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OFFICE OF GOVERNOR

May 13, 2008

Theodore A. Wyka  
Complex Transformation SPEIS Document Manager  
Office of Transformation, NA-10.1  
US Department of Energy/NNSA  
1000 Independence Avenue SW  
Washington, DC 20585

Re: **Santa Clara Pueblo's Comments on the Draft Complex Transformation  
Supplemental Programmatic Environmental Impact Statement (DOE/EIS-0236-S4)**

Dear Mr. Wyka:

Santa Clara Pueblo submits the following comments on the draft Complex Transformation Supplemental Programmatic Environmental Impact Statement ("SPEIS" in general or "Draft SPEIS" when referencing the draft document).

Based upon our face-to-face meeting on March 12, 2008, my letter dated April 1, 2008 confirming that discussion, your subsequent letter to me dated April 2, 2008, my subsequent correspondence with you, and our direct follow-up discussions including our telephone conference of April 7, 2008, I trust these comments will be considered timely and fully incorporated into the record.

Although the Draft SPEIS states that the agency proposing the action discussed therein is the National Nuclear Safety Administration ("NNSA"), because that agency is part of the U.S. Department of Energy ("DOE"), with which Santa Clara Pueblo enjoys a formal government-to-government relationship, the comments here reference DOE, instead of its agencies, as the institution proposing the actions in the Draft SPEIS. These comments, of course, apply in full force to the NNSA as an agency of the DOE.

Santa Clara Pueblo appreciates the enormity of the task at hand for the DOE. Transformation of the entire nuclear weapons complex incorporates many different facets and the Draft SPEIS addresses many different tasks as part of its proposed action. Santa Clara community members care about protecting our country and we do not necessarily object to the general idea of

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consolidation of the nuclear weapons complex across the country or the goals of trying to make the nuclear weapons complex safer and less costly to maintain. The Pueblo, however, has extreme concerns about the increase in plutonium production at LANL contemplated in the SPEIS and we do not believe any increase is warranted at this time. We object to DOE making plutonium pit production permanent at LANL and to DOE increasing any pit production at LANL above the currently authorized level of 20. The Pueblo is also shocked at the DOE's paltry environmental justice analysis and the manner in which the SPEIS underestimates the impacts of its proposed actions on the Pueblo, including multiple exposures and cumulative impacts, in contravention of the National Environmental Policy Act ("NEPA").

In addition, Santa Clara Pueblo is insulted that the DOE never conducted government-to-government consultation with the Pueblo as we requested regarding our concerns with the analysis in the DOE's 2006 draft site-wide environmental impact statement ("SWEIS") for the next five years of operations at Los Alamos National Laboratory ("LANL"). The Los Alamos Site Office has met with us on broader programmatic concerns raised in our comments but had to be clear that the SWEIS concerns were separate and were being handled at DOE headquarters in D.C. We are told that the final LANL SWEIS has just been issued but it will take some time for us to review yet another voluminous document. Consequently, our references here still look to the draft SWEIS. The fact that Santa Clara Pueblo's request for consultation prior to the finalization of the LANL SWEIS was disregarded by DOE shows enormous disrespect for our government-to-government relationship as formalized in the *U.S. Department of Energy American Indian & Alaska Native Tribal Government Policy*, DOE Order 1230.2 as revised on October 31, 2000 and reaffirmed by Secretary Bodman on January 20, 2006 ("DOE Indian Policy") and more specifically through the *Restatement of Accord between the Santa Clara Pueblo, a Federally Recognized Tribe, and the United States Department of Energy* (October 31, 2006) ("2006 Accord"). The DOE appears to have forgotten that the unique legal status of American Indian Tribes create an important requirement for the DOE, as the federal trustee, to consult directly with Tribal governments when contemplating actions that may affect Tribal members or their welfare, or Tribal land and resources.

Our concerns go beyond DOE's disrespect, however, and actually relate to the analysis in the Draft SPEIS. The DOE, through the draft LANL SWEIS, failed to comply with NEPA mandates and environmental justice requirements. It appears at times that the DOE is importing much of that same faulty analysis into this Complex Transformation SPEIS while at other times not even doing as much as was done in the incomplete LANL SWEIS analysis.<sup>1</sup> The consequences of the

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<sup>1</sup> For example, in the Draft SPEIS' discussion of the so-called Capability-Based Alternative, the DOE explains that the 2006 draft LANL SWEIS assessed the alternative of interim plutonium pit production at 50 pits annually and states that "[m]anufacturing pits in TA-55 at this level would likely cause only minor differences in impacts on land use, visual resources, water resources, geology and soils, air quality, noise, ecological resources, public health, cultural resources, and infrastructure." Based on this, the DOE concludes there is no need to even

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DOE's actions now of course, are much more serious for Complex Transformation since the SWEIS process only governs the next five years of LANL operations but this Complex Transformation SPEIS process sets in motion decisions for at least the next 65 years of LANL operations.<sup>2</sup>

Worse yet, what was deemed in the 2006 draft LANL SWEIS to be "expanded operations" in terms of plutonium pit production at LANL is now referred to as the low end of what is needed for LANL pit production in the Complex Transformation Draft SPEIS.<sup>3</sup> To continue to expand further plutonium pit production at LANL and to make that production capacity permanent at LANL through this Complex Transformation NEPA process is irresponsible when past impacts on the environment from LANL operations, and even the next five years of impacts on the environment from proposed LANL operations, have not yet been addressed in any meaningful way.

This is no theoretical or sterile regulatory matter for Santa Clara Pueblo. The Pajarito Plateau, where LANL is situated, contains many areas of traditional importance to the Santa Clara Tribal community. Environmental degradation of, or improper clean-up of, this place that is profoundly holy to the Santa Clara community affects the cultural survival of Santa Clara Pueblo. What may seem to others only like barren or unused land near LANL is actually our Bethlehem, our Mecca, our Jerusalem. Imagine how you would react to hearing about a government proposal to make permanent the increased production of plutonium triggers for nuclear weapons, with all its related radioactive and hazardous waste generation, in your most holy place of worship. As you review these comments, please bear in mind that, prior to the Manhattan Project, the Pajarito Plateau was pristine and Santa Clara's connection to this area goes back to the beginning of time.

Because Santa Clara Pueblo is barely even mentioned in the Draft SPEIS, these comments begin

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discuss these impacts related to 50 pits per year in this Draft SPEIS. See Draft SPEIS at 5-3. This completely disregards the Pueblo's 22-page comment letter on the SWEIS (which we ask be incorporated into this record) regarding the far-from-minor impacts on Santa Clara Pueblo from the DOE's proposal in the SWEIS for LANL operations, including the preferred alternative to expand pit production to 50 certifiable pits per year. Another example in which the Draft SPEIS does not even acknowledge as much as the incomplete analysis in the draft LANL SWEIS can be found in our comments regarding cumulative impacts in section IV herein.

<sup>2</sup> LANL is the preferred site for a new Consolidated Plutonium Center or CPC. The Draft SPEIS states that a CPC would be operational by approximately 2022 and would have a "service life of at least 50 years." Draft SPEIS at S-28. Thus, Complex Transformation could affect at least the next 65 years of operations at LANL.

<sup>3</sup> As discussed in section III, there are significant new circumstances and information that affects the proposed plutonium pit production decisions for the LANL SWEIS. Consequently, a supplemental LANL SWEIS is warranted.

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with a brief background description of Santa Clara Pueblo. That is followed by a listing of our various concerns with the Draft SPEIS, including the failure to comply with various laws, policies, and executive orders, resulting in an underestimation of impacts to Santa Clara Pueblo, in contravention of environmental justice guidance and NEPA mandates. We conclude with a summary of next steps that must be taken in order to comply with the law.

## **I. Overview regarding Santa Clara Pueblo**

Santa Clara Pueblo is a federally-recognized Indian tribe located in northern New Mexico, approximately 25 miles northwest of the City of Santa Fe. Much of the City of Española, approximately one mile to the west of our Tribal government offices, actually is located within the exterior boundaries of Santa Clara lands. Since most of the maps of LANL in the Draft SPEIS fail to even include Santa Clara Pueblo, two maps indicating our location relative to LANL are attached to our comments. While our Tribal offices are approximately 18 miles away from LANL, our closest border is only about 5 miles from LANL. Our traditional lands include lands taken for the Manhattan Project.

While we always will emphasize the need for DOE to respect its government-to-government relationship with the Pueblo, Santa Clara Pueblo is not only a government in some bureaucratic sense of the word. In the broader cultural sense, we are also an Indian community of people, a society unto ourselves numbering less than a few thousand, distinct from every other Indian community in our traditions. We have similarities with the other Pueblos in New Mexico, especially those who also speak our Tewa language, but we are a separate sovereign Indian nation, recognized as such over the past 400 years by three different sovereign governments – Spain, Mexico, and the United States of America. Tribal leaders at Santa Clara Pueblo still carry the canes presented to our ancestral leaders by the Spanish and Mexican governments, as well as a similar cane presented by President Abraham Lincoln after New Mexico was annexed by the United States. Tribal protection and management of our natural resources along our ancestral homelands in the Jemez Mountains, Pajarito Plateau, and Rio Grande Valley began many thousands of years ago, long before the Spanish, Mexican, or American periods of our history.

The modern-day boundaries of our Pueblo include over 53,000 acres of land. This acreage figure includes some of our traditional lands that we have fought to regain but does not encompass all of our aboriginal territory. Many of the various vegetative communities and the innumerable wildlife species they support have significant traditional and spiritual value to us as a people. The Pajarito Plateau contains many areas of cultural importance to our people and our cultural practices connected to these areas continue to this day. Some of these practices will be highlighted in our comments as we discuss impacts from proposed activities in the Draft SPEIS

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to the air, soils, and water upon which we and the plants and animals depend.

