

# LAS PLACITAS ASSOCIATION

February 14, 2008

*Delivered via electronic mail and U.S. Certified Mail*

West-wide Energy Corridor DEIS  
Argonne National Laboratory  
9700 S. Cass Avenue  
Building 900, Mail Stop 4  
Argonne, IL 60439

Re: Scoping Comments for the West-wide Energy Corridor Programmatic  
Environmental Impact Statement

To Whom It May Concern:

Please fully consider the following comments on behalf of the Las Placitas Association. For over 20 years, Las Placitas Association has strived to protect open space, restore riparian watersheds, promote recreational, educational and rural activities, and engage the members of our community in appreciating the environmental and cultural richness of the Placitas area of Sandoval County, New Mexico.

The Programmatic Environmental Impact Statement (PEIS) for the Designation of Energy Corridors on Federal Land in the 11 Western States (DOE/EIS-0386) is fundamentally flawed and unlawful in that it attempts to represent non-contiguous segments on federal land as a complete network of continuous corridors traversing both federal and non-federal lands, without conducting the necessary consultation, notification, disclosure and assessment of environmental impacts on the non-federal lands as required by the National Environmental Policy Act (NEPA) and the Energy Policy Act of 2005 (EPAct).

Although the PEIS describes corridor designation exclusively on federal land and “does not...establish energy corridors on nonfederal lands” (PEIS, p. ES-5), maps obtained from the Bureau of Land Management (BLM) under a Freedom of Information Act request illustrate internal BLM planning maps, not disclosed as part of the PEIS, that



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demonstrate corridor designations on private and tribal lands in the vicinity of Placitas, New Mexico, in addition to federal lands (Attachment 1). Such non-disclosure is in violation of the consultation requirements presented in EPA Act (PEIS, p. ES-1), and the assessment of potential conflicts of the proposed action with State, local and tribal land use plans, as required by NEPA Section 1502.16.( c).

“An agency acts arbitrarily and capriciously when it relies on factors Congress did not intend it to consider, entirely fails to consider an important aspect of the problem, offers an explanation for its decision that runs counter to the facts before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 42 (1983).

The PEIS is arbitrary and capricious in the following respects:

The PEIS is arbitrary and capricious in that it fails to explain that the designated corridors will not expedite construction of any infrastructure until private and tribal corridors are designated and some of the same permitting required for federal land is obtained on private land. Many of the same laws that apply to permitting on federal land (the Endangered Species Act, the Clean Water Act, etc.) will apply to the construction of facilities on private and tribal land. For that reason, the EIS is arbitrary and capricious in its insistence that it has somehow expedited the installation of energy infrastructure when it has accomplished nothing of the kind. This explanation for its decision is implausible, if not misleading and deceptive.

The PEIS is arbitrary and capricious because it fails to explain that the way the corridors will be completed is through the threat of eminent domain against private landowners and fails to consider the impacts of such broad scale eminent domain across the west. Instead, the PEIS uses language such as “Project applicants would secure authorizations across private lands *in the same manner that they currently do.....*” [PEIS, Section ES.10, pg. ES-9.] If the federal government is going to promote wholesale eminent domain, it is not too much to ask that it refer to it as such instead of vague terms that fail to explain the actual intent. Furthermore, the impact of wholesale eminent domain across the west is entirely omitted from the NEPA analysis of impacts. This is an instance where the agencies have entirely failed to consider an important aspect of the problem, and thus have acted arbitrarily and capriciously.

The PEIS is arbitrary and capricious in that it fails to explain that the strategy of designating corridors on federal land without designating corridors on private land is ineffective and poor planning because an informed decision about where to locate the corridors on federal land cannot be made without an implicit decision about where the corridors should be located on private land. Furthermore, the agencies entirely fail to propose and analyze corridors between supplies of energy and locations with forecasted unmet demand for energy. Yet this “analysis” is supposed to be the foundation to justify

amendment of resource management *plans*. This activity is not worthy of the term “planning” and the agencies’ justification for it is so implausible that it cannot be ascribed to the product of agency expertise and entirely fails to consider important elements of the problem.

