1.0 INTRODUCTION AND PURPOSE AND NEED FOR AGENCY ACTION

This chapter introduces the U.S. Department of Energy's (DOE's) role in the conveyance and transfer of 10 land parcels at Los Alamos National Laboratory (LANL) to the Incorporated County of Los Alamos and to the Secretary of the U.S. Department of the Interior, in trust for San Ildefonso Pueblo, as required by Public Law (PL) 105-119; a statement of the purpose and need for the DOE's action; and an overview of the alternatives analyzed in this Conveyance and Transfer of Certain Land Tracts Environmental Impact Statement (CT EIS). In addition, this chapter explains DOE decisions that the CT EIS is intended to support, as well as the relationship of this document to other environmental documentation prepared by the DOE. At the conclusion of this chapter is an overview of the CT EIS.

LANL is one of several national laboratories that supports the DOE's responsibilities for national security, energy resources, environmental quality, and science. LANL is located in north-central New Mexico, within the Counties of Los Alamos and Santa Fe, about 60 miles (97 kilometers) north-northeast of Albuquerque and about 25 miles (40 kilometers) northwest of Santa Fe (see Figure 1-1). The small communities of Los Alamos townsite, White Rock, Pajarito Acres, the Royal Crest Mobile Home Park, and San Ildefonso Pueblo are located in the immediate vicinity of LANL, adjacent to its boundaries and technical areas (TAs) (see Figure 1-2). LANL currently occupies about 43 square miles (111 square kilometers) or 27,832 acres (11,272 hectares) of land owned by the U.S. Government and under the administrative control of the DOE. Additionally, the DOE has administrative control over other properties and land within Los Alamos County, totaling about 915 acres (371 hectares).

On November 26, 1997, Congress passed PL 105-119, the *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act*, 1998 (Section 632, 42 United States Code [U.S.C.] §§2391; the Act). Section 632[1] of the Act directs the Secretary of Energy (the Secretary) to convey[2] to the Incorporated County of Los Alamos, New Mexico (the County), or to the designee of the County, and to transfer[3] to the Secretary of the Interior, in trust for the Pueblo of San Ildefonso, parcels of land under the jurisdictional administrative control of the Secretary at or in the vicinity of LANL. Such parcels of land must not be required to meet the national security mission of the DOE and also must meet other criteria established by the Act.

DOE has prepared this CT EIS in accordance with the *National Environmental Policy Act* (NEPA) of 1969 (42 U.S.C. §4371 *et seq.*) to examine potential environmental impacts associated with the conveyance or transfer of each of the land parcels tentatively identified for such in the DOE's *Land Transfer Report to Congress Under Public Law 105-119, A Preliminary*

---

[1] Section 632 of the Act is reproduced in Appendix A.

[2] The term "convey" as used in the Act and in this document refers to the disposition of land parcels away from Federal Government ownership.

[3] The term "transfer" as used in the Act and in this document refers to the disposition of land parcels to another Federal Government agency, with the retention of ownership by the Federal Government.

1.0 INTRODUCTION AND PURPOSE AND NEED FOR AGENCY ACTION

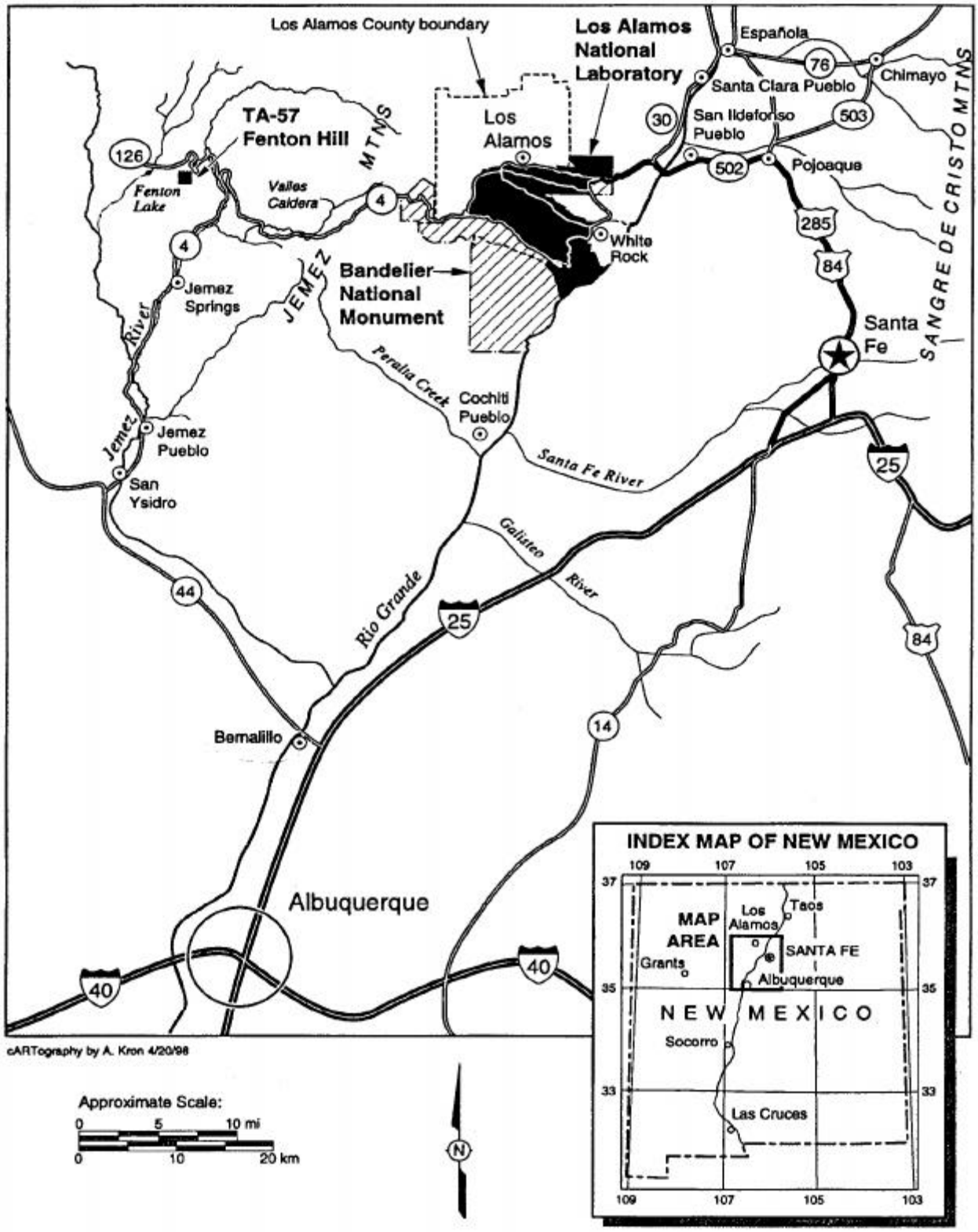

Figure 1-1. Location of the Los Alamos National Laboratory.

states that the Secretary must, to the maximum extent practicable, conduct any needed environmental restoration or remediation activities within 10 years of enactment (by November 26, 2007). Required actions are summarized in Table 1.1.3-1 and discussed in greater detail in Section 1.1.4.

The upcoming conveyance and transfer of land required by the Act is intertwined with both the issues of County self-sufficiency and the elimination of funding for assistance payments. Upon the completion of the conveyance or transfer of the qualifying parcels of land, the DOE shall make no further payments with respect to LANL under either Section 91 or Section 94 of the AECA, as stated in Section 632 of the Act.

1.1.4 Actions Associated with Public Law 105-119

The following subsections briefly discuss the various actions and reports required by PL 105-119. Additional information about other environmental regulatory compliance actions is provided also.

1.1.4.1 Land Transfer Report

As required by the Act, some tracts of land have been recognized by the DOE and LANL as being now or likely to become nonessential within the next 10 years to meet LANL's current and foreseeable programmatic missions. By authority of this new law, these tracts of land may now be disposed of by a conveyance or transfer of government ownership, provided there is reason to believe that the land is unlikely to be required for future DOE mission use[10]. Ten land tracts[11] have been tentatively identified by the DOE in the Land Transfer Report (DOE 1998b), totaling about 4,800 acres (1,944 hectares). These tracts are shown in Figure 1-2 and in greater detail in figures presented in Chapters 5 through 14. These 10 tracts of land are as follows:

- **The Rendija Canyon Tract** consists of about 910 acres (369 hectares).[12] The canyon is undeveloped except for the shooting range (the Los Alamos Sportsman's Club) that serves the local community; portions of this tract are currently under lease from the DOE to the community.
- **The DOE LAAO Tract** consists of about 15 acres (6 hectares). It is also within the Los Alamos townsite and is readily usable. DOE employees occupy offices at the site.
- **The Miscellaneous Site 22 Tract** is a small, Los Alamos townsite parcel located on the edge of the mesa overlooking Los Alamos Canyon. It consists of less than 0.5 acre (0.2 hectare) of disturbed land that is

[10] The conditions under which a parcel or land area is "required to meet the national security mission of the DOE," for the purposes of this CT EIS, are defined as those sites and their activities that are necessary so that DOE mission operations and schedules will not be interrupted. Support of the national security mission at LANL—which includes assessment and certification of nuclear weapon safety and reliability, weapons-related research and development, some nonnuclear component production, pit fabrication, and surveillance of plutonium pits—is inclusive of all actions and activities taken directly and indirectly and includes all buffer zones necessary for health, safety, and security purposes.

[11] Note: the congressional report grouped two small tracts together as "miscellaneous tracts" that are herein considered separately, hence the seeming discrepancy in the total number of tracts to be considered for conveyance and transfer.

[12] All acreages given are approximate. Actual acreage would be determined with ground surveys if conveyed or transferred. Acreages provided by the Land Transfer Report (DOE 1998b) have been adjusted herein to include some rights-of-way that were inadvertently excluded from that report.

