

Tri-Valley CAREs

Communities Against a Radioactive Environment

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Re: Draft NNSS SWEIS Comment from Tri-Valley CAREs

Tri-Valley CAREs (Communities Against a Radioactive Environment) submits these comments on the Draft Site-Wide Environmental Impact Statement (SWEIS) for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site (NNSS) and Off-Site Locations in the State of Nevada.

Tri-Valley CAREs is a non-profit organization located in Livermore, California. We have undertaken this analysis on behalf of our more than 5,000 members, including those who reside in Nevada near the Nevada Test Site (NTS), as we still call it. Tri-Valley CAREs has monitored activities in the Dept. of Energy (DOE) nuclear weapons complex, including the NTS for twenty-nine years. Since its inception, Tri-Valley CAREs has participated in numerous National Environmental Policy Act (NEPA) administrative review processes involving the nuclear weapons complex, including the scoping process for this draft SWEIS. The organization has also participated in federal litigation to uphold NEPA at NTS and other sites in the DOE National Nuclear Security Administration (NNSA) complex.

In addition, numerous Tri-Valley CAREs staff, board and members have toured NTS. Dozens have camped and demonstrated nearby in connection with the organization's longstanding support of the rights of the Western Shoshone Nation, the Treaty of Ruby Valley, the Comprehensive Test Ban Treaty, the Non-Proliferation Treaty, and other relevant nuclear disarmament initiatives. In general, Tri-Valley CAREs supports the positions taken by the Consolidated Group of Tribes and Organizations included throughout the SWEIS document.

As explained herein, the Draft SWEIS 1) fails to utilize a coherent, complete or legally adequate structure to allow stakeholders to accurately analyze the true environmental impacts of the alternatives, and, 2) fails to provide an accurate, complete or legally adequate substantive analysis of environmental impacts as is required by the National Environmental Policy Act (NEPA).

I. The Draft SWEIS Fails to Utilize a Coherent, Complete or Legally Adequate Structure to Allow Stakeholders to Accurately Analyze the True Environmental Impacts of the Alternatives as is Required by NEPA.

The Draft SWEIS fails to indentify a preferred alternative, improperly excludes a true “No Action Alternative,” fails to analyze reasonable alternatives proposed during scoping and adopts a disjointed and confusing structure, making it extremely difficult for stakeholders to analyze the actual significance of the potential environmental impacts of the alternatives that are included.

A. Failure to Identify a Preferred Alternative Violates NEPA

DOE/NNSA fails to identify a preferred alternative in the Draft SWEIS. Thus, commentors and stakeholders have no clear sense of the DOE’s priorities. Because no preferred alternative was identified in the 1996 SWEIS either, and in that instance the agency chose the Expanded Operations Alternative in every program category, commentors and stakeholders are left to assume that the Expanded Operations Alternative in this SWEIS is most likely to be implemented, albeit without the proper NEPA mechanism for agency accountability – the actual naming of a preferred alternative.

B. Failure to Include a True ‘No Action Alternative’ Violates NEPA

NEPA requires Environmental Impact Statements (EISs) to include detailed analyses of reasonable alternatives to the “preferred or proposed action,” and that one alternative be a “no action” alternative (10 CFR Part 1502.14). The SWEIS has an unusual way of identifying the alternatives, where continued activities “as is” at the various Nevada NNSA sites is presented as the “no action” alternative. The “project” already exists, but the “no action” alternative is typically associated with any impacts in the absence of the project. The SWEIS does not analyze the equivalent of the “no action” alternative, unlike in the 1996 EIS, and even in the original 1977 EIS for the NTS. In this way the SWEIS is deficient and Tri-Valley CAREs contends the SWEIS is illegal at this point by not containing the equivalent of the “no action” alternative.

