



Department of Energy
National Nuclear Security Administration
Los Alamos Site Office
Los Alamos, New Mexico 87544

APR 04 2003

Dr. Joy Nicholopoulos, Field Supervisor
U.S. Department of the Interior
Fish and Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, NM 87113

Reference: Transmittal of a Biological Assessment and Request for Formal Consultation
Regarding the Chemistry and Metallurgy Research Building Replacement
Project at Los Alamos National Laboratory

Dear Dr. Nicholopoulos:

The Department of Energy (DOE), National Nuclear Security Administration (NNSA) is proposing to construct and operate a new replacement facility for the existing Chemistry and Metallurgy Research (CMR) Building at Los Alamos National Laboratory (LANL). The preferred proposed location for the new facility (referred to as the CMRR Facility) is within Technical Area (TA)-55 at LANL; the existing CMR Building is located within TA-3 at LANL. The estimated time for initiation of construction is 2004; it is estimated that the new facility would become operational in 2010 and the project would be completed in about 2012. Construction of the new facility could involve the construction of one to three new buildings, support structures, new parking areas, and could include the rerouting of a small portion of Pajarito Road along the edge of Two-Mile Canyon.

Construction activities would be expected to continue year-round, once initiated. Small portions of Mexican spotted owl (*Strix occidentalis lucida*) potential nesting, roosting and foraging habitat could be removed during the project's construction phase; parking lot lighting and increased noise generation and human activities in the vicinity could also occur next to the remaining potential habitat areas during the project's operational phase. No individual Mexican spotted owls have been observed in the vicinity of TA-55 over the last 5 years. NNSA has, therefore, determined that the construction and operation of the new CMRR Facility may affect and is likely to adversely affect the Mexican spotted owl potential habitat at TA-55. Potential foraging habitat for the bald eagle (*Haliaeetus leucocephalus*) also exists at TA-55; however, NNSA has determined that the construction and operation of the new CMRR Facility may affect but is not likely to adversely affect the bald eagle potential habitat at TA-55.

Dr. Joy Nicholopoulos

2

A Biological Assessment with appropriate site information is provided to the Fish and Wildlife Service as an enclosure to this letter, as we engage in the Formal Consultation process under Section 7 of the Endangered Species Act (50 CFR 402.14, Formal Consultation). We look forward to an expeditious completion of this consultation process.

If you have any questions during this consultation process, please call Ms. Elizabeth Withers, of my staff, at (505) 667-8690 or Dr. Tim Haarmann, Biology Team Leader for the University of California at LANL, at (505) 667-5019.

Sincerely,

*for*

Ralph E. Erickson
Manager
Los Alamos Site Office

OOM:1RE-017

Enclosure

cc w/o enclosure:

Elizabeth Withers, OFO, LASO

John Stetson, PWT, LASO

Tim Haarmann, LANL, MS-M887



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

April 15, 2003

Cons. # 2-22-03-F-0302

Ralph E. Erickson, Manager
Department of Energy
National Nuclear Security Administration
Los Alamos Area Office,
Los Alamos, New Mexico 87544

Dear Mr. Erickson:

This letter acknowledges the U.S. Fish and Wildlife Service's (Service) April 4, 2003, receipt of your April 4, 2003, letter requesting initiation of formal section 7 consultation under the Endangered Species Act as amended (16 U.S.C. § 1531 to 1544 *et seq.*) (ESA). The consultation concerns the possible effects of your proposed construction and operation of a new replacement facility for the existing Chemistry and Metallurgy Research Building at Los Alamos National Laboratory, Los Alamos County, New Mexico on Mexican spotted owl (*Strix occidentalis lucia*) and the bald eagle (*Haliaeetus leucocephalus*).

The Service has now received the information necessary to initiate formal consultation, as outlined in the regulations governing interagency consultation (50 CFR § 402.14). All information required of you to initiate this consultation was either included with your letter and assessment or is otherwise accessible for our consideration and reference.

Section 7 allows the Service up to 90 calendar days to conclude formal consultation with your agency and an additional 45 calendar days to prepare our biological opinion (unless we mutually agree to an extension). Therefore, we expect to provide you with our biological opinion no later than August 17, 2003.

As a reminder, the ESA requires that after initiation of formal consultation, the Federal action agency may not make any irreversible or irretrievable commitment of resources that limit future options. This practice ensures agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of endangered or threatened species or destroying or modifying their critical habitats.

Ralph E. Erickson, Manager

2

We have assigned log number 2-22-03-F-0302 to this consultation. Please refer to that number in future correspondence on this consultation. If we can be of further assistance, please contact Santiago R. Gonzales of my staff at (505) 761-4755.

Sincerely,

A handwritten signature in black ink that reads "Joy E. Nicholopoulos". The signature is written in a cursive style with a large initial "J" and "N".

