service regarding the potential impacts to Bandelier are expressed in a letter that is presented in Chapter 18 of the main report. For a detailed discussion of deed restrictions and other mitigation measures, see General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

33-05-14  
(Cont.)

1 utility corridors are concerned, for example, new water  
2 lines that might need to be run, new cable TV lines, that  
3 kind of thing. Those tracts already have those kinds of  
4 utilities on them and probably this would be an  
5 additional, into the future, you know, as we come up with  
6 new and better toys, we need different utilities run  
7 through them.

8 We haven't really discussed the possibility of  
9 putting a visual restriction clause on the deed, but that  
10 is something that we should take under advisement.

11 THE MODERATOR: And if you don't get your  
12 question answered, please ask for another response. I  
13 don't mean that you didn't get an answer you wanted, but  
14 that you had a clear answer you understood, because I know  
15 Elizabeth and Dennis both want to make sure they answered  
16 your question.

17 The last person I have on the list here I  
18 believe is Jeremy Kruger.

19 MR. KRUGER: My name is Jeremy Kruger and  
20 I'm here on behalf of the National Parks and Conservation  
21 Association, and we have 400,000 members nationwide and  
22 about three or four thousand in New Mexico. And, well,  
23 the two tracts -- there are three tracts we are really  
24 concerned about.

25 The first two are the White Rock Y and TA-74,

33-06-24

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33-06-24  
(Cont.)

1 for the reasons that were just stated. We are concerned  
2 about visual impacts to Bandelier from development of  
3 these utility corridors, cell phone towers and that sort  
4 of stuff. It's a form of visual pollution, especially in  
5 a unit like Tsankawi at Bandelier. Just usually  
6 viewsapes, that's one of the best resource uses is to  
7 enjoy the view, enjoying the archeological sites, and all  
8 that. So we would hate to see that diminished in any way  
9 by future land use.

10 Of course we support the pueblo in their claims  
11 to the land. They were here first and we think they will  
12 be great stewards of the archeological sites. But of  
13 course we would love to see some sort of visual  
14 restriction clause just to make sure that Bandelier will  
15 be protected into the future. And we hope that there will  
16 be open and honest dialogue with all parties concerned  
17 over these potential impacts in Bandelier.

18 I should say actually, I kind of forgot, I  
19 wanted to thank you for your work on this. Usually I try  
20 to judge NEPA by the thickness of a document, but in this  
21 case, beyond it just being thick, there is a lot of useful  
22 information that I was able to find without too much  
23 trouble. So I also think you deserve a lot of credit for  
24 putting this together.

25 I go to a lot of NEPA meetings and usually they

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**Comment 33-07-12**

Response:

Comment noted. In addition, this issue is discussed in General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix.

1 don't have Starbucks, which is kind of nice. I don't  
2 think it's a NEPA-enabling legislation to feed chocolate.  
3 It keeps the sugar up and everybody is in a good mood.

4 So on that note I will talk about Rendija Canyon  
5 which really concerns us basically because of the  
6 potential for development of a subdivision, which I think  
7 is an idea that has surfaced before up here.

8 We know that certainly Los Alamos has a housing  
9 shortage, but there are some places that are just  
10 inappropriate for subdivisions and this is one of them. I  
11 think one thing I want to do is just read right out of the  
12 EIS. Subsequent residential development, however, would  
13 be incompatible with long-term land uses of the adjacent  
14 Santa Fe National Forest. For example, national resource  
15 protection, outdoor recreation, et cetera. Development  
16 would also cause disruption to and loss of ecological  
17 habitat and resources in the previously undisturbed areas  
18 of this land tract. This development would reduce the  
19 ecological productivity of the local area and would also  
20 preclude future use of this land for ecological habitat or  
21 for cultural resource protection.

22 And, let's see, if you could bear with me just  
23 one second, I've got more good stuff. That's how good the  
24 document was. It was very easy to find all this. Okay.  
25 So a subdivision goes in there, and what is going to be

33-07-12



1 the ecological impact to that? Well, here you go. The  
2 development would effectively disrupt the structure and  
3 function of the existing Rendija Canyon ecosystem. After  
4 development, impacts to wildlife species, primarily birds,  
5 could occur due to predation from domestic animals. There  
6 would also be a loss of preferred habitat for the American  
7 peregrine falcon and Mexican spotted owl.

8       There are some pretty cogent reasons not to  
9 build a subdivision in there.

10       Another one I think is that, given the fires  
11 that tend to sweep through the summer in the area, here  
12 you are building another subdivision, meaning the county,  
13 in a high risk area. That is just asking for a blaze that  
14 was going to sweep through the back side of the Jemez  
15 there, which is something I know a lot of fire management  
16 people are concerned about. And I don't think we need to  
17 make the situation worse by having a subdivision go in  
18 there.

19       These are all just reasons not to build a  
20 subdivision, that I know DOE is not planning to. I know  
21 that San Ildefonso is not planning to. So it really seems  
22 that it is the County are the only folks that are  
23 interested in subdivision.

24       If that were to happen, if the subdivision goes  
25 in there, I think there is also going to be a loss of

33-07-12  
(Cont.)

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1 access to the national forest. People are going to be  
2 living there. The lessees may decide not to allow general  
3 public to go through there.

4 This actually has an environmental justice angle  
5 to it because this will disproportionately impact minority  
6 populations. This will block access to places to collect  
7 fuel wood and pinon nuts, and the action says that right  
8 here in the summary, page 35, "Therefore, restricted  
9 access to this area could have a disproportionately  
10 adverse effect on these minority populations." So pinon  
11 nut gatherers.

12 I think it also mentions how this will impact on  
13 the Sportsmen's Club and also Native American religious  
14 practices in the area, disturbance of traditional  
15 practices and ceremonies.

16 I know I have been talking for a while so I will  
17 tie it up pretty soon. But there is just many, many  
18 reasons not to go ahead with the County's development plan  
19 in this area. So I would urge DOE to do whatever they can  
20 to see that that doesn't happen, and which I guess would  
21 lead to my question, which is can -- okay, getting back to  
22 one of the things that was said a couple times, the public  
23 law has already made the decision to kind of bypass the  
24 NEPA process. Even though I love the coffee and the  
25 cookies and all, the decision has already been made. So

33-07-12  
(Cont.)

33-08-08

33-09-15

**Comment 33-08-08**

Response:

The reader is referred to General Issue 6, Environmental Justice, in Chapter 2 of this appendix where the issue is discussed.

**Comment 33-09-15**

Response:

The reader is referred to the response presented for Comment 33-03-15 earlier in this transcript and to General Issue 3, Basis for DOE's Decisions, and General Issue 4, Public Law Process and the CT EIS, in Chapter 2 of this appendix.

**Comment 33-10-14**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. In addition, this issue is discussed in more detail in General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

1 what is the point of generating three inches of paperwork  
2 if the land is going to get transferred anyway?

33-09-15  
(Cont.)

3 That wasn't the intend of NEPA. And I would  
4 hope that that is something that all folks involved are  
5 aware of.

6 So my question is, what can DOE do and what is  
7 DOE willing to do to assure that ecological resources of  
8 the Rendija Canyon Tract are protected for future  
9 generations, and how willing is DOE to insist on visual  
10 restrictions being placed on future development use as a  
11 prior condition to conveyance for the White Rock Y and  
12 TA-74 areas?

33-10-14

13 MS. WITHERS: I wish they had asked me  
14 before they named that tract. It's hard to say. Well,  
15 let's see if I can take your comments point by point there  
16 and see if I can answer them. For the NEPA, the National  
17 Environmental Policy Act, one reason that we are doing  
18 this effort is so that everyone knows what the potential  
19 impacts would be, because if we didn't do an Environmental  
20 Impact Statement or similar document under NEPA, then we  
21 wouldn't be sharing that information with everyone.

22 The County has no requirement to have to do that  
23 because they are not a federal entity, and that only  
24 applies to federal entities.

25 As far as establishing mitigating actions with

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1 the County, with the U.S. Forest Service for protection of  
2 endangered species we do plan to do that. Again that is a  
3 function of who ultimately gets those portions of the  
4 tracts that are within the habitat area. We will be  
5 working that very actively and aggressively.

6 As far as our commitment to actually putting  
7 some sort of a visual covenant or restriction on the types  
8 of changes that you can make within an area to protect the  
9 visual impact, or the visual viewscape, that's something  
10 that we are going to have to talk about. I can't say that  
11 we have really given a whole lot of consideration to that  
12 at this point.

13 Your points are well taken, though, and I thank  
14 you.

15 MR. KRUGER: Thank you.

16 THE MODERATOR: Did I get all of your  
17 questions?

18 MR. KRUGER: There is also about -- my  
19 first question was what are you able to do with the  
20 conveyance of the Rendija Tract.

21 THE MODERATOR: In terms of the residential  
22 development, is that what you're talking about?

23 MR. KRUGER: Yeah, in terms of putting a  
24 restriction on the type of land use.

25 MS. WITHERS: I think that will be affected

33-10-14  
(Cont.)

33-11-14

**Comment 33-11-14**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. The reader also is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix where the issue is discussed.

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1 with the coordination that ultimately we will be doing  
2 with the U.S. Fish and Wildlife Service as to what kind of  
3 mitigations we can effect on the tract together with the  
4 County, or whoever gets the tract. So the resources are  
5 protected. So that's something we will have to work on.

6 MR. KRUGER: Thank you.

7 THE MODERATOR: Your other questions were  
8 addressed, just to make sure?

9 MR. KRUGER: Uh-huh.

10 THE MODERATOR: I don't have anyone else  
11 signed up here. There may be others who have signed up  
12 out front.

13 A SPEAKER: No sign-ups.

14 THE MODERATOR: You are welcome to comment  
15 if you haven't signed up. We have the sign-ups to make  
16 sure we have people in an orderly fashion in case there  
17 were a lot of sign-ups. Are there any other questions or  
18 comments about the Environmental Impact Statement? What  
19 we have done in previous meetings is we have given people  
20 a little time to think. If they have nothing at this  
21 point we have taken a break, given you some time to look  
22 at the environmental restoration room, get some cookies  
23 and coffee, and then we will reconvene.

24 It's 2:45. At a few minutes after 3:00 we will  
25 reconvene and see if there are more comments or

33-11-14  
(Cont.)