It is not an acceptable solution to us that we, as a Tribal community and a land-based society, be asked to make sacrifices in where or how we practice our traditions in order to preserve our health from the risks posed by actions of the federal government. Because Santa Clara Pueblo is a distinct society and we are very few in number compared to the general population, and because our interaction with the natural world is considerably greater than the general population, LANL operations can profoundly affect our way of life. It is for this reason that we raise our concerns with the Draft SPEIS and that we insist that impacts be properly addressed.

**II. There are inconsistent statements in the Draft SPEIS regarding the No Action alternative and regarding the 2006 LANL SWEIS which stymy public understanding**

The Council on Environmental Quality ("CEQ") has issued regulations and other guidance materials interpreting NEPA. CEQ regulations state that NEPA "is our basic national charter for protection of the environment." 40 C.F.R. §1500.1(a). Those regulations also mandate that federal agencies shall, to the fullest extent possible, ensure that environmental impact statements are clear and understandable in order to facilitate public involvement. *See, e.g., id.* at §1500.2 (b). Unfortunately, the Draft SPEIS contain a number of contradictory statements that only serve to confuse the public.

First, there are contradictory statements regarding what the No Action alternative really is. In one part of the document, the Draft SPEIS indicates that the Record of Decision for the 1999 LANL SWEIS, in which plutonium pit production capability at LANL of up to 20 pits per year was sanctioned, represents the No Action alternative. Draft SPEIS at 1-13 and 1-14. However, in other portions of the document, 50 pits per year is used as the No Action alternative. *See, e.g., id.* at 5-88 and 5-386.

The document also contains a number of contradictory statements about the 2006 LANL SWEIS which appear to assume an outcome for that process that had not yet been determined when the Draft SPEIS was issued and allegedly will not be determined until after this Complex Transformation NEPA process is complete. In numerous places, the document states that, through the 2006 LANL SWEIS, the DOE is evaluating increasing its current capacity to produce up to 20 pits per year at LANL. *See, e.g., id.* at 1-24 and D-10. This is an accurate statement based on the date of issuance of the Draft SPEIS and based upon the DOE's public assertions regarding the process it intends to follow. However, the document also states numerous times that LANL is "*presently reestablishing* an interim pit fabrication capacity that could provide up to 50 pits annually." *See id.* at 5-31 (emphasis added); *see also id.* at 5-64, 5-73, and 5-97.

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Besides being factually inaccurate and serving to confuse the public as to what has actually happened and what is being proposed, this repeated statement appears to pre-determine the outcome of the not-yet completed LANL SWEIS process, especially with respect to plutonium production decisions that are supposed to be made through the Complex Transformation process instead. *See id.* at S-10 (“NNSA will not make any new decisions specifically related to pit production at LANL prior to the completion of this SPEIS.”). Throughout the document, it appears that DOE already considers 50 pits to be the minimum capability in contravention of the NEPA process still underway. *See, e.g. id.* at 5-97 (discussing plutonium phase out environmental effects, assuming LANL production of 50 certifiable pits annually prior to phase out). The most current Record of Decision on the books for plutonium pit production levels is from the 1999 SWEIS, with an authorized 20 pits per year.

NEPA regulations require that agencies prepare a draft environmental impact statement with the same thoroughness as needed for final impact statements. When a draft statement precludes meaningful analysis, NEPA mandates that a revised draft of the appropriate portion of the environmental impact statement be prepared and circulated. 40 C.F.R. §1502.9(a). The 2006 Accord requires that DOE consult with the Pueblo “to assure that tribal rights, responsibilities, and concerns are addressed *prior* to the DOE taking actions.” 2006 Accord at 3 (emphasis added). In order to remedy the problems discussed above, at a minimum, the DOE must conduct government-to-government consultation with Santa Clara Pueblo on proposed revisions to the draft to fix these defects, prepare a revised draft SPEIS, and then allow the public (including Santa Clara Pueblo) the opportunity to review and comment on the revised draft document.

### **III. The “purpose and need” statement in the Draft SPEIS is not reasonably defined in light of new mandates from the President and the Congress, thereby violating NEPA**

An important requirement in any environmental impact statement is that the agency “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. §1502.13. This requirement is closely related to the duty to discuss alternatives, because the purpose of an action determines the universe of alternatives an agency must consider. *Id.* Courts will defer to agency expertise but agency discretion is not unlimited. The agency still must exercise its discretion in a manner which is reasonable, especially taking into account the facts of the situation and the important goals of informed decision-making and protection of the environment found in NEPA.

The purpose and need statement in the Draft SPEIS assumes outdated requirements regarding a need for increased plutonium production capacity. This assumption is not reasonable in light of new mandates from the President and the Congress, as well as based upon the DOE’s own admissions in the document, and skews the entire NEPA analysis inappropriately. This faulty

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imbedded foundational assumption takes some digging to uncover, which is, in and of itself, a violation of NEPA and environmental justice mandates,<sup>4</sup> but is there nonetheless and infects the entire document.

(A) *Increased plutonium pit production is an imbedded assumption of purpose and need*

The proposed action in the Draft SPEIS is to “restructure the nuclear weapons complex to make it smaller and more responsive, efficient and secure, while meeting national security requirements.” Draft SPEIS at 2-14. The proposed action is divided into two parts: restructuring special nuclear material (“SNM”) facilities and restructuring research and development and testing facilities. The document states that the “underlying purpose and need” addressed in the Draft SPEIS are to:

- Maintain core competencies in nuclear weapons;
- Maintain a safe and reliable nuclear weapons stockpile; and
- Create a responsive nuclear weapons infrastructure that is cost-effective, and has adequate capacity to meet reasonably foreseeable national security requirements; and consolidate Category I/II SNM at fewer sites and locations within sites to reduce the risk and safeguard costs.

*Id.* at 2-1.

“Responsiveness” or having a nuclear weapons complex that is more “responsive” are terms that are used throughout the document not only to describe the proposed action but also to describe the purpose and need for the action. *See id.* at 1-4 (“[O]ne of the main purposes of the proposed actions in this SPEIS is to make the Complex more responsive.”); *see also id.* at 2-2 (“The alternatives analyzed in this SPEIS are based on the need for a more responsive Complex infrastructure. . .”).

“Responsiveness” is defined in the document as “the ability to successfully execute requirements of the national security mission on schedule and react to new developments.” *Id.* at 1-4; *see also id.* at 2-10. The Draft SPEIS also specifically states that the “lack of a sufficient [plutonium] pit production capacity” is evidence of a “[l]ack of responsiveness.” *Id.* at 2-10.

Where does the need for “responsiveness,” which includes having “sufficient” plutonium pits,

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<sup>4</sup> *See, e.g.*, 40 C.F.R. §§ 1500.2(b) and 1502.8; *see also* Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 11, 1994) at § 5-5 (c).

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come from? The Draft SPEIS recounts DOE's views of relevant history, highlighting two documents in particular. As explained in the Draft SPEIS, in 1996, the DOE prepared a supplemental programmatic environmental impact statement on Stockpile Stewardship and Management and this Draft SPEIS is an update of that previous document. *See, e.g., id.* at S-3. The DOE explains that updates are needed in order to "support existing and reasonably foreseeable national security requirements." *Id.* at 2-1. One particular document, however, is highlighted throughout the Draft SPEIS as the expression of those national security requirements: the 2001 Nuclear Posture Review – a "classified report prepared by the Department of Defense that establishes the broad outline for future U.S. nuclear strategy, force levels, and infrastructure." *Id.* at S-4 fn.7; *see also* DOE, *Notice of Intent to Prepare a Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement - Complex 2030*, 71 Fed. Reg. 61731 (Oct. 19, 2006) at 61733 ("The current policy is contained in the Nuclear Posture Review, submitted to Congress in early 2002. . ."). According to the Draft SPEIS, the 2001 Nuclear Posture Review sets forth a "new balance between a responsive infrastructure and deployed stockpile size." Draft SPEIS at S-4; *see also id.* at 2-7. Indeed, the Draft SPEIS states that having a responsive infrastructure is the "cornerstone" of the new strategy discussed in the 2001 Nuclear Posture Review. *Id.* at 2-10.

Although the language is somewhat veiled to the public by using terms such as "demonstrated capabilities," or a "requirement for adequate production capacity for plutonium pits," *see, e.g., id.* at S-4 and 2-12, it appears that responsiveness as it relates to the 2001 national security requirements for plutonium pits means having the infrastructure in place capable of building lots of plutonium pits even if those pits may not ever be made or needed for use. *See, e.g., id.* at S-13, 2-21, and D-9.<sup>5</sup>

Consequently, although it is not clearly stated in the purpose and need section of the Draft SPEIS, the ability to increase pit production is part of the purpose and need for the DOE's proposed action. *See, e.g., id.* at 3-131 (explaining that the expected environmental impacts on construction of a Consolidated Plutonium Center at 125 plutonium pits per year would not be significantly different than the impacts of producing 80 pits per year but the larger capacity "provides better assurance of meeting the purpose and need for production of pits."). This is borne out in the discussion of the alternatives.

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<sup>5</sup> It is sophistry for DOE to describe the goal as merely providing the required capacity at LANL to produce more plutonium pits without having to actually ever produce those additional pits. Nuclear weapons infrastructure requires large, long-term commitments of capital. Why would it make sense for the American taxpayers to foot the bill to build, equip, and staff highly-specialized factories that cost billions of dollars if the idea were to simply mothball these structures once built? Moreover, how does building multi-billion dollar structures that may never be needed actually meet the stated purpose of creating a cost-effective infrastructure? As discussed herein, there appears to be no rush to set these wheels in motion, given the state of the science on pit longevity and recent changes to the law.