Table 1.1.3-1. PL 105-119 Conveyance and Transfer Process Steps

PROCESS STEPS	DATE DUE	RESPONSIBLE PARTY(S)	COMPLETED
Passage of PL 105-119 (Congress decides the DOE must transfer and convey suitable land)	November 26, 1997	U.S. Congress	Yes
Preliminary identification of parcels (report to Congress on land identified as suitable for conveyance or transfer by virtue of meeting PL 105-119 criteria) (Land Transfer Report)	February 24, 1998	DOE	Yes
Title review (report to Congress setting forth the results of a title search on each parcel of land identified as suitable) (Title Report)	November 26, 1998	DOE	Yes
Environmental restoration (identify the environmental restoration or remediation action, if any, that is required with respect to each parcel of land identified) (Environmental Restoration Report)	August 26, 1999	DOE	Final
Review of environmental impacts of the conveyance or transfer of each parcel as required under the provisions of the NEPA (42 U.S.C. 4321 *et seq*.) (Final CT EIS)	August 26, 1999	DOE	Final
Report to Congress on results of Environmental Restoration Report review and Final CT EIS (combined data report to Congress) (Combined Data Report)	August 26, 1999	DOE	No
Agreement on allocation of parcels between Los Alamos County and San Ildefonso Pueblo (Agreement submitted to the Secretary)	November 24, 1999	Los Alamos County and San Ildefonso Pueblo	No
Conveyance and Transfer Plan to Congress (plan for conveying or transferring land according to Agreement on allocation of parcels) (Conveyance and Transfer Plan)	February 22, 2000	DOE	No
Conveyance and transfer of land (action to convey or transfer tracts meeting suitability criteria must be undertaken by the Secretary)	November 25, 2000	DOE	No
Environmental restoration and remediation completed on lands to be conveyed or transferred	November 26, 2007	DOE	No

undeveloped and currently is used as an unsanctioned vehicle parking area.

- **The Miscellaneous Manhattan Monument Tract** consists of less than 0.5 acre (0.2 hectare). The Manhattan Monument is a small, rectangular site located within Los Alamos County land and adjacent to Ashley Pond, where most of the first Los Alamos laboratory work was conducted. A small log structure occupies the site.
- **The DP Road Tract** (North, South and West) consists of about 50 acres (20 hectares). It is generally undeveloped except for the West section where the LANL archives are currently located in one of two buildings.
- **The TA 21 Tract** consists of about 260 acres (105 hectares) and is located east of the Los Alamos townsite. This occupied site is remote from the main LANL area; University of California workers occupy offices at the site, and LANL operations are conducted at facilities there.
- **The Airport Tract** consists of about 205 acres (83 hectares). Located east of the Los Alamos townsite, it is close to the Small Business Center Annex (on East Gate Drive). The Los Alamos Airport is located on part of the tract, while other portions of the tract are undeveloped.
- **The White Rock Y Tract** consists of about 540 acres (219 hectares). It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico.
- **The TA 74 Tract** consists of about 2,715 acres (1,100 hectares). It is a large, remote site located east of the Los Alamos townsite and is largely undeveloped. This parcel was restored to the public domain by Presidential Proclamation 3539 on May 27, 1963; PL 105-119 provides the necessary legislation required for the tract to be disposed of by the DOE at this time.
- **The White Rock Tract** consists of about 100 acres (40 hectares). It is undeveloped except for utility lines, a water pump station, and a small building in use by the County.

These 10 tracts were identified as potentially suitable for conveyance or transfer through a process that had its start well before the passage of the Act. Informal dialog between the County and the DOE on the issue of a major conveyance of property started in the late 1980s. The County identified more than 20 parcels of land that they considered as having high potential development value to the County. These parcels along with several others were then evaluated by the DOE with assistance from LANL management to determine whether these parcels were required for current and future national security mission support purposes, including their use as health and safety buffer zones between LANL operations and members of the public living in the vicinity of LANL. By mid 1995, discussions regarding these parcels included San Ildefonso Pueblo government leaders and staff of other area Federal agencies. In 1996, a review of the tracts was engaged in that divided the parcels into three groups: (1) recommended for transfer, (2) tracts having unresolved issues, and (3) tracts not recommended for transfer. These recommendations were based on operational impacts, utility easement requirements, and known major environmental concerns. This list then was further reviewed with regard to the criteria established by the Act, and the 10 subject tracts were identified as a cumulative result of these efforts in early 1998.

1.1.4.2 Title Report

As required by the Act, the DOE has conducted a review of its ownership for each of the 10 tracts of land identified as being potentially suitable for conveyance and transfer. The results of this search (in the form of formal Title Reports) for any claims, liens, or similar instruments affecting the DOE's title to its interests in the real property of each of the 10 subject tracts were submitted to Congress (DOE 1999a). No "clouds on the titles" were discovered during the search.

1.1.4.3 Environmental Restoration Report

The Environmental Restoration Report required by Section 632(d)(1) of the Act is intended to inform Congress of any necessary environmental restoration and remediation activities that are needed for each of the subject tracts. It is being produced separately, but in parallel with, the CT EIS. For each of the subject tracts, the Environmental Restoration Report[13] (DOE 1999b) describes known or suspected tract contaminants; the regulatory status of site contamination; the number of buildings and other manmade structures onsite that may require decommissioning, decontamination, or demolition; the estimated or known extent of site contamination; other site concerns; the range of proposed site remedies by type; estimated waste generation associated with remediation and restoration activities; and the estimated costs and durations for cleanup. The report also identifies areas where no site data are yet available. Estimates presented in the Environmental Restoration Report are based on existing information; no effort has been made to generate new data on the subject tracts. The Environmental Restoration Report is further intended to give decisionmakers and the public information about the different levels of cleanup that could be accomplished at both ends of the range of site occupancy by members of the public. In this respect, as in others, the Environmental Restoration Report differs from the CT EIS in the range of information intended to be communicated; in some respects the assumptions made are more conservative in nature than those assumptions made for the CT EIS analysis. Additional information about the assumptions, limitations, and a summary of the data included in the Environmental Restoration Report is presented in Appendix B of the CT EIS.

The LANL ER Project has its own process of site investigation, data analysis, public and stakeholder involvement, and remediation that occurs under the auspices of an administrative authority (either the New Mexico Environment Department or the DOE). LANL is regulated under the *Resource Conservation and Recovery Act* (RCRA). The activities performed by the LANL ER Project are subject to DOE review for compliance with the NEPA at the time that proposals for actions become ripe for decision, which is typically after public input and Administrative Authority agreement to pursual of specific types of cleanup activities has occurred. To the extent that this information is known or reasonably bounding[14] data have been developed, that information is presented and used in the CT EIS analysis. Additional NEPA review will be necessary for the majority of the activities yet to be undertaken for most of the subject tracts.

---

[13] A separate, detailed Environmental Restoration Project Plan has been prepared for the TA 21 Tract, in addition to the report required by PL 105-119. Congress requested this plan in the conference reports of the House and Senate Committees on Appropriations that accompanied the *Energy and Water Development Appropriation Act for Fiscal Year 1999* (PL 105-245). This plan describes environmental restoration activities and costs for approximately the next 8 years.

[14] To "bound the impacts" is to use assumptions and analytical methods in an analysis of impacts or risks such that the result overestimates or describes an upper limit on ("bounds") potential impacts or risks. A "bounding analysis" in a NEPA document is an analysis designed to overestimate or determine an upper limit to potential impacts or risks.

The need to complete the process for proposing remedies and receiving approval for these by the appropriate administrative authorities represents one of the multiple layers of uncertainties regarding the Environmental Restoration Report's information. The difficulties in projecting costs into the future and the difficulties in projecting time durations required for cleanup actions without certain knowledge of available funding to undertake the activities, especially on a year-to-year government funding cycle, both add to the limitations of the information presented in that report.

1.1.4.4 CT EIS

The review of environmental impacts of the conveyance or transfer of each parcel, as required by the Act, is the subject of this CT EIS. The NEPA compliance process, the general document scope, the purpose and need for DOE action, the decisions to be supported by the impact analysis, a description of the alternatives analyzed, and a brief discussion and comparison of the impacts likely to occur if either alternative were implemented are discussed later in this document.

1.1.4.5 Combined Data Report

As required by the Act, a report presenting information regarding the environmental restoration or remediation required for the subject tracts (including estimated costs and cleanup durations), and the potential environmental impacts associated directly, indirectly, and cumulatively with conveyance and transfer of the subject tracts will be submitted to Congress. This report may make recommendations for the conveyance or transfer of each of the subject tracts, either in whole or in part, with regard to the likelihood of the DOE being able to meet the suitability criteria established in the Act.

1.1.4.6 Agreement on Allocation of Parcels

As required by the Act, the Incorporated County of Los Alamos and San Ildefonso Pueblo must reach an agreement on the allocation of parcels between them and submit documentation of this agreement to Congress. This is an action to be undertaken by the County and San Ildefonso Pueblo.

1.1.4.7 Conveyance and Transfer Plan

As required by the Act, the DOE must submit a plan outlining how it will proceed with conducting the actual conveyance or transfer of each of the subject tracts, in whole or in part, to the two recipients per their agreement on allocation. This plan will likely be associated with a Record of Decision (ROD) for the CT EIS (or may be contained within the ROD). Additional RODs may be issued later within the 10-year timeframe specified under the Act. The Conveyance and Transfer Plan will implement decisions made in the ROD(s), which will take into consideration the estimated costs and cleanup durations and the technical feasibility of achieving restoration and remediation to the maximum extent practical, as required under the Act, for one of the three uses established by PL 105-119; it also will consider the reasonably foreseeable environmental impacts potentially associated with the subject tracts as a result of conveyance and transfer.

1.1.4.8 Conveyance or Transfer of Land

The DOE shall convey or transfer parcels in accordance with the allocation agreement between the two recipients, subject to the requirements of the Act for retention of lands needed for the DOE to meet its national security mission and/or the requirements for environmental restoration or remediation (providing this requirement is meet within the 10-year period beginning on the date of enactment of the Act).

