

# Tri-Valley CAREs

Communities Against a Radioactive Environment

2582 Old First Street, Livermore, CA 94551 • (925) 443-7148 • [www.trivalleycares.org](http://www.trivalleycares.org)



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Mr. John Tegtmeier  
CMRR-NF SEIS Document Manager  
USDOE, NNSA, Los Alamos Site Office  
3747 West Jemez Rd., Los Alamos, NM 87544

***Re: Tri-Valley CAREs' Public SEIS Comment on the Dept. of Energy (DOE) National Nuclear Security Administration's "Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at the Los Alamos National Laboratory"(the CMRR-NF).***

Tri-Valley CAREs submits these comments on the 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) (DOE/EIS-0375-D). As explained herein, the SEIS fails to provide an accurate, complete or legally adequate analysis as is required by the National Environmental Policy Act (NEPA).

Tri-Valley CAREs was founded in 1983 in Livermore, California by concerned neighbors living around the Lawrence Livermore National Laboratory. Tri-Valley CAREs monitors nuclear weapons and environmental clean-up activities throughout the US nuclear weapons complex on behalf of its 5,600 members. Tri-Valley CAREs also seeks to eliminate waste, fraud and abuse from the oversight and management of facilities that make up the nuclear weapons complex. Due to concerns among our community about the negative environmental, health, cost, non-proliferation, and security implications of constructing and operating the CMRR-NF as planned in this SEIS' "preferred alternative," Tri-Valley CAREs submits this comment on the draft document.

The purpose of NEPA is to ensure that every federal agency prepares a full Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment.<sup>1</sup> An EIS must provide a "full and fair discussion of significant environmental impacts and shall inform the decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment."<sup>2</sup>

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<sup>1</sup> 42 U.S.C. 4332; 40 CFR 1501.

<sup>2</sup> 40 CFR 1502.1.

As described below, the SEIS is inadequate to provide a full NEPA analysis. The SEIS fails to include an adequate analysis of reasonable alternatives, fails to provide an adequate purpose and need statement, improperly segments the proposed action from other connected actions, and fails to include terrorism risk analysis. Additionally, the SEIS neglected to address many of Tri-Valley CAREs' (TVC) comments that were provided during the scoping period and only minimally addressed the comments that earned a reply in the SEIS. For these reasons, a new EIS is required and should be re-circulated for public review and comment.

**I. A New, Full Environmental Impact Statement (“EIS”) is Necessary.**

**A. Further Analysis of the Expected Costs of the Facility Must be Included.**

The costs to build this new plutonium pit production complex are just too high – and estimates are still continuing to rise. The total original estimate for constructing the new nuclear weapons complex at Los Alamos National Laboratory was reported to be approximately \$600 million in 2004. The current estimate is around \$5.8 billion. What percent of the additional billions in recent cost estimates are due to efforts to address the increased seismic hazard? DOE must analyze whether this premium is too high and examine other options, including the alternative highlighted below and outlined in Tri-Valley CAREs' scoping comment (yet ignored in the SEIS).

The SEIS fails to address the underlying rationale for the CMRR-NF, i.e., that its construction and operation would enable the technical capability at LANL to expand plutonium pit (bomb core) production from the current allowable limit of 20 pits per year to up to 80 pits per year. The US does not need 80 new plutonium pits per year. DOE must conduct a “capacity study” to determine whether the existing facilities can be used instead of building the proposed CMRR-NF, which would increase pit-manufacturing capacity to at least 80 per year. Existing facilities have sufficed since the 1990s when DOE made the decision to allow plutonium pit manufacturing at LANL at up to 20 per year. Given that the US now has fewer deployed weapons and an articulated policy not to produce new design nuclear weapons, it is a notable deficiency that the SEIS would put LANL on the path to enabling expanded pit production with no new or updated analysis to explain why (see also purpose and need, below).

And, finally, just as new seismic information has forced a re-evaluation of the construction, new cost information must force a re-evaluation of the cost/value/need that DOE perceives. Yet, the SEIS provides none.