The PEIS is arbitrary and capricious because it represents that there are no environmental impacts to the designation of corridors. First, this representation is fundamentally illogical because an Environmental Impact Statement is only prepared for federal decisions whose effects may be major. In fact, BLM’s own regulations define preparation of a resource management plan as a major federal action significantly affecting the quality of the human environment. 43 CFR § 1601.0-6; *NM Wilderness Coalition*, 129 IBLA 158 (1994). What would the purpose of requiring BLM to do an EIS for a plan if plans don’t affect the environment until a particular project is proposed and thus can’t possibly have significant impacts?

Second, this misrepresentation has the effect of persuading people not to comment on or object to the EIS, thus manipulating the public process to discourage timely comments. Analysis of specific projects will be tiered to the amended resource management plans resulting from the Corridor EIS. 40 CFR §§ 1520.20 and 1508.28(b) (“Tiering...is appropriate when it helps the lead agency to focus on issues which are ripe for decision and exclude from consideration issues already decided...”) Thus, by telling the public that no impacts result from this decision, the agencies are dissuading the public from commenting, defeating the role that commenting should play in a NEPA decision. 40 CFR § 1503.1 to 4.

Finally, this misrepresentation substitutes for meaningful environmental analysis of the real impacts of planning. These include:

- 1) Plans that provide for one type of use implicitly discourage uses incompatible with that type of use. Here, encouraging large scale industrial energy development will encourage other large scale industrial types of development and will discourage setting aside land for conservation, open space, recreation and other low impact uses.
- 2) Plans that encourage industrial development adjacent to residential properties are likely to decrease residential property values.
- 3) Plans influence land use for decades and plans are difficult to change so these impacts will go on for years.

This flawed analysis is arbitrary and capricious in that it entirely omits an important aspect of the problem, the impacts of planning. Indeed, the agency denies that such impacts even exist, a view which can only be ascribed to the product of a *lack of* agency expertise. The PEIS must be supplemented to include adequate analysis of the environmental impacts of planning.

By internally designating energy corridors on privately owned and Tribally owned lands, the author Agencies, U.S. Department of Interior (DOI) BLM, U.S. Department of

Energy (DOE) have arbitrarily and capriciously located the non-federal lands corridors (Attachment 1) without assessment of the socioeconomic, environmental and cultural impacts of these corridors. As a result of non-consultation with local, state and Tribal authorities, knowledge of alternative corridor routes that could minimize socioeconomic, environmental and cultural impacts relative to the proposed action were not considered in formulating the proposed action. For example, the map illustrated in Attachment 2 demonstrates two hypothetical alternative routes that incorporate existing utility and/or transportation Rights of Way north of Placitas, New Mexico that would have significantly fewer impacts to environmental quality, human health, cultural resources, private land values and other associated socioeconomic impacts than the proposed action. A proper consultation and dialog with private landowners, County and state governments and Tribes may have resulted in more optimal corridor locations such as those illustrated in Attachment 2.