1 questions.  
2 (There was a brief recess.)  
3  
4  
5  
6  
7  
8  
9  
10  
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Los Alamos Public Hearing (Afternoon Session)  
Document 33, Page 34 of 45

October 1999

H-211

Final CT EIS

1 THE MODERATOR: If you just came in let me  
2 bring you up to speed. I don't know if there are any new  
3 faces out there. We have heard the background on the  
4 public law, the Environmental Impact Statement, how we got  
5 to where we are, what is going to happen next. We have  
6 been taking public comments and fielding questions about  
7 the Environmental Impact Statement and would like to  
8 continue that at this point.  
9 We have just come back from a break to see if  
10 there are other people who are going to come with comments  
11 or any folks who were here who had different comments or  
12 questions, so let me pick up where we left off. Are there  
13 any additional comments or questions the public would like  
14 to offer about the Draft Environmental Impact Statement?  
15 How was the coffee? That was a great ad for Starbucks.  
16 You can't buy that kind of advertising.  
17 I'm not hearing any comments or questions. Are  
18 there any? This session was slated to go from two o'clock  
19 until five. We have another from six to nine this evening  
20 in the same room. So not hearing any, Dennis, 30  
21 minutes? We will adjourn for 30 minutes, and see if other  
22 people -- some people may not have been able to get here  
23 right at 2:00 so we will plan to be here for most of the  
24 time period.  
25 We will adjourn for 30 minutes and resume at

1 approximately 3:35. Let me make one last call. Okay,  
2 30-minute break.  
3 (There was a brief recess.)  
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**Comment 33-12-12**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1  
2 THE MODERATOR: If you have a conversation  
3 going on in the back of the room, please proceed to join  
4 us up here or move your conversation to another spot. All  
5 right. Let's reconvene. I don't see any new faces, but  
6 in case someone new just walked in, we did give the  
7 background of how we got to this point, what the  
8 Environmental Impact Statement is, the process, about the  
9 law that started it. We have taken some public comments.  
10 We took a break for about a half hour since there were  
11 none, at about three o'clock, and we are now going to  
12 reconvene to see if there are any additional public  
13 comments on the Draft Environmental Impact Statement on  
14 the Los Alamos Land Transfer.

15 Yes, we have at least one.

16 MS. STRICKFADEN: I'm Georgia Strikevatten,  
17 just a citizen who has been involved in the controversial  
18 2.1 acres of our County land, but this is concerning the  
19 Los Alamos Area Operations Office Tract. There does not  
20 appear in my quick reading of the draft statement here,  
21 there doesn't appear to be any environmental impact reason  
22 to not immediately expedite this site for development into  
23 high density student and LANL visitor housing.

24 Such a move immediately would go far in healing  
25 our split community, instead of trying to cram -- our

33-12-12

1 community trying to cram that in or getting it crammed  
2 down our throats actually.

3       What would it take to expedite this, the  
4 transfer of the LAAO site?

5       MR. MARTINEZ: To expedite the LAAO site --  
6 can you hear me? Is this on?

7       (WHEREUPON, there were proceedings held  
8       off the record.)

9       MR. MARTINEZ: As far as expediting the  
10 LAAO Tract and putting that on a list of the parcels to be  
11 transferred earlier, the hold-up, I guess, or the delay,  
12 is not so much an environmental issue but funding issue,  
13 because right now there is no funding available to build a  
14 replacement facility or lease a replacement facility to  
15 move the employees to.

16       So our area manager has been to Washington a  
17 couple of times, working with congressional staff, with  
18 the DOE headquarters staff. So we are pursuing the  
19 funding and that is the biggest thing. If we had the  
20 money right in our pocket today, of course there is time  
21 required to design and construct a building, and I'm not  
22 sure that all that could be done by the time the first  
23 parcels go.

24       But that's the primary delay right now versus an  
25 environmental issue.

33-12-12  
(Cont.)

**Comment 33-13-12**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 THE MODERATOR: Did that address your  
2 question?  
3 MS. STRICKFADEN: Yes. Thank you.  
4 MS. WITHERS: There are some limited  
5 environmental issues that we still have to rectify,  
6 though. After we know which party gets which tract, we  
7 will have to work on potential mitigation for endangered  
8 species and habitat in the area as well as cultural  
9 resources and whatnot, and although the LAAO site itself  
10 doesn't have any of that type of resource directly on the  
11 site, it's nearby other sites, so it will still be  
12 factored in.  
13 There are some other steps that are outlined. I  
14 believe in Chapter 1 we have outlined some of the other  
15 requirements that will be necessary to go through before  
16 we convey and transfer, and although that shouldn't take  
17 -- I would say probably in the next year we can probably  
18 get all that stuff wrapped up and be in a position to move  
19 as fast as we can, but it's still something that is out  
20 there that we need to accomplish.  
21 THE MODERATOR: Did you have a comment?  
22 MS. ALBERT: My name is Diane Albert again.  
23 I have a question about the LAAO site, too. Are there  
24 plans for a new building over on the other side of the  
25 bridge from the DOE headquarters? Are there any specific

33-12-12  
(Cont.)

33-13-12

Los Alamos Public Hearing (Afternoon Session)  
Document 33, Page 39 of 45

Comment 33-14-15

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 plans for that? Because if you want to transfer the site  
2 to the County, where are you going to go?

33-13-12  
(Cont.)

3 And I have another question. Are there any  
4 opportunities for citizens to become involved in this  
5 process at an earlier time than now, because, you know,  
6 there are things that have gone on previously, before even  
7 public comment. I know that you had negotiations with  
8 County officials and so on.

33-14-15

9 Were there any citizens reps involved in these  
10 really early-on discussions?

11 MS. WITHERS: Well, I think --

12 MS. ALBERT: It's an historical question  
13 because I wasn't involved and I wanted to be.

14 MR. MARTINEZ: I can answer the portion  
15 about where we will go or are likely to go. Our managers  
16 are entering into discussions with the lab director. It's  
17 our desire to be located on the other side of the bridge.  
18 It makes sense to be closer to the laboratory  
19 administration office somewhere. Nothing has been decided  
20 yet because we need to have funding, whatever, and also we  
21 don't want to circumvent this process.

33-13-12  
(Cont.)

22 Moving out and starting to turn dirt or starting  
23 to do anything to construct a building makes a decision  
24 before this is completed that we are moving and that there  
25 is something happening, so we can't do that yet. So other

Los Alamos Public Hearing (Afternoon Session)  
Document 33, Page 40 of 45

October 1999

H-217

Final CT EIS

1 than discussions and early planning, there hasn't been  
2 anything done yet there.

33-13-12  
(Cont.)

3 THE MODERATOR: Can all of you hear?  
4 Okay.

5 MS. WITHERS: As far as starting earlier  
6 with a process like this, you really have to have a  
7 proposal first that is firmed up enough that you can  
8 actually do an analysis before you can start any earlier.  
9 If you mean getting in on the conversations and the  
10 contemplation, if you will, of these actions, I don't  
11 think we can help you with that.

33-14-15  
(Cont.)

12 There may be a process that Fred Brueggeman  
13 could tell you about that could help you to tune into the  
14 County with some early steps, but I wouldn't know what  
15 that is.

16 Fred, would you like to field that question?

17 MR. BRUEGGEMAN: Back in 1992 the County  
18 and DOE had a series of public meetings on the land  
19 transfer issue.

20 MS. WITHERS: That's before my time.

21 MS. ALBERT: Mine, too.

22 MR. BRUEGGEMAN: I think there were eight  
23 of them on Wednesday nights at the DOE building, or most  
24 of the summer of 1992.

25 MS. WITHERS: I guess the answer is they

1 had a process in place and they did accept public input.  
 2 MR. BRUEGGEMAN: And then in 1997 when we  
 3 were doing the master planning for the sites we had  
 4 another whole series of public meetings that went on for  
 5 most of actually 1997, and there were probably 22  
 6 meetings.  
 7 MS. ALBERT: Only one on each one, right?  
 8 MR. BRUEGGEMAN: Five on each one.  
 9 THE MODERATOR: It looks like a quizzical  
 10 look. Did you get an answer? Five on each one, do you  
 11 know what he means by that?  
 12 MS. ALBERT: Five meetings on each tract.  
 13 MR. BRUEGGEMAN: Like TA-21 for the master  
 14 plan, we had five meetings on that.  
 15 THE MODERATOR: And five on each of the  
 16 other tracts?  
 17 MR. BRUEGGEMAN: Most of the others, yes.  
 18 THE MODERATOR: I saw your quizzical look.  
 19 I wanted to be sure you understood his answer.  
 20 Any other information on that question then?  
 21 MS. WITHERS: Did we get all of your  
 22 answers?  
 23 MS. ALBERT: I have another question on TP  
 24 Road. How long do you think that's going to take to clean  
 25 up? That, to me -- would you say that's the most polluted

33-14-15  
(Cont.)

33-15-09

**Comment 33-15-09**

Response:

It is assumed that the commentor is referring to the TA 21 Tract, located at the end of DP Road, which has many more environmental restoration issues associated with it than does the DP Road Tract. The DOE is directed to convey or transfer the tract if it proves to meet the suitability criteria, which include cleanup of the tract. Neither the potential conveyance nor transfer of any of the tracts involve the DOE selling the land (see Section 1.1.3 in Chapter 1 of the main text). The environmental restoration process is separate from but parallel to the NEPA process. These issues are discussed in more detail in General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix.

Comment 33-16-06

Response:

To clarify the response given during the public hearing, the 95 percent figure given in the response refers to 95 percent of the cleanup actions identified in the Environmental Restoration Report were already identified in the DOE's overall cleanup plans. However, because the funding for these actions is approved by Congress on an annual basis, the response should not be construed to mean that the DOE has been allocated 95 percent of the funds needed for cleanup. The reader is referred to General Issue 5, Environmental Restoration Process, in Chapter 2 of this appendix where this issue is discussed.

1 site of all the ten, of all the tracts? And how really  
2 feasible is it to clean that up and sell it?  
3 MS. WITHERS: TA-21 is one of the most  
4 polluted ones, and that might be something -- I probably  
5 am not the best person to respond to your question. That  
6 might be something that you could address to the folks in  
7 the ER break-out room and they could better address. I'm  
8 sorry.

9 MS. ALBERT: I will.

10 THE MODERATOR: Any other comments or  
11 questions? You just entered in the back. We are taking  
12 public comment on the Draft Environmental Impact  
13 Statement. Any other comments or questions about it? Not  
14 hearing any -- oh, it looks like we have another.

15 MS. O'ROURKE: This is projecting into the  
16 future. I frequently hear people make comments like they  
17 don't believe that the DOE is ever really going to  
18 transfer any land. Now I see a timeline in here that says  
19 certainly this should be done by 2007. Is this  
20 realistic?

21 MR. MARTINEZ: We believe it is. TA-21 is  
22 the biggest problem child, if you will, of all the  
23 parcels. The rest of the parcels, as our ER folks will  
24 tell you in the next room, they have 95 percent of the  
25 funds that they think they'll need for that in their

33-15-09  
(Cont.)