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The alternatives in the Draft SPEIS, besides what we assume is the No Action alternative,<sup>6</sup> actually would increase plutonium pit production capacity, including one alternative that would increase plutonium pit production capacity up to 200 pits per year, ten times more than the current level allowed. With the exception of the No Action alternative, the lowest pit manufacturing capacity assumed for the nuclear production alternatives is 50 pits per year, which is, in and of itself, a substantial increase over the current 20 pits per year authorized at LANL and the current rate of pit production at LANL of approximately 10 pits per year. *See id.* at 2-12 and 2-20. What we assume to be the No Action alternative - staying at the only currently authorized level of plutonium pits, which is 20 pits per year in accordance with the Record of Decision for the LANL 1999 site-wide environmental impact statement - is described in the Draft SPEIS as now being *below* what is a "reasonable assumption for a production capacity." *Id.* at 2-22. In fact, the Draft SPEIS even goes as far as stating that the Capability-Based Alternative of 50 pits per year is based upon an assumption of stockpiles that are "smaller than required to meet anticipated future national security needs." *Id.* at 3-62. In other words, the at times elusive references to "responsiveness" based upon national security requirements appear to correlate to a necessary minimum pit production and this has become an underlying purpose that must be met, although it is not stated in any concise or obvious way in the purpose and need section of the document.

(B) *Why this imbedded assumption is not reasonable to include in the purpose and need statement for this SPEIS*

Even if Santa Clara Pueblo were to assume that DOE is simply trying to execute its required duties through this SPEIS, and that somehow it may have been reasonable at one point to assume increased plutonium pit capacity as part of the purpose for the proposed nuclear weapons complex transformation, such an assumption is no longer reasonable in light of new mandates from the President and the Congress coupled with the DOE's own admissions in the Draft SPEIS.

The Draft SPEIS contains repeated statements to the effect that the DOE has no choice but to fulfill the stockpile size and national security requirements "established by the President and Congress." *See, e.g.,* Draft SPEIS at 1-21, 2-1, and 3-1. As discussed above, the Draft SPEIS makes the link between an increase in plutonium pit production with fulfillment of the requirements of the President and Congress, and wraps pit production into part of the purpose and need for the proposed action.

However, the latest pronouncement of the President and the Congress has set forth a new set of

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<sup>6</sup> As discussed in section II of our comments, the Draft SPEIS contains contradictory statements as to what is the No Action alternative.

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requirements to be followed and makes clear that certain tasks need to be completed first by the Congress and the Department of Defense before any decisions are made by the DOE regarding the size and shape of the nuclear weapons complex, including the appropriate level of plutonium pit production capacity.

At the end of January 2008 (after the release of the Draft SPEIS), President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181. In this new law, there is a requirement that a new Congressional Commission on the Strategic Posture of the United States be established. This Commission is tasked with reviewing the current nuclear weapons policies of the United States and then issuing a report by December 1, 2008 recommending the appropriate sizes and composition of the future nuclear weapons stockpile and the size of the nuclear weapons complex. *See id.* at § 1062. This new law also requires that a "Revised Nuclear Posture Review" be completed by the Secretary of Defense in 2009 in order to address the necessary sizes and composition of the nuclear weapons stockpile and complex for the next 5 to 10 years, including "any plans to modernize or modify the complex." *Id.* at § 1070.

The DOE has stated at its public hearings for Complex Transformation that the Record of Decision for the SPEIS must be issued by autumn of 2008. The very terms of this new law make clear that having the DOE lock in a Record of Decision this autumn for a preferred alternative to modify the existing nuclear weapons complex would be premature and would contravene the expressed intent of the President and the Congress.

When Santa Clara Pueblo inquired of our Congressional Delegation why it is appropriate to push forward with the Complex Transformation SPEIS process in light of this new law, the DOE responded that the current alternatives analyzed in the Draft SPEIS would encompass any recommendations resulting from requirements in the new law and that the current alternatives in the Draft SPEIS provide "considerable flexibility" for future decisions. *See* Letter from Theodore A. Wyka, Complex Transformation SPEIS Document Manager, NNSA, to Hon. J. Michael Chavarria, Governor, Santa Clara Pueblo (April 2, 2008)(on file with the Pueblo). The DOE's response, however, is not reasonable in light of the facts and should be reconsidered so as to avoid thwarting Congressional intent.

If the current thinking by DOE on alternatives for modernization of the nuclear weapons complex or the nuclear stockpile requirements were sufficiently flexible as alleged by DOE, why would Congress include a requirement in this newly-enacted law that a new Revised Nuclear Posture Review be issued by 2009 which, among other things, specifically addresses any plans to modernize or modify the complex? When these new mandates were put in place, the Congress was already aware of the DOE's concepts for the Complex Transformation process, especially with respect to increasing plutonium pit production capacity, which DOE has stated has been underway ever since the 2001 Nuclear Posture Review was transmitted to Congress in early

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2002. See Draft SPEIS at 3-1. Congress was briefed on the DOE's vision for the transformation when DOE forwarded the recommendations of the Secretary of Energy Advisory Board Task Force on the Nuclear Weapons Complex Infrastructure to Congress on October 19, 2005. See DOE/NNSA, *Complex 2030: An Infrastructure Planning Scenario for a Nuclear Weapons Complex able to meet the Threats of the 21<sup>st</sup> Century*, DOE/NA-0013 (Oct. 23, 2006) at 7. Thus, it is not reasonable, and indeed somewhat self-serving and disingenuous, for the DOE to assume that its current purpose and need description and current alternatives discussed in the Draft SPEIS meet these new mandates.

Moreover, and more importantly, in the Draft SPEIS, the DOE admits that the need for increased plutonium pit production capacity could change with a different stockpile requirement. The Draft SPEIS acknowledges that, although a change in stockpile size alone would not necessarily change the need for nuclear weapons laboratory facilities, a change in stockpile size could actually change the need for nuclear weapons production facilities. See Draft SPEIS at 3-67. Such an admission clearly undermines the argument that the current purpose and need articulation and alternatives in the Draft SPEIS would necessarily encompass any recommendations resulting from fulfillment of the requirements of the new law, especially as it relates to plutonium pit production capacity.

In the Draft SPEIS, the DOE also admits that “[t]he latest studies on pit aging indicate that pits currently in the stockpile may be viable for more than 85 years.” *Id.* at 3-132. As a result, the DOE admits in the Draft SPEIS that “it is unlikely that legacy pits will need to be replaced in the near future.” *Id.* at 2-9. In fact, the study to which DOE refers specifically states that there is no evidence for concern about the reliability of legacy plutonium pits for the next century.<sup>7</sup> In addition, the DOE admits in the document that “lower pit production rates may be an acceptable

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<sup>7</sup> The study referenced by DOE was conducted by the JASON group, an independent panel of scientists who provide analysis to the government. It indicates that the expected lifetime of existing plutonium pits is on the order of 100 years:

Most primary types have credible minimum lifetimes in excess of 100 years as regard aging of plutonium; those with assessed minimum lifetimes of 100 years or less have clear mitigation paths that are proposed and/or being implemented.

The Laboratories have made significant progress over the past 3-5 years in understanding plutonium aging and pit lifetimes. . . . As a result of the Los Alamos/Livermore efforts, JASON concludes that there is not evidence from the [underground nuclear explosion testing] analyses for plutonium aging mechanisms affecting primary performance on timescales of a century or less in ways that would be detrimental to the enduring stockpile.

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programmatic risk in view of the pit surveillance data, and the existence of a potential pit reuse option and cost.” *Id.* at 3-131. At a minimum, the Draft SPEIS cautions that “judgments about new pit production capabilities and capacities are complex and warrant careful consideration.” *Id.* at 2-13. Consequently, at least with respect to decisions regarding plutonium pit production, by DOE’s own admissions, there is no national security need for DOE to rush to a decision before the end of 2008.

The Draft SPEIS reveals that the 2001 Nuclear Posture Review sets forth the requirements for “responsive” infrastructure, which as discussed above, includes increased capacity for plutonium pit production. The DOE defines a Nuclear Posture Review as a “classified report prepared by the Department of Defense that establishes the broad outline for future U.S. nuclear strategy, force levels, and infrastructure.” *Id.* at S-4. Thus, by definition, the new Revised Nuclear Posture Review mandated in the National Defense Authorization Act for Fiscal Year 2008 will establish that broad outline for infrastructure, which may not be the same as the requirements in the 2001 Nuclear Posture Review. To assume that the current set of alternatives regarding increased plutonium pit capacity in the Draft SPEIS that are based in large part on the 2001 Nuclear Posture Review will be in line with the national security requirements that must be set forth in a 2009 Revised Nuclear Posture Review is simply not reasonable. To push “full steam ahead” to a Record of Decision this autumn to lock in infrastructure parameters for plutonium pit production for the next 65 years when new parameters will actually be issued within the next year also does not the definition of reasonable. This is especially so since the DOE has admitted (despite the imbedded assumptions in its purpose and need statement) that there is no need for new pits in the near future and lower pit production rates may be a viable option.

- (C) *The Complex Transformation SPEIS process must be held in abeyance until the mandates of the new 2008 law are fulfilled and then a revised draft SPEIS must be issued with additional public comment allowed*

Agencies draft a purpose and need statement in an environmental impact statement to describe what they are trying to achieve by proposing an action. The purpose and need statement explains to the public why an agency action is necessary, and it serves as the basis for identifying the reasonable alternatives available to the agency. *See* 40 C.F.R. § 1502.13. The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is the “heart of the environmental impact statement.” *Id.* at §1502.14. Consequently, if the description of the purpose and need is flawed or contrary to law, then the evaluation of alternatives also will be skewed, rendering faulty the entire NEPA analysis. That is exactly what has occurred here, especially with respect to the short shrift given to the plutonium pit production capacity described in the No Action alternative or even the Capability-Based alternative resulting from what now appears to be an overly narrow articulation of a need to increase pit production.

