18.0 CONSULTATIONS AND COORDINATION

This chapter presents statements provided by the Cooperating Agencies to the DOE to be included in the CT EIS, as well as copies of agency regulatory compliance consultation letters.

18.1 Cooperating Agency Statements

Cooperating Agency statements from the following governments and agencies were provided:

- Fred Brueggeman, Assistant County Administrator for Intergovernmental Relations, Los Alamos County, (505) 662-8080
- Governor, Pueblo of San Ildefonso
- Leonard Atencio, Forest Supervisor, U.S. Forest Service, U.S. Department of Agriculture, (505) 438-7840
- Roy W. Weaver, Superintendent, National Park Service, U.S. Department of the Interior, (505) 672-3861

Comments or questions regarding these statements or other issues may be directed to the parties noted. Mr. Curtis Canard, Bureau of Indian Affairs, Albuquerque, New Mexico, (505) 346-7109, may be contacted regarding transfer of tracts to the Pueblo of San Ildefonso.

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LOS ALAMOS COUNTY

P.O Box 30 Los Alamos, New Mexico 87544 (505) 662-8080 FAX 662-8079

COUNTY COUNCIL
Council Chair
Lawry Mann
Council Vice -Chairman
Christine Chandler
Councilors
Denise Smith
Robert Gibson
Lewis Muir
Morris B Pongratz
James Rickman

COUNTY ADMINISTRATOR
Joe King

November 16, 1998

Ms Elizabeth Withers
U.S Department of Energy
Los Alamos Area Office
Los Alamos, New Mexico 87544

RE: Conveyance and Transfer EIS

Dear Ms. Withers.

Thank you for the opportunity for Los Alamos County and other Cooperating Agencies to provide additional materials for inclusion into the Conveyance and Transfer Environmental Impact Statement (C&T EIS) draft Report The County was encouraged when we read the Notice of Intent (NOI) for this EIS because it stated that an analysis of County self-sufficiency would be included However, we were disappointed that the preliminary draft report did not include this analysis, and DOE representatives stated that self-sufficiency impacts would not be included in the document.

I have enclosed materials in three subject areas. The first is baseline data with a brief narrative showing that the County has neither attained self-sufficiency nor economic diversification. The second and largest piece is a narrative with attachments that outlines the background of self-sufficiency and includes Congressional, DOE, and County information about the role that land transferred to be transferred from DOE plays in the County's plans to achieve self-sufficiency.

Finally, I have included information concerning the impact on self-sufficiency of adopting the No-Action Alternative. The DOE Report to Congress included as an attachment to the narrative described above is explicit in concluding that the County cannot attain self-sufficiency if DOE fails to transfer land for development. The County would expect that a Record of Decision (ROD) associated with any No-Action Alternative would include a recommendation to Congress to enact legislation authorizing and appropriating funds to DOE to resume payments

"A Consolidated City and County Government"

of annual assistance payments to Los Alamos County. Similarly, we are concerned that any decision to transfer only a portion of the lands cited in the April 1998 Report to Congress or to transfer lands with substantial mitigation measures which are impediments to development will result in negative environmental impacts of two types. The first negative impact is the impact on the County's fiscal environment resulting from a failure to attain self-sufficiency and economic diversification; and the second is the potential effects of the County's being forced to develop County lands that may have a negative impact on Federal lands. The County believes the intent of Public Law 105-119 is clearly stated and should be enhanced but not replaced by this NEPA process.

Please contact me if you require any additional information.

Sincerely,

Fred Brueggeman
Assistant County Administrator
For Intergovernmental Relations

Cc: County Council
Joe King, County Administrator
Felicia Orth, Assistant County Attorney

LOS ALAMOS COUNTY SELF-SUFFICIENCY AND ECONOMIC DIVERSIFICATION

The current status of self-sufficiency and economic diversification are best described in the two tables below. The first table shows the County's FY 97 to FY 99 General Fund budget summaries and indicates the budget deficits that have resulted from the loss of the annual assistance payments. This table is all the more significant in the context of the County's FY 95 budget of over $25 million, and the productivity savings and cutbacks that have been implemented since that time.

General Fund Budget History

	FY 1997 with $ 2.6MM DOE Asst.	FY 1998 w/o $ 2.6MM DOE Asst.	FY 1999 w/o $ 2.6MM DOE Asst.
Total Revenues and Transfers In	$20,475,221	20,185,519	20,847,693
Total Expenses and Transfers Out	20,295,880	20,939,502	21,675,241
Budget Surplus / (Deficit)	$179,341	(753,983)	(827,548)

The second table shows the lack of diversity of the County's economy as reflected in the industry sector of the workforce in the County. In the Country as a whole about 1 in 6 workers is employed in the government sector, and this rises to about 1 in 4 workers in New Mexico. In Los Alamos County nearly 6 of 10 workers are employed in the government sector.

1997

	U.S.A.	New Mexico	Los Alamos County
Total Employees	124,965,000	707,200	16,806
Government Employees	19,570,000	177,200	9,999
% in Government Sector	15.7%	25.1%	59.5%

Sources

New Mexico and Los Alamos County; New Mexico Department of Labor
U.S.A.; U.S. Department of Labor

18.0 CONSULTATIONS AND COORDINATION

11/9/98

LOS ALAMOS COUNTY SELF-SUFFICIENCY

BACKGROUND

Los Alamos County was the last of the three "atomic energy communities" to undergo "normalization". The Atomic Energy Community Act of 1955 was set up too "normalize" the three communities built as the "Manhattan Project." The Act provided authority for the Atomic Energy Commission to make annual assistance payments to these communities for a limited time until they achieved self-sufficiency. Self-sufficiency is considered to be achieved when the local government has the financial ability to provide services necessary to support workers at the Federal facility without continued assistance from the Federal government. When the County Charter was finalized in 1967, annual assistance payments comprised over 60% of the annual County budget, and many basic services were still being provided by the Atomic Energy Commission. In 1997 when the last assistance payment was made, Federal funds made up only 14% of the County budget, and virtually all services are being provided by the County.

Serious attempts at self-sufficiency were started in 1982 with renewal of the assistance payments contract. The basic element of self-sufficiency was the "buyout" of future assistance payments pioneered at Oak Ridge. However, a 1982 report by the Stanford Research Institute to DOE noted that Los Alamos lacked some of the basic factors to achieve self-sufficiency, including lack of land and lack of a diverse taxing authority. In 1987, in parallel with renewal of the assistance payments contract, DOE and the County signed the Electric Coordination Agreement whereby the County agreed to invest in electric generating facilities to take advantage of rising electric prices. It was proposed that the County could gain revenue by selling electricity, and DOE would guarantee certain electricity purchases to support the County's investment. However, electric prices fell and the "profits" to the County never materialized. Early proposals to use Federal land to ease the perennial housing crisis had resulted in AEC and DOE declaring as surplus the Western Perimeter Tract and the Rendija Canyon Tract, and a Forest Service land trade was to free up the Cemetery Tracts. By 1987 these lands had yet to reach the market. In 1987 when the County and DOE funded the start-up of a local non-profit economic development corporation, a part of the corporation's initial work program was working to release DOE land for economic development. In 1992 along with discussions of the renewal of the assistance payments contract, DOE made the first proposal to the County to transfer specific parcels of land. The County started planning for the development of those lands, and in 1994 a significantly different package of land was presented by DOE to the County. Planning for this land was completed in 1998.

CONGRESSIONAL SELF-SUFFICIENCY LEGISLATION

When faced with mandates from DOE and Congress to become financially self-sufficient (not reliant upon annual assistance payments from DOE), the County convened a "blue ribbon" committee called the Community Futures Team to review its alternatives. In the same time frame, the 104th Congress approved an amendment to the Atomic Energy Community Act of 1955 to a) authorize DOE to transfer utilities and municipal installations to the County until June 30, 1998, b) require DOE to submit to Congress by June 30, 1996 a recommendation on whether the County and School District have or can attain self-sufficiency, and c) authorize DOE to make annual assistance payments until June 30, 1997. A copy of this amendment is included as Attachment A. After looking at seven alternatives to reaching self-sufficiency, the Community Futures Team found that the only viable option was for a "buyout" similar to other Atomic Energy Communities coupled with the transfer of land with which to expand the County's tax base.

The County and DOE began discussions in mid-1995 that culminated in December, 1995 with the signing by the County Council Chair and the DOE Assistant Secretary for Defense Programs of an "Agreement in Principle." A copy of the "Agreement" is included as Attachment B. The "Agreement" provides that a) DOE and the County would cooperate on legislation to implement the self-sufficiency plan required by Congress, b) the DOE would transfer certain lands for the County to achieve self-sufficiency, c) the County

would develop a master plan for development of the transferred lands, and d) the DOE will transfer and the County will accept certain facilities and utilities.

With this Agreement in place, the DOE moved to complete its report to Congress . The "Report to Congress Concerning Assistance Payments for the Incorporated County of Los Alamos, New Mexico" was agreed to by both parties and is included as Attachment C. This Report states "Thee only reasonable alternative to the continuation of annual assistance payments is through an increase in the County's tax base. This can be achieved, in part, by increasing the commercial and retail business base in the County through development of property proposed for transfer to the County." In addition to recommending that the DOE transfer undeveloped land and certain municipal utilities and installations, the report recommended that the Federal Government make a final payment of $22.6 million to the County. This amount is equivalent to the amounts provided to other Atomic Energy Communities.

On August 19, 1996 the Los Alamos County Council approved the "Self Sufficiency Strategy" included as Attachment D. This "Strategy " was specifically "dependent upon the DOE successfully transferring to the County vacant land and municipal installations", and includes six elements such as County efforts towards productivity and efficiency and implementing economic development and diversification activities.

Congress implemented one portion of the recommendation, and the Defense Authorization Act of 1997 included the $22.6 million appropriation. The County received its final assistance payment from the DOE in June, 1997. By June 1998 the DOE had implemented most of the recommendation to transfer municipal utilities and installations with the lease of the Airport, the Agreement to transfer the Water Production System, and the transfer of three fire stations. The DOE has also completed transfer of the $22.6 million and the inclusion of economic development requirements in the new contract with the University of California to operate LANL Similarly, the County has completed its obligations to master plan the land that may be transferred from DOE; to take over responsibility for the airport, water production system, and some fire stations; to implement restructuring and productivity of County services; to undertake economic development and diversification activities such as the Research Park, and has applied for payments-in-lieu-of taxes for certain DOE lands that are exempt from property taxes.

DOE LAND TRANSERS

The transfer of developable land is the only outstanding element of the "Agreement in Principle", the Report to Congress", and the "Self-Sufficiency Strategy". When questions arose about DOE's authority to transfer land, County elected officials and staff sat down with DOE and San Ildefonso Pueblo representatives and drafted much of what has become PL105-119. The County is concerned that the 8,000 plus acres originally discussed for transfer has been reduced by nearly 40% to 4,646 acres, and that 65% of the remaining land is in Santa Fe County where it cannot contribute to expansion of the County's tax base. The addition of San Ildefonso Pueblo as a land recipient is not unwelcome but also serves to reduce the amount of land the County was considering as available for self-sufficiency. In May, 1997 the County Council approved the "Principles of Land Transfer from DOE" included as Attachment E. The goals of 1,500 developable acres for residential development and 500 developable acres for economic development do not appear attainable at this time, even if a significant portion of the land evaluated in the EIS is transferred to the County without significant mitigation measures. If the DOE adopts the No Action Alternative then the County will have to reopen discussions with the DOE and with Congress on either the resumption of annual assistance payments or on other means to attaining self-sufficiency.

09-05-95 12:09PM FROM BINGAMAN D.C. TO 3150566628363 P002 008

Q:\ARM\ARM95.908 S.L.C.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To revise the applicability of the Atomic Energy Community Act of 1955 to Los Alamos, New Mexico.

IN THE SENATE OF THE UNITED STATES—104th Cong., 1st Sess.

