

Tri-Valley CAREs

Communities Against a Radioactive Environment

2582 Old First Street, Livermore, CA 94551 • (925) 443-7148 • www.trivalleycares.org



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Mr. John Tegtmeier
CMRR-NF SEIS Document Manager
Los Alamos Site Office
3747 West Jemez Road
TA-3 Building 1410
Los Alamos, New Mexico, 87544
By e-mail to NEPALASO@doeal.gov

Re: Final CMRR-NF SEIS Comment from Tri-Valley CAREs

Tri-Valley CAREs submits these comments on the Final Supplemental Environmental Impact Statement (SEIS) for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory (LANL). As explained herein, despite the revisions, the Final SEIS continues to fail to provide an accurate, complete or legally adequate analysis as is required by the National Environmental Policy Act (NEPA).

1. As a preliminary matter, the Final SEIS does not adequately comply with CEQ Sec. 1503.4, *Response to comments*, which details how agencies must respond to the comments they receive to Draft Environmental Impact Statements. It requires;
 - (a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond...
 - (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. 1503.4 (b) 43 FR 55997, Nov. 29, 1978.

The NNSA has failed to attach and respond to all of the comments it received. For example, a seven-page comment on behalf of the Loretto Community (Sisters and comembers) was submitted by Penny McMullen, however it was not included in the comments section of the Final SEIS nor was there any agency response. The NNSA must re-release the final SEIS to include answers to all of the comments that were received.

2. Additionally, the agency must respond substantively to comments that are received. Tri-Valley CAREs' comment, along with numerous others, received an agency response that was wholly inadequate and lacked required substance. Under CEQ regulation 1503.4 (a)(5) Agencies are allowed to respond by;

Explain(ing) why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if

appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

However, the NNSA's responses to several of Tri-Valley CAREs' detailed comments, including those pertaining to the scope and purpose and need of the SEIS, failed to meet that standard by essentially alleging that agency responses were not required because "NNSA does not intend to revisit decisions previously made on the level of operations at LANL." Simply citing other NEPA documents, without making clear the precise language and records of decision that purportedly guide the scope of this SEIS does not suffice.

Additionally, the NNSA response purportedly explaining why Tri-Valley CAREs' suggested alternative was not considered in detail was essentially an assertion that, "Space does not exist" in the proposed buildings that could serve as an alternative. However, this summary and limited conclusion does not meet the "hard look" required by NEPA and is not a sufficient basis for disposing of this suggested, reasonable alternative.

The discussion of alternatives is the legally required heart of any EIS. 40 CFR § 1502.14. The legally adequate EIS must "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 CFR § 1502.14(a). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate..." *Southeast Alaska Conservation Council v. FHA*, 2011 U.S. App. LEXIS 9097, 16-17 (9th Cir. 2011) "Informed and meaningful consideration of alternatives — including the no action alternative — is thus an integral part of the statutory scheme." *Id.* Thus, because this alternative, and other viable alternatives (including a real No Action Alternative) were not examined, the Final SEIS is inadequate.

Finally, we urge the NNSA to withdraw the Final SEIS and provide a more thorough analysis that comports with the requirements of NEPA and responds to Tri-Valley CAREs' and other comments in the thoroughgoing manner that the law requires.

For Tri-Valley CAREs,
/s/
Marylia Kelley, Executive Director

/s/
Scott Yundt, Staff Attorney

2582 Old First Street
Livermore, CA 94550