33-16-06

Los Alamos Public Hearing (Afternoon Session)  
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1 baseline budget, what they've told me. And so that is  
 2 spread out to the 2007 time frame. So we believe it's  
 3 realistic and that we can comply with the requirements.  
 4 MS. O'ROURKE: Relating to that, too, then,  
 5 will you wait until everything is ready to transfer before  
 6 you transfer everything or will you start transferring?  
 7 MR. MARTINEZ: No, we will not. We will  
 8 transfer them when they're ready.  
 9 MS. O'ROURKE: Thank you.  
 10 THE MODERATOR: Yes.  
 11 A SPEAKER: I guess I have a question more  
 12 for the County and maybe San Ildefonso Pueblo, but have  
 13 there been any discussions on how the County and San  
 14 Ildefonso is going to divide up these lands? And, if so,  
 15 has any public involvement been taking place in that?  
 16 MR. MARTINEZ: You can offer the mike to  
 17 either party if they would like to address that. Of  
 18 course the Department of Energy is not a party to those  
 19 negotiations.  
 20 MR. BRUEGGEMAN: Well, the County and San  
 21 Ildefonso have been meeting off and on over the last two  
 22 years, but in terms of this process that is in this log  
 23 that is to culminate in November, we have one meeting.  
 24 The Tribal Council and County Council met jointly on March  
 25 15th and talked about a process for getting to an

13-16-06  
(Cont.)

33-17-17

33-18-17

**Comment 33-17-17**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

**Comment 33-18-17**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.



1 agreement by November, and we have agreed to meet again  
2 and we have set up sort of a way of getting to that  
3 point.

4 MS. O'ROURKE: November of this year.

5 MR. BRUEGGEMAN: Yes.

6 MS. WITHERS: Thank you, Fred.

7 THE MODERATOR: Any other questions or  
8 comments? Not hearing any, then, Dennis, Elizabeth, what  
9 would you like to do? It's about 10 till 4:00.

10 MS. WITHERS: Why don't we go ahead and we  
11 will end the meeting, or the session, and resume the next  
12 session then at six o'clock tonight. Both Dennis and I  
13 will stay here for a period of time. If anyone would like  
14 to ask us questions off the record we will be available.

15 THE MODERATOR: So if someone here knows  
16 someone who is coming later, would you please not tell  
17 them not to come, if they are planning to come this  
18 afternoon, there will still be people available, it just  
19 won't be in this normal format. They will still be able  
20 to get their comments and questions.

21 Anything else before we adjourn? Then we will  
22 end this session now in the formal sense. You will still  
23 be available. And we will reconvene at six o'clock, from  
24 six to nine tonight. Same place. Thank you.

25 (The meeting was adjourned at 3:50 p.m.)

33-18-17  
(Cont.)

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COUNTY OF BERNALILLO

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STATE OF NEW MEXICO

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REPORTER'S CERTIFICATE

5

I, the undersigned Court Reporter and Notary

6

Public, HEREBY CERTIFY that I reported in stenographic

7

shorthand the proceedings set forth herein, and the

8

foregoing is a true and correct transcript of the

9

proceeding to the best of my ability.

10

I FURTHER CERTIFY that I am neither employed by

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nor related to any of the parties or attorneys in this

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case, and that I have no interest whatsoever in the final

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disposition of this case in any court.

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BARBARA K. HARRIS, RPR-CM

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Certified Court Reporter #114

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My Commission Expires: 12/31/99

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HEARING ON THE  
DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE CONVEYANCE AND TRANSFER OF  
CERTAIN LAND TRACTS ADMINISTERED BY  
THE DEPARTMENT OF ENERGY AND  
LOCATED AT LOS ALAMOS NATIONAL LABORATORY,  
LOS ALAMOS AND SANTA FE COUNTIES, NEW MEXICO

March 25, 1999  
Los Alamos, New Mexico  
6:00 p.m.

REPORTED BY: BARBARA HARRIS, CM/RPR NM CCR #114  
American Reporting  
201 Twelfth Street, Northwest  
Albuquerque, New Mexico 87102

1

A P P E A R A N C E S

2

For the DOE:

3

MR. DENNIS MARTINEZ

4

MS. ELIZABETH WITHERS

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Moderator:

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MR. STEVE WILKES

7

Interpreter:

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MR. ARTURO SANDOVAL

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**Los Alamos Public Hearing (Evening Session)  
Document 34, Page 3 of 51**

1 MR. MARTINEZ: Good evening. We would like  
2 to get started. And if you are in the lobby out there and  
3 you can hear us, you are welcome to come in and take a  
4 seat.

5 My name is Dennis Martinez. I'm with the  
6 Department of Energy, a Deputy Area Manager here at the  
7 Los Alamos area office, and we welcome you. Thank you for  
8 coming.

9 We are here this evening to talk about the Draft  
10 Environmental Impact Statement report that has been issued  
11 and get comments from you. I will very quickly try to run  
12 you through the public law that brings us here and is  
13 driving this project, and then I will introduce Elizabeth  
14 Withers, who is our document manager for this process, who  
15 will walk us through some of what they're doing, and then  
16 we will open it up for questions, answers and comments.

17 Basically this Public Law 105-119, you probably  
18 can't read it from the back row, was made effective  
19 November 26, 1997. It requires the Secretary of Energy to  
20 convey certain properties in Los Alamos without  
21 consideration to San Ildefonso Pueblo and to the County of  
22 Los Alamos. It specified that these parcels had to be  
23 usable for historic, cultural, environmental preservation,  
24 preservation, economic diversification purposes, or  
25 community self-sufficiency, and that these parcels had to

Los Alamos Public Hearing (Evening Session)  
Document 34, Page 4 of 51

1 be no longer needed by the Department for the national  
2 security mission. So that's what started everything.  
3 A schedule was pretty much laid out for us  
4 within that law. Basically it required us at the  
5 Department to identify the parcels, and we did that in a  
6 report to congress in February 1998, we identified those  
7 parcels here. The report that we sent congress identifies  
8 ten sites. There is only nine on this map. There is two  
9 small ones on this one map. That's where ten comes from.  
10 So that part is completed, as you can see there, or maybe  
11 you can't from the back.  
12 These dates and this information is also on  
13 handouts that is available on the back table.  
14 The next step was we had to complete a title  
15 search on those parcels to determine if we had clear title  
16 to them. We contracted with the Army Corps of Engineers,  
17 who has a lot of experience and expertise in that area up  
18 here, especially in Los Alamos, and they completed that  
19 title search, and we submitted it to congress this past  
20 January. Basically that report says in the Corps of  
21 Engineers' opinion the Department owns those parcels free  
22 and clear.  
23 And the next process, the next step we have to  
24 do, I will skip a few steps because Elizabeth will cover  
25 them, is in August '99, this year, we have to issue the

**Los Alamos Public Hearing (Evening Session)  
Document 34, Page 5 of 51**

1 Environmental Impact Statement and an Environmental  
2 Restoration Study. Folks in the next room here have  
3 information on the environmental restoration study and  
4 they can fill you in and give you copies of what that  
5 document looks like. They have a draft of that already.

6 And so what we are here tonight for is for the  
7 Environmental Impact Statement and to receive your  
8 comments, and we will do that.

9 The next step that we need to do is we need to  
10 issue -- we need to receive a report, an agreement from  
11 Los Alamos County and from San Ildefonso Pueblo which  
12 outlines their agreement on how they would split these  
13 parcels. The Department is not involved in that  
14 negotiation. That is strictly between these two  
15 entities. And that agreement is due to come to us in  
16 November of this year.

17 Then we have to, the Department has to, submit a  
18 plan to congress by February 2000 that outlines the  
19 schedule, the costs, everything that has to be done, what  
20 our plan is for conveying these parcels, and the time  
21 lines and milestones for doing it.

22 The last item, the last two items are in  
23 November 2000 the first available parcels that are ready  
24 to go have to be transferred by that date. And then we  
25 became a long-term project, and we have until November

1 2007 to complete environmental restoration and remediation  
2 and transfer the remaining parcels to Los Alamos County  
3 and San Ildefonso Pueblo.

4 So in a quick overview, that's our process,  
5 that's why we're here, that's what we're doing.

6 Now I will introduce Elizabeth Withers, and she  
7 will take you through the Environmental Impact Statement  
8 process.

9 MS. WITHERS: Thank you. As Dennis pointed  
10 out, according to Public Law 105-119, the Department of  
11 Energy has an obligation to consider the potential impacts  
12 that could happen because of this conveyance and transfer  
13 of the tracts pursuant to the National Environmental  
14 Policy Act. So we started out this process then by the  
15 Department of Energy determining that an Environmental  
16 Impact Statement would be the appropriate level of both  
17 documentation and analysis that was needed to comply with  
18 the regulatory requirements.

19 We published a Notice of Intent to prepare an  
20 Environmental Impact Statement in May of 1998. We  
21 proceeded then to also hold a public scoping period.

22 After the scoping period was completed, early  
23 summer, we took the comments that were received on the  
24 scoping of the document and actually started working on  
25 the analysis and the document preparation. We worked with



**Los Alamos Public Hearing (Evening Session)  
Document 34, Page 7 of 51**

1 cooperating agencies on this effort. For this  
2 Environmental Impact Statement the cooperating agencies  
3 have been the County of Los Alamos, San Ildefonso Pueblo,  
4 the Bureau of Land Management, the Bureau of Indian  
5 Affairs, Bandelier National Monument, the U.S. Forest  
6 Service, and the Department of, I'm sorry, Bureau of Land  
7 management, did I say that? Well, there are six of them.  
8 And we worked with these folks all through the summer,  
9 fall, and winter drafting the document, and were able to  
10 publish the Draft Environmental Impact Statement last  
11 month.

12 On February 26 we published a notice of general  
13 availability of the draft document in the Federal  
14 Register. At the same time we mailed out over 200 copies  
15 of the document to various individuals, organizations, and  
16 stakeholders that have already identified themselves as  
17 being interested in reviewing the document. If you are  
18 interested in seeing a copy of the document and you  
19 haven't received one already, there are extra copies of  
20 both the document and the summary on the front table and  
21 you are welcome to pick up one or both of them as you  
22 wish.

23 Additionally, a document is available on the  
24 Worldwide Web, and I have the web address posted on that  
25 back wall as you go out. Please take note of that if you

1 are interested in being a website there.

2       Additionally, if you need copies and want to  
3 contact me to get extra copies, hard copies sent out to  
4 you, we have our address, mailing address, e-mail address,  
5 a 1-800 phone number, et cetera, on that wall, so please  
6 give me a call and I'll be happy to get you copies of the  
7 document.

8       The alternatives that we analyzed in the  
9 Environmental Impact Statement included both an Action  
10 Alternative and a No Action Alternative. The No Action  
11 Alternative would be simply that the DOE would not  
12 transfer, convey the tracts of land, they would continue  
13 under our administrative authority and the land use on  
14 them would be essentially the same as it is right now in  
15 the foreseeable future.

16       Under the Proposed Action Alternative, we would  
17 consider the conveyance and transfer of each of the ten  
18 subject tracts, either in whole or in part to the County  
19 of Los Alamos or San Ildefonso Pueblo.

20       In general, the environmental impacts that we  
21 concluded after our draft analysis was completed is that  
22 for direct impacts that are the result of DOE's actual  
23 action and conveyance and transfer, the impacts are  
24 relatively minor. It mostly consists -- the action mostly  
25 consists of us relocating our offices and warehousing

1 facilities and operations. So those impacts are  
2 relatively minor. But for the impacts that could be  
3 associated because we actually effected a conveyance and  
4 transfer the tracts to the County or San Ildefonso Pueblo,  
5 on some of the tracts the impacts could be fairly  
6 significant.