DOE/NNSA concluded without explanation that “NNSA will not consider shutting down the NNSA because it does not meet the agency’s purpose and need,” (SWEIS, pp 1-12 – 1-13). However, an EIS is intended to establish how the project affects the environment and to analyze whether there exist alternatives that will entail less of an impact. Furthermore, the EIS should provide a basis of judgment as to whether the impacts from the project are unacceptably high, and if so, require an alternative action, specific mitigation procedures, or that there be no action at all. The NEPA process is not intended to cater to the agency’s “purpose and need” but rather “... to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment,” (10 CFR Part 1500.1). The “absence of the project” alternative, which in the most conservative sense would be as stated in the 1996 EIS,

“Alternative 2 – Discontinue Operations – All current and planned program activities and NTS operations would be discontinued under this alternative. Only environmental monitoring and site-security functions necessary for human health, safety, and security would be maintained.”¹

The 1996 EIS also even considered a second alternative that had limited action,

¹ DOE, *Final Environmental Impact Statement for the Nevada Test site and Off-Site Locations in the State of Nevada*, August 1996, pg. 1-4.

“Alternative 4 – Alternate Use of Withdrawn Lands – All defense-related activities and most Work for others program activities would be discontinued at the NTS. Certain programs and activities that are not currently included in NTS mission responsibilities are also evaluated. This alternative could include other activities, such as the relinquishment of portions of the NTS, that would be dependent upon future land-use designations and withdrawal status.”²

The cursory statement in the SWEIS in section 1.5 does not sufficiently discuss why such alternatives were eliminated from consideration as required by law, “... for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated,” (10 CFR Part 1502.14).

Thus, because a real No Action Alternative was not examined, the Draft SWEIS is inadequate.

C. Failure to Include Analyses of Reasonable Alternatives Proposed During Scoping Violates NEPA

Tri-Valley CAREs submitted detailed comments on the Scope of the Proposed Environmental Impact Statement for Continued Operation of the Dept. of Energy National Nuclear Security Administration Nevada Test Site and Off-Site Location in the State of Nevada Pursuant to The National Environmental Policy Act on October 16, 2009. (Attached for reference) These comments included a detailed recommendation of a reasonable pathway (and offer underlying detailed analysis) through which the NTS could transition out of the NNSA nuclear weapons complex. We offered the key parameters that must be considered under what we termed the “curatorship” alternative and, because it is a reasonable alternative, demanded that an alternative consistent with curatorship be included in the Draft SWEIS. Yet, rather than analyze this alternative as required, the SWEIS simply mentions the concept of our comment on page 1-20, in conjunction with other comments on alternatives, and then responds as follows-

Response: *This SWEIS tiers from NNSA and DOE programmatic EISs that have facilitated decision making regarding the assignment of missions to the NNSS, such as supporting stockpile stewardship, maintaining nuclear testing capability, and disposing LLW and MLLW. These NEPA documents and related decisions are described in Section 1.5 of this SWEIS. This NNSS SWEIS would not provide the basis for a DOE programmatic decision, but would provide the basis for site specific implementation of programmatic decisions that have already been made in existing programmatic EISs and other NEPA documents. DOE NEPA regulations (10 CFR 1021.330(c)) require that large, multiple-facility DOE sites, such as the NNSS, prepare SWEISs. This NNSS SWEIS addresses the full range of missions, programs, capabilities, projects, and activities under the purview of NNSA in Nevada. In response to public comments, conservation and renewable energy projects are addressed under each of the SWEIS alternatives (No Action, Expanded Operations, and Reduced Operations), and the Renewable Energy Operations Alternative was eliminated from consideration as a separate alternative. See Chapter 3, Section 3.5, of this SWEIS for further discussion of these issues.*

The brief statement in the SWEIS quoted above does not sufficiently discuss why our proposed alternative was eliminated from consideration as required by law, “... for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated,” (10 CFR Part 1502.14). 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.* However, this vague summary response with its limited conclusions does not meet the “hard look” required by NEPA and is not a sufficient basis for disposing of this suggested, reasonable alternative.