1.1.4.9 Environmental Compliance Actions Required Prior to Conveyance or Transfer

Discussion of the environmental compliance actions required for the DOE to convey or transfer real property is provided in the October 1997 publication *Crosscut Guidance on Environmental Requirements for DOE Real Property Transfers* (DOE 1997c). Several of these compliance actions are in addition to those required by either the Act or the NEPA. These additional requirements include the need for:

- Completion of an Environmental Baseline Survey Report to meet the requirements of the 1992 *Community Environmental Response Facilitation Act* (CERFA) amendments to the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA)
- Completion of consultation requirements under Section 7 of the *Endangered Species Act* and Section 106 of the *National Historic Preservation Act*
- Completion of consultation regarding traditional cultural properties (TCPs)
- Completion of compliance actions for 10 CFR 1022, DOE Compliance with Floodplains/Wetlands Environmental Review Requirements

A brief discussion of pertinent laws, regulations, permits, and DOE orders is included in Chapter 17 of this CT EIS. Actions to meet the procedural requirements of DOE (General Provisions) 10 CFR 1022 have been undertaken by the DOE both concurrently with and as a part of the CT EIS process. Specifically, as provided for by 10 CFR 1022, a Floodplain and Wetland Assessment was prepared and incorporated into the Draft CT EIS (see Appendix D); a separate Notice of Floodplains and Wetlands Involvement was published in the *Federal Register* (FR) (see copy of this notice in Appendix C), and a Statement of Findings is included in the Final CT EIS (see Appendix D). No comments were received from members of the public regarding the Notice of Floodplains and Wetlands Involvement.

Typically, administrative control of land that is not required by a government agency likely would be relinquished to the General Services Administration (GSA) for disposal. The GSA is the Federal agency responsible for the conveyance of excess and surplus Federal real estate, as stated in Section 203 of the *Federal Property and Administrative Services Act* of 1949, as amended (40 U.S.C. 484). The GSA is invested with the statutory means whereby Federal real property holdings no longer required by Federal agencies for their needs are disposed of as surplus property for non-Federal public or private use. Other Federal agencies are first notified of the availability of the land, and if another Federal use need is identified, the GSA then would arrange for the administrative control of the land to be turned over to that Federal agency for their use. Next in line for disposal of real estate would be State and local public agencies and eligible nonprofit organizations for specified public uses. Purchase of the property at fair market value under competitive sale for unrestricted use is the last resort of the GSA for disposal of surplus land. However, in this case, the disposal of the property identified at this time by the DOE as not being required for future mission use is regulated under the specific provisions of Section 632 of the Act.

1.2 Purpose and Need for Agency Action

The DOE needs to act in order to meet the requirements of Section 632; that is, to convey and transfer certain parcels of land identified by the DOE as being suitable for conveyance or transfer, as defined by the Act.

To be conveyed or transferred (1) the parcels of land must have been determined to be unnecessary for support of the DOE's mission requirements before November 26, 2007[15]; (2) the DOE also must have accomplished any necessary environmental remediation or restoration by that time, to the maximum extent practicable; and (3) the parcels must be suitable for use by the receiving parties for historic, cultural, or environmental preservation purposes, economic diversification purposes, or community self-sufficiency purposes. The parcels that have been preliminarily identified as suitable for conveyance or transfer by the DOE are located at LANL within both Los Alamos and Santa Fe Counties. The recipients of the land tracts will be the Incorporated County of Los Alamos or its designee and the Secretary of the Interior, in trust for the Pueblo of San Ildefonso.

1.3 DOE Decisions to be Supported by the CT EIS

Under the provisions of Section 632 of the Act, the DOE must decide on its action regarding disposition by conveyance or transfer of each of the 10 parcels of land under the DOE's administrative control that have been preliminarily identified as potentially being suitable for that action. Section 632 provides a narrow basis for decisions to be made by the Secretary. The criteria for determining the suitability for conveyance and transfer are described in Section 1.2, above. These three criteria will guide the DOE's decision to convey or transfer each of the subject parcels.

In accordance with the provisions of Section 632, if the DOE decides to dispose of a particular tract of land, in whole or in part, and the parcel currently meets the three criteria for suitability, it may be conveyed or transferred as soon as March 2000. Under the provisions of the Act, the DOE may defer an action decision on those tracts that currently are needed for national security mission support purposes until the tracts are no longer required by the DOE for such use, provided that change in requirements occurs by the close of the specified 10-year period. Similarly, the DOE may defer an action decision on those tracts requiring environmental restoration or remediation until those requirements have been met, to the maximum extent practicable, provided that it is within the specified 10-year period. The DOE has the discretion to redefine the spacial dimensions of a tract from the way it was previously defined (in the Land Transfer Report [DOE 1998b]) in order to facilitate an early disposition decision on those lands that do not require environmental remediation or restoration that could be disposed of in 2000. In that case, the DOE may then defer a disposition decision on the remaining, contaminated portions of the tract that would continue under the DOE's administrative control until such time as it may be environmentally remediated or restored, provided that occurs within the 10-year period time limitation imposed by the Act. Similarly, the DOE could redefine parcels and delay an action decision for those tracts that are currently being used by the DOE to support a national security mission-related action, while making an disposition decision in the short term on those portions of tracts that are not so currently required.

As part of the DOE's screening process for proposing tracts for potential conveyance or transfer, the need of a parcel to support the DOE's mission over the next 10 years was considered. One of the tracts proposed for disposal, the TA 21 Tract, is currently used to support mission-related operations involving radioactive material and fusion energy research. The DOE LAAO Tract is currently occupied by nearly 100 DOE employees

[15] November 26, 2007, marks the end of the 10-year action period specified in Section 632 of the Act.

responsible for oversight of LANL. The DP Road Tract includes two buildings; one of these currently houses the LANL archives. All three of these tracts were considered to be likely to become unnecessary for mission support use by the DOE for various reasons within the defined 10-year timeframe. Since the Land Transfer Report was furnished to Congress in early 1998, a portion of the TA 21 Tract, namely the Tritium Systems Test Assembly (TSTA) facility, has been identified recently by the Director of the Office of Science as being required beyond the 10-year timeframe established by the Act for mission support purposes (Krebs 1998). Similarly, Defense Programs has identified the collocated Tritium Science and Fabrication Facility (TSFF) as also being required beyond the 10-year timeframe (Agrawal 1999).

Almost all of the tracts (9 out of 10 tracts) contain potential or known contaminated sites or areas that may require some degree of environmental remediation or restoration in order to be suitable for the uses approved by the Act. Only the Miscellaneous Manhattan Monument Tract is known to have no contamination issues. Environmental remediation or restoration activities for some of these contaminated areas may be achievable by the DOE before the end of the 10-year period in a technically and fiscally responsible manner. However, some of the sites may be extremely difficult and expensive to remediate or restore, and the DOE ultimately may not pursue such action, thereby making a no action decision on these sites. It is expected that the DOE will issue one or more RODs supported by the Final CT EIS analysis over the 10-year period (ending November 26, 2007), in accordance with the Secretary's plan for conveyance and transfer of the parcels.

There are decisions related to these parcels that the DOE will not make based upon the Final CT EIS analysis. The potential beneficial and adverse impacts from future contemplated development of the land tracts and those that could result from changes in the land use must be understood by the DOE in reaching its decision(s) regarding the disposal of each of the parcels away from DOE administrative control although the DOE will not decide upon future land uses for the 10 tracts. The discussion of information regarding the potential impacts that might result from future development and use of the tracts is of special value to the potential receiving parties and to those living in the Los Alamos County area. The DOE will not decide on which parcel is received by which of the named recipients. Section 632 of the Act specifically states that this decision is to be made exclusively by the County and San Ildefonso Pueblo. The information developed in the course of this CT EIS and the parallel Environmental Restoration Report (DOE 1999b) required by the Act may factor into this decision only to the extent that the two parties chose to make use of it. Should the two parties fail to reach an agreement regarding the disposition of a tract, the land will not be conveyed or transferred.

The DOE's decision to transfer and convey or not to transfer or convey a particular tract of land will be based, as appropriate, on the ability of the DOE to ultimately effect a timely and fiscally responsible restoration or remediation of any site contamination to within levels of residual contamination acceptable for future use by members of the public, the designated recipients, and the State and Federal regulatory agencies. However, the DOE will not decide upon methods or timing of restoration or remediation based upon this CT EIS analysis. To the extent that the environmental restoration and remediation information contained in this CT EIS will aid in better forming conveyance and transfer decisions, the DOE will consider that information.

A separate process engaged in by the DOE through the LANL ER Project that

involves the public and State and Federal regulatory agencies will be used to determine the appropriate level of cleanup to be undertaken, the technical manner in which it will be achieved, and the priority of actions for the subject tracts. This separate process includes the DOE's NEPA review that is performed when the cleanup action(s) becomes ripe for decision. The DOE is directed by the language of the Act to remediate or restore the environment, to the maximum extent practicable, to a level of residual contamination compatible with one of the three uses identified in the Act. It may not be possible within the time allotted by the Act for the DOE to reasonably achieve a level of cleanup consistent with the actual recipient's specific intended use for an individual tract in a fiscally prudent manner. The use of the language "to the maximum extent practicable" in the Act indicates that lawmakers were cognizant of the need for this effort to be conducted in a reasonable fashion within the financial bounds imposed by congressional funding and other available resources given the status of the individual sites requiring remediation or restoration. It may only be possible that the DOE will be able to meet a minimal level of cleanup compatible with one of the uses named in the Act within the time allotted by the Act. This could result in a greater level of residual contamination. ER Project activities to date range across the subject tracts and include areas where the contamination has been well characterized and where removal activities have already been conducted in whole or in part. Other areas may have had little or no site characterization work performed yet, such as areas within floodplains that may have received contamination washed downstream from other contaminated areas in the past, and much work remains to be done within the tract before remediation decisions can be reasonably made. Some of the sites are sufficiently contaminated such that cleanup activities are likely to be very complex and will be time and labor intensive; other tracts may only be slightly contaminated and the cleanup activities involved are likely to be straightforward and may be accomplished in a short period of time with minimal effort. Not all of the work that may be required to remediate or restore the subject tracts is currently included in the DOE plan *Accelerating Cleanup: Paths to Closure* (DOE 1998c); this plan is dynamic and subject to revision and change every year. For example, the current plan does not include the floodplain areas where in the past upstream wastes may have washed downstream onto some of the tracts and buildings currently in service that contain asbestos or other hazardous materials requiring decontamination before demolition may be undertaken. Similar plans will be developed to address the cleanup of these buildings and floodplain areas. To the extent known or anticipated, environmental restoration and remediation impacts information is included in this CT EIS. However, NEPA compliance for potential impacts is expected to be completed; the decisions related to those activities are expected to be made; and the actions are expected to be performed before the DOE makes any subsequent decision(s) regarding the disposal of the subject tracts as stipulated by the Act.