S. 1026

To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BINGAMAN (for himself and Mr. DOMENICI)

Viz:

On page 570, between lines 10 and 11, insert the following:

SEC. 3168. APPLICABILITY OF ATOMIC ENERGY COMMUNITY ACT OF 1955 TO LOS ALAMOS, NEW MEXICO.

(a) DATE OF TRANSFER OF UTILITIES.—Section 72 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2372) is amended by striking out "not later than five

ATTACHMENT A

August 5, 1995 (10:15 a.m.)

years after the date it is included within this Act" and inserting in lieu thereof "not later than June 30, 1998".

(b) DATE OF TRANSFER OF MUNICIPAL INSTALLATIONS.—Section 83 of such Act (42 U.S.C. 2383) is amended by striking out "not later than five years after the date it is included within this Act" and inserting in lieu thereof "not later than June 30, 1998".

(c) RECOMMENDATION FOR FURTHER ASSISTANCE PAYMENTS.—Section 91 of such Act (42 U.S.C. 2391) is amended—

(1) by striking out ", and the Los Alamos School Board;" and all that follows through "county of Los Alamos, New Mexico" and inserting in lieu thereof "; or not later than June 30, 1996, in the case of the Los Alamos School Board and the county of Los Alamos, New Mexico"; and

(2) by adding at the end the following new sentence: "If the recommendation under the preceding sentence regarding the Los Alamos School Board or the county of Los Alamos, New Mexico, indicates a need for further assistance for the school board or the county, as the case may be, after June 30, 1997, the recommendation shall include a report and plan describing the actions required to eliminate the need for further assistance for the school board or the

county, including a proposal for legislative action to carry out the plan.".

(d) CONTRACT TO MAKE PAYMENTS.—Section 94 of such Act (42 U.S.C. 2394) is amended—

(1) by striking out "June 30, 1996" each place it appears in the proviso in the first sentence and inserting in lieu thereof "June 30, 1997"; and

(2) by striking out "July 1, 1996" in the second sentence and inserting in lieu thereof "July 1, 1997".

August 5, 1995 (10:15 a.m.)

18.0 CONSULTATIONS AND COORDINATION

U.S. Department of Energy
and
Incorporated County of Los Alamos

AGREEMENT IN PRINCIPLE

The parties to this Agreement are the United States Department of Energy ("DOE") and the Incorporated County of Los Alamos ("County"). This Agreement in Principle ("Agreement") is effective when signed by both parties.

Background

The Atomic Energy Community Act of 1955 established the policy for terminating Government ownership and management of the Government-owned communities created during the era of the Manhattan Project. The purpose of the Act was to provide for the development of these communities into sustainable, self-governing entities. The Act provided for the transfer of utilities, municipal functions and installations to local governments, and the sale or transfer of real property which would be used to establish private homes, businesses, and community services such as hospitals, churches, and parks. The Act also allowed the Government to provide financial assistance to these communities to both mitigate burdens imposed by the Government's operations as well as to sustain them for a limited time until they achieved financial self-sufficiency. In general, the intent of Congress was to assist the development of viable communities which would attract and retain the skilled personnel necessary to support atomic energy programs.

In June of 1996, DOE's authority to contract with the County for assistance payments will expire and it is recognized that an extension is required to allow the County to finalize plans for self-sufficiency. In keeping with the intent of the Act, both the parties wish to find mutually acceptable solutions for eliminating assistance payments as soon as practicable. Further, the parties wish to complete the transfer of utilities, municipal functions and installations, and properties, as appropriate, to assist the County in achieving self sufficiency. Both Parties recognize the continued availability of utilities and municipal services are vital to DOE's operations and will be assured as a result of any transfers to the County.

Agreements and Understandings

The DOE and County have historically worked together in good faith to find mutually acceptable solutions to common concerns. The parties have begun discussions and identified proposed actions which would assist both parties in meeting the objectives of the Atomic Energy Community Act of 1955. Although the parties have not completed all of the details of these

ATTACHMENT B

actions, they wish to memorialize their intentions and fundamental understandings. In signing this Agreement, the parties state that they have reached the following agreements:

WHEREAS the Atomic Energy Community Act of 1955 (43 USC 2301 et seq.) is the statutory basis for the relationship between the parties; and

WHEREAS the County is a "community" as defined in the Atomic Energy Community Act of 1955; and

WHEREAS the Atomic Energy Community Act of 1955 allows the DOE to make assistance payments to the County for special burdens imposed upon it by DOE operations and to provide for the transfer of utilities, municipal installations and functions, and property to the County; and

WHEREAS the Atomic Energy Community Act of 1955 obligates the County to achieve financial self-sufficiency at the earliest practical time; and

WHEREAS the County, in recognition of their obligations under the Atomic Energy Community Act of 1955, shall utilize all reasonable, available means to achieve financial self-sufficiency to the end that assistance payments by DOE may be reduced and terminated at the earliest practical time; and

WHEREAS the DOE, in recognition of their obligations under the Atomic Energy Community Act of 1955, shall support and implement certain actions intended to assist the County in its efforts to achieve maximum practical self-sufficiency; and

WHEREAS the parties have not completed all of the details of these actions, but wish to memorialize and provide notice of their intentions and fundamental understandings;

NOW, THEREFORE, the parties state that they have reached the following agreements:

1. The DOE and the County shall support a proposed revision to the Atomic Energy Community Act of 1955 which would serve to assist the County in achieving self-sufficiency in a timely manner. It is agreed that this revision shall include the following:

    a) To extend until June 30, 1998 the authority to transfer certain utilities;

    b) To extend until June 30, 1998 the authority to transfer various municipal installations and functions;

    c) To extend until June 30, 1997 the authority to enter into a contract for assistance payments to the County;

d) To extend until June 30, 1996 the time required to provide to Congress a recommendation on the continued need for assistance payments and, if it is determined that further assistance is needed, a plan to terminate assistance payments at the earliest practical time.

It is further agreed that as part of the above plan, DOE and the County will, if necessary, develop appropriate proposals for legislative action to implement the above plan.

2. DOE owns certain lands and buildings which, if transferred to the County, could be sold, leased, or otherwise utilized by the County for private or public development. Subject to legislative authorization and mutual agreement on certain conditions, the DOE is willing to transfer certain lands and buildings to the County and the County is willing to accept those lands and buildings. In establishing those conditions, the DOE and County agree to the following guiding principles:

a) Priority shall be given to transfer of lands and buildings which can be readily developed to: i) Create affordable housing, ii) be developed to assist the County in achieving self-sufficiency within three years, or iii) be developed in accordance with the plan specified in item 1.d above.

b) Certain other properties within the County may be considered for transfer if their future use can be shown to enhance and benefit the economic development of the Community.

3. The DOE will cooperate with the County as the County develops an integrated community Master Plan, which will be used to facilitate the timely zoning, conversion, and development by the County of any properties which are or could be transferred to the County. The Plan also will identify and assess the economic development potential for the identified properties.

4. The County is currently dependent upon the DOE for its water supply and seeks to ensure that water production and transmission systems, and water rights and allocations shall be available to sustain the Community and accommodate future growth within the County. Subject to mutual agreement on certain conditions, the DOE is willing to transfer a portion of its water production and transmission system, and to transfer or lease a portion of its water rights and allocations to the County, and the County is willing to accept them.

5. The DOE currently contracts with the County for fire protection and ambulance services both for Los Alamos National Laboratory (LANL) and the community. Under this contract the DOE pays the County to provide fire service personnel and the DOE furnishes all facilities, equipment, and maintenance. In order to enhance the County's

ability to assume responsibilities for providing these services within the community, the DOE will consider transferring to the County certain facilities and equipment. The DOE and County also agree to develop respective estimates of fire service level demands and associated costs, and to implement a plan that allocates costs fairly and equitably to both parties.

6. The DOE owns and operates the airport in Los Alamos. Subject to mutual agreement on certain conditions, the DOE is willing to transfer the airport land, buildings, improvements, and certain personal property to the County and the County is willing to accept them. The parties understand that the County may decide not to use the land and buildings as an airport.

7. The DOE owns gas transmission and service facilities within the County. DOE is considering the sale of all or part of these facilities to a commercial interest; however, DOE may consider transferring a portion of these facilities to the County and the County will consider accepting them.

8. Each party commits to negotiate in good faith. The parties recognize that the concurrence of others may be necessary to complete the negotiations and that additional statutory authority may be necessary to carry out the full intent of the parties.

9. DOE and the County intend to reach agreement on these issues prior to June 30, 1996.

UNITED STATES DEPARTMENT OF ENERGY

By: Victor Reis,
Assistant Secretary for
Defense Programs

Dated: 18 Dec 1995

INCORPORATED COUNTY OF LOS ALAMOS

By: Lawry Mann,
County Council Chairman

Dated: 15 Nov. 1995

18.0 CONSULTATIONS AND COORDINATION

Report to Congress Concerning Assistance Payments for the Incorporated County of Los Alamos, New Mexico

Submitted by the

U.S. Department of Energy
June 1996

I. Purpose of this Report

Section 91 of the Atomic Energy Community Act of 1955, (42 USC 2391), as amended most recently by section 3161 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, (referred to in this report as the "Community Act"), requires the Secretary of Energy to present recommendations as to the need for assistance payments to the Incorporated County of Los Alamos (the County), New Mexico after June 30, 1997. The Community Act also requires that if the Secretary's recommendation indicates a need for further assistance, the recommendation shall include a report and a plan describing the actions required to eliminate that need for further assistance, including a proposal for legislative action necessary to carry out the plan.

The authority of the Department of Energy (DOE) to contract with the County for assistance under the Community Act expires on June 30, 1997; DOE has determined that the need exists to provide assistance at current levels through that date.

II. Recommendation

DOE recommends that the historically paid annual assistance not be continued indefinitely. Specifically, DOE recommends that termination of financial assistance to the County could best be accomplished by three actions that will contribute to the achievement of a higher level of self-sufficiency for the County. These actions are: (1) a final settlement of $22.6 million to the County; (2) the transfer to the County of several municipal installations and functions which to date are still owned and operated by the Federal Government; and (3) the transfer to the County of undeveloped land which can be utilized by the County or developed by private interests to increase the County's revenue from property and gross receipts taxes.

III. Background

A. History and Uniqueness of the Los Alamos Community

The community of Los Alamos, New Mexico was established in 1943 by the Manhattan District of the Corps of Engineers in support of the war effort to develop an atomic weapon.

The site was chosen for this research mission because of its remoteness and topography. Throughout the war, the research and development activities and community services and facilities were under the control of the military.

After its establishment in 1947 the Atomic Energy Commission (AEC) assumed civilian control of the research facility, now known as the Los Alamos National Laboratory (LANL), and of the community of Los Alamos. The AEC, through a contractor, provided many of the services typically thought of as municipal services, such as water, sewage, garbage disposal, gas, electricity, and fire protection, to the community through the same systems which served LANL, and provided all other services necessary for the functioning of a community, such as the hospital, the schools, housing, and police protection. In effect, though under AEC control, Los Alamos was a Federal reservation similar to a military base, and the residential and commercial community remained "inside the fence" with the only entry through two guarded gates until 1957.

Los Alamos, along with Oak Ridge, Tennessee, and Richland, Washington, was for approximately 20 years a wholly Government-owned community under the jurisdiction of the AEC. The Atomic Energy Community Act of 1955 was enacted to end Government ownership in these communities. The goal of the Community Act was to provide for the development of these communities into sustainable, self-governing entities. It authorized the transfer of utilities and municipal functions and installations to local governments and state entities and the sale or transfer of real property and improvements to private interests for residential housing, businesses, and community services such as hospitals, churches, and civic organizations.

When the Community Act was proposed, Los Alamos was specifically excluded because it was still thought necessary, at that time, to keep Los Alamos as a Federal reservation financially managed by the AEC. By the time the provisions of the Community Act were made applicable to Los Alamos in 1962, most of the municipal infrastructure, systems, and services had been developed to meet the needs and priorities of LANL rather than the community. As a result, the systems were not primarily designed with the thought of an eventual need to establish a local government empowered to provide municipal services or the development of privately owned homes and businesses.