**B. Existing Analysis of the Seismic Hazards Must be Updated.**

The original Environmental Impact Statement in 2004 assessed a building designed to withstand only mild seismic events. A 2007 updated seismic hazards analysis showed a potential, major increase in seismic ground motion and activity. Los Alamos National Lab sits between the Rio Grande rift and the volcanic Jemez Mountains in a seismic fault zone. Only a full EIS can adequately study the full consequences of increased seismic events and what effect they might have on the proposed plant.

The SEIS should be withdrawn until the details of the Seismic Risks are better understood. For example, the cost-saving (comparatively speaking) Shallow Option, in which the foundation would be constructed in a geologic layer above a poorly welded tuff layer, is not a mature concept, and it is not yet fully known if this option will be safe. The SEIS fails to

accurately analyze how impacts to the environment from the Shallow Option construction may be different from other options, and under what circumstances.

There are more new seismic investigations currently underway at LANL. This SEIS must be withdrawn and a new EIS undertaken after the results of these new investigations are known. Proceeding with a design before seismic risks are better known will only repeat the process that led to the DOE admission of need for this Supplemental EIS.

### **C. Current Conditions Require Further Analysis on the Threat of Wildfires.**

In the past 11 years two wildfires have come dangerously close to causing and/or caused serious problems at LANL. The Cerro Grande (2000) and the still raging Las Conchas (2011) wildfires demonstrate that fires are a real, and possibly increasing, threat to the security of radioactive materials and wastes at LANL. Current analysis of wildfires at LANL is inadequate and must be reevaluated, given the recurrent incidence of wildfires in the surrounding areas.

## **II. The SEIS Fails to Include an Adequate Analysis of Reasonable Alternatives.**

The twin functions of the Environmental Impact Statement (EIS) are to “require that agencies take a ‘hard look’ at environmental consequences, and provide for broad dissemination of relevant environmental information.” See *Robertson v. Methow Valley*, 490 US 332, 350 (1989). 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.*

### **A. Space that can be Made Available in PF-4 is a Reasonable Alternative that Must be Rigorously Explored and Objectively Evaluated in a New/Revised EIS**

In Tri-Valley CAREs scoping comments on the SEIS, we provided a reasonable alternative to the construction of the CMRR-NF. We wrote, “... Given that the CMRR Radiological Laboratory Utility and Office Building (RLUOB) is build and is slated to become operational within 2 years, its capabilities must be taken into account. Further, given that the CMRR-NF is not slated to be completed until about 2020, other relevant LANL activities between the present and 2020 must be included in the analysis. (In other words, the issue is not merely what LANL could do differently today, it is what LANL could do differently by 2020 that must be considered in the NEPA analysis. In this context, LANL’s PF-4 must be considered in conjunction with the CMRR RLUOB.

“That analysis must take into account that PF-4 presently holds equipment that need not stay until 2020, such as the ARIES “pilot project,” which was never supposed to be permanent there. Additionally, PF-4, we were told by LANL management, has other space that could be available in the future but which presently holds contaminated plutonium wastes in acid, a waste management issue waiting to be dealt with.

“Therefore, a reasonable alternative could be to devote a small portion of the massive resources that would have been used to construct the CMRR-NF to clean out the areas in PF-4 that could be made available and pair that capability [in PF-4] for “heavy lab” activities with the “light lab” capabilities of the already-built CMRR-RLUOB.”

Since we wrote that scoping comment excerpted above, the schedule for the CMRR-NF has slipped again, to 2035. And, the CMRR-NF costs have risen yet again. And, estimates of the considerable seismic uncertainties associated with its construction have also risen. And, the RLUOB has proceeded to completion. And, there has been no NEPA decision changing the current LANL production limit of 20 pits per year. Thus, the detailed alternative we submitted, which was completely reasonable at scoping, has changed only in that it has become even more so. Yet, DOE failed to analyze this alternative in the SEIS, in violation of NEPA.