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In light of the latest national security pronouncements of the Congress and the President contained in the National Defense Authorization Act for Fiscal Year 2008, the purpose and need statement in the Draft SPEIS, especially as it relates to increased plutonium pit production capacity, is no longer accurate with respect to fulfilling national security mandates. What is needed is actually the subject of this new law. The Congress and the President have indicated through this new law that the needs will be reassessed and determined within the next year. That is why trying to complete this Complex Transformation NEPA process in the next few months is folly and by definition cannot produce a defensible analysis. The DOE has no sound basis to even evaluate a reasonable alternative until the requirements of the new law are satisfied. The DOE would be attempting to sidestep Congressional will and that does not meet the definition of reasonable.

The proposed action contemplated in the Draft SPEIS will affect, at a minimum, the next 65 years of operations of the entire nuclear weapons complex. Given the magnitude of the decisions at issue and the span of time those decisions could cover, this NEPA process must be set aside until the mandates of the new law, including the Revised Nuclear Posture Review, are completed. Then, a revised draft SPEIS should be issued in accordance with the updated national security framework with an opportunity for review and comment by the public and with proper government-to-government consultation with Santa Clara Pueblo.

**IV. The Draft SPEIS does not adequately or reasonably address cumulative health and other impacts to the Santa Clara Pueblo community in contravention of Presidential directives and CEQ guidance regarding environmental justice and in violation of NEPA**

This section of our comments focuses primarily on cumulative impacts through the lens of human health risks but our underlying point about the requirement that DOE better address the effects of multiple environmental exposures to the Pueblo applies in equal force to other sections of our comments, where we highlight a substantial number of environmental impacts to Santa Clara Pueblo that were inadequately addressed or overlooked completely in the Draft SPEIS.

**(A) *DOE underestimated health risks, cumulative impacts, and environmental justice***

In the Draft SPEIS, the DOE used CAP-88, an atmospheric transport model designed by the Environmental Protection Agency ("EPA"), to estimate dose and risk from radionuclide air emissions as part of Clean Air Act compliance. The DOE used CAP-88 to calculate the highest effective dose equivalent for an assumed Maximally Exposed Individual ("MEI") for emissions of radionuclides other than radon. It appears assumed doses for both workers and the public were converted to address cancer fatalities resulting from annual assumed dosages for each

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contaminant modeled, to see if any dosage exceeded public health standards that could lead to cancer fatalities beyond the normal annual rate of cancers. *See, e.g.*, Draft SPEIS at 4-46, 5-22 through 5-24, and B-13. In the Draft SPEIS, the DOE admits that “[r]adiation exposure can also cause nonfatal cancers and genetic disorders” but states that “[i]n this SPEIS, only estimates of potential fatal cancers are presented.” *Id.* at C-9 and C-10. This omission from the analysis is a very serious matter. The causation of nonfatal cancers and/or genetic disorders within a distinct subpopulation of peoples, namely the few thousand members of the Santa Clara Pueblo community, can actually limit the very continued existence of our society.

It does not appear that any additional consideration was given in the Draft SPEIS to modeling additional exposure pathways utilized by Santa Clara Pueblo or to the assessment of cumulative health effects, and the environmental justice impacts resulting therefrom.

- (i) *Outdated version of model used and exposure pathways underestimated by DOE*

It appears that the version of the CAP-88 model used in the Draft SPEIS is outdated and not as complete as the most recent version. The Draft SPEIS references that calculations performed for the analysis used EPA’s 1992 version of the CAP-88-PC model (Revision 1.0.). *See* Draft SPEIS at 4-46. The rationale for using this early version of the risk modeling software is unclear, since revisions to the CAP-88 model were released in 2000 (Version 2.0), 2001 (Version 2.1), and 2006 (Version 3.0), with three interim software updates provided in 2007. There exist significant differences between Version 1.0 and Version 3.0 of the CAP-88 radiation risk assessment models. Version 1.0 incorporates the use of 265 radionuclides and 6 decay chains in order to calculate the dose for 7 internal organs, while Version 3.0 incorporates the use of 825 radionuclides and the multitude of decay chains listed in the Federal Guidance Report No. 13<sup>8</sup> to calculate the dose for 23 internal organs. *See* EPA, *Radiation Risk Assessment Software: CAP88 and CAP88-PC*, <http://www.epa.gov/radiation/assessment/CAP88/index.html>. The EPA states that “Version 3 includes an expanded library of radionuclides and incorporates updated radionuclide risk conversion factors” and is a “significant update to Version 2.1.” Because “Version 3 will generate dose and risk results that differ from those results calculated by previous versions,” the EPA recommends that the Version 3.0, the most updated version, be used in analyses. *See* EPA, *National Emission Standards for Hazardous Air Pollutants (Radionuclides), Availability of Updated Compliance Model*, 71 Fed. Reg.8854 (Feb. 21, 2006). Thus, it appears that the human health impact assessment in the Draft SPEIS relies on an outdated version of a radiation risk model.

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<sup>8</sup> EPA, *Cancer Risk Coefficients for Environmental Exposure to Radionuclides, Federal Guidance Report No. 13, EPA 402-R-99-001* (Sept. 1999).

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It also appears that the CAP-88 modeling in the Draft SPEIS did not take into account additional exposure pathways, above and beyond an assumed Maximally Exposed Individual, for Native American traditional uses of the land. The Complex Transformation Draft SPEIS does generally acknowledge that Pueblos use unfiltered surface water sources for ceremonial purposes (although Santa Clara Pueblo is conspicuously absent from the list of Pueblos in this section of the document, despite the fact that our closest border to LANL is only approximately five miles away). *See* Draft SPEIS at E-12. The document also generally acknowledges that ingestion of edible plants near LANL may provide an exposure pathway by which radionuclides and nonradionuclides can be transferred to humans. *See id.* at 4-34 and 4-35. However, unlike the draft LANL SWEIS, actual additional exposure pathways of a Native American user of these and other sources do not appear to be part of the modeling of impacts that was conducted for the Draft SPEIS. If such additional pathways are part of the modeling for the Draft SPEIS, it is certainly not clearly stated in the document or readily apparent to the Pueblo (so that we could conduct any meaningful review of assumptions), which in and of itself violates NEPA standards for a draft environmental impact statement.

At Santa Clara Pueblo, our practices result in exposures beyond exposures experienced by the general public. Pueblo members collect and utilize numerous wild plants and herbs for medicinal and other cultural purposes. When we harvest elk or deer, in addition to the meat, we consume the bone marrow, the organs, and the blood. We utilize the clays and the sands of the region for our crafts. The pigments applied to the pottery made by our world-famous artists come from the soils and are often applied by licking the brushes, which are often made of natural materials. Unlike the general public, Santa Clara Pueblo members utilize springs and seeps and other surface sources of water in our traditional areas in their natural, unfiltered state, as part of our cultural practices. Thus, exposure pathways are considerably more for Santa Clara Pueblo members than the average off-site citizen, even the average off-site Maximally Exposed Individual.

(ii) *DOE disregarded past cumulative impacts*

As for cumulative impacts, in addition to underestimating the number of environmental pathways or exposure routes, the Draft SPEIS appears to focus on additive effects of each single chemical or radiological agent or stressor, rather than addressing the combined impact of multiple stressors and the potential for interaction amongst different stressors. As discussed below, although the CEQ regulations for NEPA define cumulative impacts to ensure that past actions are taken into account when assessing the incremental effects of the proposal, the DOE dismisses the need to account for the past human health and environmental exposures by basically stating it is too difficult to do a real cumulative effects analysis (especially for cumulative impacts of low level radiation), *see id.* at C-4, so “[h]istorical impacts at the potentially affected sites are captured in the existing No Action Alternative.” *Id.* at 6-1. It appears that DOE simply assumes past impacts

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are part of the natural background now and did not account for natural background radiation levels when assessing cumulative environmental impacts in the Draft SPEIS.

This paltry analysis of past actions seems to defy logic when one compares it to the 2006 draft LANL SWEIS. Even in that 2006 draft document, where additional exposure pathways were acknowledged but still underestimated for Santa Clara Pueblo, the DOE stated that additional exposures of a so-called Special Pathways user would result in a dose of 4.5 millirem per year. *See* 2006 draft LANL SWEIS at C-39. This dosage was assumed to be in addition to that which the offsite MEI experiences. *See id.* at C-27. The DOE also stated in that analysis that “the highest estimated ingestion pathway dose to any offsite resident is about 4.5 millirem per year from radionuclides in the environment resulting from past LANL operations, global fallout, and naturally-occurring geologic sources.” *Id.* at C-39. In addition, the document stated that the highest assumed dose for the then-proposed expansion of LANL (to produce up to 50 plutonium pits annually) would be 7.8 millirem per year. *Id.* Thus, if one adds these figures together, it appears from the analysis in the 2006 draft LANL SWEIS that the highest assumed total dosage for Santa Clara Pueblo members for what is now called the Capability-Based Alternative in the Draft SPEIS, taking into account such operations plus additional exposure pathways for Native American traditional practices as well as background radiation from past actions, could result in a total annual dose of 16.8 millirem per year. According to the Complex Transformation Draft SPEIS, this far exceeds acceptable annual dose standards for members of the public. Draft SPEIS at C-8 (“[N]o member of the public [may] receive an annual dose greater than 10 mrem from the airborne pathway and 4 mrem from ingestion of drinking water.”). This significant health risk, however, is not acknowledged for the Capability-Based Alternative in the Draft SPEIS which is supposed to be the equivalent of what was once termed “expanded operations” in the LANL SWEIS process. *See, e.g., id.* at 5-73.