Joy E. Nicholopoulos
State Supervisor

cc:

NEPA Compliance Officer, Department of Energy, National Nuclear Security Administration,
Los Alamos, NM (Attn: Elizabeth Withers)



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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May 14, 2003

Cons. # 2-22-03-F-0302

Ralph E. Erickson, Area Manager
Department of Energy
Los Alamos Area Office
Los Alamos, New Mexico 87544

Dear Mr. Erickson:

This letter transmits the U.S. Fish and Wildlife Service's (Service) review of the proposed Department of Energy (DOE), National Nuclear Security Administration construction of a Chemistry Metallurgy Research Building Replacement Project (CMRR) and its effects on the bald eagle (*Haliaeetus leucocephalus*) and Mexican spotted owl (*Strix occidentalis lucida*) (owl) in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The DOE has submitted the Biological Assessment (BA): The Potential Effects of the Chemistry and Metallurgy Research Facility Replacement Project on Federally Listed Threatened, Endangered, and Sensitive Species Los Alamos National Laboratory (LANL), Los Alamos, New Mexico dated April 2003. The BA evaluated the anticipated effects on federally listed species and their habitats, resulting from the construction of the CMRR at Technical Area 55 (TA-55) of LANL. The proposed project will consist of two to three buildings (a total of 200,000 square feet [sq ft] and utilize approximately 16 hectares (ha) (40 acres [ac]) in Los Alamos County, New Mexico.

The Service concurs with your "may affect, not likely to adversely affect" determination for the bald eagle at TA-55. The following reasons are given to support our concurrence; 1) only foraging habitat exists at the proposed CMRR location and 2) bald eagles have not been recorded foraging on or near the proposed construction location.

The DOE has determined that the proposed CMRR "is likely to adversely affect" the owl. Based on information provided in the April 4, 2003, BA and other information available to the Service, and telephone conversations with your staff, we believe the appropriate conclusion is "may affect, not likely to adversely affect" for the owl. The following reasons are given to support our determination: 1) no owls have been recorded in the project area; 2) owls have not been found nesting or roosting within 2.7 kilometers (1.6 miles) of the proposed CMRR; 3) only approximately 7.8 ha (19.3 ac) in the core and 6.8 ha (16.8 ac) in buffer areas of area of environmental interest (AEI) habitat may be disturbed; 4) potential disturbance during construction of the CMRR is expected to be insignificant or discountable based on the

information provided in the BA; 4) Delaney *et al.* (1997) suggested that owls may habituate to repeated noise disturbance exposures as the nesting season progresses; 5) they also reported that owls did not flush at distances greater than 105 meters (m) from the noise source; 6) Gallegos *et al.* (1997) and Gonzales *et al.* (1997) reported at least 100 potential nesting sites in the Canon de Valle and Los Alamos Canyon AEs; therefore, nest-site selection should not be precluded; 7) the size of the building site 16.2 ha (40 ac) is insignificant; and 8) LANL will conduct owl presence/absence surveys before CMRR construction activities begin. Therefore, we believe that the effects of the CMRR project on the owl will be insignificant or discountable because of the small project size and disturbance of impact, and the habitat has not been occupied for at least 8 years.

The Service appreciates the thorough analyses provided in the BA and your efforts to protect endangered and threatened species. Please contact the Service if you have questions or wish to discuss our conclusion.

Please contact the Service if: 1) future surveys detect listed, proposed or candidate species in habitats where they have not been previously observed; 2) the project is changed or new information reveals additional effects of the proposed action to listed species; 3) a new species is listed or critical habitat designated that may be affected by the proposed action. In future communications regarding this project, please refer to Consultation #2-22-03-F-0302. If we can be of further assistance, please contact Santiago R. Gonzales of my staff at (505) 761-4755.

Sincerely,



Joy E. Nicholopoulos
State Supervisor

cc:

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

Literature Cited

Delaney, K. D., T. G. Grubb, and L. L. Pater. 1997. Effects of helicopter noise on nesting Mexican spotted owls. Report to Holloman Air Force Base, US Air Force, Alamogordo, New Mexico. 49 pp.

Gallegos, A. F., G. J. Gonzales, K. D. Bennett, and L. E. Pratt. 1997. Preliminary risk assessment of the Mexican spotted owl under a spatially-weighted foraging regime at the Los Alamos National Laboratory. Los Alamos National Laboratory Report LA:13259-MS. 62 pp.

Gonzales, G. J., A. F. Gallegos, and T. S. Foxx. 1997. Second annual review update: preliminary risk assessment of federally listed species at the Los Alamos National Laboratory. Los Alamos National Laboratory. Los Alamos National Laboratory Report LA-UR-97-4732. 14 pp.