### **B. The SEIS Failed to Include a No Build Alternative**

Instead of evaluating a no-build alternative, the SEIS included a “no-action” alternative that entailed construction and operation of a new CMRR-NF at TA-55 adjacent to RLUOB, as analyzed in the 2003 CMRR EIS. **This is not a true no-action alternative.** NEPA requires that DOE study an alternative that involves not going forward with the proposed project. A more reasonable no-action alternative that should be studied in a future EIS is not building any CMRR Nuclear Facility and maintaining the pit production at current levels. DOE failed to study meaningfully consider a true no action alternative in violation of NEPA. This deprived the public and decisionmakers of the opportunity to “make an informed comparison of the alternatives.” *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988)

### **C. The SEIS’ Purported “No Action” Alternative is Not a Reasonable Alternative and Should Have Been Eliminated from Further Study**

The SEIS’ “no-action” alternative is not a true no action alternative but is a sham alternative. The SEIS immediately eliminates the alternative from analysis because it “would not meet the standards for a Performance Category 3(PC-3) structure as required to safely conduct the full suite of NNSA AC and MC mission work.” The SEIS summary states “the 2004 CMRR-NF would not be constructed.” Therefore the SEIS does not provide this alternative for public review or comparison rendering it a sham alternative.

In fact, the entire alternatives analysis fails to provide a suite of options for an informed comparison of alternatives. The *only* “alternative” that DOE does not summarily rule out is the agency’s “preferred alternative” (see, for example, pp S-8-9 and S-20.)

## **III. The Purpose and Need Statement Omits Critical Reasons for the Proposed Action.**

An EIS must explain the underlying purpose and need to which the lead agency is responding with the proposed action. 40 CFR § 1502.13. NNSA made the decision to draft a supplement to the CMRR EIS due to significant new circumstances and information that is relevant to the environmental impacts of the facility. (CEQ NEPA Regulations 40 CFR 15029[c][1]). The CEQ advises that an EIS more than five years old should be carefully scrutinized to determine whether a supplement is required. As part of this scrutiny, the agency should determine whether the purpose and need for the project remains the same. Thus, in drafting the CMRR-NF SEIS, NNSA should have re-examined the purpose and need for the proposed project.

Because there have been significant changes in the circumstances surrounding the purpose and need of the CMRR-NF, the stated purpose and need should have been revised. The CMRR-EIS was completed in 2003, but “project planning and design for the CMRR-NF...has progressed along a slower timeline than projected in the *CMRR EIS*.” (CMRR-NF SEIS at S-2). NNSA acknowledges that “over the past 7 years, the CMRR-NF planning process has identified several design considerations that were not envisioned in 2003,” and that the LANL SWEIS and the Complex Transformation SPEIS and their RODs, which included decisions on the size, scope, purpose and mission of the CMRR-NF, were issued in 2008 and 2009. Additionally, many relevant events took place over the past seven years, including President Obama’s Nuclear Posture Review (2008) and The New Strategic Arms Reduction Treaty with Russia (2010), that also have direct relevance to the size, scope, purpose and mission of the CMRR-NF (CMRR-NF SEIS at S-2). However, the CMRR-NF SEIS claims that “[t]he purpose and need for the NNSA action has not changed since the issuance of the 2003 CMRR EIS and makes no assertion that it examined the purpose and need for the facility in light of the passage of time and these intervening events.

The CMRR-NF cites the Final Complex Transformation SPEIS of 2008. It analyzed the “50/80 alternative,” and found that “completion of the CMRR Facility would be needed to support production of up to 80 pits per year.” (FCTS PEIS at S-39). However, no Record of Decision (ROD) was ever published determining that the agency or LANL required up to 80 plutonium pits per year to support its mission. Despite the lack of decision, the CMRR-NF SEIS proposes an expanded CMRR-NF that enables this 50/80 plutonium pit per year capacity. Yet, LANL still operates pursuant to its 2009 LANL SWEIS ROD, which only allows a production capacity of 20 pits per year.