In essence, the community and LANL evolved as "Siamese twins" with independent personalities but many common organs. For that reason, when the Los Alamos community was transferred from Federal ownership under the Community Act, the AEC made the decision to retain ownership and control of a number of functions and installations which served both entities. Those which today are still under the control of the Federal Government are water, gas pipelines, the fire department, and the airport, and to some degree electric power for which the County and DOE have a pooling agreement.

The Community Act also provided authority for the AEC to make annual assistance payments to these communities to mitigate the burdens imposed by the Government's operations, as well as to sustain them for a limited time until they achieved financial self-sufficiency. Originally,

assistance payments were limited to a period of ten years, but the Community Act was amended to permit payment beyond that period for some entities. For the last 10 years, the County and the Los Alamos School Board have been the only two entities receiving assistance payments under the Community Act. The continued need for assistance at Los Alamos stems from a number of factors, in addition to those which have already been discussed, which contribute to its uniqueness.

Los Alamos is greatly restricted in its ability to create an industrial or business economic base and is, after 50 years in existence, still effectively a one-company town. The employment generated by operations in support of the DOE□s missions accounts for more than 80 percent of total employment within the County. Topography, isolation, limited land availability, an expensive water supply, no ready labor market, and lack of nearby market for goods, all mitigate against industrial or natural business economic expansion. To elaborate on one of these factors, out of a total County land area of 71,700 acres, 88 percent is owned by the Federal Government and only 10,500 acres or 12 percent is owned by the private sector or the County. In addition, the lands owned by the County include canyon land which cannot be developed. This lack of privately owned land is not present at either Richland or Oak Ridge.

In addition to the geographical isolation from markets and labor and the scarcity of privately owned land as causation factors, the County's slower achievement of self-sufficiency is partially the result of DOE continuing to control several critical municipal functions, identified above, which were not transferred along with other municipal installations in the 1960's.

An agreement between the County and DOE to fashion a new relationship must necessarily recognize the unique past relationship between the County and DOE and the unique nature of the community and its geography. What is now needed is a rational separation of as many systems and services as possible in order for the County to manage its own affairs and control costs of providing services to the community, and in order for DOE to lower its costs of operation.

B. History of Assistance at Richland, Oak Ridge, and Los Alamos

Richland, Washington

From 1955 until 1969, the city of Richland, the Richland School District, and other entities including police and fire departments and the local hospital, received assistance payments totaling approximately $1 million per year. In 1969, after extensive discussions among the Joint Committee on Atomic Energy, the city of Richland, the School District, and the AEC, it was agreed that the city and School District had achieved self sufficiency and, accordingly, a procedure was agreed upon to incorporate lump sum payments rather than annual assistance payments. These payments consisted of approximately $8.3 million for the schools and city of Richland, with the majority going to support the school construction programs. Subsequent to 1970, the agency budgets did not include requests for any community assistance for Richland but, over the next eight years, Congress did add funds primarily for the school district and

additional payments to the city to fund past service liabilities for the police and firemen's pension funds. From the end of annual assistance payments in 1970 until 1978, approximately $10 million in additional assistance payments under the Community Act were paid to the local governments and entities in what can be described as a phased buy-out.

Oak Ridge, Tennessee

In 1985, the Congress authorized DOE under Pub.L. No. 99-145 to contract for a final financial settlement with Anderson County, Roane County, and the city of Oak Ridge, and to terminate all annual assistance payments to those entities pursuant to section 91 of the Community Act, as well as to provide for an advance payment of "payments in lieu of property taxes" under the Atomic Energy Act of 1954 for fiscal years 1986 through 1996. Approximately $41 million was authorized to be obligated during fiscal year 1986 to pay for this final settlement. At the time DOE terminated assistance payments, the annual cost was approximately $5 million and constituted 11, 7, and 6 percent respectively of the general revenues for the city of Oak Ridge and Roane and Anderson Counties and their school districts. It should be noted that the school districts comprised some 60 percent of the annual budget for these entities. Therefore, DOE assistance to local governments was only a small part (between 2 to 5 percent) of their annual operating funds at the time of termination.

The foundation for agreement between DOE and the Oak Ridge entities was laid in 1979, when DOE required them to develop and implement 5-year self-sufficiency plans. Each was required to set aside 10 percent of its estimated annual assistance payments-- which would be matched by DOE-- to fund self-sufficiency plans and projects. In essence, the set-asides were a mutually agreed upon incentive for the communities to develop and undertake projects to decrease costs and increase local revenues. Over a period of five years, approximately $5 million in self-sufficiency program funds was used to establish industrial parks, revolving loan funds, municipal productivity improvement programs, to acquire and improve industrial and commercial property, to make improvements to the infrastructure, and to recruit companies to relocate to the area.

A precise definition of self-sufficiency was never attempted for the Oak Ridge entities. The $41 million lump-sum payment was calculated using a formula which considered: 1) the sum of payments which would have been made over ten years with the annual payment reduced by 12 percent each year, and 2) an added factor which would constitute an advance payment of ten years of "payments in lieu of property taxes". These amounts, plus consideration given by DOE and the entities to their five years of self-sufficiency projects, were deemed adequate in settling annual assistance payments.

Los Alamos, New Mexico

Los Alamos County began to receive annual assistance payments in 1968, one year after the AEC removed itself from the direct financial responsibility and operation of community services. Over the past 28 years, the ratio of assistance payments to General Fund revenues

has declined from a high of 68 percent of County General Fund revenues in 1968 to the current level of about 13 percent. When the Community Act was amended in 1986 to extend assistance for Los Alamos County for an additional 10 years, the payments provided about 19 percent of General Fund revenues. At the time of the extension, DOE and the County tried to achieve a buy-out of County assistance payments similar to that achieved at Oak Ridge, but were unsuccessful in reaching a settlement. Unlike the Oak Ridge situation, the DOE assistance payments were, as they are today, a major source of revenue for the County. In the course of negotiations, the County and DOE did reach an understanding that a buy-out of approximately $22 million was the minimum acceptable amount; however, the parties were unable to agree on the cost, and method, of separating so many entangled municipal interests. At the time, DOE did not offer to transfer to County ownership the remaining municipal installations and services as part of the termination agreement, nor did DOE offer to convey undeveloped or improved lands as a means of increasing the potential property and gross receipts tax base.

C. The County's Efforts in Achieving Self-Sufficiency

The County has made significant efforts to maximize revenues received from gross receipts (including retail sales) and property taxes by raising the rate of such taxes within legal limits to the point beyond which a negative impact could be expected and by establishing county business practices to manage the collection of these revenues in the most productive manner.

The revenue received from gross receipts taxes, however, is not predictable because a major portion of this revenue depends on the amount and sources of LANL procurements. The $1 billion contract between the University of California and DOE is not subject to gross receipts tax because of the University's tax-exempt status in New Mexico. As a result, only the Unviersity's subcontractors performing work in Los Alamos are subject to gross receipts taxes that benefit Los Alamos directly. The amount spent by LANL on such subcontracts changes as LANL's mission changes.

The scarcity of land and labor, among other things, has created negative conditions for the retail community of Los Alamos. As a result, retail sales only account for about 20 percent of the taxable economy, compared with 40 to 50 percent in other New Mexico communities. This lack of a retail economy not only limits the amount of gross receipts tax revenues that can be expected from retail sales but also exerts pressure for a rate of gross receipts tax which will discourage new retailers from establishing in the County.

In 1984, the United States Supreme Court issued a decision in a case filed by the state of New Mexico, holding that DOE contractors are subject to New Mexico gross receipts tax. This decision caused an immediate increase in the amount of gross receipts tax revenues available to the County, since as a result of the Supreme Court's decision, DOE's other major contractor at LANL, The Zia Company, became subject to this tax for the first time. The case also resulted in a one-time, lump-sum settlement for back taxes of $9 million. County voters approved an amendment to the home rule charter to establish a permanent fund with these settlement

proceeds, and this permanent fund, after reinvestment to preserve present worth, provides a stable and predictable source of funds for large capital improvement projects.
The County has also taken steps to streamline County operations generally and has issued and refinanced bonds for the construction of two hydroelectric plants as part of becoming a partner with DOE in providing electric power for the County and LANL.

Because of the limits and lack of reliability of gross receipts tax revenue, and the small amount of taxable real property, the County is now focusing on more long-term efforts to broaden the economic base and diversity of the County and to make the County less dependent on LANL. The County is encouraging, participating in, and facilitating a number of initiatives to revitalize the downtown shopping areas and to attract new retail and industrial businesses to the area. Part of DOE's goal in achieving a final termination settlement of assistance is to aid in this initiative by transferring available lands to the County to increase the property available for economic development, thus allowing the County to increase property tax revenue and provide a more stable source of gross receipts tax revenue.

V. The Recommendation For Final Settlement Of Assistance

A. The Proposed Final Settlement

In order to end annual financial assistance payments to the County on June 30, 1997, the date statutory authority for such payments expires, DOE proposes three measures:

1. a one-time payment to the County of $22.6 million during fiscal year 1997 in addition to annual assistance at the current level for fiscal year 1997, and eligibility in fiscal year 1998 for payments in lieu of taxes under section 168 of the Atomic Energy Act of 1954;

2. the transfer of land and improvements associated with the functions of community fire protection; water production for LANL and the community; and aviation services for the community provided suitable terms can be negotiated for such transfers; and

3. the transfer of other lands to the County to the extent that transfer will not negatively impact LANL operations and will contribute to the goals of economic diversification through the attraction of new businesses and the construction of affordable housing.

DOE strongly believes that there are two conditions for a buy-out which must be part of the agreement to end annual payments. First, the buy-out payment should constitute a final financial settlement with the County to terminate all assistance payments pursuant to section 91 of the Community Act. Secondly, DOE, LANL, or their contractors or subcontractors, should not be subject to a future levy, special fees, taxes, or assessments for municipal or utility

services and improvements by the County unless: (1) these special fees, taxes, or assessments are appropriately and reasonably applied to all entities within the County, or (2) the County first obtains approval from DOE.

B. Basis for an Agreement on Termination of Annual Assistance Payments

Termination of assistance payments is contemplated to be a negotiated process. The Community Act does not provide guidelines or formulas for calculating burdens imposed by the Government or methods for assessing self-sufficiency. The justification for termination of assistance payments that underlies the statutory and contractual language hinges on a judgment that DOE has fulfilled its financial obligations to the County pursuant to the Community Act. That is, the sum of the assistance payments, including in-kind payments for the transfer of municipal installations, utilities, and real property without charge, as well as direct cash outlays, is judged sufficient to compensate the County for the burdens imposed by the DOE presence. On the other hand, the County must justify the continuation of payments by demonstrating that it has exercised every reasonable means to become self-sufficient through taxes, fees, and assessments; that it has implemented plans to develop an economic base from which it can begin to minimize its dependence upon DOE for assistance; and that it continues to provide services and benefits essential to DOE in the fulfillment of its mission. Fundamental to the negotiation is an assumption that both parties can independently assess their ongoing and future needs and arrive at a mutually agreed upon process of "balancing the books".

Negotiating a settlement on termination must begin with the factors specified in section 91 of the Community Act used in setting assistance payments. Rephrased in the context of termination of assistance, these factors are:

1. the County is able to maintain municipal services at a level which will not impede the recruitment and retention of personnel essential to DOE's missions at Los Alamos;

2. the municipal services and other burdens imposed on the County by reason of DOE's operations in Los Alamos are adequately compensated for by gross receipts tax revenues and traditional payments in lieu of taxes under the Atomic Energy Act of 1954; and

3. adequate measures have been taken to eliminate the fiscal problems peculiar to the County by reason of the construction of the community as a single-purpose national defense installation under emergency conditions.