To reiterate, the curatorship alternative is reasonable because:

- 1) It is in line with the short term purpose and need of NNSS while taking into account the reality of the financial crisis facing the nation that requires cuts to spending across all programs;
- 2) Unlike any of the proposed alternatives in the Draft SWEIS, the curatorship approach as recommended would actualize President Barack Obama’s speech in Prague, Czech Republic on April 5, 2009, in which he declared “America’s commitment to seek the peace and security of a world without nuclear weapons;”
- 3) The phase out of nuclear weapons has begun with the 2010 ratification of the New START. Unlike any of the proposed alternatives in the draft SWEIS, the curatorship approach as recommended reasonably implements the foreseeable post New START wind down of the nuclear weapons complex;
- 4) It is consistent with the United States’ signing of the Comprehensive Test Ban Treaty (CTBT) and the present priority given to its ratification by the Obama Administration;
- 5) It conforms to President Obama’s current initiatives to strengthen U.S. and international commitment to the Non-Proliferation Treaty (NPT), which entered into force in 1970.

A curatorship alternative was entirely reasonable and an alternative consistent with curatorship must be included in a revised Draft SWEIS. Thus, because this alternative, and other viable alternatives (including a real No Action Alternative) were not examined, the Draft SWEIS is inadequate.

D. Failure to Adopt a Coherent Structure for the Draft SWEIS Violates NEPA

Staff at Tri-Valley CAREs found the document structure extremely disjointed and difficult to approach in any consistent way. Data on specific issues, such as historic contamination, or specific program impacts, had to be chased down throughout all the volumes and beyond, to additional cited documents that were frequently difficult to locate. The Ninth Circuit Court of Appeals stated in *Mothers for Peace v. NRC* that “The application of NEPA’s requirements...is to be considered in light of the two purposes of the statute: first, ensuring that the agency will have and will consider detailed information concerning significant environmental impacts; and, second, ensuring that the public can both contribute to that body of information [via meaningful comments] and can access the information that is made public.” 449 F.3d at 1034.

Together with the limited comment period, an unprogrammatic approach to data presentation and limited access to cited documents, the public’s understanding and analysis of the Draft SWEIS was hampered in violation of NEPA.

II. Failure of the Draft SWEIS to provide an accurate, complete or legally adequate substantive analysis of environmental impacts as is required by the National Environmental Policy Act (NEPA)

A. The Draft SWEIS should be supplemented to provide necessary information that is missing

Significant information that is essential for public stakeholders to make meaningful analysis of the environmental impacts of the various proposed alternatives is missing from the Draft SWEIS. This includes:

- The SWEIS does not give current levels of NTS contamination from past activities or map its distribution, in order to evaluate what “more” or “less” activity as defined in the SWEIS would really mean.
- The SWEIS does not provide NTS budget figures to understand resource allocation, program impacts and priorities, both within the Test Site mission, and relative to our national budget as a whole.
- The SWEIS does not provide information on plans to address range fires and flash flooding to prevent off-site contamination.

B. The Expanded Operations Alternative that proposes new projects that will create more waste, and also increases the current waste production from on-going projects is unacceptable.

NTS should not be seen as an unlimited radioactive and toxic waste dumping area. The proposed increases of 15 million cubic feet of projected Low-Level Waste and 900,000 cubic feet of Mixed Low-Level Waste in the Expanded Operations Alternative would result in unreasonable impacts on community health near NTS as well as risks from transportation of that waste on the small rural roads leading to the NTS.

C. Failure to include an unclassified ‘Intentional Destructive Acts’ Section Violates NEPA

According to Appendix G.5 Intentional Destructive Acts, “NNSA has prepared a separate, classified analysis of the potential impacts of intentional destructive acts.” This violates the holding of The Ninth Circuit Court of Appeals in *Mothers for Peace v. NRC*, “The application of NEPA’s requirements...is to be considered in light of the two purposes of the statute: first, ensuring that the agency will have and will consider detailed information concerning significant environmental impacts; and, second, ensuring that the public can both contribute to that body of information [via meaningful comments] and can access the information that is made public.” 449 F.3d at 1034

By failing to produce an unclassified description of the potential impacts of intentional destructive acts, public stakeholders were unable to make any recommendations, analyses or assessment of the potential environmental impacts of an intentional act at NTS. Thus, the SWEIS failed to ensure that the public has access to information adequate enough to contribute, via meaningful comment in violation of NEPA

Finally, due to the inadequacies detailed above, and those detailed by other commentors, specifically those provided by Consolidated Group of Tribes and Organizations and Healing Ourselves and Mother Earth, Tri-Valley CAREs urges the NNSA to revise the Draft SWEIS 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/
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