7       We have come up with a Preferred Alternative  
8 that is listed in the Environmental Impact Statement and  
9 in the summary as well, which is a subset of the proposed  
10 action.

11       We have recognized that some of the tracts will  
12 be easier to remediate and restore than other tracts. We  
13 think that we can probably release a couple of the smaller  
14 tracts in the pretty near term, by the year 2000 or soon  
15 thereafter. For the most of the remainder of the other  
16 tracts we recognize that it's going to take longer to  
17 clean those properties up, and so we're estimating that we  
18 will probably not make the 2000 year deadline but we will  
19 probably be able to convey or transfer those by the end of  
20 the year 2007.

21       For TA-21, however, we recognize that there is a  
22 lot of contamination on that tract, and we think that  
23 probably our preferred alternative would be to say that we  
24 can probably transfer part of that tract before the year  
25 2007.

1           We plan to take the comments that we receive  
2 during this comment period, which started on February 26  
3 and which will go until April 12th, that is a 45-day day  
4 comment period, and as soon as the end of the comment  
5 period is reached we will then take all of the comments,  
6 we will start reworking the draft document as we need to,  
7 and we will come up with a final document.  
8           For all of the comments that we receive after  
9 April 12th, I'll try to get them in and worked into the  
10 document as much as I can, but we're on a very short  
11 schedule.  
12           We plan to issue the Final Environmental Impact  
13 Statement, together with a comment response document,  
14 about the first week in August, so it's a very aggressive  
15 schedule.  
16           We will be then taking the information that we  
17 have obtained through the Environmental Impact Statement  
18 process as well as the Environmental Restoration Report  
19 process, combining them together and issuing that combined  
20 data report to congress at the end of August.  
21           We expect that probably, because of the  
22 requirements of the law, that it will be about the same  
23 time frame, February of the year 2000, before we issue our  
24 first Record of Decision on this action, and it will be  
25 probably in conjunction with the report on conveyance and

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1 transfer of the land tracts as required by congress at  
2 about the same time scale.  
3 In all likelihood because this is probably going  
4 to become a long-term project over the next ten years,  
5 ending in the year 2007, there will be other RODS issued,  
6 at least one other ROD, probably multiple RODs. And with  
7 that I'm going to go ahead and turn over this meeting to  
8 get comments, questions, whatever you would like to  
9 contribute this evening from the audience. And our  
10 moderator for the evening is Mr. Steve Wilkes.

11 THE MODERATOR: Thank you. I am the  
12 moderator. I am not an employee of Department of Energy.  
13 I have been asked to run the meeting to get your  
14 comments.

15 There are several ways for you to give  
16 comments. This is not the only opportunity, is to stand  
17 up and say something. There are, of course, other written  
18 forms that are available, you can turn them in in any  
19 written form. You do not have to use the one that is  
20 supplied.

21 You notice we have a court reporter, Barbara  
22 Harris here, who is taking down the oral comments  
23 verbatim, so we have that record.

24 If you would like to do it over e-mail there is  
25 an e-mail address on that piece of paper there as you go

1 out toward the cookies. There is also a 1-800 number so  
2 you can phone in your comments to the Draft Environmental  
3 Impact Statement.

4 We also have with us today, tenemos un  
5 interprete, Arturo Sandoval.

6 THE INTERPRETER: (Speaking in Spanish.)

7 THE MODERATOR: Gracias, Arturo. We also  
8 have, as you noticed when you came in, there are cookies  
9 and beverages out in the lobby out there. What we have  
10 been doing, since we have done two of these sessions, two  
11 down in Pojoaque yesterday, one in the afternoon, and one  
12 in the evening, and one this afternoon, we found that we  
13 have done a period of time where people have given their  
14 comments, and it seems to be that we run out long before  
15 the three-hour period is over, so we take a break, give  
16 people to go into the adjacent room there.

17 That is a very different arrangement in there.  
18 It's an open house. It's not a hearing. It's not a place  
19 where they are taking comments. It's kind of a place to  
20 wander around, get familiar with environmental restoration  
21 issues and ask questions in a very informal sense.

22 If you want comments recorded for the Draft  
23 Environmental Impact Statement, that does need to happen  
24 in here. They are not set up for that, but they are there  
25 to talk about environmental restoration. So we usually

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1 take a break, give people a chance to do that, reconvene,  
2 see if there are additional comments.  
3 If there are, we take them. If not, we take  
4 another break for a while in case other people just  
5 couldn't get here right at 6:00 or right at 6:30, and try  
6 to get other comments. Because we do have three specific  
7 desired outcomes for these sessions.  
8 One is what we hope we have already begun to  
9 accomplish, and that is hearing from Elizabeth and Dennis,  
10 so you walk out of here with a clear understanding of how  
11 this whole thing got started, what the law was about, what  
12 started the process, and also then the Environmental  
13 Impact Statement process itself which Elizabeth alluded  
14 to. There is far more material in the printed  
15 information, but we wanted to at least give you an  
16 overview of that.  
17 The second desired outcome is to get a complete,  
18 accurate record of public comments about the Draft  
19 Environmental Impact Statement.  
20 And the third one is another way of looking at  
21 that, and that is for everybody to walk out of here saying  
22 anyone who had anything to say had an opportunity to say  
23 it.  
24 There are a couple of other comments. Let's  
25 see. If you are having a conversation in the back of the

1 room, we can hear you probably better than you can hear  
2 us, so please try to move out toward the lobby or into the  
3 environmental restoration room so we can continue in here  
4 without other noise. I think I may have covered  
5 everything.  
6 Oh, a full transcript of this session and the  
7 comments that were given, and I assume comments from both  
8 sessions at Pojoaque and the session this afternoon, will  
9 be available, and if I heard correctly, in a week and a  
10 half.  
11 MS. WITHERS: About a week and a half.  
12 THE MODERATOR: A week and a half a full  
13 transcript of the comments, if you are interested in  
14 that. And with that, unless there are questions about  
15 what we're about to do, I will start our process of  
16 getting your comments. Thank you.  
17 Now what we have done, I have been charting some  
18 key words about your questions or comments. What you are  
19 seeing charted is not the public record. I'm not trying  
20 to capture every word that is being stated, but I want to  
21 at least get some points up here so people can kind of  
22 follow along with the questions and points that have been  
23 made, so if they have the same one to make they don't  
24 necessarily need to.  
25 A SPEAKER: Where will the public comments



Comment 34-01-17

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. Further clarification was provided later in the hearing (quote is repeated here).

1 be available that we can have?

2 MS. WITHERS: Those will be available at  
3 the public reading rooms for DOE here in Los Alamos and  
4 also in Albuquerque.

5 THE MODERATOR: Thank you. Then if there  
6 are no more questions about what we are about to do, the  
7 first person who signed up to comment -- what we have done  
8 is run through the names, people who have signed up, and  
9 after that, if there isn't a whole long list here, we have  
10 just taken questions from whoever has any.

11 Let's start with this, Newby Ellington. And I'm  
12 also going to ask you to use the microphone, because one  
13 of the things we found yesterday was people could hear the  
14 answers but they couldn't always hear the questions. So  
15 would you please use this.

16 MR. ELLINGTON: Mine is a question probably  
17 versus a comment, but I notice on the exhibits out in the  
18 lobby that there are proposed recommendations for the use  
19 of the land. Who made those recommendations? Is that  
20 DOE, the County, or who made those recommendations?

21 MS. WITHERS: In both instances the persons  
22 that made those recommendations were representatives of  
23 the San Ildefonso Pueblo and the Los Alamos County. The  
24 Department of Energy has no control over what these lands  
25 will be used for ultimately. As long as they meet the

34-01-17

“... MR. FERGUSON: Elizabeth is correct when she answered your question and said that the Department does not have the authority to specify use. The statute says that in order to convey we have to make a finding that it can be used for any of the uses that she discussed earlier.

That doesn't mean that either the County or the Pueblo must make that use. Having said that, there will be a process, a series of processes, where the Department is obligated to consult with, confer, with other agencies in the area, particularly with regard to threatened and endangered species and cultural resources that may end up with mitigations in the nature of limitations on the conveyance documents, in order for the Department to be in compliance with those other statutes, separate and apart from any requirements or specifications that this law requires.

It's a little complex, but I didn't want you to think that this would be totally a no-strings-attached conveyance in all circumstances. The Department is in no position to really specify in that regard at this time until we go through these consultations.

I hope that didn't muddy the water. It was intended to clarify, that there is the subtlety, and really they are sort of at odds.”

1 criteria of the law, they can set their own future use.  
2 MR. ELLINGTON: You answered my second  
3 question about the future use of the land and are there  
4 any controls or restrictions or covenants, and you said  
5 no, that once the land is transferred it is up to the,  
6 what is the word, recipient of the land. I see. All  
7 right. That indeed was my question. Thank you.  
8 THE MODERATOR: Thank you. The next person  
9 who had signed up is Blair Swartz, I believe it is.  
10 MR. SWARTZ: I didn't sign up to make a  
11 comment.  
12 THE MODERATOR: You don't need to. You are  
13 not obligated.  
14 MR. SWARTZ: I had not intended to make a  
15 comment. My name is Blair Swartz. I live in Barranca  
16 Mesa, and my principal concern with this comment is that  
17 the Rendija Canyon Tract. My principal concern is the  
18 Rendija Canyon Tract because I live on Barranca Mesa.  
19 THE MODERATOR: We would ask him to hold it  
20 up a little closer.  
21 MR. SWARTZ: I have read your lovely  
22 document here, talking about the Rendija Canyon Tract and  
23 its environmental impacts. It looks like it's pretty  
24 competently done. I was not here this afternoon. They  
25 did address some of the birds and animals that might be

34-01-17  
(Cont.)  
34-02-17

34-03-07

**Comment 34-02-17**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. The reader also is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix and to the response to Comment 34-01-17.

**Comment 34-03-07**

Response:

The CT EIS analyzes the potential for impact to the Mexican spotted owl habitat in the Rendija Canyon area and states that there could be impacts (see Section 5.3.7 in Chapter 5 of the main text). The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix and Chapter 16 of the main report for a discussion of mitigations. The DOE recognizes that the goshawk has been proposed for listing under the *Endangered Species Act* as a threatened or endangered species. Currently, however, the goshawk is not listed nor afforded the protections that listing provides. As species are listed and de-listed under the *Endangered Species Act*, the DOE will consider the effect to individuals and to potential habitat, as appropriate.

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Comment 34-04-01

Response:

The CT EIS acknowledges that the potential development of Rendija Canyon could increase the risk of wildfire (See Section 5.3.7.1 in Chapter 5 of the main report). However, the DOE has no role in the choice of land use (see response to Comment 34-01-17). The reader also is referred to General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix where the issue is discussed.

1 affected this afternoon.