In this context, an agreement on termination should include provisions which assure that these factors are achieved. Because of the limitations on and lack of predictability in revenues generated by taxes, the County currently depends on its annual assistance payment of approximately $2.7 million to supplement revenues which support maintaining municipal

ultimately be achieved from the strengthening of the local economy will not be realized in the short term, it appears that those cost savings have the potential to be significant in the future.

V. Summary and Conclusion

As required by section 3161 of the National Defense Authorization Act of 1996, DOE has assessed the need for continued assistance to the Incorporated County of Los Alamos. DOE has determined that the historically paid annual assistance should not be continued indefinitely and that termination of financial assistance to the County could best be accomplished by: (1) a final settlement of $22.6 million to the county; (2) the transfer to the County of several municipal installations and functions owned and operated by the Federal Government; and (3) the transfer to the County of undeveloped land. DOE does not believe that any extensions of authorities under the Community Act are required to implement the proposed recommendations.

Los Alamos County
Self-Sufficiency Strategy

County Council

Denise Smith, Chairman
Lewis Muir, Vice-Chairman
James Fretwell
James Greenwood
Lawry Mann
Morris Pongratz
Sharon Stover

Administration

Alex Georgieff, County Administrator
Roger Bagley, Deputy County Administrator
Fred Brueggeman, Assistant County Administrator
for Intergovernmental Relations

ATTACHMENT D

18.0 CONSULTATIONS AND COORDINATION

I. Introduction

This report, the "Los Alamos County Self-Sufficiency Strategy", from the Incorporated County of Los Alamos (LAC), is submitted to the U. S. Department of Energy (DOE) to assist them in compliance with Section 3161 of the National Defense Authorization Act of 1996 (Public Law 104-106), which amended Section 91 of the Atomic Energy Community Act of 1955 (Public Law 84-122) to require the Secretary of Energy to present to the Congress by June 30, 1996, recommendations as to the need for further assistance payments from the DOE to the County of Los Alamos. If justification for further assistance payments is found, the Secretary will include a report and a plan describing the actions needed to eliminate the need for further assistance. If necessary, the report will include a proposal for legislative action required to implement the plan.

The County and the DOE executed an "Agreement in Principle" (Appendix A) in December 1995 which, in general, provided for the DOE to eliminate assistance payments and transfer municipal installations (including vacant land) to the County. The County agreed to become independent of assistance payments, and to accept and operate the municipal installations.

Los Alamos County is a unique municipality in many ways, including the situation that the vast majority of its property and economic activity is exempt from taxation *but* generates significant demands for public services. In light of this serious constraint to revenue generation, the dilemma the County faces is how to continue to provide services while dealing simultaneously with: (a) declining revenues resulting from the loss of assistance payments, and (b) increasing costs resulting from accepting and operating the DOE facilities. This report, the "Los Alamos Self-Sufficiency Strategy", is a comprehensive, long-range approach for the County to achieve self-sufficiency.

II. Outline of the Los Alamos County Self-Sufficiency Strategy

What is self-sufficiency? The following definition is from the report, "Analysis of Department of Energy Impact and Support at Los Alamos New Mexico":

> "In practice, a government entity is financially self-sufficiency if its budget is balanced, i.e., if the revenues equal the expenditures. In the case of Los Alamos, self-sufficiency will exist if that balance is achieved without DOE assistance payments. Without lowering the current level of service, local government has limited flexibility in reducing expenditures. Therefore, realistic self-sufficiency will be achieved in the County when the tax base expands sufficiently to provide the equivalent DOE assistance without the deterioration in the level of service."

The Los Alamos County strategy for achieving self-sufficiency contains the following essential elements (outlined here and detailed in Section VII) and is *dependent upon the*

DOE successfully transferring to the County vacant land and municipal installations (to be discussed later), and to provide financial assistance during this transition.

1. **Budget and Organizational Restructuring Plan**: The County will continue implementation of a comprehensive budget and organizational restructuring in order to prioritize services, reduce the cost of providing existing services, identify and evaluate for elimination non-essential services, identify and implement productivity improvements, and identify potential reorganization/consolidation opportunities in order to provide services more effectively and efficiently.

2. **Economic Development and Diversification**: The County will attempt to expand its tax base and diversify its economy by aggressively developing the land obtained from the DOE and implementing an economic development program, including efforts to retain and expand existing businesses, and a possible reduction in the gross receipts tax (GRT) rate in order to become a more competitive location for businesses within New Mexico.

3. **DOE Contract Reform**: The County will provide DOE with specific recommendations and performance measures for the new Los Alamos National Laboratory (LANL) management and operations (M&O) contract to be effective in late 1997 (Appendix B). The County's suggestions will include areas of local procurement preference, expanded outsourcing, increased local technology transfer initiatives, participation in economic development activities, improved educational asset utilization, and contractor corporate citizenship.

   The benefits to the County are (a) an expanded revenue base to pay for existing services accepted from DOE with the loss of assistance payments, (b) payment of services to support LANL's impact, and (c) economic diversification as directed by Congress and the DOE. While the County is not a party to the contract, County input into the contract is important because County finances and services are significantly impacted by LANL operations, and the DOE has recognized local governments as stakeholders in such contracts at all DOE sites.

4. **Payments-In-Lieu-Of-Taxes (PILT)**: The County is requesting that DOE make payments-in-lieu-of-taxes and give assurances that the County is eligible for special burden payments in the future to appropriately compensate the County for the impact of LANL on the community, for the cost of services received by LANL and its employees, and to support the LANL/DOE in its national defense mission.

5. **Lump-Sum Payment**: The County is requesting that DOE make a lump sum payment to the County in FY97 of $17.6 million. (This amount represents the sum of annual assistance payments which would have been made over the next ten years if the annual payment is reduced by 10% each year to zero.) This payment would provide the basis of the County's transition to self-sufficiency.

6. **Facility Transition Fund**: The County is requesting that DOE make a one-time $5 million payment to the County in FY97 to fund reserve accounts for repairs to the aging and substandard infrastructure of the DOE facilities which will be transferred to the County that includes the water system, fire stations and equipment, and the airport.

III. Background on Efforts Towards Self-Sufficiency

The dependence of the County's economy on one entity - LANL - has been a source of concern for many years. This concern is deepened by the fact that LANL generates major public service requirements, but LANL property and most of its spending are exempt from local taxation to pay for those services. Economic diversification activities have been underway with mixed and limited results in areas of Federal land release, economic development funding, and outside revenue generation through utility commodity sales. Each of these are summarized below.

1. **Federal Land Release:** The goal for release of Federal land for private development has been a long-term continuing process. In the early 1980s three sites were identified: (a) the "Cemetery Tracts", (b) the "Western Perimeter" tracts, and (c) Rendija Canyon. To date, the Cemetery Tracts were released for residential development through a private trade with the Forest Service; and parts of the Western Perimeter tracts have been transferred to the County from the DOE, GSA, and the Park Service for *recreational use*. The parcel identified for *private development* in the Western Perimeter Tracts has not yet been released, and Rendija Canyon has been returned by the GSA to the DOE as unsellable because of conflicting claims. In the late 1980s the County government contracted with the Los Alamos Economic Development Corporation to attempt to gain the release of several small parcels of land from DOE for business purposes. No land has been transferred as a result of this effort.

2. **Economic Development**: Organized governmental interest in economic development in Los Alamos began in 1983 with the creation of the Los Alamos Economic Development Corporation (LAEDC), a private non-profit organization. DOE, LANL, and the County were instrumental in providing startup funding for this organization. The company has been oriented towards technology transfer through a process of assisting LANL employees in becoming entrepreneurs and starting new businesses. LAEDC provides small business counseling, and offers business incubator space to small businesses.

   In 1979, the County levied a 5% tax on lodging, with the proceeds dedicated to marketing the County to attract visitors. To date that tax has generated over $1.6 million.

   There was a shift to concern about the declining tax base of the retail sector in the community in the late 1980s, and the County responded by creating and funding the Community Development Committee (CDC). The CDC had a national economic consultant prepare a retail analysis which showed major retail leakage, in that about 50% of the disposable income of Los Alamos residents was being spent out of the County. The CDC prepared plans for the White Rock and Los Alamos retail areas and has been implementing those plans with a variety of funding sources to capture additional taxable retail spending.

   Then, in 1990 the County Administrator asked staff to prepare an economic development strategic plan to help coordinate and direct the several economic

development efforts underway. The County's Economic Development Strategic Plan (EDSP - Executive Summary included as Appendix C) was adopted in 1991 *with the highest priorities being land development for business expansion and affordable housing for labor force expansion.*

3. **Revenue Generation Through Utility Commodity Sales**: The County has attempted to move towards self-sufficiency with increased revenues from utility sales. The County purchased the White Rock gas and electric systems from a private company and has generated additional general fund revenues. The County and the DOE agreed in 1983 to enter into an electric power resource pool, and in 1985 the County issued $110 million in revenue bonds to build two hydro power plants, purchase a portion of the San Juan Generating Plan, and purchase an interest in several other plants. This purchase has lowered electric rates for both LANL and County residents and businesses. However, the expected general fund revenues in excess of $1 million per year from power sales have not materialized. Both gas and electric profit transfers to the County's general fund are further threatened by "wheeling" authority which may undercut rates to major utility users.

IV. Impediments to Diversification

Los Alamos has been and continues to be greatly restricted in efforts towards diversification of its economy to reduce dependence upon LANL. Any discussion of self-sufficiency for Los Alamos needs to recognize the factors which have to date significantly hindered economic development, such as rugged topography, a location remote from materials or markets, Federal ownership of virtually all vacant land, limited and expensive water supplies, a high cost of living, revenue generation restrictions, and a limited workforce. A brief discussion of each follows.

1. **Topography**: The topography that made Los Alamos attractive as the location of a secret national defense installation has been a detriment to its growth, added to the cost of providing services, and hindered development. Although Los Alamos County is small in horizontal area, it rises nearly a mile vertically from the Rio Grande River in the east to the Jemez Mountain peaks in the west. The "townsite" business and residential community is located on the Pajarito Plateau which is a series of five mesas that radiate from the Jemez Mountains. These finger mesas are several miles in length, and are separated by deep canyons. The mesas are connected for access by a single arterial road that runs along the intersection of the mountain and the mesas. White Rock, which is the other part of the Los Alamos community, is located 1,000 feet lower on the edge of the Rio Grande gorge about 8 miles from the townsite.

2. **Remoteness**: The remoteness which made Los Alamos desirable in its infancy has become a major obstacle in trying to compete with other communities for business locations. Access into the community is along one of two winding highways which at times can be covered with snow. There is no rail connection within 40 miles, and at the moment there is no commercial air service to the County. All persons and goods must arrive by highway, and, since the community is basically at the end of a cul-de-

sac, traffic does not stop here on the way to somewhere else. The community is surrounded in all directions by Federal and Indian lands, and thus has no trade area on which to base a retail and personal service economy. Since most businesses need to locate on good transportation facilities near either raw materials or markets, Los Alamos is not attractive to most businesses.

3. **Federal Ownership of Vacant Land**: Nearly 90% of the land in the County is owned by the Federal government, either as LANL, as the Bandelier National Monument, or as the Santa Fe National Forest. Not only are the townsite and White Rock communities surrounded by Federal property, but the County itself is completely bounded by Federal and Indian Pueblo property. Most privately-owned land has been developed, and vacant land owned by the County is mainly in undevelopable canyon bottoms. Most attempts to trade or release Federal land for private development has been time-consuming and difficult. And, in fact, because of the rugged topography, there is very little undeveloped land that is easily developable.

4. **Water Supplies**: Water rights are a very important commodity in arid New Mexico, and Los Alamos County's location high in the mountains adds significantly to its water production cost. The Federal government acquired groundwater rights in the 1940s for the Manhattan Project, and acquired an allocation of water from the San Juan/Chama Project in the 1960s. About 80% of the groundwater rights are now being used by the Federal government, either for its own use or to sell to the community. Los Alamos County buys water from the DOE and distributes it to residential and business customers. County users currently pay $4.32 per 1,000 gallons of water, which is the highest price in New Mexico and among the highest in the country.