(iii) *Environmental justice wrongly dismissed by DOE*

In the Draft SPEIS, DOE asserts that there are no environmental justice concerns with its proposed action or preferred alternative as none of the impacts, to the extent there are any, are disproportionately high for Santa Clara Pueblo. The environmental justice analysis in the Draft SPEIS is woefully slim but we focus here on the analysis as it relates to LANL operations.

The Draft SPEIS states:

Based on the analysis of impacts for resource areas, few high and adverse impacts from construction and operation activities at LANL are expected under any of the alternatives; to the extent that any impacts may be high and adverse, [the DOE through] NNSA expects the impacts to affect all populations in the area equally.



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Draft SPEIS at 5-65.

The document also states that none of the human health impacts were determined to be high and adverse, so there was no need to then determine if any health impacts were disproportionate. *Id.* at B-11 and B-12. As discussed below, this does not come close to meeting the full intent of a required environmental justice analysis.

- (B) *Environmental justice guidance and NEPA regulations and guidance establish the standards that must be met to address cumulative impacts.*

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 11, 1994) ("Executive Order 12898"), provides that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Executive Order 12898 makes clear that the provisions apply fully to Native Americans. In 1997, CEQ issued a guidance document regarding environmental justice that "interprets NEPA as implemented through the CEQ regulations in light of Executive Order 12898." See Council on Environmental Quality, *Environmental Justice: Guidance Under the National Environmental Policy Act* (Dec. 10, 1997), <http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf> ("CEQ Environmental Justice Guidance").

As explained in the CEQ Environmental Justice Guidance, Executive Order 12898 "recognizes the importance of research, data collection, and analysis, particular with respect to multiple and cumulative exposures to environmental hazards for low-income populations, minority populations, and Indian tribes. Thus, data on these exposure issues should be incorporated into NEPA analyses as appropriate." *Id.* at 3.

The CEQ Environmental Justice Guidance sets forth a number of factors that agencies are supposed to consider when determining whether human health effects or environmental effects are disproportionately high and adverse. Among them are two that specifically look to cumulative impacts:

[w]hether health effects occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards . . . .

[and]

[w]hether the environmental effects occur or would occur in a minority

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population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

*Id.* at 26 and 27.

The CEQ is clear that exposure can mean contact with a chemical, biological, physical, or radiological agent. The guidance also clarifies that multiple exposures address more than one agent from single or multiple sources that have the potential for deleterious health or environmental effects, and that cumulative exposure can result from exposure to one or more agent from single or multiple sources over time in one or more locations. *Id.* at 30.

These cumulative impact standards embodied in the CEQ Environmental Justice Guidance are not mere guidelines, however. The CEQ Environmental Justice Guidance is completely in keeping with NEPA mandates as well, and the courts have recognized that CEQ's interpretation of NEPA is entitled to deference.

As the Draft SPEIS indicates, when looking at environmental impacts of a proposed action, the affected environment is "interpreted comprehensively to include the natural and physical environment and the relationship of people with the environment." Draft SPEIS at 4-1 (*citing* 40 C.F.R. §1508.14). This includes interrelated social and economic effects. 40 C.F.R. §1508.14. NEPA regulations also are clear that agencies, in assessing cumulative impacts, have to address "the impact on the environment which results from the incremental impact of the action when added to other *past*, present and reasonably foreseeable future actions" and that such cumulative impacts "can result from individually minor but collectively significant actions taking place over a period of time." *Id.* at §1508.7 (*emphasis added*).

The CEQ has even issued guidance on how to address past actions to meet NEPA regulatory mandates regarding cumulative impacts. *See* Memorandum from James L. Connaughton, Chairman, Council on Environmental Quality to Heads of Federal Agencies, *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis* (June 24, 2005), [http://www.nepa.gov/nepa/regs/Guidance\\_on\\_CE.pdf](http://www.nepa.gov/nepa/regs/Guidance_on_CE.pdf) ("CEQ Past Actions Cumulative Effects Guidance"). The CEQ emphasizes that "delving in to the historical details of individual past actions" is not necessary but that a cumulative impact analysis should include the "current aggregate effects of past actions" when those past actions are relevant to determining "whether the reasonably foreseeable effects of the agency proposal for action and its alternatives may have a continuing, additive and significant relationship to those effects." CEQ Past Actions

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Cumulative Effects Guidance at 1 and 2.<sup>9</sup>

Thus, it is the very requirements contained in NEPA regulations themselves, as further amplified through Executive Order 12898 and CEQ guidance, that set the standards that DOE failed to follow in assessing cumulative impacts to Santa Clara Pueblo in the Draft SPEIS. As discussed below, the Draft SPEIS does not contain sufficient detail regarding these multiple exposures and cumulative effects to allow Santa Clara Pueblo to participate in a meaningful review, allow for meaningful decision-making, or to even demonstrate that the DOE has taken the necessary hard look at these critical issues.

(C) *DOE ignored environmental justice and NEPA requirements regarding cumulative impacts*

In the Draft SPEIS, the DOE indicates that it complied with Executive Order 12898 and used CEQ guidance and methodology for addressing cumulative impacts. *See* Draft SPEIS at B-11 and B-27. However, despite its attempts, DOE did not fulfill the mandates of the law in the Draft SPEIS.

The guidance and regulations make clear that more must be done than what appears to be DOE's approach of viewing risk for each exposure or stressor individually, even if maximum exposure to the general public is assumed with each stressor then added together for a total. The DOE assumes, looking at national statistics, that "approximately 1,714 fatal cancer deaths per year" out of 1,000,000 people will happen naturally near any DOE site at issue in the Complex Transformation SPEIS alternatives and thus risk must be measured in cancer fatalities above that general population figure. Draft SPEIS at C-10. This shows complete disregard for the fact that the Santa Clara Pueblo community is a unique society and culture unto itself numbering only a few thousand people where any increased disease, illness, genetic disorder, or health risks have far greater effects to our survival as a people.

It also misses a critical part of the required environmental justice analysis, which involves more than fatality statistics of our Tribal community as compared to the general population. In fact, CEQ guidance instructs that the analysis must go farther than simply comparing overall health risk rates for the Santa Clara community to those rates generally accepted as being risky. CEQ

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<sup>9</sup> Although these past effects are not analyzed in a cumulative effects analysis in the Draft SPEIS, the DOE implicitly admits there are aggregate effects of past actions necessitating a cumulative impact analysis by stating statistics regarding how much the various wastes would be decreased if plutonium operations were phased out completely from LANL. *See, e.g.*, Draft SPEIS at 5-97 (discussing 11 percent decrease of low level waste, 14 percent decrease of mixed low level waste, and 80 percent decrease of transuranic waste at LANL if plutonium operations were eliminated from LANL). While these figures are helpful, a mere recitation of percentages does not meet the NEPA definition of a cumulative impacts analysis.

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guidance instructs that the focus of the analysis must also include whether there are health effects or whether there could be environmental effects for an Indian Tribe based upon cumulative or multiple adverse exposures from environmental hazards. *See* CEQ Environmental Justice Guidance at 26 and 27. As we have described, this is not just an environmental justice issue, but a requirement of NEPA too. *See* 40 C.F.R. §1508.7 and CEQ Past Actions Cumulative Effects Guidance.

As documents in the public illustrate, the current aggregate effects of past actions are relevant at LANL in order to determine whether the proposed action and alternatives making permanent plutonium pit production at LANL may have a continuing additive and significant relationship to those past effects. Since 1999, the Center for Disease Control and Prevention (“CDC”) through its Los Alamos Historical Document Retrieval and Assessment Project (“LAHDRA Project”) has been identifying information concerning past releases of radionuclides and hazardous chemicals from LANL occurring since 1943 in order to determine potential off-site health effects. *See* CDC, *Interim Report of the Los Alamos Historical Document Retrieval and Assessment Project* (March 2007) at 1, <http://www.lahdra.org/reports/LAHDRA%20Report%20v5%202007.pdf>. Through the LAHDRA Project, the CDC has already uncovered documents revealing that airborne releases of plutonium from LANL following the Manhattan Project may be on an order of magnitude greater than officially reported, constituting the largest airborne release of plutonium of all of the DOE sites around the country. *See* LAHDRA Project public meeting notes (July 18, 2007), [http://www.lahdra.org/meetings/mtg\\_15/mtg\\_15.htm](http://www.lahdra.org/meetings/mtg_15/mtg_15.htm).

Another example can be found from a recent news release from DOE’s own Argonne National Laboratory. That release states that scientists have been struggling for decades to address the concern about “plutonium contamination spreading further in groundwater than expected, increasing the risk of sickness in humans and animals.” In fact, the Argonne National Laboratory has indicated that plutonium nanoclusters travel more readily through soil and into groundwater in ways that have eluded proper study and remediation for “almost half a century.” Argonne National Laboratory, *News Release: Scientists discover how the structure of plutonium nanocluster contaminants increases risk of spreading* (April 22, 2008), [http://www.anl.gov/Media\\_Center/News/2008/news080422.html](http://www.anl.gov/Media_Center/News/2008/news080422.html).

These are only a few examples but they serve to demonstrate that documents within the public domain indicate aggregate effects of past actions at LANL are significant as that term is defined in NEPA and must be addressed through a proper cumulative effects analysis. *See* 40 C.F.R. §1508.27; *see also* CEQ Past Actions Cumulative Effects Guidance at 3. Summarily writing off such past aggregate effects as simply being subsumed in the No Action alternative does not meet the mandates of NEPA.