2 I wanted to remark that although you talked  
3 about the peregrine falcon habitat and the spotted owl  
4 habitat, any remarks on the spotted owl habitat, in fact  
5 it's about a mile from the tract, and although in my  
6 experience spotted owls are pretty gentle beasts, it's not  
7 clear to me that they wouldn't be affected. And so they  
8 were observed.

9 If you will look in Los Alamos Report LA 12206,  
10 they were observed on the other side of Guaje mountain  
11 apparently, not by me, unfortunately.

12 The third species that is not talked about there  
13 because it's not endangered is the goshawk. It's likely  
14 to be an endangered or whatever species shortly, possibly  
15 before 2007. Okay?

16 MS. WITHERS: Exactly.

17 MR. SWARTZ: The second thing I want, that  
18 occurred to me, and I only came here this afternoon so I  
19 haven't thought about this very much, my principal concern  
20 these days is not this actually, it's wildfires, and I'm  
21 concerned that, well, of the three alternatives that are  
22 proposed, for the Rendija Canyon area, it strikes me  
23 offhand that as far as the danger of wildfires to the  
24 town, the cultural would be the least dangerous, in my  
25 experience.

34-03-07  
(Cont.)

34-04-01

Comment 34-05-12

Response:

Comment noted.

1 And you can check with the fire department  
2 here. There have been, with present use, there have been  
3 a number of people from the town and elsewhere that have  
4 -- there have been a number of fires ignited, small fires  
5 ignited in the canyon when it's dry, particularly in dry  
6 weather.

34-04-01  
(Cont.)

7 I think, my understanding of the cultural use is  
8 that it might actually be -- there might be a locked gate  
9 at the bottom before you get to the Sportsmen's Club, and  
10 if that's the case, I being selfish, I think that would be  
11 really good for me.

34-05-12

12 The alternative of a residential community down  
13 there is very hard for me to figure out what would happen  
14 as far as wildfires go. I think it depends partly on the  
15 community that would develop. If it's a bedroom community  
16 for Santa Fe, and for the rest of the world as well, it  
17 might be, because this is a very valuable community to  
18 live in because of the education it provides its kids and  
19 stuff. I think people might not feel that they belong so  
20 much to the community, and that might -- it's hard to  
21 imagine what would happen because of the roads that would  
22 go off and trails and stuff that would go off into the  
23 national forest from there, as far as what the danger from  
24 wildfire would be.

34-04-01  
(Cont.)

25 The present -- so I would actually put that at

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Comment 34-06-19

Response:

To elaborate on the response given during the public hearings, the assessment of impacts to recreation are often discussed under the resource called "land use" or "land resources." In this CT EIS, information on recreation is presented as part of the discussions of land use (see Sections 3.2.1, 5.1.1, 5.2.1, 5.3.1, 6.1.1, 6.2.1, 6.3.1, 7.1.1, 7.2.1, 7.3.1, 8.1,9.1.1, 9.2.1, 9.3.1, 10.1.1, 10.2.1, 10.3.1, 11.1.1, 11.2.1, 11.3.1, 12.1.1, 12.2.1, 12.3.1, 13.1.1, 13.2.1, 13.3.1, 14.1.1, 14.2.1, 14.3.1, and 15.3.1 of the main report).

1 the bottom of my list, making a guess, as far as the  
 2 wildfires go. The present situation would be in the  
 3 middle.  
 4 Thank you.  
 5 THE MODERATOR: Let me make sure I heard.  
 6 I just want to get the main point. Your concern was about  
 7 wildfires in Rendija and your goal was to have as little  
 8 development as possible?  
 9 MR. SWARTZ: Yes. That's a guess. You've  
 10 got experts.  
 11 THE MODERATOR: Okay. I have down next  
 12 Rich Morley, I believe it is. And thank you for giving  
 13 your name. If you want your name in the record, please do  
 14 give your name. I have been giving them, I realize.  
 15 MR. MORLEY: I'm Richard Worley, the  
 16 president of the Sportsmen's Club, which is located in  
 17 Rendija Canyon. I spoke at the town meeting the other  
 18 night and said I haven't read the whole document and now I  
 19 have.  
 20 Actually I have a couple alternatives, written  
 21 comments, but really I think it assesses things pretty  
 22 good. I did have one question. Recreational use is not  
 23 considered as one of the impacts as far as the criteria.  
 24 Is that determined by NEPA or -- you consider noise, you  
 25 consider utilities, you don't consider recreation.

34-04-01  
(Cont.)

34-06-19

Comment 34-07-12

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 MS. WITHERS: We do consider as a going-in  
2 proposition that part of the tract would be used for  
3 environmental preservation. And the definition of that  
4 from the potential recipient that identified that future  
5 use stated that that would include a recreational  
6 component.  
7 MR. SWARTZ: I'm not complaining, I'm just  
8 wondering what sets the criteria that you went through.  
9 You said you had noise, you had water, you had endangered  
10 species, a whole list of things. Does that come out of  
11 NEPA directly?  
12 MS. WITHERS: No, it doesn't.  
13 MR. SWARTZ: Or is that a judgmental thing  
14 the way it's done?  
15 MS. WITHERS: It is somewhat judgmental,  
16 but we have a body of history to draw on and we generally  
17 consider all of the various different kinds of  
18 environmental resource areas and the potential for impact  
19 to those resource areas, and we try to identify through  
20 our scoping process any specific or special resource areas  
21 that might be in a specific location.  
22 MR. SWARTZ: Okay. One final question. It  
23 seems like the two scenarios are end points. One is full  
24 development by the County, and one is full nondevelopment  
25 by the Pueblo. Is that the intent, just to span the two

34-06-19  
(Cont.)

34-07-12

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Comment 34-08-23

Response:

The CT EIS assessed the transportation impacts associated with the potential development plans described for each tract. In order to bound these impacts, they were presented without mitigation measures. It is not within the scope of DOE's authority to mandate specific mitigation measures to the recipients. For a more detailed discussion of mitigation issues, please see General Issue 2, Deed Restrictions, in Chapter 2 of this appendix and Chapter 16 of the main report.

1 points rather than to consider all intermediaries.

2 MS. WITHERS: No, we actually asked both of  
3 the representatives of both organizations to give us a  
4 list of the types of projected uses that they were  
5 actually contemplating for each of the ten tracts, even  
6 though we know that both parties won't get all ten tracts,  
7 obviously. But we wanted to be able to offer a reasonable  
8 analysis of the potential impacts from those contemplated  
9 uses to the public and to the decision makers.

10 MR. SWARTZ: Okay.

11 THE MODERATOR: Thank you. John Sarracino  
12 is the next person signed up and the last person. And I  
13 want to make sure, unless there are other names on the  
14 sheet out there that can brought to me, if someone would  
15 walk out there just to check to see. If not, we will just  
16 open it up for any other questions or comments.

17 MR. SARRACINO: I appreciate the chance to  
18 speak. I'm not sure that I have done enough research on  
19 this, but let me just start out by commenting that, as a  
20 resident of Los Alamos, in an area which would be impacted  
21 by the 12,058 trips per day which would be expected to be  
22 added to the local transportation system and an increase  
23 of 819 trips during peak-hour traffic, I'm a little  
24 concerned if all of the traffic in this Rendija Canyon  
25 area is forced out in this direction that will add an

34-07-12  
(Cont.)

34-08-23

Response:

Comment noted.

1 undue pure burden to the County infrastructure, that  
2 perhaps we will never be able to recover in the way of  
3 property taxes or impact fees or whatever in this area.  
4 So my feeling is that the EIS should be  
5 modified, perhaps specifically for this particular tract,  
6 should be modified to specifically say that access out in  
7 this direction through whoever's lands they belong to, and  
8 I believe they belong to the Pueblo right now, that access  
9 should be allowed out in this direction to State Route  
10 504.

11 In general I think there probably should be some  
12 language to cover all of the tracts that access to  
13 reasonable transportation nodes, should be allowed from  
14 every site here.

15 MS. WITHERS: Just to answer why we didn't  
16 do that in the first place, typically for an Environmental  
17 Impact Statement, is what you are doing is contrasting the  
18 existing environment with the proposed action, and having  
19 an access road that went through the Pueblo land and  
20 exited out the other side of that canyon wasn't part of  
21 the proposal. So that's why we didn't do that.

22 MR. SARRACINO: I sort of anticipated your  
23 answer, so this is my forum to let the members of the  
24 County Council, County staff know, that I think they will  
25 have failed in their obligation to the citizens of this

34-08-23  
(Cont.)

34-09-23



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Comment 34-10-12

Response:

To elaborate on the response given during the public hearings, the DOE’s authority to limit or condition the conveyance or transfer of land tracts is circumscribed by the provisions of Public Law (PL) 105-119. Such limitations are not an issue for tracts transferred to the U.S. Department of the Interior (DOI), in trust for the Pueblo of San Ildefonso, because such an administrative transfer will not result in a change of ownership (that is, the U.S. Government will retain title), and all applicable requirements (including those pertaining to environmental safeguards) will remain in effect. In the case of land conveyed to the County of Los Alamos, the DOE must convey “fee title” to the tracts of land. The DOE must work within this limitation in determining what, if any, conditions or restrictions can be included in the instruments of conveyance.

1 community if they bargain for this tract of land without  
2 securing a right-of-way access from this direction down to  
3 State Route 504.

4 Thank you very much.

5 MS. WITHERS: Glad to have given you the  
6 opportunity.

7 MR. SARRACINO: Thank you.

8 THE MODERATOR: Unless someone knows of  
9 other names in the sign-up sheet, that's all I have up  
10 here who have formally signed in. If there are no other  
11 names, then we will just open it up. Is there anyone else  
12 who has a clarifying question or a comment you would like  
13 to make about the Draft Environmental Impact Statement?

14 A SPEAKER: I haven't had a chance to read  
15 the thing so there may be some ignorance in these  
16 questions. I guess one fine point, there was a question  
17 earlier about control of the land, after the transfer. Is  
18 it a case of it's not your intent to control the use of  
19 the land afterwards, or you have no legal way to control  
20 the use of the land afterwards?

21 MR. MARTINEZ: Well, there is a potential  
22 for us to maybe have deed restrictions if it's something  
23 that can be negotiated among the parties, and mitigate  
24 certain actions if there are issues that we need to take  
25 care of. But in general, I would say that the way the law

34-09-23  
(Cont.)

34-10-12

Comment 34-11-22

Response:

To clarify the response given during the public hearing, the statement was based on the current state of DOE knowledge and was limited to the land tracts that are the subject of this CT EIS. The DOE recognizes that additional information may become available in the future. The reader is referred to General Issue 7, Homesteaders Association Claims, in Chapter 2 of this appendix.