5. **High Cost of Living**: The lack of developable land and high LANL salaries have contributed to the high cost of living in Los Alamos. The cost of vacant office space is near $10 per square foot, housing costs are over 60% above the national average, and the overall cost of living is over 20% above average (based on the most recent ACCRA quarterly cost of living survey). The release by DOE of a significant amount of land for private development can potentially stabilize land price increases. But, the dumping of a large amount of land on the market could cause land prices to crater and seriously impact households, businesses and financial institutions with mortgages based on higher land values.

6. **Revenue Generation Restrictions**: LANL recruitment and retention of quality personnel depends, in part, on the ability of the County and the School District to provide relatively high quality public services. However the capacity of the County to generate revenue to provide those services is limited by two main factors: (a) limited tax base, and (b) limited taxing authority.

    a) **Limited Tax Base**: New Mexico municipalities are dependent upon property and gross receipts taxes to pay for local services. *Ninety-four percent of the land in the County is exempt from property taxes*, and, based on the value of LANL improvements (provided by DOE), only 7% of the improvements pay property taxes. Similarly, both the Federal government and its contractor, the University

of California, are exempt from gross receipts taxes. Yet LANL does utilize public services. In addition, the 18,000 population of the County is supplemented by over 10,000 daily commuters who also utilize public services but may work for a tax exempt employer.

To illustrate the impact of this limited tax base on the County:

LANL budget	$ 1,100 million
Private, non-LANL spending	$ 150 million
Total economic activity	$ 1,250 million
Taxable economic activity	$ 400 million

Percent taxable: $400 million / $1,250 million = 32%

b) **Limited Taxing Authority**: The State of New Mexico limits the ability of its local governments to levy taxes and limits the amounts that can be levied.

i) **Property Taxes**: While Los Alamos County has levied about 65% of the maximum allowable property taxes, it still has the highest per capita property tax in the state for combined county/municipal services. The growth of property taxes is limited by "yield control" restrictions imposed by the state. If the maximum property tax rate were imposed, the County could only realize an additional $1.5 million per year from property taxes. Raising the property tax rate would further discourage economic diversification and business development, contribute to the high cost of housing, high cost of living, and limited work force.

ii) **Gross Receipts Taxes**: As a combined city/county, Los Alamos is able to levy both county and municipal gross receipts tax rates. With 1/4% of remaining authority for general purpose revenue, the County could raise about $1 million per year from this source. However, raising GRT rates would not be fiscally prudent in the short-term, since increased rates will make Los Alamos less competitive for businesses, resulting in decreased GRT revenues.

iii) **Other Tax/Income Sources**: Finally, New Mexico local governments have no ability to impose income taxes, employee head taxes, or many other revenue generating methods successfully utilized across the country.

Currently the New Mexico State Legislature is considering options which may remove the tax exemption of the University of California. The County is evaluating the potential impact of a tax on the LANL.

7. **Labor Force**: Finally, Los Alamos County's efforts towards economic diversification are challenged by a lack of skilled, affordable, and available labor. Unemployment in the County hovers around 2%, largely because the high cost of living makes unemployment unaffordable to County residents. Lower paid jobs at LANL, at LANL contractors, and at non-LANL employers are generally filled with persons from outside of Los Alamos, primarily from Rio Arriba and Santa Fe Counties. A recent

regional labor market study identified transportation as the single largest barrier to participation in the Los Alamos job market by persons from surrounding communities. County efforts to overcome this barrier by providing affordable housing in the County and by developing a regional transit system are proceeding but will take years to produce significant results.

V. DOE Transfer of Municipal Facilities and Operations

The DOE's 1995 plan to reduce its budget by $19 billion over the next five years includes shedding those municipal facilities and services it has been providing to non-DOE customers. In Los Alamos those municipal operations include the water production and distribution system, fire department facilities and equipment, and the airport. Shedding these facilities and services will result in major recurring annual savings to the DOE - *and increased costs to the County.* Transferring these facilities and services to the County is a major component of the self-sufficiency strategy. A brief description of each follows.

1. **Water Production and Distribution System**: DOE and the County have agreed that the DOE will transfer to the County at no cost to the County a portion of the DOE's water rights, all water wells (including up to four new wells to maintain system capacity), and the water production system including pumps, tanks, lines, etc.

   The County will operate the system and will sell water back to the DOE at a projected savings of $500,000 per year to the Federal government. As part of this transfer, the County needs to capitalize a repair and replacement fund and a working capital fund, as well as a water rights defense and acquisition fund.

2. **Fire Department Facilities and Equipment**: The County has had a contract since 1989 with the DOE to provide fire protection to all LANL facilities, but DOE still owns the fire stations and fire equipment. The County has agreed to a formula to pay its "fair share" of fire protection costs, and to accept those stations and equipment that serve the community. The County's annual "fair share" of fire protection and annual equipment replacement and repair fund is estimated at $1.5 million. In addition, the County will need $2 million to capitalize the equipment replacement fund and provide vehicle maintenance facilities, as well as $2.5 million to cure deferred facility maintenance and code compliance problems.

3. **Airport**: The County has agreed to accept the airport facility from the DOE, and to operate the airport for three years at a loss if there is scheduled commercial air service *and* if LANL shares the operating loss. The County's share of operating losses is estimated to be $200,000, and about $1.2 million in immediate capital improvements are necessary to correct substandard conditions.

VI. DOE Transfer of Land for Economic Diversification and Affordable Housing

The DOE's commitment to transfer land for economic diversification and affordable housing to the County, as outlined in the December 1995 Agreement in Principle, is a critical component of the County's self-sufficiency strategy, and is the difference between this self-sufficiency strategy and previous buyout proposals. However, while developable land may allow the community to recruit businesses from outside the area, it is only one of many obstacles to be overcome before self-sufficiency is achieved. The County will still be dependent upon LANL operations to provide the marketing focus for economic development. In addition, land development is an expensive, time and resource consuming process, with significant results at least five years into the future. These points are discussed briefly, below.

1. Several aspects of LANL's operations will serve as the marketing focus for land development. The first component is businesses providing goods or services to LANL who could benefit from a more proximate location. This could include businesses in other locations that could relocate to Los Alamos, as well as existing local businesses that are now restricted in their size and could compete for LANL contracts if they had access to more space.
2. A second area of opportunity is from business which could benefit from increased outsourcing which is expected to be required through DOE contract reform. LANL has suggested "teaming" with a corporate partner to be located in Los Alamos who would handle many non-science activities, and might include bringing a non-LANL corporate entity to Los Alamos.
3. A third element is technology transfer activities where a company using LANL technology would see the benefits of locating near the source of that technology.
4. Tourism is another area that can benefit from LANL's reputation. LANL's science museum brings over 125,000 annual visitors to the County, and LANL seminars and symposia attract thousands of visitors to other locations. The availability of land will provide the opportunity to develop facilities to allow the County to benefit from those activities.
5. Also, the knowledge at LANL should be a resource for education-related activities for everything from a youth science camp to a four-year science and research university to a graduate center for research and technology.

To reiterate, none of these options are feasible without available land. There are two significant costs associated with development of this land. The first is the operational cost of staffing to manage, market, and sell land for development. The second is the capital cost related to off-site and on-site infrastructure needs. In addition, land development will result in increased demand/requirements for County services. At some point land proceeds will cover the operational costs and may be able to cover the carrying costs for the infrastructure. The County estimates a five-year capitalization of operational costs at $2.5 million and initial infrastructure development costs of $4 - $5 million.

VII. Los Alamos County Self-Sufficiency Strategy Details

The current proposal from the County to the DOE for self-sufficiency has six elements (outlined in Section II):

1. **Budget and Organizational Restructuring Plan (BOR)**: The County has undertaken a comprehensive budget and organizational restructuring which involves both near-term and long-term plans. The near-term recommendations focused on identifying productivity measures that could be implemented quickly, beginning in FY97, while preserving all essential and most non-essential County services. These were identified by the Senior Management Team after a nine-month study and include elimination of numerous FTEs and other budget adjustments. Implementation has resulted in approval of an FY97 general fund budget which is nearly 10% less than FY96.

   The County is continuing with its long-term BOR plan which will focus on more intensive productivity and process improvements; identification and possible elimination of non-essential services that have outgrown their usefulness, become too expensive to continue, or have too small a user population to justify; and an extensive reorganization of County functions and staffing. Included will be a program for soliciting community input in order to identify service priorities and expectations. A consultant will be hired to assist the Senior Management Teal with identifying and evaluation of major reorganization/consolidation scenarios. The resulting plan will be used to either reorient existing services if future budgets are stable, or to determine which services to reduce if the financial situation deteriorates.

   These BOR efforts follow a successful multi-year streamlining program begun in 1992 in an effort to provide efficiency and cost-reduction measures to offset the consequences of reduced revenues and increased costs.

2. **Economic Development and Diversification**: The County's goal to broaden the tax base so that existing services can be maintained when DOE support is terminated is virtually impossible without available land for development. Therefore, the Agreement in Principle, signed by DOE and the County in December 1995, commits DOE to transfer up to 500 acres of developable land to the County for business development, affordable housing development, and educational facility development. These uses will diversify the County's tax base away from dependence upon LANL, while creating regional and state benefits in terms of job opportunities, workforce training facilities, and gross receipts revenues.

   Los Alamos County is starting to review and update the 1995 Economic Development Strategic Plan. The availability of land for economic activity will remove one of the major obstacles, and will provide for the implementation of programs for retention and expansion of existing businesses and for recruitment of new targeted industries. Availability of labor is a second obstacle which will continue to be pursued through continued County support of affordable housing and support for regional transportation options. The County will continue to administer DOE funds for

regional economic development, and expects that funded regional programs for business loans and in-plant training will benefit the County's economic base.

The County continues to work to implement the Economic Development Strategic Plan. More recent Council retreats have prioritized and refined those goals and objectives. Specific County projects have been identified to strengthen the retail base through redevelopment of the County and Schools shops site on Trinity Drive, to develop a conference facility to attract hotel facilities and strengthen the visitor base, to develop a research park to attract private research and development firms, to develop business park facilities for existing business retention and expansion, to construct a new senior center facility to support the retirement sector of the economy, and to strengthen higher education by supporting the transfer of existing housing from DOE to the University of New Mexico and setting aside land for future educational facility development. The County is also active in supporting regional economic development through the creation of a community reuse organization and acting as fiscal agent for DOE community transition funds which include small business loan funds and on-the-job training programs.

One aspect of the proposed economic development program is a possible reduction in gross receipts taxes to make Los Alamos a more attractive location for business. With currently one of the highest GRT rates in the region, a 1/4% reduction in GRT rate would place the County in a better competitive position for business, and could save LANL nearly $500,000 per year on taxes paid by its contractors.

3. **DOE Contract Reform**: DOE contract reform initiatives have placed a high priority on outsourcing and privatization of some functions that have in the past been internal to DOE operations. The end to the Cold War has reduced the need to have all operations internalized for security reasons. In light of tighter budgets, the current peacetime philosophy is that the private sector may be able to perform some work less expensively, or at least distribute overhead among many customers. Discussions with LANL management and University of California officials have indicated their general agreement with this philosophy.

   Very preliminary discussions have placed the extent of additional LANL outsourcing around 10% to 20% of the LANL budget. How much of this can be captured in Los Alamos County is dependent upon such factors as what new local procurement preference requirements are implemented, whether a few major or many smaller private contracts are outsourced, and how quickly the land transfer occurs and the economic development program is implemented.

   LANL outsourcing will also have regional and statewide benefits as more jobs are created and more gross receipts taxes are paid.