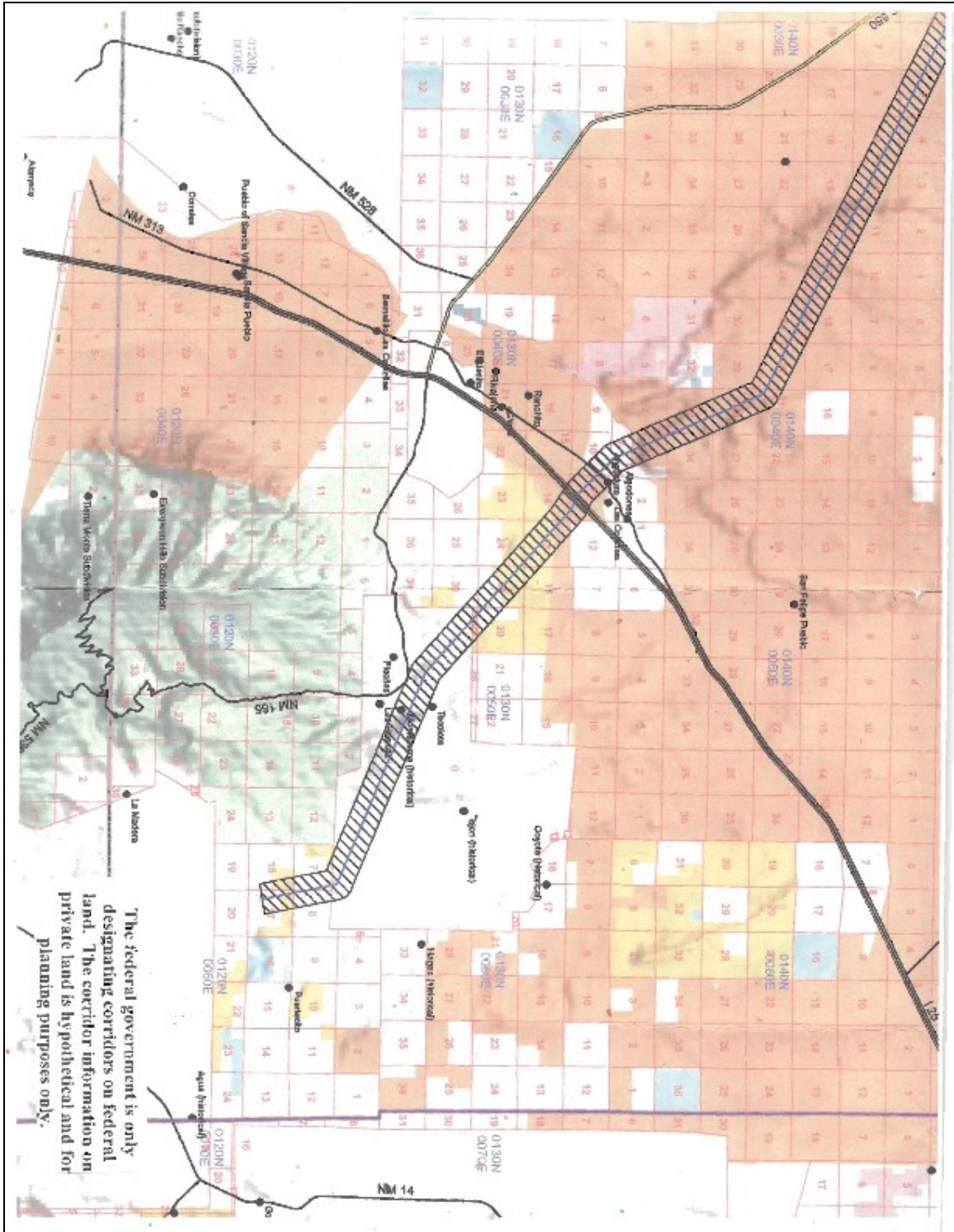
The Las Placitas Association recommends:

- a). The PEIS be revised to account for the reasonably foreseeable significant adverse effects on the human and natural environment that will occur as the result of energy corridor implementation on private, state and Tribal lands, as required by NEPA.
- b). The revised PEIS give due consideration, in full consultation with the affected parties, to alternative potential corridor routes across private and Tribal lands, other than those internally published but not publicly disclosed by the author Agencies (Attachment 1). The map illustrated in Attachment 2 provides examples of more optimal corridor placements in the vicinity of Placitas, New Mexico.
- c). Locations in or adjacent to Placitas, including the Placitas Development Area (per Sandoval County Land Use Planning documents) should be avoided as such sitings would adversely impact the human and natural environment, contribute to loss of property value and damage the integrity of the community.
- d). Alternative corridors should be sited away from residential areas;
- e). Location of the energy corridor on the BLM land located to the north and east of the Placitas Open Space and residential area on Indian Flats Mesa is unacceptable for the same reason that the proposed energy corridor location is unacceptable, i.e, adverse impact on the human and natural environments.

Respectfully Submitted,  
Las Placitas Association

Reid F. Bandeen  
Board President

Attachment 1



Attachment 2