1 is designed, transfer the properties without  
2 consideration, certainly leads in a direction where the  
3 recipients are fairly free to do what they want to do with  
4 those properties.  
5 A SPEAKER: The next question is you  
6 mentioned the Corps report, on who owned, who formally  
7 owned the land. As I recall, everyone was really happy  
8 with that report. Is that sort of a done thing or are we  
9 going to hear more about that in lawsuits?  
10 MR. MARTINEZ: I am sure that for those  
11 folks, referring to the Homesteaders of the Pajarito  
12 Plateau, for them it is not a done thing. They still have  
13 concerns and they still have issues.  
14 With regards to the land transfer, I will just  
15 clarify,, out of this 4646 acres, Rendija Canyon is the  
16 only area that has some formerly-owned pieces of property  
17 on it. There is a small section here, a section there,  
18 and here and here. So Rendija Canyon is about 908 acres.  
19 Approximately 92 acres were formerly owned.  
20 None of the other parcels for land transfer were  
21 ever formerly owned by anyone other than the government.  
22 And so this is the extent of any claims that would ever  
23 arise.  
24 The Corps of Engineers have said these are free  
25 and clear and the government has condemned them properly

34-10-12  
(Cont.)

34-11-22

1 or purchased them properly and we own those, but the  
2 homesteaders' claims are broader. They express an  
3 interest in getting compensation for all the lands in Los  
4 Alamos that were taken, some of which there are houses on,  
5 County buildings are on. Their interest is broader than  
6 just land transfer parcels.

7 A SPEAKER: And you mentioned that, you  
8 know, some of this land would go to the County, some will  
9 be to the Pueblo. If both parties, you know, wants a  
10 piece, I mean, who figures that out?

11 MR. MARTINEZ: The decision -- the  
12 negotiation is strictly between Los Alamos County and San  
13 Ildefonso Pueblo. The Department of Energy is not  
14 involved in that. And the way the public law is written  
15 what will happen is, if they fail to agree on a parcel or  
16 on all the parcels, then there will be no transfer. It's  
17 strictly up to the two entities.

18 A SPEAKER: So if they tie, neither gets  
19 it?

20 MR. MARTINEZ: That is basically it.

21 A SPEAKER: Unless the DOE can see some  
22 reason not to do it? I guess a final question is, I think  
23 in the comments a lot of people are concerned about what  
24 is going to happen to the land. In terms of the, you  
25 know, no Action Preferred Alternative, some of us are

34-11-22  
(Cont.)

34-12-17

34-13-06

**Comment 34-12-17**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

**Comment 34-13-06**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. For a more detailed discussion of the issues associated with the DOE's obligations regarding the No Action Alternative, please see General Issue 3, Basis for DOE's Decisions, in Chapter 2 of this appendix.

Additionally, to elaborate on the question of being able to put a certain "spin" on the Preferred Alternative, the DOE is responsible for determining its Preferred Alternative after consideration of all the information available, including consideration of public comments.

34-13-06  
(Cont.)

1 really concerned about what might happen to the land.  
2 I mean, is there an option to, say, to lobby for  
3 the No Action, or to try to put a certain spin on the  
4 Preferred Alternative?

5 MS. WITHERS: Essentially our options to  
6 choose the No Action Alternative were pretty much limited  
7 to the land not being suitable per the requirements under  
8 the law. Otherwise we're obligated under the law to  
9 convey or transfer.

10 I just want to interject that one of the  
11 appendices here, Appendix A in the Environmental Impact  
12 Statement, does have a full copy of the law, so if you  
13 wanted to read the full law, it's only a couple of pages,  
14 it's pretty short. I know that the rest of this is  
15 delightful reading and I strongly encourage everyone  
16 taking it home and pursuing it, but if you just wanted to  
17 read the Act itself, that is copied in full in this  
18 document.

19 THE MODERATOR: I would add also to your  
20 question about the homesteader thing, many questions came  
21 up in last night's session. You can get that transcript  
22 when it comes out, because what Dennis talked about in  
23 terms of many of the comments are that they are claimants,  
24 as Dennis said. I don't know if you want more detail on  
25 what was said. It will be in there.

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Comment 34-14-01

Response:

To elaborate on the comment given during the public hearing, the risk of wildfire to LANL was analyzed in the LANL Site-Wide EIS. The CT EIS discusses wildfire in Rendija Canyon in Section 5.3.7 of Chapter 5 in the main report. The Interagency Wildfire Management Team is a fire-planning organization with members from different government agencies and entities around Los Alamos.

1 MS. STEVENS: Faith Stevens from the Los  
2 Alamos Monitor, and I would like to ask if people who do  
3 have questions would give their names so I can get the  
4 right person with the right question.

5 THE MODERATOR: It's a chance to get your  
6 name in the paper. Here it is. Other comments?  
7 Questions?

8 MR. SWARTZ: I'm sure I don't need to point  
9 out that this wildfire question is of importance to the  
10 laboratory as well.

11 MS. WITHERS: Right. The laboratory, the  
12 Department of Energy, the County, the Forest Service,  
13 Bandelier National Monument. I believe Bandelier and I  
14 believe several other organizations in the area are all  
15 working together. This is a regional problem, not just a  
16 community problem or a lab problem. We recognize it as  
17 all of our problem.

18 MR. SWARTZ: But it's the impact of this  
19 particular decision.

20 MS. WITHERS: That we are analyzing.

21 MR. SWARTZ: That we are talking about, not  
22 the general. I realize everybody is scared, so.....

23 THE MODERATOR: Someone else here.

24 MR. MORLEY: Richard Morley, Sportsmen's  
25 Club again. We have actually talked about that at the

34-14-01

**Comment 34-15-17**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 club also. The way the club is currently configured it  
2 makes a great firebreak, the north side of the road where  
3 the range is. We've looked at what we can do at our  
4 spring cleanup this year to help remove any excess fuel  
5 there.

6 And as far as the bird issue you brought up, we  
7 have a wildlife section that is just looking for a project  
8 to do, so if we can help out with any of those plans we  
9 can bring some bodies to it.

10 MS. WITHERS: We always like volunteers.  
11 Thank you.

12 THE MODERATOR: Any other comments,  
13 clarifying questions about the Draft Environmental Impact  
14 Statement?

15 MR. SWARTZ: I guess I would like to ask  
16 the question because there are some people here. What is  
17 the time table here as far as what's known, for example,  
18 about meetings of the County with the Pueblo, and when can  
19 the public get input into this? I know that this is not a  
20 responsibility of the Department, but I think this is  
21 going to become pretty quickly much more public.

22 MS. WITHERS: Actually we have Fred  
23 Brueggeman with the County in the audience. Perhaps,  
24 Fred, you would like to field that.

25 MR. BRUEGGEMAN: At this point the tribal

34-14-01  
(Cont.)

34-15-17

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**Comment 34-16-23**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 council and the county council have held one joint meeting  
2 to talk about a process for the negotiations so we can get  
3 to an end point by November of this year. Out of that  
4 meeting I was asked to come up with actually a public  
5 information plan for the process, and we will be working  
6 on that over the next few weeks and bringing it to council  
7 for consideration.

34-15-17  
(Cont.)

8 That aside, we won't be meeting again until May,  
9 so this is a time when we're all reading these reports and  
10 trying to do our homework.

11 THE MODERATOR: Anyone else with a comment  
12 or question?

13 MR. SARRACINO: This is John Sarracino  
14 again, so I would like to ask Fred directly, is there any  
15 thought to allowing egress out of Rendija Canyon other  
16 than through existing roads in the County of Los Alamos?  
17 I think this is a fairly large issue and I suspect that  
18 the County has not addressed that and the counselors have  
19 not thought of it yet.

34-16-23

20 MR. BRUEGGEMAN: It has been thought of.

21 MS. WITHERS: That's one of the things that  
22 this environmental impact does, is it informs all of the  
23 citizens as well as all of the decision-makers about what  
24 the potential for future impacts would be, so that this is  
25 a big headstart for anyone, if we have identified

1 problems, and now it's up to the future recipients and the  
2 communities to solve the problems.

34-16-23  
(Cont.)

3 THE MODERATOR: Other comments, questions?

4 MR. FERGUSON: My name is Steve Ferguson,  
5 I'm with the Department of Energy, in the Washington  
6 office. Elizabeth, I sense a need to clarify a response  
7 to the first gentleman's question about the Department's  
8 ability to control use versus the potential for  
9 limitations in the transfers with respect to conditions on  
10 the deed.

11 We talked about that a little this afternoon.  
12 Do you want to handle it or do you want me to say  
13 something.

14 MS. WITHERS: Go right ahead, Steve.

15 MR. FERGUSON: I was afraid you would say  
16 that. Elizabeth is correct when she answered your  
17 question and said that the Department does not have the  
18 authority to specify use. The statute says that in order  
19 to convey we have to make a finding that it can be used  
20 for any of the uses that she discussed earlier.

21 That doesn't mean that either the County or the  
22 Pueblo must make that use. Having said that, there will  
23 be a process, a series of processes, where the Department  
24 is obligated to consult with, confer, with other agencies  
25 in the area, particularly with regard to threatened and



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Comment 34-17-17

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. For a more detailed discussion of mitigation issues, please see General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

1 endangered species and cultural resources that may end up  
2 with mitigations in the nature of limitations on the  
3 conveyance documents, in order for the Department to be in  
4 compliance with those other statutes, separate and apart  
5 from any requirements or specifications that this law  
6 requires.

7       It's a little complex, but I didn't want you to  
8 think that this would be totally a no-strings-attached  
9 conveyance in all circumstances. The Department is in no  
10 position to really specify in that regard at this time  
11 until we go through these consultations.

12       I hope that didn't muddy the water. It was  
13 intended to clarify, that there is the subtlety, and  
14 really they are sort of at odds.

15       MR. ELLINGTON: And that would apply to the  
16 tracts that go to the pueblos as well as the County?

17       MR. FERGUSON: Whether such a consultation  
18 -- I'm really digging a hole here. Whether the  
19 consultation would end up with such limitations could in  
20 large part depend on who it's going to and what is the use  
21 they want to make of it. And this is a negotiation  
22 process that Elizabeth referred to. We are way out in  
23 front of that, or behind that now. It's going to happen  
24 way down the road.

25       MS. WITHERS: And I was just going to say

34-17-17

1 that I have spoken with the State Historic Preservation  
2 Officer, both with respect to our obligation to protect  
3 historical resources, as well as the head of the Fish and  
4 Wildlife Service area office in Albuquerque who has a  
5 regulatory authority, and in both cases we have reached  
6 the agreement that we cannot proceed with the Department  
7 of Energy's compliance process until we know who gets  
8 which tract because that very much will then determine  
9 just what the potential for impacts are based on the  
10 future contemplated uses by that organization.

11 So we are delaying our completion of  
12 consultation until after we know that piece of information  
13 in both cases. So we plan to then pick that piece up  
14 after we know this agreement of the split between the two  
15 parties on the pieces of property. And so probably about  
16 this winter, in December, January time frame, then we'll  
17 take up that action again and complete the consultation  
18 that the Department of Energy needs in order to meet our  
19 requirements. And it probably will be a process. I don't  
20 expect it to be an event.

21 We will be working with the County and the San  
22 Ildefonso Pueblo to reach agreements and mitigations to  
23 satisfy our requirements. We are not able to violate  
24 another law in order to meet another law. So we'll take  
25 care of business.