4. **Payments-In-Lieu-Of-Taxes (PILT)**: Federal agencies are authorized to make PILT payments to local governments for major Federal land holdings within their jurisdictions. The County currently receives about $25,000 per year from the Department of Agriculture for Santa Fe National Forest lands and from the Department of the Interior for Bandelier National Monument property. The County has not received PILT from the DOE due to the payment of annual assistance

payments. However, the cessation of annual assistance payments will make the County eligible for an estimated $40,000 per year in PILT based on the use and value of the property *when it was acquired* for LANL. The County will join other DOE host communities in requesting modifications of that formula to more accurately reflect the impact of the present use on the local governments. Such PILT reforms could also lead to payments to surrounding jurisdictions that are impacted by a major DOE facility such as LANL.

5. **Lump Sum Payment**: The County is requesting a $17.6 million lump sum payment for the assistance payments representing the present value of the assistance payments for the ten-year contract period from fiscal year 1997 to fiscal year 2006. While the buyout proposals discussed in 1985 and 1989 would have the money deposited for interest use, the current proposals would use the lump sum amount for two general purposes:

   a) First, approximately $10 million would be used over the next five years to supplement general fund revenues while the revenue impacts from economic and land development, and LANL contract reform are starting to be realized.

   b) Second, it is anticipated that about $7.6 million is needed for economic development infrastructure investments to assist with economic diversification. These infrastructure investments would include on-site and off-site streets and utilities for the land to be developed, as well as "pump priming" facilities for special uses, such as a conference center, research and technology center, etc. The payback for this investment is projected to begin about 2002 for ten years, and would be dependent on sufficient expansion of the tax base.

6. **Facility Transition Fund**: The County is requesting an addition $5 million lump sum payment from DOE for the transition of municipal facilities and operations from the DOE to the County. Among the items expected to be capitalized from this transition fund are a water rights defense and acquisition fund, major water equipment replacement fund, a fire equipment replacement fund, and specific capital improvements to the airport and fire stations. It is anticipated that this $5 million fund would be supplemented from interested earnings from the $17.6 million payment, ongoing revenue from water rates or from equipment replacement fund charges, and outside funds such as the State Fire Marshal's Fund or the Federal Aviation Administration Airport Trust Fund. After the initial five year period, these facilities accepted from the DOE would become eligible as capital improvements projects under the regular County CIP process.

VIII. Conclusions

The Los Alamos County Self-Sufficiency Strategy will evolve and change when the new LANL management contract is complete, the new fire department contract is in place, and the proposed land transfer is hopefully complete. Uncertainties that have been identified

can serve as an action agenda for the County Council, County staff, and County residents. For example, having identified PILT as a potential revenue source, the community can work together with other communities to try to insure that this potential is reached. The same model can apply to all other factors in the self sufficiency plan and the assumptions that it is based on.

IX. References

"Analysis of Department of Energy Impact and Support at Los Alamos, New Mexico", Incorporated County of Los Alamos, New Mexico, April 1996.

"Economic Development Strategic Plan", Incorporated County of Los Alamos, New Mexico, October 1992.

"Los Alamos County, Department of Energy Reports on Potential Community Assistance Agreement Lump Sum 'Buy Out' Proposal", Incorporated County of Los Alamos, New Mexico, September 1985.

"Los Alamos County Labor Survey", Tri-Area Association for Economic Development, for Incorporated County of Los Alamos, New Mexico, 1994.

"Los Alamos County Report on Community Assistance Agreement Lumpsum "Buyout", Incorporated County of Los Alamos, New Mexico, July 1989.

"Retail Market Analysis for Los Alamos, New Mexico", prepared for the Community Development Committee of the Los Alamos County Council by Hammer, Siler, George Associates, Denver, Colorado, February 1990.

X. Appendices

A. "Department of Energy and Incorporated County of Los Alamos Agreement in Principle", Incorporated County of Los Alamos, New Mexico, December 1995.

B. "Los Alamos County Council Position on M&O Contract", Incorporated County of Los Alamos, New Mexico, April 8, 1996.

C. "Economic Development Strategic Plan - Executive Summary", Incorporated County of Los Alamos, New Mexico, October 1992.

18.0 CONSULTATIONS AND COORDINATION

PRINCIPLES OF
LAND TRANSFERS FROM DOE

1. Developable lands to be transferred should be adjacent to already developed land in order to minimize sprawl, gain economies in extending public utilities, and reduce the costs of providing public services.

2. Preservation of the quality of life for County residents is a paramount concern, and self-sufficiency must be attained only through managed growth and development.

3. Self-sufficiency can be obtained through the expansion of the tax base which will generate additional property and gross receipts taxes sufficient to replace the annual assistance payments and pay the costs of maintaining the water, airport and fire facilities transferred from the DOE to the County. The County's goal for these purposes is at least 500 acres of land suitable for economic development and diversification.

4. Self-sufficiency will also be obtained through the provision of land for housing. Additional housing land will reduce the steep upwards inflationary spiral of residential property values and will eventually bring Los Alamos housing prices more into line with other communities. The County's goal for these purposes is at least 1,500 acres of land suitable for residential development.

5. Education is an important value to residents of Los Alamos, and land for expanded public and higher education and training facilities should be provided.

6. Self-sufficiency also requires that access be maintained to and within the community for residents and visitors, for commercial purposes, and for emergency situations. Lands for access include the S.R. 4 and S.R. 502 rights-of-way, the airport and emergency landing strip, and emergency access available through Los Alamos and Rendija Canyons.

7. Self-sufficiency will also require adequate utilities, including water, sewer, gas, and electricity. Land is needed to preserve existing utility infrastructure, as well as to provide for additional water wells, a new sewage treatment plant, and more gas and electric transmission facilities.

ATTACHMENT E

8. County assumption of the water production and transmission system, airport, and fire stations will require designated transfers of land, transfers of easements, and the establishment of easements on DOE land, other Federal land, and tribal land.

9. The County supports the preservation of prehistoric and cultural resources. County government does not have the assets to assume these responsibilities and this responsibility must be left to others.

10. Los Alamos County is blessed with an abundance of natural areas for hiking and outdoor recreation, and supports the provision of joint access agreements to permit public access wherever possible. The County government, however, does not have the resources to assume additional responsibilities for natural areas or trails,

11. Los Alamos County has short-term, medium-term, and long-term needs for land. We assume that Los Alamos will always have a need for more land as the community continues to grow. Since self-sufficiency in the near future is critical for Los Alamos, substantial land transfers should be completed as soon as possible - preferably within three years after the termination of assistance payments. The present need for prompt action, however, should not be construed as diminishing this atomic energy community's long-term need for self-sufficiency and its interest in future land that might be released by the Department of Energy and Los Alamos National Laboratory.

IMPACT ON LOS ALAMOS COUNTY SELF-SUFFICIENCY OF THE NO-ACTION ALTERNATIVE

Included below are three paragraphs from Los Alamos County documents. The first two are from the Introduction to the FY 1999 County budget, and the third is from the Budget Guidance for preparation of the FY 2000 County budget.

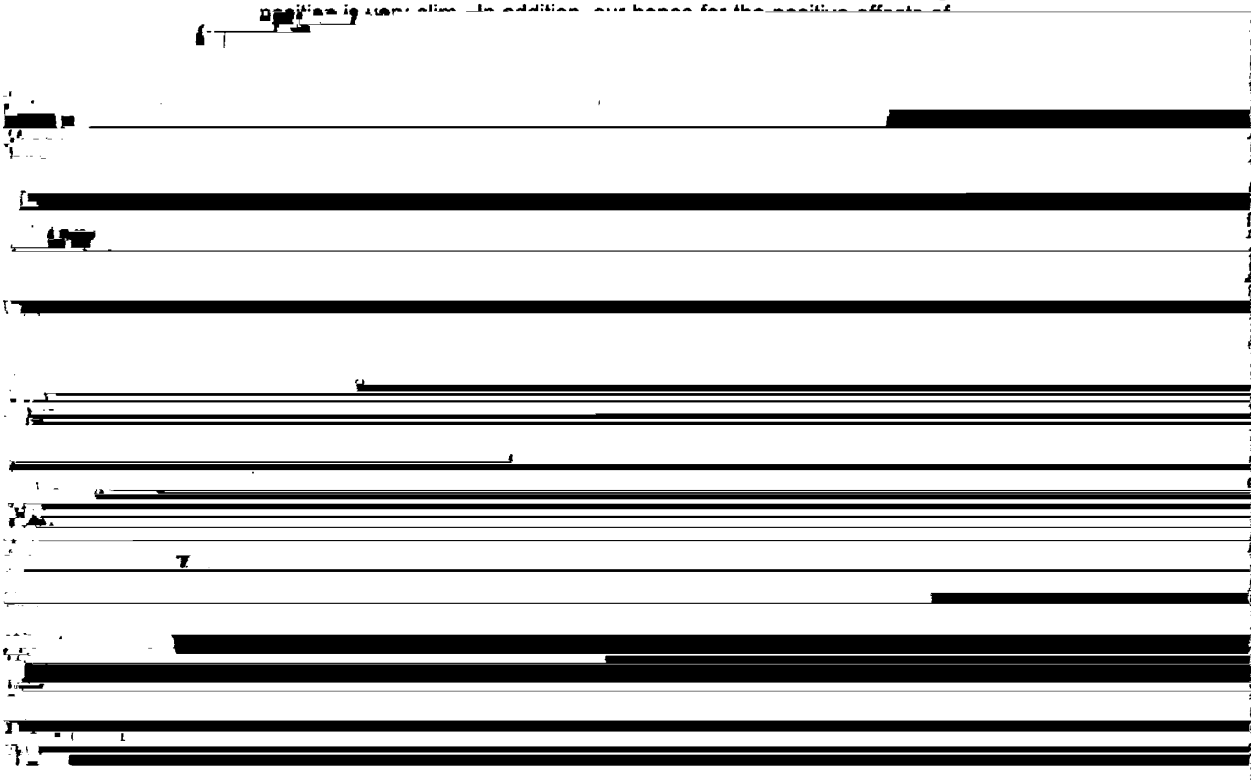
INTRODUCTION

Fiscal year 1998 was the County's first year of operating without the Department of Energy (DOE) assistance payments. In prior years this equaled 13% of the General Fund's revenues. Discontinuance of the assistance payments was not a surprise. We planned for this event and negotiated a lump sum buyout of future assistance payments. We also set aside a portion of the General Fund's fund balance - the Community Transition Designation - and built up its balance to help us through this change. It is specifically these preparations which enabled us to develop a budget in fiscal year 1998 which did not include reductions in the services that the County provides to the community.

Source: FY 1999 County Budget

There are several new issues that have accelerated our need to make significant changes sooner than we had anticipated a year ago.

1. The County's Self-Sufficiency Strategy, in the form it was originally adopted and subsequently implemented, is now flawed. The likelihood that land will be transferred soon enough or in significant enough quantities to *effectively* improve the County's operating



18.0 CONSULTATIONS AND COORDINATION

Office of Governor
SI-GC98-287

9 November 1998

PUEBLO DE SAN ILDEFONSO
TEWA
NEW MEXICO

Route 5, Box 315-A
Santa Fe, New Mexico 87501

Telephone
(505)455-2273
FAX (505)455-7351

Ms. Elizabeth R. Withers
C&T EIS Document Manager
Department of Energy
Albuquerque Operations Office
Los Alamos Area Office
Los Alamos, NM 87544

Dear Ms. Withers:

In our Tewa language, *Po-who-ge-oweenge*: Where the Water Cuts Through, is the name of our village. When the Spanish arrived in the 1500's, it was renamed the Pueblo of San Ildefonso, in honor of St. Ildefonsus of Toledo. An archbishop in Toledo, Spain around 675 AD. Our people still use the Tewa name. It would be exalting if all the lands were returned to its rightful caretakers. As the caretakers of this land, our Corn Mothers have guided us to this place of peace and have entrusted it to us, the Tewa People. We have been following the life plan that was instructed to us by the Corn Mothers since the emergence from the underworld through the mountain springs from the north. With this, we consider as true, that all the land from the cardinal points of the Tewa World belong to the Tewa People.