Although DOE has indicated that it did not do the analysis because it is difficult to track multiple

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exposures, *see* Draft SPEIS at C-4, it is important to note that a framework does exist to address cumulative impacts in the context of NEPA and environmental justice. In May 2003, the EPA established such a framework. *See* EPA, *Framework for Cumulative Risk Assessment*, EPA/630/P-02/001F (May 2003), <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=54944> ("EPA Cumulative Risk Framework"). The EPA's approach looks at the specific subpopulations of a place and considers various stressors affecting them, including how multiple stressors can act together over time. *See* EPA Cumulative Risk Framework at 2. EPA does indicate that an MEI approach with each individual stressor being combined later is a method that is used, but EPA cautions against approaches that ignore synergistic or antagonistic interactions. In other words, it is important to assess how some chemicals or agents may have the ability to affect a response to other chemicals or agents. *Id.* at 50 and 66. EPA emphasizes the need for a cumulative risk assessment to look at multiple stressors, in addition to dealing with time-related aspects, susceptibility concerns, and subpopulations with particularly distinctive exposures. *Id.* at 37-42. The EPA's framework views risk assessment as including environmental, health, social, and cultural factors and the EPA states that its framework is consistent with the definition of cumulative impacts in NEPA. *Id.* at 9.

EPA states that a cumulative risk assessment is "an analysis, characterization, and possible quantification of the combined risks to human health or the environment from multiple agents or stressors." *Id.* at 6. As detailed above, DOE did not perform any analysis that comes close to meeting that definition, especially with respect to Santa Clara Pueblo, and thus did not fulfill the mandates of NEPA, Executive Order 12898, and numerous guidance from CEQ regarding cumulative impacts to the Santa Clara Pueblo community. In order to remedy these problems, at a minimum, the DOE must conduct government-to-government consultation with Santa Clara Pueblo on proposed revisions to the draft to fix these defects, prepare a revised draft SPEIS, and then allow the public the opportunity to review and comment on the revised draft document.

#### **V. Additional impacts to Santa Clara Pueblo not addressed in the Draft SPEIS**

In this section, we highlight additional concerns for Santa Clara Pueblo that also were not adequately addressed in the Draft SPEIS.

##### **(A) Waste impacts**

Recently, the Inspector General for the DOE audited DOE's compliance record for meeting the Consent Order, a binding document signed by DOE and the New Mexico Environment Department to address the clean-up of legacy waste that was disposed in pits, trenches, shafts, and landfills at LANL. *See* DOE Office of Inspector General, *Audit Report: The Department's Progress in Meeting Los Alamos National Laboratory Consent Order Milestones* (DOE/IG-

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0793)(April 2008), <http://ig.energy.gov/documents/IG-0793.pdf> ("Consent Order Audit"). This audit reveals that, "absent a dramatic change in approach, it is unlikely that the Department will complete certain long-term remediation activities at Los Alamos in accordance with existing requirements." *Id.* at 1. The audit also states that "[d]elays in completing the substantial remediation work associated with the Consent Order milestones may increase the risk of employee and public exposure to contaminants." *Id.* at 3.

In fact, because of the DOE's deplorable performance in meeting critical Consent Order milestones, the State of New Mexico, through its Environment Department, has gone on record strongly opposing any increases in pit production capability or any expansion of LANL's mission in general. *See* Letter from Ron Curry, Secretary, New Mexico Environment Department to Theodore Wyka, Complex Transformation SPEIS Document Manager (March 27, 2008)(on file with the Pueblo). The State chides the DOE for its "long history in New Mexico of paying lip service to cleanup" and calls it "unconscionable" for the DOE to even consider funding additional pit production while a "60 year legacy of contamination remains unaddressed." *Id.* at 2. Santa Clara Pueblo fully supports the concerns expressed by New Mexico Environment Department Secretary Ron Curry.

Unfortunately, nothing in the Draft SPEIS alleviates our concerns. Effects of past contamination have been disregarded in the document, most notably in the cumulative impacts discussion, as we describe in section IV of our comments. Furthermore, the document gives little assurances that there is proper capability to handle additional waste that would result from the proposed action.

The Draft SPEIS states all of the Consolidated Plutonium Center alternatives contemplated for LANL would increase transuranic waste, mixed transuranic waste, low level waste, mixed low level waste, hazardous waste, and non-hazardous waste. *See* Draft SPEIS at 5-91. The document indicates that TRU waste would go to a WIPP "or a WIPP-like" facility. *Id.* at A-9. The DOE admits that there is limited capacity in WIPP and that the amount of transuranic waste generated needing disposal could exceed WIPP capacity. *See id.* at B-27. To quell that concern, the Draft SPEIS contains only a vague statement that, if there is a need, DOE will initiate the appropriate strategies for expanding disposal capacity at the appropriate time. *Id.* In other words, there is not necessarily a waste disposal path for the transuranic waste the DOE is contemplating generating by increasing pit production at LANL.

As for low level waste, the Draft SPEIS states that such low level waste would be disposed of on-site at LANL at TA-54, Area G. *See id.* at 5-92. Yet, as the DOE Inspector General's audit recognizes, DOE has not met Consent Order milestones set for clean-up of past waste dumped at Area G. *See* Consent Order Audit at 2. It is irresponsible to even contemplate adding low level waste to Area G until legacy waste impacts there are actually mitigated.

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This is not an idle concern to Santa Clara Pueblo. All waste remediation issues affect us, be they "cap and cover" methods that have already resulted in LANL contaminants found in surface and ground waters nearby, or removal methods, where transport off the hill raises its own safety concerns as waste is transported near or through our lands. It is important to remember this area is part of our aboriginal homeland. The lands need to be restored to the same condition they were in before the Manhattan Project. To do anything less is disrespectful of the earth.

Because there is no real cumulative impact analysis regarding legacy waste or real analysis of impacts of generating transuranic waste with no known disposal path, at a minimum, in accordance with 40 C.F.R. §1502.9(a) and the 2006 Accord, the DOE must consult with Santa Clara Pueblo on revisions and then a revised draft SPEIS must be circulated for public comment. Impacts to Santa Clara Pueblo resulting from incomplete clean-up of legacy waste, as well as future waste generation, must be acknowledged in the document.

(B) *Seismic impacts*

The preferred alternative in the Draft SPEIS is for LANL to become the permanent site for plutonium pit production for the nation, even though LANL, unlike some of the other sites discussed for the Consolidated Plutonium Center alternatives, has earthquake potential at least as high as 7 on the Richter Scale. *See* Draft SPEIS at 4-31 (Richter scale potential at 7 for Pajarito Fault), 5-198 ("little potential for earthquakes" for Pantex CPC discussed) and 5-269 (no faults located by Savannah River Plant CPC discussed). This is disconcerting in and of itself, but our concerns are compounded by the confusing discussion of seismic risk at LANL in the document, which appears to underestimate impacts, especially relating to Santa Clara Pueblo.

The Draft SPEIS states that:

[t]he dominant contributor to seismic risk at LANL is the Pajarito Fault System. The main element of the system is the Pajarito Fault. Secondary elements include the Santa Clara Canyon Fault, the Rendija Canyon Fault, the Guaje Mountain Faults, and the Sawyer Canyon Fault.

*Id.* at 4-29.

This fault system also connects to Santa Clara Pueblo's landbase. It is our current understanding that each of these faults mentioned in the Draft SPEIS connect directly to Santa Clara lands.

The document indicates that five small earthquakes have been recorded in the Pajarito Fault since 1991 and the maximum earthquake potential may be as high as 7 on the Richter scale for the Pajarito Fault, 6.5 for Rendija Canyon, and 6.5 for the Guaje Mountain Fault. *Id.* at 4-30 and 4-

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31. Although parts of the document indicate that a comprehensive update to LANL seismic hazards was completed in 2007, *see, e.g., id.* at 4-29, 5-41 and 5-76, another section of the document states that a report is still in the process of “being prepared to recalculate the probabilistic seismic hazard at LANL.” *Id.* at 4-32.

The Draft SPEIS does admit that “the seismic hazard [at LANL] is higher than previously understood,” and indicates that a “beyond design basis earthquake” could cause radiation exposure that far exceeds public health standards. *Id.* at 5-76 and 5-77. Such risks, however, are dismissed by stating that mitigation measures would be included in the design to alleviate the risks. *Id.*

This analysis is confusing and is not clear enough to allow for meaningful review by the Pueblo. The Draft SPEIS is unclear about whether there may or may not be more seismic studies underway for LANL and appears to indicate that we are to take comfort in the fact that design will alleviate any “beyond design basis” earthquake scenarios that may or may not yet be fully understood. An environmental impact statement is supposed to be clear and concise. See 40 C.F.R. §1502.1. The Draft SPEIS does not meet that standard with respect to seismic hazards at LANL.

In any event, what we can ascertain from our review of the 2007 report on seismic hazards for LANL is that detailed high-precision mapping of the Pajarito fault system has not yet been performed, especially with respect to the Santa Clara Canyon segment of the fault system and there is still fairly poor knowledge of certain seismic properties at issue at LANL. *See* URS Corporation, *Final Report- Update of the Probabilistic Seismic Hazard Analysis and Development of Seismic Design Ground Motions at the Los Alamos National Laboratory* (May 25, 2007). Among other things, Santa Clara Pueblo remains concerned that this fault system, which connects to our lands, provides a means of transport for groundwater contamination. This does not appear to be addressed at all in the Draft SPEIS and certainly is not addressed with respect to Santa Clara Pueblo.