34-17-17  
(Cont.)

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**Comment 34-18-14**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 A SPEAKER: During this consultation with  
2 the parties would the public have the opportunity to  
3 provide input on their concerns about concerned use of the  
4 land?

5 MS. WITHERS: Typically speaking, those  
6 processes are not open to the public input in the same way  
7 that the National Environmental Policy Processes are.  
8 However, I'm certain that the two separate parties would  
9 appreciate input.

10 A SPEAKER: But there is no process to  
11 collect input other than by the initiative of a concerned  
12 party?

13 MS. WITHERS: That's correct.

14 THE MODERATOR: Any other comments,  
15 questions on the Draft Environmental Impact Statement?  
16 Not hearing any, would you like for us to take a break,  
17 Elizabeth, Dennis?

18 MS. WITHERS: Why don't we take about a  
19 fifteen-minute break.

20 THE MODERATOR: Okay, we will reconvene at  
21 approximately five after 7:00. Remember the environmental  
22 restoration open house is to the left, and we will  
23 reconvene to see if there are comments at that point.  
24 Thank you.

25 (There was a brief recess.)

34-18-14

1 THE MODERATOR: We are going to reconvene.  
2 If you are in the back of the room and you intend to  
3 continue your conversation, please move farther back or  
4 into the environmental restoration room.

5 All right, we will begin. Like I said, if you  
6 are having a conversation in the back of the room, could  
7 you either have a seat if you plan to be in the input  
8 session or move farther become in the lobby and continue  
9 your conversation. Thank you.

10 I see a couple of new faces who were not here  
11 for the earlier session, I believe. Let me just make sure  
12 you are clear on what happened earlier. We had a very  
13 quick review of the public law, what started this entire  
14 process. We also got an overview of the Environmental  
15 Impact Statement process itself. There is more printed  
16 information. This was just a brief overview to bring  
17 people up to speed on the basics. There is much more  
18 printed information out in the lobby to describe it in  
19 greater detail.

20 After that we have been taking comments and also  
21 clarifying questions about the Draft Environmental Impact  
22 Statement. That is the purpose of this session is to get  
23 public input on that document.

24 So is there anyone here -- you do not have to  
25 have signed in. I don't think we have a new sign-in

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**Comment 34-19-04**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. The reader is referred to General Issue 2, Deed Restrictions, in Chapter 2 of this appendix.

1 sheet. We didn't see that many people so we can handle it  
2 informally. If you weren't here earlier, we would ask you  
3 to use the microphone because we found last night people  
4 could often hear the answers but they could not always  
5 here the questions. So if you would hold the microphone  
6 just an inch or two from your mouth and speak into it we  
7 can hear you.

8 Also we have a reporter here from the local  
9 paper. She would like to attribute quotes and so forth.  
10 If you don't mind giving your name, that's fine. You  
11 don't have to, but she has made that request. If you want  
12 your name in the public record as having made a comment or  
13 the name of your organization, please mention it.

14 Anything else we need to mention before we  
15 continue?

16 All right, is there anyone here with additional  
17 comments or clarifying questions about the Draft  
18 Environmental Impact Statement?

19 MS. HORDE: My name is Dorothy Horde. I'm  
20 concerned about the cultural resources. The County has no  
21 equivalent of the Antiquities Act, and you have commented  
22 that you can put deed restrictions. Can you tell us in a  
23 little more detail what sort of protection that you can  
24 give cultural resources? Do you identify them? The  
25 County is not accustomed to identifying those resources.

34-19-04

1 MS. WITHERS: Let me take a shot at that.  
2 I have already had conversations with the State Historic  
3 Preservation officer talking about this very problem. We  
4 have come to the agreement that we won't -- the Department  
5 of Energy won't pursue the consultation process until  
6 after we know which recipient party is going to receive  
7 which tract, since that's a decision that is strictly up  
8 to San Ildefonso Pueblo and Los Alamos County.

9 At that time, which could be all the way to the  
10 end of November of this year, after that point then I  
11 would pick back up and complete the consultation process  
12 that is required under the agency.

13 As part of that consultation and regulatory  
14 requirement to protect the sites, the cultural resources,  
15 historic resources, et cetera, we would have to be able to  
16 meet that, and we anticipate that one way to do that would  
17 be to get an agreement going with the County, with San  
18 Ildefonso's input, so that those cultural sites are  
19 protected to some extent.

20 And I qualify that, because there are many  
21 different types of mitigations that could be possible. We  
22 will be figuring out which type is best for a particular  
23 site, with input from San Ildefonso Pueblo and possibly  
24 some of the other pueblos in the area. They have a  
25 specific site that is of importance to them, that happens

34-19-04  
(Cont.)

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1 to fall in one of these tracts. We don't even know all of  
2 the sites that might be of importance because they haven't  
3 been identified to us. But if they so desire, then they  
4 can participate in the process as well.

5 We are required by law to ask them if they can  
6 tell us or in some way indicate an area of interest.

7 Let's see. I'm anticipating that the  
8 consultation process and reaching an agreement for  
9 protection could take several months, and it could even  
10 take years, depending on the sites. So we have been  
11 engaged in a process of sending our archeologists and  
12 specialists out to these sites, to these tracts,  
13 identifying all of the potential areas that they can tell  
14 would be of interest in the preservation process, so we  
15 can get a handle on what's out there.

16 So these tracts, such as TA-74 Tract is very  
17 rugged terrain, and all of it previously had not been  
18 mapped. That's true of several of the tracts. We should  
19 finish that effort, I believe by the first part of this  
20 spring. There were just a couple of little things we were  
21 mopping up this season. So we will be in a good position  
22 by the time we are able to sit down with the State  
23 Historic Preservation and the Advisory Council and figure  
24 out what potential mitigations are appropriate for each  
25 individual site.

34-19-04  
(Cont.)

1 We don't have -- I can't really give you a  
2 standard answer, because there are so many different types  
3 of these resources. They really cover the range all the  
4 way from lithic scatters to pueblo areas, to historic  
5 buildings, so there is a whole gamut there we are going to  
6 have to be looking at. We are going to have to look at  
7 each tract and each site specifically and reach  
8 agreement. It should be a fun process.

9 MS. HORDE: Thank you.

10 THE MODERATOR: I forgot to mention also  
11 tenemos un interprete. If you need a Spanish  
12 interpreter, the Department of Energy has provided one and  
13 he is here this evening, because some new people came in.  
14 Does anyone?

15 Any other comments, questions?

16 MR. SWARTZ: It's nice to -- I get the  
17 impression I can ask a question. Sorry. It's conceivable  
18 as far as in the species and stuff that this business that  
19 you were discussing in terms of the sites might actually,  
20 once you got into the negotiations with, say, the County  
21 or the Pueblo for all that, it might make it, the habitat  
22 that you might have to protect, goodness knows for a  
23 particular endangered species, might make the tract  
24 completely in the end inappropriate for the agency that  
25 you are dickering with. Can you address that?

34-19-04  
(Cont.)

34-20-07

**Comment 34-20-07**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. For a discussion of mitigation issues, please see General Issue 2, Deed Restrictions, in Chapter 2 of this appendix and Chapter 16 of the main report. For clarification, should habitat for a threatened or endangered species be present on a tract, conveyance or transfer could still occur. One of land uses identified in PL 105-119 is for environmental preservation; as long as the land can be used by the recipients for one of the three land uses identified in PL 105-119, it can still be conveyed or transferred.



1 MS. WITHERS: I sure can. As it just  
 2 happens, the Department of Energy has just completed an  
 3 Endangered Species Habitat Management Plan for the Los  
 4 Alamos National Laboratory. We have just gone through the  
 5 consultation process with the Fish and Wildlife Service  
 6 and got their concurrence that the implementation of that  
 7 plan would not likely lead to an adverse effect on the  
 8 species.

9 So we are very happy about having that plan in  
 10 place, and knowing where we have areas of habitat for the  
 11 endangered species that are in this region.

12 Now, one thing I might point out, and you have  
 13 sort of hit upon this earlier tonight, is that over the  
 14 ten-year time period species will be listed, delisted,  
 15 they could change. New species could fly in or walk in,  
 16 or seeds could be dropped in.

17 MR. SWARTZ: I'll bring one in.

18 MS. WITHERS: That's never been suggested  
 19 before. So this is something that could be a quite  
 20 lengthy process. We know already that it's not going to  
 21 be an event, but it could range further out in time than  
 22 you might initially think that it would. Until we  
 23 actually convey or transfer a particular tract we're  
 24 always going to be on the hook to protect any species that  
 25 is in that area and their habitat under the law.

30-20-07  
(Cont.)

Comment 34-21-07

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 The other thing that you hit upon was, let's see  
2 if I can remember your question there, your first one.  
3 MR. SWARTZ: Don't ask me.  
4 MS. WITHERS: Well, just as a little bit  
5 further information, we do have the areas already mapped  
6 that have habitat or species. There aren't very many  
7 areas in Los Alamos National Laboratory that do have  
8 actual species nesting or living, raising young, that are  
9 endangered species, but we do have lots of habitat. We do  
10 now have a very good group awareness of where that habitat  
11 is and what the likelihood of its being impacted would  
12 be.  
13 There aren't any particular tracts that are  
14 totally within a habitat area. There are several tracts  
15 that have small amounts of habitat nesting or roosting  
16 habitat in particular, within the tract. Almost all the  
17 tracts have potential foraging habitat. For the peregrine  
18 falcon the entire flank of the mountains is considered  
19 foraging habitat, and they have quite a wide range, the  
20 peregrine falcon does, so it's pretty hard to avoid them.  
21 I think that's about most of the points I wanted  
22 to make. Did you have any further questions on this  
23 issue? Since you've got the floor there we might as well  
24 finish, huh?  
25 MR. SWARTZ: Well, it's quite clear, if you

30-20-07  
(Cont.)

34-21-07

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**Comment 34-22-17**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left.

1 expand the town you are going to reduce the habitat.  
 2 MS. WITHERS: That's correct.  
 3 MR. SWARTZ: And it doesn't matter whether  
 4 the bird is nesting, you know, within 50 feet or 100 feet  
 5 or maybe even 500 feet of the boundary of the particular  
 6 tract you are considering, there can't be any question  
 7 about expanding the town and reducing the habitat.  
 8 MS. WITHERS: Expanding the town would  
 9 reduce the habitat, and that is noted in the Environmental  
 10 Impact Statement as being a potential impact, but most of  
 11 the habitat that is within these tracts is foraging  
 12 habitat or roosting habitat and not core nesting habitat,  
 13 which for the perpetuation of the species is really the  
 14 critical habitat.  
 15 We have a couple of bird experts in the audience  
 16 here and if they would like to add anything, I offer them  
 17 the opportunity to do so.  
 18 A SPEAKER: Is Dave Keller here?  
 19 MS. WITHERS: No, I don't see Dave Keller  
 20 in the audience.  
 21 THE MODERATOR: If there aren't, I will  
 22 move to a different topic unless you want to continue this  
 23 topic.  
 24 A SPEAKER: A few more questions here.  
 25 When you-all were figuring out ten 10 parcels, I imagine

34-21-07  
(Cont.)