We were and still are at an age of discovery. Ever since the invasion of European peoples to our lands, we have lost most of what we have been entrusted to. However, we are fortunate that we have had government/s that have considered our way of life on these lands. But the invasion continues today. Because of the invasion, our land, water, and air have been contaminated by all sorts of tangible and intangible matter.

Our statement of concern is when we receive our lands back from the Department of Energy; we will have clean and uncontaminated lands. The No Action Alternative should not be an issue to both the Pueblo of San Ildefonso and/or the County of Los Alamos. It is the duty of the United States Department of Energy that all land up for conveyance and transfer is cleaned to the utmost standards of regulations that have been set forth by both the state and federal entities. This is the greatest concern to the pueblo. Our people live off the lands that adjoin some of the greatest hazard concern to the community of Los Alamos; this distinct piece of land is called Technical Area-54 (TA-54). As you know, our boundaries touch within this area. This is where our people hunt elk and deer, and where we gather wood and plants for domestic and ceremonial use.

Overall, the pueblo would like this conveyance and transfer to be meaningful for all parties. We hope the US Department of Energy will be most helpful in fulfilling their commitment to both the Pueblo of San Ildefonso and the County of Los Alamos. We have kept our vow with our Corn Mothers since time immortal, now its time for the United States to do the same.

This statement is from my Tribal Council, tribal elders, myself and the people of the Pueblo of San Ildefonso. May our Great Spirit guide us on this positive path. Kuu-daa' – Thank you.

Sincerely,

for Governor
Pueblo of San Ildefonso

United States Department of Agriculture | Forest Service | Santa Fe National Forest (505) 438-7840 | 1474 Rodeo Road P.O. Box 1689 Santa Fe, NM 87505

File Code: 1580

Date: November 6, 1998

Elizabeth R. Withers
C&T EIS Document Manager
528 35th Street
Los Alamos, NM 87544

Dear Ms. Withers:

In your November 3, 1998, letter you indicated that a statement from cooperating agencies would be included within your Conveyance and Transfer Environmental Impact Statement. The following is the Santa Fe National Forest response to this request.

It is estimated that nationally over 17 million acres of National Forest lands do not have legal right of public access. It is the Forest Service objective to maintain or acquire legal right of public access to all National Forest lands. While the Conveyance and Transfer EIS is considering conveying a number of land parcels, only one parcel, the Rendija Canyon Tract is of concern to us. Existing roads and trails which cross the Rendija Canyon tract provide public access to over 10,000 acres of National Forest lands.

It is our understanding that one of the action alternatives proposes to eliminate public use of portions of forest roads #57, and #57A and forest trails #279 and 286. Restricting use of these roads and trails will greatly hinder both public and administrative access to the above mentioned 10,000 plus acres of National Forest lands. Presently these lands afford not only recreation opportunities for the general public, but serve as traditional firewood gathering and collection areas for other forest products by local Hispanic and Native American populations. Restricted access to this area could have a substantial negative impact on the environmental justice interests of these individuals (Executive Order 12898). In addition, reduced Forest Service administrative access could hinder our ability to extinguish wildfires which could have negative effects on private properties located nearby.

We request that prior to conveying the Rendija Canyon tract, permanent non-restrictive easements be granted to the United States of America for Forest trails #279, and 286, and for Forest Roads #57 and #57A.

Sincerely

for LEONARD ATENCIO
Forest Supervisor

cc: Espanola Ranger District

Caring for the Land and Serving People

Printed on Recycled Paper

United States Department of the Interior
NATIONAL PARK SERVICE
Bandelier National Monument
HCR 1, Box 1, Suite 15
Los Alamos, New Mexico 87544-9701
(505) 672-3861 ext 502

Parks and People, Our Mission, Their Future

November 6, 1998

Elizabeth R. Withers
C&T EIS Document Manager
Department of Energy
Los Alamos Area Office
Los Alamos, NM 87544

Dear Ms Withers,

Bandelier National Monument appreciates the opportunity to participate in the review of the draft Conveyance and Transfer EIS and further, the opportunity to provide comments and register concerns.

The focus of our concern is the potential effect on the Tsankawi unit of the Monument by the transfer of the TA-74 and the White Rock Y tracts. These parcels are directly across NM 4 from the Tsankawi unit of the Monument. More specifically, we are concerned that potential uses of or activities taking place on the tracts will cause uncontrollable threats to the cultural resources of Tsankawi and destroy its ambience and character and therefore the reason people visit Tsankawi.

Tsankawi is rich in the cultural resources of the puebloan peoples who lived there centuries ago. If development or any kind of use that permitts intense or overnight use were to occur on the adjacent tracts, the National Park Service would not be able to protect those irreplaceable resources from loss due to pot hunting and vandalism Under the status quo, overnight use is not permitted and day time use is restricted on the adjacent tracts making it easier for the National Park Service (NPS) to monitor and control potentially threatening activities in the Tsankawi area. Tsankawi itself is a day use only area but, if the adjacent lands are developed or overnight use permitted, resident populations across NM 4 could easily access Tsankawi at night undetected and seriously threaten the resources. Furthermore, any attempt by the NPS to protect the Tsankawi from nightime vandalism and pothunting would place an insurmountable economic burden on park staffing and budget levels.

Park visitors are attracted to Tsankawi because of its solitude, peace and tranquility and the opportunity to explore the archeological resources in such a setting. The view from Tsankawi mesa is breathtaking and encompasses most of the area slated for transfer. Should develppment or intense use occur on those two tracts, the unique character of Tsankawi and the associated visitor experience would be ruined.

Should development or intense use occur on those two tracts, the natural and cultural resources of Tsankawi would be at risk as well and the unique characteristics which draw visitors to Tsankawi would be destroyed. Under such a scenerio, the National Park Service, Bandelier National Monument would not be able to fullfill its legislated mandate to protect the resources and provide for visitor enjoyment and education at Tsankawi.

We are the Keepers of the past, Caretakers of the present, and the Promise of the future

The proposed uses of the two tracts (resource preservation or recreation) as described in the Draft C&T EIS poses no known threats to the Tsankawi unit of Bandelier National Monument. We feel that even the development of additional wells by Los Alamos County and related maintenance access can be done in a sensitive way that does not ruin the visitor experience at Tsankawi. If given the choice, however, Bandelier National Monument much prefers the resource preservation alternative (with an added utility option) since that promotes a greater degree of resource protection. We feel that increased and/or uncontrolled recreation in the two tracts would cause the loss of the cultural resources on those two tracts. Even so, the less preferred recreation option is much better than any development use of the lands

Bandelier National Monument urges that transfer of either the TA-74 tract or the White Rock Y tract be executed in a way that requires NEPA compliance and review and approval by the Secretary of the Interior for any subsequent development or intense use of the two tracts

Sincerely,

Roy W. Weaver
Superintendent

18.2 Consultation Letters

This section presents the letters associated with the DOE's regulatory compliance consultation processes. The following letters have been exchanged with the listed representatives and agencies.

- Ms. Jennifer Fowler-Propst, Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service
- Dr. Lynne Sebastian, State Historic Preservation Officer, Historic Preservation Division

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Department of Energy
Albuquerque Operations Office
Los Alamos Area Office
Los Alamos, New Mexico 87544

NOV 03 1998

Ms. Jennifer Fowler-Propst
Field Supervisor
Ecological Services Field Office
United States Fish and Wildlife Service
2105 Osuna NE
Albuquerque, NM 87113-1001

Dear Ms. Fowler-Propst:

The Department of Energy (DOE) is preparing an Environmental Impact Statement (EIS) for the proposed conveyance and transfer of certain land tracts located at Los Alamos National Laboratory (LANL) within Los Alamos and Santa Fe Counties, New Mexico. This action is required by Public Law 105-119, which was passed on November 26, 1997. The proposed conveyance and transfer action would encompass ten tracts totaling 4,646 acres of land. The EIS will include discussion of potential direct impacts that would likely result from DOE's conveyance and transfer action for each tract, and indirect impacts that would likely result from the subsequent development and use of the tracts by the two recipients named in Public Law 105-119. These two recipients are the Incorporated County of Los Alamos and the Secretary of the Interior, in trust for the Pueblo of San Ildefonso.

Existing site information is being used for the analysis of alternatives presented in the Draft C&T EIS. DOE expects to prepare a Biological Assessment and engage in consultation with the Service under the Section 7 requirements of the Endangered Species Act. In the initial stages of analysis, the species being considered for the tracts and their current legal status are as follows:

- *Falco peregrinus anatum* (American peregrine falcon) - endangered
- *Strix occidentalis lucida* (Mexican spotted owl) - threatened
- *Empidonax traillii extimus* (Southwestern willow flycatcher) - endangered
- *Haliaeetus leucocephalus* (Bald eagle) - threatened
- *Falco peregrinus tundrius* (Arctic peregrine falcon) - threatened
- *Mustela nigripes* (Black-footed ferret) - endangered

The tracts include roosting and foraging habitats for the American peregrine falcon, the Mexican spotted owl and the bald eagle. There is nearby identified nesting habitat for two of these species near several of these tracts.

Jennifer Fowler-Propst 2

We request that the Service review this list for completeness of species considered and the accuracy of legal status in light of any changes in listing under the Endangered Species Act that may have taken place during the last year. Please either then concur with this list or supply us with an updated list.

We would like to thank the Service for its continued support and assistance in our LANL National Environmental Policy Act and Endangered Species Act compliance efforts. For your information and planning purposes, the current estimate for having a Draft Conveyance and Transfer EIS available for stakeholder review is the January 1999 time frame. It is expected that the Conveyance and Transfer Biological Assessment will likely be delivered to your office before that time to begin the compliance process in earnest.

Sincerely,

Elizabeth R. Withers
C&T EIS Document Manager

LAAME:6EW-333

cc:
C. Jarman
TetraTech
6121 Indian School NE
Suite 205
Albuquerque, NM 87110
R. Hull, TetraTech, LAAO
G. Gonzales, ESH-20, LANL, MS-M887
M. Sifuentes, EPD, AL

United States Department of the Interior

FISH AND WILDLIFE SERVICE
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, New Mexico 87113
Phone: (505) 346-2525 Fax: (505) 346-2542

December 10, 1998

Cons. #2-22-98-I-311

Ms. Elizabeth Withers
U.S. Department of Energy
Los Alamos Area Office
35th Street
Los Alamos, New Mexico 87544

Dear Ms. Withers:

This responds to your letter dated November 3, 1998, requesting an updated species list for the Environmental Impact Statement (EIS) for Proposed Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory (LANL) that is being prepared by the Department of Energy (DOE). The proposed conveyance and transfer action would encompass ten tracts of land (totaling 4,646 acres) within Los Alamos and Santa Fe Counties, New Mexico. The EIS will include discussion of potential direct impacts that would likely result from DOE's conveyance and transfer action for each tract, and indirect impacts that would likely result from the subsequent development and use of the tracts by the two recipients named in Public Law 105-119. DOE expects to prepare a Biological Assessment and engage in consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (Act).

The list provided in your letter (American peregrine falcon, Mexican spotted owl, southwestern willow flycatcher, bald eagle, arctic peregrine falcon, and black-footed ferret) is complete for the federally listed species found in the area; however, the status of one species, the arctic peregrine falcon, is not correct. This species is listed as endangered by similarity of appearance, not threatened. Enclosed is an updated list of endangered, threatened and candidate species and species of special concern that may be found in Los Alamos and Santa Fe counties. These species should be considered in the analysis of environmental effects for the proposed action. We recommend that adequate species-specific surveys be conducted during the appropriate flowering/breeding season and within suitable habitat to address action-related impacts on these species. Although candidates are not protected under the Act, the Service is required to monitor their status. If any candidates or species of special concern decline precipitously, they could be listed as endangered or threatened species. Therefore, actions which may contribute to the decline of these species should be avoided. We recommend that candidates and species of special concern also be included in the site surveys and evaluated in the EIS.