1.4 Overview of the Alternatives Considered

Two alternatives are analyzed in this CT EIS: (1) the No Action Alternative and (2) the Conveyance and Transfer of Each Tract Alternative or the "Proposed Action Alternative." The No Action Alternative, while analyzed in full for the purpose of providing a baseline for comparison of impacts, would not meet the need for agency action. The Conveyance and Transfer of Each Tract Alternative has been identified as meeting the DOE's purpose and need for action. A Preferred Alternative has been identified by the DOE, which is a subset of the Proposed Action Alternative.

1.4.1 No Action Alternative

Under this alternative, the DOE would continue its administrative control of each or all of the individual tracts tentatively identified as candidates for conveyance and transfer, and conveyance or transfer actions for each or all of the tracts would not occur. Subject lands would continue to be used as they are currently being utilized. Under this alternative, land might not be restored or remediated in a manner or in a timeframe consistent with that imposed by the Act. Neither the County nor San Ildefonso Pueblo would gain additional land for their use as a means to promote self-sufficiency or diversification of their income basis.

1.4.2 Convey and Transfer of Each Tract Alternative

Under this alternative, each of the 10 tracts of land, identified by the DOE's Land Transfer Report (DOE 1998b), would individually be either conveyed or transferred to either the County or the Secretary of the Interior, in trust for San Ildefonso Pueblo, in whole or in part. For those tracts with a current mission-support use or with environmental restoration or remediation requirements, the DOE may delay their disposition decision for up to 10 years on the whole tract, or the DOE could make a disposition decision in the short term to convey or transfer portions of certain tracts immediately not currently required for the DOE mission-support uses or where environmental restoration or remediation is not required. The DOE would then retain control of the remaining, contaminated portion(s) of the individual tracts or the portion(s) yet required to support a mission-related need and delay its disposition decision on those portions of the tracts for some future time up until the end of the 10-year period allowed for by the Act, which would be near the end of the year 2007. The DOE would delay the conveyance or transfer until these tracts meet the conveyance and transfer criteria—that is, until adequate environmental restoration or remediation could be accomplished and until the tract portion is no longer needed for mission support purposes. At the end of the 10-year period designated in the Act, barring any new legislative action to the contrary, land parcels or portions of parcels that have not already been conveyed or transferred would remain under the administrative control of the DOE, and the DOE would make a de facto decision in favor of the No Action Alternative regarding that land.

The relocation of site tenants to other, as yet unidentified, generic locations is included in the analysis of this alternative. Additional NEPA review will be required for those future actions when the proposals on specific action alternatives actually become ripe for decision(s). Additionally, indirect impacts that could result from the use of the subject tracts by the two recipient parties are analyzed in this CT EIS, together with potential cumulative impacts from interjecting the direct and indirect actions into the context of other local and regional past, present, and future reasonably anticipated actions.

1.4.3 Preferred Alternative

The DOE has identified the following subset of the Proposed Action Alternative, by tract, as its Preferred Alternative. Tracts are listed below in an approximate order of potential timing of disposition; the actual order of tract disposition may be slightly different. Consistent with PL 105-119, the actual disposition of each tract, or portion of a tract, would be subject to the DOE's continuing or future need for an individual tract, or a portion of the tract, to meet a national security mission support function. This need could result from either direct or indirect activity involvement. Additionally, the disposition of each tract, or portion of a tract, would be subject to the ability of the DOE to complete any necessary environmental restoration or remediation.

The DOE has concluded that significant portions of two tracts (the TA 21 Tract and the Airport Tract) will not be available for conveyance or transfer within the 10-year period specified by PL 105-119. This is due to identified national security operational needs of two facilities within TA 21 and the need for surrounding areas to be retained as security, health, and safety buffer areas. The area of buffer retention is roughly equivalent to about a one-half mile radius from the facility sites and includes portions of the TA 21 Tract and the Airport Tract.

The DOE also recognizes with regard to six of the remaining tracts that meeting the conveyance and transfer criteria within the mandated 10-year timeframe may not be possible for all portions of these tracts. For example, the current national security mission support functions that are conducted on the DOE LAAO Tract and the DP Road Tract could possibly require portions of the tracts to be retained for use beyond the 10-year timeframe established by the Act, although this is considered to be unlikely. Similarly, there may be newly proposed activities at LANL facilities that could require the retention of portions of tracts for national security mission support reasons. In this case, only essential areas would be retained, and the remainder of the tract would likely be conveyed or transferred.

Further uncertainty regarding the DOE's ability to convey or transfer all of the tracts results because some portions of the six tracts have associated contamination issues. Those portions of the tracts may potentially require environmental restoration or remediation that could be technically difficult to achieve or that could require more than the 10-year period established under the Act for completion of these actions. The LANL ER Project process, which includes input from stakeholders and approval by the Administrative Authority(s), will proceed with the anticipation of completing the necessary environmental restoration and remediation actions by the end of the year 2007. However, the DOE recognizes that some tracts that have contamination issues are going to consume more time and resources and be more expensive to clean up because the cleanup technical strategy could change from those currently planned by the ER Project.

Reaching agreement on the cleanup approach and conducting the necessary testing and remedial action could be a lengthy process. The extra funding required for such a change in the planned cleanup also may require the appropriation of additional funding from Congress. Given such considerations, it may not be possible to complete all of the necessary environmental remediation or restoration actions necessary to release all portions of the subject tracts within the allotted timeframe.

The DOE is confident that it can convey or transfer in whole two tracts in the near term; these two tracts are not currently used nor are they anticipated to be needed in the future for national security mission support needs. Although one of the tracts has a minor surface disposal site, it can easily be remediated within a short period of time. These two tracts are the Miscellaneous Manhattan Monument Tract and the Miscellaneous Site 22 Tract.

The Preferred Alternative for conveyance and transfer of the 10 land tracts identified as potentially suitable, per the criteria established in Public Law 105-119, is as follows (within each grouping no order of conveyance and transfer is intended):

Convey or Transfer Entire Tract in the Year 2000, or Soon Thereafter:

- Miscellaneous Manhattan Monument Tract
- Miscellaneous Site 22 Tract

Convey or Transfer Entire Tract or Partial Tract (Portions of Tract Without Potential Contamination Issues or Mission Support Concerns) in the Year 2000, or Soon Thereafter, But Before the End of the Year 2007:

- DOE LAAO Tract
- White Rock Tract
- Rendija Canyon Tract
- TA 74 Tract
- DP Road Tract
- White Rock Y Tract

Convey or Transfer Partial Tract (Portions of Tract Without Potential Contamination Issues or Mission Support Concerns) at a Later Time, But Before the End of the Year 2007:

- TA 21 Tract
- Airport Tract

For the tracts that are conveyed in part, the DOE would continue to resolve outstanding national security mission support issues and any contamination cleanup required on the remaining portions of the tracts so that conveyance or transfer of those portions could occur before the end of the 2007 deadline stated in the Act.

The environmental impacts of the Preferred Alternative, based on current information, would be expected to be between those presented for implementation of the Proposed Action and the No Action Alternatives for each tract.

1.5 Relationship to Other DOE NEPA Documents and Proposed Actions

In this CT EIS, the DOE examines the environmental consequences that could be expected if each of the 10 identified land tracts, in whole or in part, were conveyed or transferred with subsequent development and use of the tracts for the purposes identified by the Act and as further contemplated by the recipients. However, other DOE NEPA reviews recently completed or currently being conducted could affect the analysis of the long-term result of the conveyance and transfer actions either indirectly or cumulatively. These DOE NEPA documents are summarized here and their relationships to the CT EIS alternatives are noted.

1.5.1 1999 LANL Site-Wide Environmental Impact Statement

1.5.1.1 NEPA Analysis

The DOE proposes to continue operating LANL and has identified four action alternatives for the continued operation of the facility: (1) the Expanded Operations Alternative, (2) the Reduced Operations Alternative, (3) the Greener Alternative, and (4) the No Action Alternative. The affected environment for most resources and impacted areas is within 50 miles (80 kilometers) of LANL. Analysis indicates little difference in the environmental impacts among the alternatives analyzed. The primary discriminators are collective worker risk due to radiation exposure, socioeconomic effects due to LANL employment changes, and electrical power demand.

1.5.1.2 Relationship to Conveyance and Transfer Action

The LANL SWEIS was issued in early May, 1998 (DOE 1998a). The Final SWEIS was issued in early 1999 (DOE 1999c); a ROD was issued on September 13, 1999. Information contained in the SWEIS regarding environmental resources or existing conditions is used extensively in the CT EIS. Implementing the SWEIS Preferred Alternative would result in greater use of electric power due to expanded LANL operations. This alternative would result in more people being hired, mostly for long-term

employment. It also would result in more of the LANL workers being exposed to radioactive materials and processes. Use of the Preferred Alternative as the basis for the No Action Alternative in the CT EIS provides a reasonable upper limit of impacts regarding those resources of concern to the Proposed Action Alternative analysis. This approach assures that the CT EIS has not underestimated the potential impacts that may result from the conveyance and transfer of the subject tracts. In particular, the level of use of utilities (such as electricity and natural gas), waste management and disposal facilities, and groundwater resources are maximized in the Preferred Alternative. As the four alternatives analyzed in the SWEIS relate to varying levels of operations at LANL's key facilities, the 10 subject tracts for the CT EIS are either excluded from the analysis (as they do not form a part of the LANL site) or they remain unchanged in land use across the alternatives. The cumulative effects that could result from implementing the Preferred Alternative and the subsequent development and growth that could result from the conveyance and transfer of land to the County and San Ildefonso Pueblo are analyzed in Chapter 15 of this CT EIS. Information contained within the analysis of human health risk from operating LANL at its current level and at an expanded level of operation is included in this document, especially in the analysis of relocating public dose receptors relative to the subject tracts.