34-22-17

1 you had to look at a crystal ball and figure out what was  
2 available, you know, as things progress, and there are  
3 other tracts that you thought, well, we need to hold this  
4 back for now, and then you later figure out we can give it  
5 up. Did those go through the same process or have we seen  
6 the last land until 2007?  
7 MR. MARTINEZ: I take your question to mean  
8 will any more parcels be added? No, the only parcels that  
9 can be transferred under this public law are those that  
10 were identified in the report to congress which are these  
11 parcels here. The only thing that can happen is that  
12 things can drop off the list if for some reason they can't  
13 be transferred, but nothing can be added to the list.  
14 A SPEAKER: So this is the last thing we  
15 see until 2007 or, you know.  
16 MR. MARTINEZ: Under this law. I can't  
17 control, if congress passes something else, but under the  
18 authority we have in this law.  
19 MS. WITHERS: They did do a really thorough  
20 screening process to try to anticipate new projects, and  
21 to the best of their ability they have considered that  
22 these are the only ten areas that are likely to become  
23 suitable before the end of the year 2007.  
24 A SPEAKER: And you mentioned earlier,  
25 that, you know, these ten tracts, two were likely before

34-22-17  
(Cont.)

34-23-06

**Comment 34-23-06**

Response:

The comment was addressed during the public hearing. The response is presented in the transcript on the left. See Section 1.4.3 in Chapter 1 of the main report for a discussion of the Preferred Alternative.

1 the year 2000, the rest were going to have to wait. Is  
2 there any order or priority list, or how you deal with  
3 those remaining tracts, or is it just whatever gets  
4 cleaned up first?

5 MR. MARTINEZ: Well, as part of the  
6 negotiations that the County and Ildefonso conduct, at  
7 some point we will be going to them and asking them to  
8 prioritize for us which parcels they think makes sense to  
9 them to go first, and we will kind of put that up against  
10 our list of what the ER folks tell us are easiest to clean  
11 and we will work that way.

12 MS. WITHERS: There is a separate process  
13 from the Environmental Restoration Work that is going to  
14 be done on these tracts and it does involve negotiation,  
15 consultation with the state as the representative for the  
16 Environmental Protection Agency for the RCRA law. So  
17 there is a whole process that they will go through to  
18 determine which of the tracts they are able to clean up.  
19 And part of the information that will get fed in, of  
20 course, like Dennis said, a big part is the desires of the  
21 future recipients.

22 THE MODERATOR: Would you say what RCRA  
23 is?

24 MS. WITHERS: I'm sorry, I have been  
25 chastised about using those acronyms. Resource

34-23-06  
(Cont.)

1 Conservation Recovery Act regulation. That's what LANL is  
2 operated under as opposed to some of the other  
3 environmental regulations. I am going to be careful and  
4 not say what they are so I don't have to explain what the  
5 acronym is.

6 THE MODERATOR: You folks have done very  
7 well. I just wasn't sure if they knew what that stood  
8 for.

9 Anyone else with a comment or clarifying  
10 question about the Draft Environmental Impact Statement?  
11 While you're thinking, if you have just came in, we had a  
12 meeting yesterday afternoon, in Pojoaque, two to five, and  
13 one in the evening there from six to nine, taking public  
14 comment. We had one this afternoon here from two to five  
15 and this one that you are in now.

16 At all of those meetings the comments have been  
17 recorded, and if you just came in there will be a complete  
18 record of those in about a week and a half available in  
19 the reading room here in Los Alamos. Is that right? The  
20 DOE reading room. And that is located for those who may  
21 not know?

22 MS. WITHERS: Right over here on Central  
23 street about a block away.

24 THE MODERATOR: Are there any other  
25 comments then, any other clarifying questions? Yes.

Comment 34-24-12

Response:

PL 105-119 obligates the DOE to convey and transfer the subject tracts of land (see Appendix A of this CT EIS). After any tract is conveyed to the County of Los Alamos, the DOE will not have any authority over the use of that tract. The DOE and the recipients are planning on exploring means to mitigate impacts to environmental and cultural resources. For a more detailed discussion of mitigation issues, please see General Issue 2, Deed Restrictions, in Chapter 2 of this appendix and Chapter 16 of the main report.

To clarify the response provided during the public hearing, the DOE could convey the land, reserving rights-of-way or with access requirements for such purposes as to facilitate utility line repairs or to perform environmental monitoring.

34-24-12

1 A SPEAKER: I have probably a very  
2 simplistic question, but is there any possibility, is the  
3 avenue potentially open that land transfer to the County  
4 could be protected, could continue to be in the state that  
5 it's in now, or is that like not even of interest or  
6 possibility?

7 THE MODERATOR: And not transferred you  
8 mean?

9 A SPEAKER: No, if it is -- here is my  
10 assumption I'm running on and it could be inaccurate.  
11 That land transfer to the County, the first thing they  
12 would look at is how can we develop it. I'm just  
13 wondering, and you may not even be the right people to  
14 ask, but once you give it over it's not -- you have  
15 nothing to do with it anymore. That's correct, once the  
16 land is transferred it has nothing to do with LANL  
17 anymore? Is that correct?

18 MS. WITHERS: If there are no provisions  
19 made in the transfer documentation, that's correct.

20 A SPEAKER: So I guess that is my  
21 question. Is it still potential, the potential is there  
22 for you to do certain type of protection on some of it in  
23 the way that you transfer it then? Is that possible?

24 MS. WITHERS: That's conceivably possible,  
25 yes. I think probably I should say that both parties have

1 identified their contemplated future uses and that  
2 information was used in the Environmental Impact Statement  
3 to then look at what kind of impacts would result from  
4 that contemplated future use. We did ask that they give  
5 us a list on what those contemplated future uses would be,  
6 and I think they both took it very seriously.

7       There are some tracts that they both identified  
8 where there would be little development or no development  
9 take place, so you might want to take a look at the list  
10 and take a look at those tracts and what is contemplated  
11 there.

12       As far as determining future uses that are  
13 somehow different from what they've analyzed, that would  
14 be up to the recipient party.

15       THE MODERATOR: A brief summary of those  
16 anticipated uses is on that wall out there for each  
17 tract.

18       MS. WITHERS: That's right, the lighted  
19 diorama with the pictures and maps has just a very brief  
20 summary of what the contemplated future uses are. A much  
21 more detailed analysis with a list of assumptions of what  
22 those contemplated future uses mean in relationship to the  
23 conditions of the tract is in the Environmental Impact  
24 Statement.

25       We have arranged this in kind of an unusual

34-24-12  
(Cont.)



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1 way. Since it was kind of an unusual project we felt that  
2 was appropriate. We took and gave individual chapters to  
3 each of the ten tracts, so Chapters 4 through 15 are each  
4 of the individual tracts, and it goes from an explanation  
5 of existing conditions of each tract to the No Action  
6 Alternative and then the Proposed Action Alternative,  
7 which includes the contemplated future uses.

8 A SPEAKER: Thank you very much.

9 MS. WITHERS: Sure.

10 THE MODERATOR: Are there any other  
11 comments or questions? It's 7:30. I'm not hearing any  
12 more. We are scheduled to go from six to nine. The  
13 pattern has been we have taken a couple of breaks and  
14 reconvened in case someone had come late so we didn't miss  
15 them, but Dennis, Elizabeth?

16 MS. WITHERS: Half an hour.

17 THE MODERATOR: We will reconvene then at  
18 eight o'clock and see if there are some people who have  
19 arrived at that time or if you have new questions. If you  
20 just arrive, if you are interested in the environmental  
21 restoration part of this, the informational open house is  
22 in the room just to the left as you are going out. It's  
23 not a hearing, it's not a place to get comments. It's a  
24 place to really find out about those issues. They are not  
25 taking formal comments on the Environmental Impact

34-24-12  
(Cont.)

1 Statement at all. That is all done in here.  
2 Thank you.  
3 (There was a brief recess.)  
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1 THE MODERATOR: If you are here to give  
2 comments or ask questions about the Draft Environmental  
3 Impact Statement, please come on in and have a seat. We  
4 will begin in just about a minute. I will give you folks  
5 about a minute or so to get here, into the room. I  
6 announced this in the environmental restoration room as  
7 well, so people in there, they know to come on in.  
8 So everybody understand, if they have comments  
9 they are to come on in. So let me ask, are there any  
10 additional questions or clarifying questions about the  
11 document, the Draft Environmental Impact Statement? Not  
12 hearing any, then I will ask Dennis and Elizabeth.  
13 MR. MARTINEZ: This is the second time we  
14 have had a break like this and haven't had any comment,  
15 and I guess I would like to ask if anyone objects, or if  
16 they don't object, we will adjourn the meeting now and  
17 call it an evening. I ask for a show of hands if anyone  
18 does object and would like us to continue.  
19 I don't see any hands. We will record that. I  
20 guess we'll call it an evening then. Thank you.  
21 THE MODERATOR: Let me just make sure, if  
22 someone has a comment, if someone gets home and says I  
23 have a comment but I couldn't get to the meeting, they  
24 can --  
25 MS. WITHERS: There are a number of

1 different ways that you can get comments in to me until  
2 April 12th, which is the end of our comment period. There  
3 is a list on the back wall of various different addresses  
4 and it includes an e-mail address, a 1-800 number that we  
5 have established, our mailing address, our street  
6 address. Come by, call me, please get your comments into  
7 me.

8       We also have back at the registration table, we  
9 have written comment forms for your convenience, if you  
10 would like to use those as well. So we have various  
11 different ways established, and we hope that everyone who  
12 would like to comment on the Environmental Impact  
13 Statement, the conveyance and transfer of the land tracts,  
14 will do so.

15       Thank you very much.

16       THE MODERATOR: Thank you and goodnight.  
17       (The meeting was adjourned at 8:05 p.m.)

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COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

REPORTER'S CERTIFICATE

I, the undersigned Court Reporter and Notary  
Public, HEREBY CERTIFY that I reported in stenographic  
shorthand the proceedings set forth herein, and the  
foregoing is a true and correct transcript of the  
proceeding to the best of my ability.

I FURTHER CERTIFY that I am neither employed by  
nor related to any of the parties or attorneys in this  
case, and that I have no interest whatsoever in the final  
disposition of this case in any court.

\_\_\_\_\_  
BARBARA K. HARRIS, RPR-CM  
Certified Court Reporter #114  
My Commission Expires: 12/31/99

Prepared with the Participation of these Cooperating Agencies:

U.S. Department of Agriculture:

- Forest Service (Santa Fe National Forest, Española District)

U.S. Department of the Interior:

- National Park Service, Bandelier National Monument
- Bureau of Land Management, Taos Office
- Bureau of Indian Affairs

San Ildefonso Pueblo

Incorporated County of Los Alamos