In evaluating whether the purpose and need for the CMRR-NF remains the same as stated in the 2003 EIS, the NNSA should have examined the “needed” level of production capacity the CMRR-NF. In doing so, it must consider that LANL is currently only authorized to produce 20 pits per year despite visiting that issue in 4 NEPA documents (the SSM PEIS, the 2008 and 2009 SWEISs and the Complex Transformation PEIS). By rushing toward a CMRR-NF Record of Decision in this SEIS to meet a need - and provide the technical capability - to produce up to 80 plutonium pits per year without any underlying pit production ROD, has the agency “putting the cart before the horse.”

This is a situation akin to the movie “Field of Dreams.” If the DOE builds it (the CMRR-NF), they will come (increased production of pits). And, without the integrated and full NEPA review required by law.

The SEIS also should take into consideration relevant external circumstances. For example, the US is reported to have a total of approximately 40,000 plutonium pits in storage and on weapons under US control. Approximately 5,000 of those pits are deployable as nuclear weapons. In total, the US has constructed approximately 70,000 nuclear weapons and used two of the weapons more than 60 years ago.

None of the US invasions of at least 18 foreign nations, including Iraq and Afghanistan, has required the use of nuclear weapons (nor should they have). The current President’s Nuclear Posture Review does not state or determine (or change) the number of plutonium pits the US requires, but does purport to reduce the nation’s reliance on nuclear weapons in future military strategy and forego the production of new design nuclear weapons.

Additionally, the New Strategic Arms Reduction Treaty between the U.S. and Russia (ratified since the scoping period closed) calls for reductions in deployed, strategic nuclear weapon stockpiles. In considering the circumstances above, and others, how can the agency claim that the “purpose and need” for the CMRR-NF should not be scaled back greatly? (And, again, how can the agency ignore that its “preferred option” can enable a production rate of up to 80 new plutonium pits per year, which is undeniably scaling up while the arsenal scales down?)

#### **IV. The SEIS Fails to Include Analysis of Risks Associated with a Terrorist Attack.**

There needs to be a thorough analysis of the risks of a terrorist attack at the CMRR-NF in the SEIS. The analysis should include the risk of both “outsider” and “insider” attacks in compliance with the DOE’s Office of NEPA Policy and Compliance 2006 Guidance Memorandum, “Need to Consider Intentional Destructive Acts in NEPA Documents.” While general terrorism analyses have been made that cover LANL in other NEPA documents, the changes in size and scope of the CMRR-NF detailed in the SEIS propose new and unanalyzed potential threats if a terrorist act were to occur at the facility. This analysis, to the maximum extent possible, should be made public in an unclassified document for public comment during the NEPA process. This point was also raised in Tri-Valley CAREs public comment period during Scoping and was not responded to in the SEIS in violation of NEPA.

#### **V. The SEIS Failed to Respond to Tri-Valley CAREs’ Comments Provided During Scoping.**

The SEIS failed to adequately respond to Tri-Valley CAREs’ comments provided during the scoping period. Many of the comments were given a cursory reply and some were altogether disregarded. Our comments regarding a reevaluation of the purpose and need of the CMRR-NF were not addressed in the SEIS. Additionally, there was no analysis concerning the risks associated with terrorist attacks at the new facility. Furthermore, our comment regarding the impact on the nation’s nuclear Non-Proliferation Treaty obligations should have yielded a response. All of these comments provided by TVC discussed significant impacts that the CMRR-NF will have on the natural and human environment, and as such, they should be addressed in a new EIS or, at a minimum, a properly completed and re-circulated new draft Supplemental EIS.

We did receive confirmation of your office’s receipt of our scoping comments. Moreover, they have been publicly available on our website at [www.trivalleycares.org](http://www.trivalleycares.org) under “technical letters and comments,” should you have misplaced them during the production of the SEIS. And, we have not moved our office or changed our phone, fax or other contact numbers. Therefore, we can only conclude that you failed to analyze them properly in violation of NEPA.

For Tri-Valley CAREs,

/s/

Marylia Kelley, Executive Director

/s/

Scott Yundt, Staff Attorney

2582 Old First Street

Livermore, CA 94550