1.5.2 DP Road Tract Environmental Assessment Analysis

In early 1997, the DOE completed an analysis of the conveyance and development of 28 acres (11 hectares) on the so-called "DP Road Tract" in the DP Road Tract Environmental Assessment (EA) (DOE 1997a). This tract is a portion of the tract referred to herein as the "DP Road Tract (North, West, and South)," being that portion referred to as the "South" part. The County was named in the EA as the recipient of this conveyance action, and their plans to develop the site included the construction of new parking lots, storage buildings, office buildings, and various equipment maintenance areas for the County's use. A Finding of No Significant Impact (FONSI) and the EA were issued together on January 23, 1997. No conveyance of this tract has occurred. Decisions relevant to this tract will be made based upon the analysis contained in the CT EIS.

1.5.2.1 Relationship to Conveyance and Transfer Action

The land conveyance action that was the subject of the DP Road Tract EA has been included in the current Proposed Action Alternative analysis being covered by the CT EIS. The information provided by the DP Road Tract EA has been incorporated in this document by reference. Because it is part of the Proposed Action Alternative, it is excluded from the No Action Alternative analysis.

1.5.3 Research Park Environmental Assessment

The Research Park EA (DOE 1997b) analyzed the lease of about 60 acres (24 hectares) within LANL's TA 3 and TA 62 to the County's designee for the construction, occupation, and use as a research park. About 10 multistoried buildings and their associated parking lots and roadways will be constructed, mostly in areas of disturbed land that have not been developed. The Research Park will be subleased to organizations, companies, and groups for the purposes of operating light laboratories and offices. The Research Park EA analysis supported the issuance of a FONSI in October 1997.

1.5.3.1 Relationship to Conveyance and Transfer Action

A lease between the Los Alamos Economic Development Corporation (the party designated by the County of Los Alamos to pursue this action) and the DOE has been negotiated and was executed in February 1999. The Research Park will provide space for about 1,500 workers and will likely have a positive, though minor, impact on the local economy and infrastructure. Most of the employees will be expected to come from other locations within the State or regional area. Mitigation measures to protect sensitive area resources have been taken by the DOE. The development and operation of the Research Park are part of the No Action Alternative for this CT EIS. Chapter 15 of this document analyzes the cumulative impacts for the conveyance and transfer action.

1.5.4 Electric Power Systems Upgrade Project Environmental Assessment

The DOE is considering the installation of a third, 18-mile (29-kilometer) electric line into LANL for the purpose of enhancing the reliability of electricity service delivery into the LANL and Los Alamos County area. An EA is being drafted to analyze the potential affects of installing and maintaining a 345-kilovolt line from the Norton Substation across the Rio Grande that would then drop down to a 115-kilovolt carrying capacity into the west side of LANL. The proposed action calls for the installation of oversized transmission poles and lines that are commonly used for larger, 345-kilovolt transmission lines for the segment of the line that would cross the river area. Installation of this line would not, in and of itself, provide additional electricity service into LANL and Los Alamos County. Instead of splitting the existing power load between the existing two supply lines, it would be split between three lines with the installation of this new line. When a new power delivery source is brought into the northern New Mexico area, however, this line could be altered to deliver its maximum capacity of 345 kilovolts with minimal additional effort. The proposed route for the transmission line crosses BLM- and USFS-administered land on the eastern side of the Rio Grande, crosses the river, and continues across LANL to the northwest where it would terminate at a new substation in LANL's TA 8. From that termination point, 115-kilovolt connections would be made to the existing substations at TA 3. The Predecisional Draft EA (DOE/EA 1247) is scheduled to be released to the stakeholders and will likely be made available to the public during 1999.

1.5.4.1 Relationship to Conveyance and Transfer Action

Electricity demand within the Los Alamos County area due to increases in population, commercial, and industrial activities as a result of the conveyance and transfer of the subject tracts is analyzed in Chapters 5 through 14 of this CT EIS. Chapter 15 of this document analyzes the cumulative impacts of the conveyance and transfer action, along with other known future electric power demands. The Electric Power Systems Upgrade Project EA is proceeding independently of this CT EIS because the action is independently justified, does not prejudice the decision(s), and the action being analyzed would not affect the total amount electric power being brought into the area power pool at this time. The issue of increased electric power supply is a regional concern in northern New Mexico, and it would be expected to have its own NEPA analysis when it becomes ripe for action analysis. The installation of a third line into the LANL and Los Alamos County area (as is discussed in the Electric Power Systems Upgrade Project EA) is part of the No Action Alternative for the CT EIS.

1.5.5 Strategic Computing Complex Environmental Assessment

The DOE is considering the construction and operation of a new computing facility (the Strategic Computing Complex [SCC]) at LANL's TA 3. Equipment at this facility would be capable of operating at a 50 trillion floating point operations per second (TeraOps) computing power level. An EA was prepared that considered construction, occupancy, and operation of the two-story, 267,000-square-foot (24,800-square-meter) building. The building structure includes office areas and a large, 43,500-square-foot (4,040-square-meter) computing area filled with state-of-the-art computer equipment. Several new parking lots would be constructed around the TA 3 area to off-set the parking spaces lost due to the siting of the building. The reuse of large volumes of water for cooling and its subsequent evaporation were the main environmental concerns analyzed, together with the electric power demand that such a facility would place on the existing LANL and Los Alamos County resources. The impacts of the construction and operation of the SCC were included in the levels of operation for all SWEIS alternatives. The EA and FONSI were issued on December 21, 1998.

1.5.5.1 Relationship to Conveyance and Transfer Action

The construction and operation of such a computing facility at LANL would require potential companion actions, such as reuse of discharge water within the cooling systems at TA 3 and treatment of waters for that purpose with the potential for zero or at least minor discharge back to the environment to keep the potential for adverse impacts insignificant. The cumulative effects of energy and water use within the County supply systems are analyzed in Chapter 15 of this CT EIS. The SCC construction and operations analysis proceeded independently of this CT EIS due to its independent utility and its lack of prejudicial influence to the decision(s) supported by this analysis. The proposed facility is part of the No Action Alternative for the CT EIS.

1.5.6 Nonproliferation International Security Center Environmental Assessment

The DOE is considering the construction and operation of a new centralized facility for LANL nonproliferation and security activities within the TA 3 portion of LANL. An EA was prepared that considered the construction, occupancy, and operation of the Nonproliferation International Security Center (NISC). The NISC would consist of a single, four-story building that would house offices and light laboratory operations over about 163,000 square feet (15,143 square meters) of floor space. The new building would replace multiple small offices and laboratory operations that are currently scattered over LANL and consolidate their functions, together with nearly 500 existing LANL employees. A small shop and high-bay area would be constructed next to the main building. The traffic and parking conditions were the main environmental concerns analyzed, together with waste generation from construction activities. The NISC EA (DOE/EA 1247) was issued on July 22, 1999.

1.5.6.1 Relationship to Conveyance and Transfer Action

The NISC is part of the No Action Alternative for the CT EIS. The potential for economic effect is minor and positive; it is included in the cumulative analysis provided in Chapter 15 of the various incidental area activities anticipated within Los Alamos County in the near term.

1.6 Overview of the Conveyance and Transfer Environmental Impact Statement

General information regarding the NEPA process and the process the DOE used in preparation of this CT EIS is included on the inside cover of this CT EIS. Additional information specific to the CT EIS is described in this section, including the role of Cooperating Agencies[16] and a summary of the scoping process and comments received, followed by a summary of the Draft CT EIS review process and comments received on the draft document.

1.6.1 Environmental Impact Statement Approaches

In this CT EIS, each tract is considered separately, with discussion of the contemplated land uses, the existing environment of each tract, and the potential environmental effects estimated to result from the development and use of the tract being included within a single chapter. It should be noted that, as already stated, the Act provides no basis for the DOE to direct the future use of the property to be disposed. As a result, the uncertainty over the ultimate use of the 10 tracts dictates a generic regional approach in the CT EIS when considering the future development and use of each tract. Information pertaining to land use related impacts is provided with an emphasis on significant cumulative and regional effects. It is not the intent of this CT EIS to satisfy the various Federal, State, and local environmental requirements that would be required by the future recipients of the tracts or subsequent owners or uses. Consequently, the CT EIS is not at the level of detail normally associated with specific project-oriented EISs. Certain site-specific issues or concerns are not resolved in this CT EIS because these are more related to specific development plans of the parties who may acquire the tracts. The Act provides that the future use of each land tract is to be one of three potential uses: (1) historic, cultural, or environmental preservation purposes; (2) economic diversification purposes; or (3) community self-sufficiency purposes. Uses (2) and (3) may include a suite of potential specific uses, including residential, recreational, or industrial and commercial future uses, for the purposes of impact analysis. The County and San Ildefonso Pueblo have identified their contemplated specific uses of each of the tracts. (See Chapter 2, Section 2.1, for identified contemplated uses of both parties.) This contemplated use information has been factored into the quantitative analysis contained within this analysis. The DOE is directed by the language of the Act to remediate or restore the environment to a level of residual contamination compatible with one of the three uses identified above, to the maximum extent practicable. Under PL 105-119, the DOE has no authority to direct future use of the property proposed for conveyance and transfer. Therefore, the DOE cannot "know" the future development. The DOE, therefore, assessed the land uses identified by the potential recipients rather than a "worst-case scenario." The underlying goals of the original Council on Environmental Quality (CEQ) requirement to evaluate a worst-case scenario were "disclosure of the fact of incomplete or unavailable information; acquisition of that information if reasonably possible; and evaluation of reasonably foreseeable significant adverse impacts even in the absence of all information." The CEQ later

[16] "Cooperating Agency" means any Federal agency other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a Cooperating Agency are described in 40 Code of Federal Regulations (CFR) §1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a Cooperating Agency (40 CFR §1508.5).

rescinded the worst-case scenario because it was "an unproductive and ineffective method of achieving those goals; one which can breed endless hypothesis and speculation" (SIFR-15618). The underlying assumption of the EIS analysis is that the contemplated future uses are bounding for actual future site uses. Based on the level of environmental site remediation actually achieved and the amount of residual site contamination, the use of the tracts may necessarily be different from those contemplated based on human health and ecological risk factors. The transfer or conveyance of any tract or portion of a tract is to be made after environmental site remediation or restoration has already occurred. The LANL ER Project is engaged in activities over the entirety of LANL and land in the Los Alamos townsite area that was historically involved in the activities associated with laboratory work. As part of that project, remediation investigations have already been initiated on most of the 10 subject parcels. Some site restoration or remediation work has additionally been conducted at several of the subject parcels. The LANL ER Project will proceed unchanged, except for possible revisions in terms of schedule, the demolition of buildings that are currently in service that contain hazardous materials, and the cleanup of floodplain areas not currently contemplated. The LANL ER Project work has its own process for data gathering, risk analyses, determination of cleanup levels involving decisions about what residual contamination levels are acceptable for future land uses, public involvement processes, and a separate NEPA review process, which will largely take place along different time lines. Because of these factors, this CT EIS will not engage in a detailed quantitative analysis of the LANL ER Project work. A qualitative discussion of the anticipated ER Project process for each tract will be included in the No Action Alternative and the individual tract conveyance or transfer analysis. The information included in the qualitative discussion is drawn from the Environmental Restoration Report (DOE 1999b) being prepared in parallel with the CT EIS, which is summarized in Appendix B of this CT EIS.