The EIS should also 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. We recommend that an adequate quantification of direct, indirect, and cumulative effects be completed for all wildlife resources in the planning area. Indirect effects are those caused by, or resulting from, the proposed action, and are later in time, but reasonably certain to occur. In addition, the EIS should address the impacts of all interrelated and interdependent actions that are likely to occur in the planning area. Interdependent actions have no independent utility apart from the action under consideration. Interrelated actions are part of a larger action, and are dependent on the larger action for their justification. The Service is particularly concerned about the potential adverse impacts of increased development, traffic, recreation, and other activities that result in disturbance and habitat loss or degradation. The degree of impacts on threatened and endangered species and other natural resources depends on the resultant management and/or development of the lands proposed for transfer. The EIS should include discussions of ongoing management practices and protections provided under the control of DOE and the potential impacts expected to occur when these lands are transferred (and possibly developed) and are no longer controlled by DOE.

In future communications regarding this proposal, refer to consultation #2-22-98-I-311. If we can be of further assistance, please contact Carol Torrez of my staff at (505) 346-2525, extension 115.

Sincerely,

Brian Hamilton

for Jennifer Fowler-Propst
Field Supervisor

cc:
Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico
Director, New Mexico Energy, Minerals, and Natural Resources Department, Forestry and Resources Conservation Division, Santa Fe, New Mexico

ENDANGERED, THREATENED, AND CANDIDATE SPECIES
AND SPECIES OF CONCERN
LOS ALAMOS AND SANTA FE COUNTIES, NEW MEXICO
December 10, 1998

Los Alamos

Big free-tailed bat, Nyctinomops macrotis (=Tadarida m., T. molossa), SC
Black-footed ferret, Mustela nigripes, E
Goat Peak pika, Ochotona princeps nigrescens, SC
Long-legged myotis, Myotis volans, SC
New Mexican meadow jumping mouse, Zapus hudsonius luteus, SC
Occult little brown bat, Myotis lucifugus occultus, SC
Spotted bat, Euderma maculatum, SC
American peregrine falcon, Falco peregrinus anatum, E
Arctic peregrine falcon, Falco peregrinus tundrius, E (S/A)
Bald eagle, Haliaeetus leucocephalus, T
Ferruginous hawk, Buteo regalis, SC
Mexican spotted owl, Strix occidentalis lucida, T
Loggerhead shrike, Lanius ludovicianus, SC
Northern goshawk, Accipiter gentilis, SC
Southwestern willow flycatcher, Empidonax traillii extimus, E
White-faced ibis, Plegadis chihi, SC
Whooping crane, Grus americana, XN
Flathead chub, Platygobio (=Hybopsis) gracilis, SC
Jemez Mountains salamander, Plethodon neomexicanus, SC
New Mexico silverspot butterfly, Speyeria nokomis nitocris, SC

Santa Fe

Black-footed ferret, Mustela nigripes, E
Fringed myotis, Myotis thysanodes, SC
Long-legged myotis, Myotis volans, SC
New Mexican meadow jumping mouse, Zapus hudsonius luteus, SC
Occult little brown bat, Myotis lucifugus occultus, SC
Pale Townsend's (=western) big-eared bat, Plecotus townsendii pallescens, SC
Small-footed myotis, Myotis ciliolabrum, SC
Spotted bat, Euderma maculatum, SC
Yuma myotis, Myotis yumanensis, SC
American peregrine falcon, Falco peregrinus anatum, E
Arctic peregrine falcon, Falco peregrinus tundrius, E (S/A)
Baird's sparrow, Ammodramus bairdii, SC
Bald eagle, Haliaeetus leucocephalus, T
Ferruginous hawk, Buteo regalis, SC
Loggerhead shrike, Lanius ludovicianus, SC
Mexican spotted owl, Strix occidentalis lucida, T
Mountain plover, Charadrius montanus, C
Northern goshawk, Accipiter gentilis, SC

2

Southwestern willow flycatcher, Empidonax traillii extimus, E
White-faced ibis, Plegadis chihi, SC
Whooping crane, Grus americana, XN
Flathead chub, Platygobio (=Hybopsis) gracilis, SC
Texas horned lizard, Phrynosoma cornutum, SC
Chiricahua dock, Rumex orthoneurus, PT
Santa Fe cholla, Opuntia viridiflora, SC

Index

E	=	Endangered
PE	=	Proposed Endangered
PE w/CH	=	Proposed Endangered with critical habitat
T	=	Threatened
PT	=	Proposed Threatened
PT w/CH	=	Proposed Threatened with critical habitat
PCH	=	Proposed critical habitat
C	=	Candidate Species (taxa for which the Service has sufficient information to propose that they be added to list of endangered and threatened species, but the listing action has been precluded by other higher priority listing activities).
SC	=	Species of Concern (taxa for which further biological research and field study are needed to resolve their conservation status)
S/A	=	Similarity of Appearance
*	=	Introduced population
XN	=	Nonessential experimental

Department of Energy
Albuquerque Operations Office
Los Alamos Area Office
Los Alamos, New Mexico 87544

MAR 23 1999

Ms. Jennifer Fowler-Propst, Field Supervisor
U. S. Department of the Interior
Fish and Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, NM 87113

Dear Ms. Fowler-Propst:

Subject: Conveyance and Transfer of Tracts of Land Required by Public Law 105-119

This letter serves to document our meeting held on March 1, 1999 regarding the Department of Energy's (DOE) consultation requirements pursuant to Section 7 of the Endangered Species Act (ESA) for its upcoming conveyance and transfer of land required by Public Law 105-119. Thank you for taking the time out of your busy schedule to meet with us.

Present at the March 1 meeting were yourself, Chris Nagano (of your staff), Tonianne Baca-Green (Counsel for the Department of the Interior), Hortense Haynes (Counsel for DOE), Mark Sifuentes (NEPA Specialist for the DOE Albuquerque Operations Office), and myself. During the meeting we discussed Congress' requirements under Public Law 105-119 (the Act); DOE's discretion under the Act; the requirements under the Act over which DOE has no control; and the path forward for DOE's consultation requirements per the ESA.

We agreed that conveyance and transfer of land by DOE, as required by the Act, does not constitute a major construction activity that would normally require the preparation of a Biological Assessment document. Nor would direct or indirect actions on the part of the DOE, undertaken to implement transfer or conveyance of the land, be expected to affect either threatened or endangered species or their potentially suitable habitats. However, potential cumulative effects (as defined at 50 CFR 404.02) resulting from actions undertaken by the Incorporated County of Los Alamos and the San Ildefonso Pueblo could result in adverse modification to portions of potentially suitable habitat. We agreed in the meeting that the extent of potential cumulative impacts could range from "no effect" to "is likely to adversely affect." This is because of the differences in the contemplated land uses identified by the two land recipients, which are currently tentative. In that regard we agreed in the meeting that DOE will await the recipients'

notification of their preferred allocation for each tract before proceeding further to satisfy our consultation requirements pursuant to Section 7 of the ESA.

As soon as possible after receiving that information, DOE will re-evaluate its need for consultation. As then deemed necessary, DOE will prepare a Biological Assessment and reinitiate consultation with your office. Some mitigation measures for possible adverse effects to potential habitat have been identified already and are included in the Draft Conveyance and Transfer EIS, a copy of which your office has already received. As stated in that document (Chapter 16.4.7, mitigation measures for ecological resources discussion), DOE proposes working with the land recipients to explore ways to mitigate the adverse effects that could result from changes in land use. While the mitigations that are undertaken by DOE must be ones that DOE has the legal authority and jurisdiction to engage in, we think that helping the land recipients develop mitigation actions and management plans for the land would serve the goal of meeting our mutual (albeit slightly different) obligations under the ESA. In light of the stated purpose of Public Law 105-119, which is to encourage and further the ability of the land recipients in their goals of economic diversification and self-sufficiency, DOE feels constrained to place considerable emphasis on assisting the recipients to develop ways to mitigate any potential adverse effects that could result from their future development actions rather than pursuing the employment of any land use restrictions.

The time frame within which DOE expects to receive the land allocation agreement from Los Alamos County and San Ildefonso Pueblo is August to November 1999. DOE will make maps of sensitive resources available for review by the appropriate persons within each of the recipient organizations in late July or early August 1999. We expect that the Final Environmental Impact Statement and the Environmental Restoration Report required by Public Law 105-119 will be completed and available to each of the recipients at about the same time.

I appreciate being able to meet with you to discuss this issue as it is of considerable importance to DOE. If you have any questions regarding the land conveyance and transfer actions we are considering, please call me at (505) 667-8690.

Sincerely,

Elizabeth R. Withers
CT EIS Document Manager

LAAME:6EW-490

cc:
See page 3

Jennifer Fowler-Propst 3 MAR 23 1999

cc:
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Department of Energy
Albuquerque Operations Office
Los Alamos Area Office
Los Alamos, New Mexico 87544

SEP 0 2 1998

Dr. Lynne Sebastian
State Historic Preservation Officer
Historic Preservation Division
228 East Palace Avenue, 3rd Floor
Santa Fe, NM 87503

Dear Dr. Sebastian:

Thank you for meeting with me and the cultural resource members of the Tetra Tech Project Team regarding studies being conducted for the Conveyance and Transfer Environmental Impact Statement (EIS). Your thoughts on how the EIS and subsequent documents and studies should address impacts to cultural resources for compliance with Section 106 of the National Historic Preservation Act were very helpful. Below is my understanding of our discussion.

Because the EIS will be completed before it is known which parcels of land will be transferred to the Secretary of the Interior, in trust for Pueblo of San Ildefonso, and which to Los Alamos County, we will not be able to meet or satisfy the requirements under Section 106 before the document is completed. The EIS will describe the potential for impacts under the various alternatives and will describe in general the process needed for compliance. We will attempt to acquire determinations of eligibility for as many recorded archaeological sites as possible within the parcels so that discussions of impacts under the alternatives can be more precise. As you mentioned, the issue of possible human burials will also be addressed in the EIS.

Once the County and San Ildefonso have decided who will receive each parcel (scheduled for the end of November 1999), the Department of Energy (DOE) will prepare a plan for the transfer of the parcels. This plan will include a detailed description of the actions required prior to the transfer to mitigate any effects to eligible archaeological sites or Traditional Cultural Properties (TCP), per Section 106. Of course, you will be consulted in the determination of these actions.

For those parcels being transferred to the Department of the Interior (DOI), in trust for San Ildefonso Pueblo, the transfer is an undertaking that will have no effect on eligible properties because the land is going from federal agency to federal agency. Thus no mitigative actions would be required for the archaeological sites or TCPs in those parcels. However, the issue of access to religious or cultural sites by other tribes will have to be addressed, probably through agreements between the DOI, Bureau of Indian Affairs,

San Ildefonso, and any interested tribes. DOE will facilitate discussions for these agreements, but will not be directly involved.

The parcels that are transferred to the County will be transferred out of federal control, thus the undertaking would have an effect only on eligible archaeological sites and TCPs present on the parcels the County receives. In this instance, you suggested that a programmatic agreement be developed addressing treatment of eligible properties, and also that the County include language addressing treatment of archaeological sites in their county ordinances. Depending on the cultural resources in the parcels and the reaction of the County, data recovery through excavation may also be included in the mitigative actions. As with the parcels transferred to DOI in trust for San Ildefonso, agreements would also need to be developed for parcels going to the County to address access to religious and cultural sites by tribes. This would be accomplished through agreements between the DOE, the County, and the interested tribes.

Please correct me if I have misunderstood any of these points. Again, I appreciate you taking time out of your busy schedule to meet with us, and I look forward to working with you for this EIS. If you have any questions or concerns, please do not hesitate to contact either me at (505) 667-8690 or Kathy Roxlau, Tetra Tech NUS Inc., at (505) 247-4933.

Sincerely,

Elizabeth R. Withers
Conveyance and Transfer EIS
Document Manager
Office of Environment

LAAME:6EW-224

cc:
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