CEQ Environmental Justice Guidance instructs that, to be included in an environmental justice analysis, an impact must be “significant” in accordance with NEPA. See CEQ Environmental Justice Guidance at 26. NEPA regulations defining “significantly” instruct that significance can refer to the intensity of an impact which can include unique characteristics of the geographic area such as proximity to cultural resources and the degree to which the possible effects on the human environment involve unique or unknown risks or are likely to be highly controversial. See 40 C.F.R. §1508.27. Based on the foregoing, the impacts of seismic vulnerability are significant to Santa Clara Pueblo and thus should be addressed as a matter of environmental justice. In any event, the discussion of seismic risk at LANL contains enough contradictory statements to render it “so inadequate as to preclude meaningful analysis.” Consequently, in accordance with 40 C.F.R.



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§1502.9 (a) and the 2006 Accord, the DOE must consult with Santa Clara Pueblo on revisions to the analysis and a revised draft SPEIS must be circulated for public comment. Impacts to Santa Clara Pueblo resulting from the higher but still uncertain seismic vulnerability of LANL must be acknowledged in the document.

(C) *Air Quality Impacts*

The Draft SPEIS states that LANL is “a major source, based on the potential to emit,” of nitrogen oxides, carbon monoxide, and volatile organic compounds. Draft SPEIS at 4-15. The document also states that “[p]it manufacturing activities [at LANL] would result in the release of criteria and toxic pollutants into the surrounding air.” *Id.* at 5-21. The greatest increase in annual non-radiological air emissions from the preferred plutonium operations at LANL would be total suspended particulates. *Id.* at 5-22. The radiological air emissions from pit manufacturing would include plutonium, americium, and enriched uranium. *Id.*

Increased emissions as they relate specifically to Santa Clara Pueblo were not analyzed in the Draft SPEIS. Santa Clara Pueblo is downwind of LANL and our closest border is only approximately five miles away from LANL. Monitoring by both the Pueblo and LANL shows that the prevailing winds come from the southwest. Monitoring indicates contaminant transport from LANL to the Pueblo via particulate. Radioactive particulate appears to be at issue in the document for construction workers but impacts are underestimated for Santa Clara Pueblo.

The document appears to state that only construction workers for the additional plutonium pit manufacturing infrastructure at LANL could receive radiation doses above natural background radiation levels. *See id.* at 5-66. Yet, this ignores LANL data regarding the fact that the prevailing winds over Santa Clara Pueblo come from the direction of LANL. It also ignores a recent study prepared by the Government Accountability Project which found that radionuclide movement via airborne particulates is a concern deserving greater attention. *See Government Accountability Project, Citizen Environmental Monitoring, Los Alamos, New Mexico (June 2007), <http://www.whistleblower.org/doc/2007/FinalLANLReport.pdf> (“GAP Report”).*

The GAP Report compared levels of radioactivity between indoor dusts and other environmental samples such as sediments or ash. Sampling sites included a number of locations surrounding LANL, some known to be within an impact area and some outside of the known impact zone. *Id.* at 5. The GAP Report revealed that indoor dust samples of areas surrounding LANL contained greater total radioactivity than shown in surrounding soils or various controls and baseline references. Both Picuris Pueblo (which is considerably farther away from LANL than Santa Clara Pueblo) and San Ildefonso Pueblo locations were included in the GAP Report, and residential dusts from both those Pueblos contained some of the most elevated radiation levels. *See id.* at 2.

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Thus, given that LANL and Santa Clara Pueblo air monitoring data show the prevailing winds at Santa Clara come from the direction of LANL, and given that the GAP Report shows that dusts are more radioactive than previously understood, construction activities that present radiation risks to the construction workers will impact Santa Clara Pueblo too. This needs to be analyzed in a revised draft SPEIS. Gusty winds are the norm in the springtime in Northern New Mexico and it is reasonable to assume that radioactive materials on the surface can be suspended into the air by gusty winds. It appears construction work could be a major source for air pollutants requiring increased sampling and monitoring. *See* Draft SPEIS at C-6 (“National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations specify that any source that potentially can contribute greater than 0.1 mrem per year TEDE [total effective dose equivalent] to an off site individual is considered to be a ‘major source’ and emissions from that source must be continuously sampled.”).

There are additional air impacts to the Pueblo resulting from increased traffic which we address below. Emissions, be they radioactive or engine exhaust, that settle in our homes and on our crops and in surface water sources cause impacts to our traditional practices. That is why it is necessary to address those additional pathways for Santa Clara Pueblo in modeling health risks and to conduct a full cumulative impact analysis.

(D) *Traffic impacts*

In the Draft SPEIS, the DOE does admit that construction of a Consolidated Plutonium Center at LANL would increase traffic, as would operations of such a center, and that the “traffic increase would tend to exacerbate congestion on local roads.” Draft SPEIS at 5-88. However, the document states such an increase in traffic would be small compared to the overall daily traffic level. *See id.* This analysis underestimates cumulative impacts to Santa Clara Pueblo.

Santa Clara Pueblo is divided by State Road 30 which commuters use on a daily basis as they travel to the Española Valley’s primary employer, LANL. This road passes directly through the middle of the Pueblo, separating two major Pueblo housing areas. Peak traffic on State Road 30 was deemed quite heavy a decade ago and traffic load has already grown exponentially without any expanded plutonium pit production at LANL. We have concerns about the ability of our Pueblo members to be able to cross the road from their homes to our government buildings. At peak commuter hours, it is already extremely difficult to exit the Pueblo village onto State Road 30 or to make a left turn from that road into the Pueblo. Moreover, any increase in traffic due to more LANL commuters would not just be small relative to current levels; it would cumulatively exacerbate pollution problems, including carbon black and diesel exhaust particles which are carcinogenic and have genotoxic effects. These multiple, cumulative impacts to Santa Clara Pueblo need to be addressed.

(E) *Water quantity and quality impacts*

The Draft SPEIS indicates that some of the alternatives involving LANL would actually exceed LANL's water rights. Draft SPEIS at 3-139 and 5-37. Although such options are not the DOE's preferred alternative, the DOE must be clear that any alternative that exceeds LANL's water allotment must not be considered viable because exceeding water allocations in a desert environment clearly would be an irretrievable and irreversible resource commitment, which NEPA prohibits.

While the Draft SPEIS does admit to some contamination of water quality in both surface and ground water in areas offsite of LANL, *see e.g., id.* at 4-25, E-6, E-7, and E-17,<sup>10</sup> the DOE ignores the environmental justice impacts to Santa Clara Pueblo of this contamination. The ground water that is contaminated is the same source of supply as our drinking water. Those impacts were not assessed in the Draft SPEIS. In addition, it does not appear that the DOE assessed how increased pumping by LANL could affect the direction of the ground water contamination plume underlying the Superfund site known as the North Railroad Avenue plume in Española. There, the contaminant of concern is tetrachloroethylene, which the Department of Health and Human Services has determined is reasonably anticipated to be a carcinogen. *See* Department of Health and Human Service, Agency for Toxic Substances and Disease Registry website, *ToxFAQs for Tetrachloroethylene (PERC)*, <http://www.atsdr.cdc.gov/tfacts18.html>. Would LANL's actions affect the direction of that plume? This must be analyzed. As for surface water quality impacts, the Draft SPEIS acknowledges that area Pueblos use untreated surface water sources for sacred ceremonies, but Santa Clara Pueblo is not even included in the list of such Pueblos. *Id.* at E-12.

A more illustrative example of the lack of regard for environmental justice and cumulative impacts can be found in Table 4.1.5-2 describing surface water and sediment contamination affected by LANL operations. In that table, the significance of elevated radionuclides onsite and offsite are minimized by noting that runoff events are sporadic. The significance of PCBs detected onsite and offsite also are minimized by indicating wildlife exposure in a few canyons is merely "possible." *Id.* at 4-22. Wildlife exposure seems to be underestimated in that table overall and that is distressing since the text below the table clearly states that "[s]tormwater runoff exceeded the wildlife habitat standard for gross alpha activity of 15 picocuries per liter since the Cerro Grande Fire in nearly all canyons." *Id.* Even more distressing is the fact that the Draft SPEIS contains no analysis of how this actually impacts Santa Clara Pueblo.

As we described earlier in these comments, wildlife that consume contaminated surface flows or

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<sup>10</sup> One contaminant that does not appear to be addressed in the document, which Santa Clara Pueblo brought to the attention of the DOE in its comments on the 2006 draft LANL SWEIS, is hexavalent chromium, a cancer-causing carcinogen, which has been found in the regional aquifer bordering LANL.

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contaminated seeps or springs are used and consumed by Santa Clara Pueblo members as part of our own traditions, in ways that far exceed any exposure to the general public. Even contaminated Rio Grande surface supplies that affect our downstream neighboring Pueblos affect us as well. Our traditions are such that we attend their feast days and consume traditional foods grown by those Pueblos.

The CEQ Environmental Guidance instructs that, when determining whether environmental effects are disproportionately high and adverse, agencies must consider:

[w]hether there is or will be an impact on the natural or physical environment that significantly (as employed by NEPA) and adversely affects a[n] . . . Indian tribe. Such effects may include ecological, cultural, human health, economic, or social impacts on . . . Indian tribes, when those impacts are related to impacts on the natural or physical environment[.]

CEQ Environmental Justice Guidance at 26.

The impacts at issue are significant as that term applies to NEPA. *See* 40 C.F.R. §1508.27 (significance analysis can include the extent to which effects on the human environment are uncertain); *see* also Draft SPEIS at E-17 (“Contaminant pathways into the Rio Grande and onto public lands are still being studied and are *poorly understood* due to the complex geohydrology of northern New Mexico.”)(emphasis added). Thus, the DOE should have analyzed the effects of the contamination of our waters as it relates to the ecological, cultural, human health, and social fabric of Santa Clara Pueblo.