1.6.2 Role of Cooperating Agencies

Various LANL area government agencies have participated in the CT EIS preparation process as Cooperating Agencies for the purpose of contributing information needed for analysis of the cumulative impacts that could result from the DOE decision to convey or transfer all or part of the subject tracts. These agencies are as follows:

Incorporated County of Los Alamos

San Ildefonso Pueblo

U.S. Department of the Interior

- National Park Service, BNM
- BLM, Taos Office
- Bureau of Indian Affairs

U.S. Department of Agriculture

- USFS (Santa Fe National Forest, Española District)

Several of these Cooperating Agencies have identified issues of special concern to their agencies or organizations with regard to the two alternatives analyzed in the CT EIS. These issues are included within the analysis of impacts presented in Chapters 5 through 15, and within the discussion of identified mitigation measures presented in Chapter 16. The complete statements made by the Cooperating Agencies of these issues of special concern are included in Chapter 18.

1.6.3 Organization of the CT EIS

Chapter 2 of the CT EIS describes the No Action Alternative, the Conveyance and Transfer of Each Tract Alternative, and other alternatives that were considered but not analyzed further. This chapter also compares the impacts associated with the No Action

Alternative and the Conveyance and Transfer of Each Tract Alternative. Chapter 3 describes the general LANL environmental setting of the 10 subject land tracts. Chapter 4 briefly discusses the methods and assumptions used in the impacts analysis for this CT EIS. Chapters 5 through 14 are devoted individually to each of the 10 subject tracts. Each of these chapters discusses both alternatives under consideration, including the existing environment of the particular tract being covered, the contemplated future land use(s), and the potential environmental impacts that could result from either a DOE no action or action decision. Chapter 15 analyzes the potential cumulative impacts that could result under each of the two alternatives analyzed. Chapter 16 is a discussion of potential mitigation measures for which the DOE would be responsible and recommended mitigations for consideration by the County of Los Alamos and San Ildefonso Pueblo. Chapter 17 includes a discussion of actions to be taken specific to the conveyance and transfer activity and a listing and brief discussion of the applicable laws, regulations, permits, and DOE orders. Chapter 18 includes information regarding issues of special concern to the Cooperating Agencies and also discusses the consultations and coordinations that were involved in the production of this document. Chapter 19 contains the references for the CT EIS analyses, and Chapter 20 is a list of the preparers of the document and its analyses. Chapter 21 is a list of agencies, organizations, and people to whom copies of this CT EIS were sent. Chapter 22 is the glossary. Chapter 23 is the index.

1.6.4 Scoping Process and Comments Received

The NEPA (40 CFR 1501.7) requires Federal agencies to invite the participation of affected Federal, State, and local agencies; any affected Native American tribe; the proponent(s) of the action; and other interested parties to comment on the scope and significant issues to be analyzed in the CT EIS. In accordance with the NEPA, the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] Part 1500-1508), the DOE NEPA Implementing Procedures (10 CFR 1021), and DOE's NEPA orders and guidelines, the DOE determined on January 20, 1998, that an EIS should be prepared to assess the potential environmental impacts of conveying and transferring certain land tracts located at LANL within the Incorporated County of Los Alamos and Santa Fe County. The DOE published in the FR, dated May 6, 1998 (63 FR 25022), a Notice of Intent (NOI) to prepare an EIS to assess the potential environmental impacts of conveying and transferring certain land tracts located within the Incorporated County of Los Alamos and Santa Fe County and at LANL (see Appendix C). The public scoping period began with the publication of this NOI and ended June 30, 1998. Public scoping meetings were held in three locations: Los Alamos, New Mexico (May 19, 1998); Santa Fe, New Mexico (May 20, 1998); and Española, New Mexico (May 21, 1998). Comments were accepted verbally, electronically, by phone, and in writing. In the next section are summaries of the scoping comments received on the CT EIS. These comments were used to shape the CT EIS analysis and were incorporated as appropriate and to the extent practicable within the CT EIS analysis in the pertinent sections.

The DOE received approximately 110 comments from 31 commentors on the scope of the CT EIS via public comment forms, letters, electronic mail, and verbal comments provided at the public hearings. Comments were organized into the following categories:

- Cultural Resources (01)
- Natural Resources, Wildlife, and Threatened and Endangered Species (02)
- Cumulative Impacts (03)

- Environmental Justice (04)
- Historic Trails, Recreation, and Public Access to National Forest Lands (05)
- Fire Hazard (06)
- Cooperating Agency Status (07)
- Environmental Restoration (08)
- Alternatives (09)
- Restrictions or Easements (10)
- Future Uses (11)
- Partial Conveyance or Transfer (12)
- Homesteader Issues (13)
- Environmental Monitoring (14)
- Water Rights and Utility Corridors (15)

1.6.5 Specific Comment Summaries

1.6.5.1 Cultural Resources (01)

Several commentors requested that impacts on cultural resources and archaeological sites be analyzed in the CT EIS. A commentor stated that the DOE should conduct a survey to identify the cultural value the lands contain. One commentor stated that transfer of special cultural and natural resources to the County will not provide enough protection for these resources and that the impacts from this lack of protection should be analyzed in the CT EIS. Another commentor expressed concern that any development activity or overnight use on TA 74 and the White Rock Y Tracts would pose a threat to and have a negative effect on the cultural resources of the Tsankawi unit of BNM and the visitor experience of that unit. In Chapter 3, see Section 3.2.8; in Chapter 4, see Section 4.2.8; and in Chapters 5 through 14, see Sections X.1.8, X.2.8, and X.3.8 (where "X" is the chapter number). Also see Chapters 15 and 16.

1.6.5.2 Natural Resources, Wildlife, and Threatened and Endangered Species (02)

Several commentors expressed concern that extensive development of the land tracts could have an adverse effect on the natural and wildlife resources, especially threatened and endangered species, in and around the tracts. Concern was expressed about the potential adverse impacts of increased development, traffic, recreation, and other activities that result in habitat loss or degradation. In particular, a commentor stated that impacts on habitat and water quality from activities on canyon edges should be considered. Several commentors stated that the CT EIS should include analysis of the potential impacts on threatened and endangered species and other natural resources that are expected to occur when the tracts are no longer managed by the DOE and are fully developed. A commentor recommended that candidates for threatened and endangered species and species of special concern also be evaluated in the land tract surveys and in the analysis of the environmental effects. The commentor also recommends that the CT EIS fully assess the impacts of the proposal and its alternatives on other fish and wildlife resources, with an emphasis on sensitive species habitat, wetlands, waters of the United States, and native wildlife and plant populations. In Chapter 3, see Section 3.2.1.7; in Chapter 4, see Section 4.2.7; in Chapters 5 through 14, see Sections X.1.7, X.2.7, and X.3.7 (where "X" is the chapter number). Also see Chapters 15 and 16.

1.6.5.3 Cumulative Impacts (03)

Several commentors stated that the CT EIS should address the cumulative impacts of transfer and development of the 10 parcels as a whole, including transportation, population growth, air pollution, water availability and quality, habitat fragmentation, aesthetics, and quality of life. A commentor

stated that the significance of cumulative impacts may be obscured when they are evaluated on a project-by-project basis and recommends that an adequate quantification of direct, indirect, and cumulative effects be completed. Commentors believed that changes in the land use for some or all of the parcels will have a cumulative effect over a much broader area and should be analyzed. Several commentors requested that the DOE analyze the impacts of transfer and subsequent development of the land parcels on the mandates and environmental protection goals of other land management agencies such as the USFS and NPS. See Chapter 15.

1.6.5.4 Environmental Justice (04)

A commentor questioned how the CT EIS will utilize the Environmental Justice Order. Another commentor thought it important to include environmental justice issues in the CT EIS. In Chapter 3, see Section 3.2.13; in Chapter 4, see Section 4.2.13; and in Chapters 5 through 14, see Sections X.1.13, X.2.13, and X.3.13 (where "X" is the chapter number). Also see Chapter 15.

1.6.5.5 Historic Trails, Recreation, and Public Access to National Forest Lands (05)

Several commentors asked the DOE to consider the impacts from transfer and development of the 10 tracts and to preserve the local hiking trail system and recreational activities that occur on the tracts. A commentor also requested that impacts from reduced legal and administrative capacity to manage, preserve, and protect recreational resources as a result of the transfer to the Pueblo or County be considered. A commentor stated that the Rendija Canyon Tract contains undeveloped recreational activities, trails, and access roads to the Santa Fe National Forest, including the only legal public access road to this land. The commentor stated that the Rendija Canyon Tract contains some water and power easements that should be considered in the CT EIS. The commentor also stated that the USFS needs access to the Santa Fe National Forest via the Rendija Canyon access road for administrative purposes. Another commentor recommended that the parcel of land containing the Los Alamos Sportsman's Club in the Rendija Canyon Tract be transferred to the County for subsequent lease to the Los Alamos Sportsman's Club, remaining as a specified recreation area. Another commentor stated that access to rock faces for recreational rock climbing activities within the White Rock Y Tract should remain open to the public after the land is transferred or conveyed. See Chapter 3, Section 3.2.1; in Chapter 4, see 4.2.1; also see Chapters 5 through 14, Sections X.1.1, X.2.1, and X.3.1 (where "X" is the chapter number).

1.6.5.6 Fire Hazard (06)

Several commentors requested that the DOE include the impacts of development on the potential for catastrophic fires. A commentor also noted that it is important, as part of a comprehensive fire management system under development, to construct effective fuelbreaks to reduce the threat of fire, specifically within the Rendija Canyon Tract. See Chapter 3, Section 3.2.12; in Chapter 4, see Section 4.2.12; and in Chapters 5 through 14, see Sections X.1.12, X.2.12, and X.3.12 (where "X" is the chapter number). Also see Chapters 15 and 16.

1.6.5.7 Cooperating Agency Status (07)

The County of Los Alamos requested to be designated by the DOE as a Cooperating Agency under NEPA and DOE regulations. See Section 1.6.4.

1.6.5.8 Environmental Restoration (08)

Several commentors questioned the level to which the 10 tracts would be "cleaned" or be environmentally restored. One commentor requested mitigation of contaminated areas in

the 10 land tracts to meet U.S. Environmental Protection Agency (EPA) or other environmental requirements. A commentor questioned whether any land that was transferred would have to be cleaned up within 10 years, regardless of cost. A commentor questioned whether a parcel could be transferred without cleanup if its intended use is the same as its current use—for example, the shooting range at Rendija Canyon. Another commentor strongly urged the DOE to utilize the land use plans of the two recipients of the land transfer, Los Alamos County and San Ildefonso Pueblo. The commentor stated that if the County and Pueblo agree that the land will be used for commercial/industrial uses, then a "brownfields" cleanup standard should be assumed and, if the two parties agree on preservation for a site or part of a site, then minimizing ecological risk is the appropriate standard. Another commentor questioned if partial tracts are transferred due to contamination of the rest of the parcel, to what extent would the DOE protect the public from the contaminated section. See Chapters 1 and 2; Chapter 3, Section 3.2.1; and Chapter 4, Section 4.2.1. Also see Chapters 5 through 14, Sections X.1.1, X.2.1, and X.3.1 (where "X" is the chapter number).

1.6.5.9 Alternatives (09)

Comment Summary 09.01

One commentor requested that the DOE include analysis of transferring two parcels of land not included in the Land Transfer Report (DOE 1998b): the University Site on State Road 4 and the Research Park Phase II site. Another commentor suggested the deletion of two areas from the scope of the CT EIS: the 25-acre (10-hectare) "DP South" parcel and the eastern three-fourths of the 260-acre (105-hectare) TA 21 Site. See Chapter 2, Section 2.4.

Comment Summary 09.02

Several commentors requested that the DOE consider as an alternative the transfer of the 10 tracts to other Federal agencies, such as the NPS or the USFS. A commentor stated that transfer of parcels with cultural and natural resources should be to Federal agencies having administrative and legal capabilities to manage these resources to a level consistent with or greater than is currently performed by the DOE. See Chapter 2, Section 2.4.

Comment Summary 09.03

A commentor stated that another alternative should be added providing for partial conveyance and transfer of only those lands that would not adversely affect natural and cultural resource management and protection mandates of adjacent Federal and tribal lands. See Chapter 2, Section 2.4.

Comment Summary 09.04

Another commentor stated that a fourth alternative that allows for partial conveyance for reasons other than cleanup concerns should be analyzed. The commentor noted that, as proposed, the list of alternative actions does not provide for "no action" when transfer of certain parcels, or portions of parcels, threatens cultural and natural resources. The commentor stated that retention by the DOE should be preferred for portions of parcels where protection and preservation of cultural and natural resources after transfer cannot be ensured. Also, retention by the DOE should be preferred for areas where the proposed land use is in conflict with surrounding land uses. See Chapter 2, Sections 2.1 through 2.4.

1.6.5.10 Restrictions or Easements (10)

Several commentors questioned whether the DOE has the ability to put restrictions on the use of the land or specify the type of use for the land. Another commentor asked if the DOE could restrict transfer if some of the

land tracts contained threatened and endangered species. A commentor requested that the DOE put restrictions on transfer of the lands to provide that the subsequent use of the land be environmentally and socially sustainable, and, if Los Alamos County or the Pueblo fail to do so, the land reverts back to the DOE. A commentor stated that the USFS needs access to the Santa Fe National Forest via the Rendija Canyon access road for administrative purposes and recommended that all existing trails and access roads within the Rendija Canyon Tract be reserved and unrestricted public easements be granted to ensure long-term public access. See Chapter 16.

1.6.5.11 Future Uses (11)

Several commentors stated that the proposed list of future uses was imbalanced toward development and that the DOE should consider combining economic diversification purposes and community self-sufficiency purposes as they are essentially the same, and taken separately, would give development disproportionate weight. Another commentor believed that the uses are not mutually exclusive because they are collectively one of three criteria that justify consideration of a land parcel for conveyance. A commentor requested that the future uses include consideration of recreational uses, aesthetic uses, and uses by natural resources, such as wildlife. A commentor states that the lands within DOE property were all once in the possession of the Pueblo of San Ildefonso and contain much religious and cultural significance and that this should be considered in future uses of the land. See Chapters 1 and 2.

1.6.5.12 Partial Conveyance or Transfer (12)

A commentor questioned how the DOE would decide which tracts to transfer or convey in whole or in part. See Chapters 1 and 2.

1.6.5.13 Homesteaders (13)

Several commentors raised the question of claims to LANL lands by homesteaders and their descendents. One commentor stated that the homesteaders believe there is a lack of cooperation from the DOE in receiving information they have requested. See Chapter 1, Section 1.1; DOE LAAO has supplied the requested information.

1.6.5.14 Environmental Monitoring (14)

One commentor believes that environmental monitoring is essential and should be coordinated in efforts with the Pueblo of San Ildefonso and other agencies. The commentor stated that if the lands to be transferred are to be used by the people, a thorough monitoring and sampling plan should be developed and implemented to monitor and ensure the public of its safe use. See Chapters 1 and 2 and Chapters 5 through 14, Sections X.1.1 and X.2.1 (where “X” is the chapter number). Also see Chapters 15 and 16 and Appendix E.

1.6.5.15 Water Rights and Utility Corridors (15)

A commentor stated that water use should be analyzed in the CT EIS, including contamination problems and low water supplies. A commentor recommended that the CT EIS analyze water supply and utility corridors for all potential developments. See Chapter 3, Section 3.2.3; Chapter 4, Section 4.2.3; and Chapters 5 through 14, Sections X.1.3, X.2.3, and X.3.3 (where “X” is the chapter number). Also see Chapter 15.

1.6.6 Draft EIS Comment Process and Comments Received

The NEPA (40 CFR 1503.1) requires Federal agencies to invite the participation of affected Federal, State, and local agencies; any affected Indian tribe; proponent(s) of the action; and other interested parties by comment on the Draft CT EIS. At least one

public meeting for the purposes of providing the public with the opportunity to comment on draft EISs is required under DOE's NEPA implementing regulations (10 CFR 1021.313).

The Draft CT EIS was issued in February 1999, and a Notice of Availability for the draft document with an announcement of the public meeting times and locations was published in the *Federal Register* on February 26, 1999. Two public comment meetings were held in March at Pojoaque and Los Alamos, New Mexico. The commenting period lasted for 45 days, ending on April 12, 1999. During that time and shortly thereafter, over 200 comments were received on the Draft CT EIS by 49 commentors via public comment forms, letters, electronic mail, and verbal comments provided at the public hearings.

These comments were used to make factual changes to the CT EIS and are incorporated as appropriate and to the extent practicable within the CT EIS analysis. Appendix H of this Final CT EIS provides discussions of general issues raised by commentors, copies of the actual comments received, and DOE's responses. Since the issuance of the Draft CT EIS, there have been changes in information, plans, and related NEPA documents. Changes of this nature, together with editorial corrections, are reflected in this Final CT EIS. The following discussions summarize the changes made to the draft text and analysis provided in the CT EIS.

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

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

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

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

All comments on environmental restoration received during the comment

period also were forwarded to the Environmental Restoration Project group for consideration.

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

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

1.6.7 Specific Comment Summaries and DOE Responses

The full text of the comments and responses to individual comments are presented in Appendix H of this CT EIS.

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

General Issue 1: Purpose and Need

General Issue 2: Deed Restrictions

General Issue 3: Basis for DOE's Decisions

General Issue 4: Public Law Process and the CT EIS

General Issue 5: Environmental Restoration Process

General Issue 6: Environmental Justice

General Issue 7: Homesteaders Association Claims

1.6.7.1 General Issue 1: Purpose and Need

Issue:

Commentors questioned whether the proposed conveyance and transfer of the tracts identified in the CT EIS would fulfill the purpose of Public Law (PL) 105-119. Commentors noted that Los Alamos County has stated that the proposed conveyance of these lands would not provide the income necessary for the County to become self-sufficient. Commentors also noted that the real costs for the County to meet the self-sufficiency goal, such as addressing the water and electrical usage demand, make the proposed action untenable. Therefore, commentors opined that the proposed conveyance and transfer action would not satisfy the purpose of PL 105-119, specifically Los Alamos County self-sufficiency, and that the conveyance and transfer action evaluated in this CT EIS does not meet the "purpose and need for agency action" presented in this CT EIS. Commentors further stated that for this reason the conveyance and transfer action should not be selected by the decisionmakers. Commentors also noted that other alternatives, such as continuing assistance payments to the County, were rejected because they did not meet the need for agency action. Commentors believe that if the DOE's proposed action does not meet the need for agency action, it too should be rejected just as other alternatives were rejected.

Response:

The DOE believes there may be confusion between the "purpose and need" for DOE

action and the intended purpose of PL 105-119. The purpose and need for DOE action evaluated in this CT EIS is "to act in order to meet the requirements of Section 632" of PL 105-119. The DOE has evaluated the conveyance and transfer action and other suggested action alternatives in light of meeting its requirements under PL 105-119—that is, to convey and transfer certain parcels of land identified by the DOE as being suitable for conveyance or transfer, as defined by PL 105-119. To be conveyed or transferred (1) the parcels of land must have been determined to be unnecessary for support of the DOE's national security mission requirements before November 26, 2007[17]; (2) the DOE also must complete, to the maximum extent practicable, any necessary environmental remediation or restoration by that time; and (3) the parcels must be suitable for use by the receiving parties for historic, cultural, or environmental preservation purposes, economic diversification purposes, or community self-sufficiency purposes. The conveyance and transfer of land tracts would satisfy the DOE's obligations required by PL 105-119. The other suggested action alternatives would not satisfy these requirements. The "purpose and need" referenced by the commentor is best described as the intended purpose of PL 105-119, which is to provide Los Alamos County with the means for self-sufficiency, due to the end of assistance payments, and to transfer lands to the Pueblo of San Ildefonso. Section 1.1, Background Information, contains further information on the intended purpose of PL 105-119.