This analysis is lacking in the Draft SPEIS. The remedy is one we have included repeatedly in these comments: these impacts must be acknowledged in a revised draft SPEIS circulated again for public comment and government-to-government consultation with Santa Clara Pueblo must occur prior to the release of the revised draft pursuant to the 2006 Accord.

(F) *Cultural resource impacts*

The Draft SPEIS states that:

[d]ue to the high density of cultural resources at LANL, relative to other DOE sites under consideration, there is a high probability that resources would be impacted during CPC [Consolidated Plutonium Center] construction anywhere on the LANL site, including TA-55.

Draft SPEIS at 5-53 and 5-54.

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To address this, the DOE states it “would identify and evaluate any cultural resources that could potentially be impacted by the construction of the CPC” and that such “[m]ethods for identification *could* include . . . consultation with interested Native American tribes” *Id.* at 5-54 (emphasis added). This “could” reference is repeated for the different alternatives. *See id.* at 5-55 and 5-56.

DOE’s Indian Policy states that the “DOE will be diligent in fulfilling its federal trust obligations to American Indian . . . governments in policy implementation and program management activities.” DOE Indian Policy at 2. DOE Indian Policy states that the DOE:

will consult with any American Indian . . . tribal government with regard to any property to which that tribe attaches religious or cultural importance which might be affected by a DOE action. . . . Such consultation will include tribal involvement in identifying and evaluating cultural resources including traditional cultural properties; facilitating tribal involvement in determining and managing adverse effects; [and] collaboration in the development and signing of memoranda of understanding with DOE, when appropriate.

*Id.* at 4.

The 2006 Accord states that the DOE “will consult with the Pueblo about the potential impacts of proposed actions on the Pueblo and its cultural, religious and environmental resources and will avoid unnecessary interference with traditional practices.” 2006 Accord at 3.

To fulfill DOE’s Indian Policy and the 2006 Accord, consultation *must* occur with Santa Clara Pueblo to determine whether any cultural resources may be at issue from any activities contemplated at LANL through Complex Transformation and to determine how to prevent adverse impacts.

#### **VI. Next steps DOE must take in addressing these comments, which include government-to-government consultation with Santa Clara Pueblo**

For the reasons stated above, a new revised draft SPEIS must be issued subject to public review in accordance with 40 C.F.R §1502.9(a). Government-to-government consultation with Santa Clara Pueblo regarding the revisions is required before the revised draft document is issued for additional comment. *See* 2006 Accord at 3 (“DOE will consult with the Pueblo to assure that tribal rights, responsibilities, and concerns are addressed prior to the DOE taking action, making decisions, or implementing programs that may affect the Pueblo.”). As a matter of environmental justice and NEPA mandates, impacts to Santa Clara Pueblo discussed herein must be addressed in

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a revised draft SPEIS. Moreover, no final environmental impact statement regarding Complex Transformation should be issued without first consulting with Santa Clara Pueblo to ensure compliance with the 2006 Accord and to ensure DOE has lived up to its commitment to “protect and promote” Tribal Trust resources in order try to avoid impacts to those resources. DOE Indian Policy at 3 (Section I).

For impacts that cannot be avoided, mitigation to the Pueblo must then also be the subject of government-to-government consultation before any Records of Decision are issued for this Complex Transformation NEPA process. DOE Indian Policy is clear that, when avoidance of impacts through “DOE trust protection measures” cannot be fully carried out, the DOE will work with the affected Tribe regarding corrective measures. *Id.* Consultation with an affected tribe is also part of the DOE’s environmental justice duties. *See* CEQ Environmental Justice Guidance at 10; *see also* Comprehensive Presidential Documents No. 279, *Memorandum from the President to the Heads of Departments and Agencies, EPA-175-N-94-001* (Feb. 11, 1994) at [http://www.epa.gov/fedfac/documents/executive\\_order\\_12898.htm#memo1](http://www.epa.gov/fedfac/documents/executive_order_12898.htm#memo1).

As we have detailed in section III of these comments, completion of the NEPA process for Complex Transformation or even the issuance of a revised draft SPEIS must not occur until the requirements of the latest national security pronouncements of the President and the Congress, contained in sections 1062 and 1070 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, are fulfilled. To complete any NEPA process on Complex Transformation, especially as it relates to plutonium pit production capacity, in contravention of this new law would result in a faulty and incomplete analysis in violation of NEPA.

## **VII. Conclusion**

The CEQ, in its NEPA regulations, advises that:

NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

40 C.F.R. §1500.1 (c).

It is with this spirit that Santa Clara Pueblo offers these comments, because the environment that we seek to have DOE protect, restore, and enhance, is connected to, and part of, our home and place of worship, which is integral to the cultural survival of the Santa Clara people. The DOE has already admitted in the Draft SPEIS that long-term effects of DOE operations at LANL on the

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biological communities, which depend on the land in such a fragile desert setting, are "especially delicate." Draft SPEIS at 8-1. The DOE also has indicated, as we have discussed above, that LANL has more seismic uncertainty and far more cultural resource impact potential than other sites across the nation considered for a new plutonium center. Consequently, and in light of the numerous additional concerns we raised in these comments, we sincerely hope the DOE will reconsider its preference to make permanent increased plutonium pit production at LANL. We also hope that DOE will live up to its commitments reaffirmed to Santa Clara Pueblo in our 2006 Accord as quoted here by addressing all the concerns we have expressed here with the Draft SPEIS in a manner that "recognizes and respects the continued existence of the Pueblo's values and culture in the exercise of its sovereignty."

Sincerely,



J. Michael Chavarria  
Governor

- Encl: (1) Map from LAHDRA Project showing Santa Clara Pueblo and LANL  
(2) Map from Santa Clara Pueblo Office of Environmental Affairs entitled "Santa Clara Pueblo - Location to Los Alamos National Laboratory"

cc w/ encl:

Members of the Santa Clara Tribal Council  
DOE Secretary Samuel Bodman  
NNSA Administrator Thomas P. D'Angostino  
DOE Deputy Assistant Secretary for Intergovernmental & External Affairs Steve Morello  
CEQ Chairman James Connaughton  
Senator Pete V. Domenici  
Senator Jeff Bingaman  
Representative Tom Udall  
Representative Heather Wilson  
Representative Steve Pearce  
Governor Bill Richardson  
New Mexico Environment Department Secretary Ron Curry  
New Mexico Indian Affairs Department Secretary Alvin Warren  
Joseph M. Chavarria  
Jessica Aberly

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# INDIAN PUEBLO

ESPANOLA, NEW MEXICO  
87532

OFFICE OF GOVERNOR

RESOLUTION NO. 08 - 16

## **SUPPORTING THE SUBMISSION OF COMMENTS FOR SANTA CLARA PUEBLO TO THE DEPARTMENT OF ENERGY REGARDING THE COMPLEX TRANSFORMATION DRAFT SUPPLEMENTAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT**

WHEREAS, Santa Clara Pueblo (the "Pueblo") is a sovereign Indian tribe, recognized as such by the United States Government, with the Pueblo's Tribal Council as its governing body, whose authority is defined by the Pueblo's Constitution and Bylaws approved on December 20, 1935; and,

WHEREAS, the Pueblo has maintained a recognized and formalized government-to-government relationship with the Department of Energy (the "DOE") as set forth first in 1992 and then 2006 in the *Restatement of Accord between the Pueblo of Santa Clara, a Federally-Recognized Indian Tribe and the United States Department of Energy* (October 31, 2006); and,

WHEREAS, the DOE has issued a draft Supplemental Programmatic Environmental Impact Statement (the "Draft SPEIS") regarding the DOE's proposed transformation of the entire nuclear weapons complex ("Complex Transformation"); and

WHEREAS, the DOE's preferred alternative in the Complex Transformation Draft SPEIS includes significantly increasing and making permanent the production of plutonium pits at Los Alamos National Laboratory ("LANL"); and,

WHEREAS, the Tribal Council has concerns about the health impacts to the Santa Clara Pueblo community resulting from multiple past exposures from LANL, the increased risks of seismic events at LANL, and how the DOE's proposal will cumulatively impact the soils, air, water, and cultural resources of the Pueblo; and,

WHEREAS, the Tribal Council opposes expanding plutonium pit production at LANL and making that production capacity permanent through this Complex



Transformation process when the impacts on the environment from sixty years of contamination at LANL still have not been adequately addressed; and,

WHEREAS, the Tribal Council believes it is important for the Pueblo, as a sovereign nation and as a matter of environmental justice, to protect the health and welfare and cultural survival of the Pueblo, by voicing concerns through participation in this and associated government-to-government processes regarding LANL to try to the greatest extent possible to alleviate impacts to the natural and cultural resources of the Pueblo.

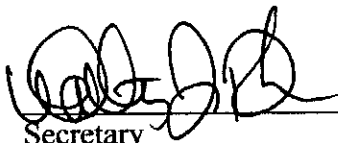
NOW THEREFORE BE IT RESOLVED that the Tribal Council hereby authorizes and supports the submission by Governor Chavarria to the DOE of the attached comments regarding the Complex Transformation Draft SPEIS.

#### CERTIFICATION

I, the undersigned, duly elected Governor of the Santa Clara Pueblo, do hereby certify that the Tribal Council, at a duly called meeting that was convened with proper notice and was held on the 20<sup>th</sup> day of May, 2008, at Santa Clara Pueblo, New Mexico, a quorum being present, approved the foregoing Resolution with 10 in favor, and 0 opposed, 0 abstaining, 2 being absent.

  
\_\_\_\_\_  
Governor J. Michael Chavarria

ATTEST:

  
\_\_\_\_\_  
Secretary