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

The DOE received several suggestions regarding other alternatives to be evaluated in this CT EIS (for example, reinitiate the assistance payments without conveyance or transfer). These alternatives were considered but eliminated from detailed analysis, as described in Section 2.4 in Chapter 2 because they would not allow the DOE to meet its need to comply with the requirements of PL 105-119. Also see Section 1.6.7.3, General Issue 3: Basis for DOE's Decisions.

1.6.7.2 General Issue 2: Deed Restrictions

Issue:

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

[17] November 26, 2007, marks the end of the 10-year action period specified in Section 632 of PL 105-119.

that the current recreational access to the tracts is continued and enhanced.

Response:

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

In the case of transfer to the DOI, the land would still be owned by the U.S. Government; only the administrative jurisdiction would be transferred from one Federal agency to another. See section 632(a)(2) of PL 105-119, presented in Appendix A. Thus, all applicable requirements governing activities on Federal land, including those for the protection of sensitive resources, would continue. Responsibility for interpreting and applying those requirements would rest with the DOI. It would be inappropriate for the DOE to attempt to place prior restraints on the DOI's ability to exert its authority in administering land under its jurisdiction.

In the case of conveyances to the County of Los Alamos, the DOE must convey to the County "fee" title[18] to the parcels of land. See section 632(a)(1) of the PL 105-119, presented in Appendix A. The DOE must work within this limitation in determining what, if any, conditions or restrictions can be included in the instruments of conveyance. The DOE may conclude that deed restrictions are not the most effective vehicle to preserve ecological and cultural resources. However, notwithstanding the limited authority conferred upon the DOE by PL 105-119, the DOE is required to consult with appropriate regulators concerning the protection of threatened and endangered species and cultural resources before conveying title to any tracts of land to the County. These consultations could lead to agreements between the DOE, the regulators, and the County on mitigation measures to be applied to minimize the potential for adverse impacts after conveyance of the land occurs. The DOE has contacted these regulators (see Chapter 18 of this CT EIS). The regulators have agreed that it will be most productive to defer further consultations until the County and the Pueblo of San Ildefonso have reached agreement on which recipient will receive which tracts of land. See section 632(e) of PL 105-119, presented in Appendix A. The land division process should be completed by November 1999. At that time, the DOE and the regulators will know which tracts will be conveyed to the County and thus will be the subject of consultations. These consultations will address the specifics of the mitigation measures. The Mitigation Action Plan (MAP) that the DOE will develop as part of its NEPA compliance process will include this information.

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

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

recipients and explore the question of continued recreational access.

1.6.7.3 General Issue 3: Basis for DOE's Decisions

Issue:

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

Response:

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

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

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

adverse impacts will be part of the overall decisionmaking process.

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

Issue:

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

Response:

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

Under the *Atomic Energy Community Act* (AECA) of 1955 (42 U.S.C. §§2301-2394), the Federal Government recognized its responsibility to provide support for a specified period to agencies or municipalities that were strongly affected by their proximity to facilities that are part of the nation's nuclear weapons complex while they achieved self-sufficiency.

These facilities were three so-called Atomic Energy Communities: Oak Ridge, Tennessee; Richland, Washington; and Los Alamos, New Mexico. Each of these communities was established as a wholly government-owned community in which all municipal, educational, medical, housing, and recreational facilities were provided by the Federal Government. Under the AECA, national policies were established regarding the obligations of the United States to the three Atomic Energy Communities. These policies were directed at terminating Federal Government ownership and management of the communities by facilitating the establishment of local self-government, providing for the orderly transfer to local entities of municipal functions, and providing for the orderly sale to private purchasers of property within these communities with a minimum of dislocation. The establishment of self-government and transfer of infrastructures and land were intended to encourage self- sufficiency of the communities through the establishment of a broad base for economic development.

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

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

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

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

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

PL 105-119 was drafted with input from the DOE, San Ildefonso Pueblo, and the County of Los Alamos. It is customary for Congress to consult with parties affected by prospective legislation. However, Congress ultimately prescribed both the results to be accomplished by the statute and the process to be followed in accomplishing those results. That process was specified in substantial detail. These details included the potential recipients, criteria for determining the suitability of parcels of land for conveyance or transfer, setting the steps for implementing the process, setting the timetable for implementing the process, and the roles and responsibilities of the parties involved. The DOE is obligated to adhere to these requirements and carry out its role as mandated by PL 105-119. While the NEPA process includes addressing public concerns and comments regarding the proposed action, the DOE does not have the authority to modify the requirements of PL 105-119. Only Congress can address changing the process or details of the process by amending PL 105-119.

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

Although there is limited involvement by the DOE in the conveyance and transfer decisions, Congress instructed the DOE to proceed with the NEPA process to evaluate the potential environmental impacts associated with the conveyance and transfer action. See section 632(d)(1)(B) of PL 105-119, presented in Appendix A. While the CT EIS may only play a limited role in the overall decisions made by the DOE, it fulfills the intent of NEPA. It informs the public of the impacts of the proposed action. Moreover, it can be used by the Pueblo and the County to help reach their decision as to which party will receive which tract, and to what use they will ultimately put the land. Finally, the DOE will use the CT EIS analyses as part of the report to Congress on the suitability of the tracts for conveyance and transfer. See section 632(d)(1)(C) of PL 105-119, presented in Appendix A. These uses of the CT EIS analyses fulfill the intent of the NEPA process to inform the decisionmakers and promote better decisionmaking. The process through which this CT EIS has been prepared also fulfills the intent of NEPA to inform the public in a timely manner so that the public

can provide input to the decisionmaking process.

1.6.7.5 General Issue 5: Environmental Restoration Process

Issue:

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

Response:

Under the requirements of PL 105-119, the DOE is required to clean up each tract, to the maximum extent practicable, before it can be conveyed or transferred. The DOE, through the LANL Environmental Restoration Project, is conducting a separate process for site cleanup. This process will involve the public and State and Federal regulatory agencies to determine the appropriate level of cleanup to be undertaken for the each tract, the technical manner in which it will be achieved, and the priority of the cleanup actions. This separate process will include the DOE's NEPA review of the cleanup actions as details are developed and they become ripe for decision.

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

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

Because the details of the future cleanup activities associated with these tracts are unknown, this CT EIS presents information intended to bound the potential environmental impacts. The environmental information on restoration provided in this CT EIS (see Appendix B) is based on the DOE's Environmental Restoration Report, which is being produced to meet the DOE's requirements under section 632 of PL 105-119. This section of PL 105-119 requires the DOE to identify any environmental remediation or restoration necessary on the tracts considered for conveyance and transfer and to then supply this information in a report to Congress together with the environmental impact information. The Environmental Restoration Report seeks to bound the amounts of wastes generated, the costs of the cleanup activities that will occur in the future, and the durations of cleanup actions, even though the exact

details of these cleanup activities are currently only estimated. The DOE's proposed remedies and estimates of projected waste volumes, cleanup costs, and cleanup duration presented in the Environmental Restoration Report are based on site knowledge and characterization data as they exist today. These projections also are based on the DOE's understanding of the types of cleanup strategies and the cleanup levels that are generally acceptable to the regulators as meeting the RCRA corrective action requirement by which LANL is regulated.

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

1.6.7.6 General Issue 6: Environmental Justice

Issue:

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

Response:

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

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

In accordance with CEQ guidance, this CT EIS evaluates the potential for

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

As part of its human health impacts analysis, the LANL SWEIS looked at potential exposure through special pathways, including ingestion of game animals, fish, native vegetation, surface waters, sediments, and local produce; absorption of contaminants in sediments through the skin; and inhalation of plant materials. For LANL, the special pathways are important to the environmental justice analysis because some of these pathways are more important or viable to the traditional or cultural practices of minority populations in the area. Even considering these special pathways, the SWEIS did not find disproportionately high and adverse health impacts to minority or low-income populations.

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

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

- **Area Pueblos:** San Ildefonso, Santa Clara, Jemez, Cochiti, San Juan, Pojoaque, Nambe, and Tesuque
- **Predominately Hispanic Communities:** El Rancho, Jacona, Jaconita, Guachupangue, Española (Traditional Hispanic communities also can be artisan guilds, rural development organizations, and acequia associations [irrigation water distribution system associations].)
- **Topics of Concern:** Human health (LANL emissions and contaminants), economic (effects from LANL projects), and social (project effects on the fabric of a community and TCPs)
- **TCPs:** Significant place or object associated with historical and cultural practices or beliefs of a living community that is rooted in that community's history and is important in maintaining the continuing cultural identity of the community
- **General Categories of TCPs:** Ceremonial and archaeological sites, natural features mentioned in stories and legends, plant gathering areas (plants for ceremonial, medicinal, and artisan purposes), clay procurement areas (hunting areas and acequias) (TCPs are not restricted to Native American groups. For example, traditional Hispanic communities also maintain religious practices, arts and

crafts traditions, folklore, and traditional medical practices.)

- **Subsistence and Other Consumption Issues:** Cattle grazing, deer and elk hunting, plant cultivation and wild plant gathering, fishing; "special exposure pathways" (ingestion, inhalation, dermal contact); limiting access; and quantifiable data

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

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

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

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

This comment notwithstanding, the DOE considers that it has met the objectives of this Executive Order 12898 to investigate environmental justice impacts that would be potentially high and adverse and would disproportionately affect one group over another in this Final CT EIS analysis.

1.6.7.7 General Issue 7: Homesteaders Association Claims

Issue:

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

Commentors also believed that the DOE has not addressed the homesteaders' claims.

Response:

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

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

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

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

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

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