



Columbia Riverkeeper  
111 3rd Street  
Hood River, OR 97031  
www.columbiariverkeeper.org

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U.S. Department of Energy  
Richland Operations Office  
c/o Paula Call, NEPA Document Manager  
P.O. Box 550, MSIN: A2-15  
Richland, WA 99352

*Submitted Via Email to:* landconveyanceEA@rl.gov

**RE: NEPA Scoping Comments on DOE's Proposed Land Conveyance at Hanford**

U.S. Department of Energy:

Columbia Riverkeeper (Riverkeeper) submits these comments regarding the U.S. Department of Energy's (DOE) proposal to convey roughly 1,641 acres of the Hanford Site to the Tri-City Development Council (TRIDEC) for future development. *See DOE Notice of Intent to Prepare an EA for Hanford Land Disposal* (hereinafter "DOE Notice"), 77 Fed. Reg. 58,112 (Sept. 19, 2012). TRIDEC plans to develop and site a nuclear power plant and/or nuclear fuel generation operations at site. In turn, the scope of DOE's National Environmental Policy Act (NEPA) analysis for the land conveyance must include the effects of TRIDEC's planned new nuclear development.

Riverkeeper is deeply invested in clean water, strong salmon runs, and healthy communities. Our organization represents over 3,000 members in Oregon and Washington and regularly comments on decisions impacting Hanford and the Columbia River. Beyond the scoping process, Riverkeeper opposes the proposed land conveyance because of the environmental impacts that would result, and because the conveyance is essentially a give-away of public land to private corporations. Hanford is the focus of intense, publicly-funded clean-up efforts that will continue for the foreseeable future. Conveying these lands to private industry for less than fair market value is not in the public interest.

More broadly, Riverkeeper supports a ‘clean-up first’ approach at Hanford to protect the Columbia River and the economic and ecological health of downstream communities. Hanford is widely recognized as the most contaminated site in the Western Hemisphere, and radioactive pollution is actively leaching into the Columbia River. Cleaning up Hanford’s radioactive legacy is a monumental task, and only about one-third complete. Until the entire Hanford Site is clean and safe, DOE should not engage in side-projects that detract from DOE’s conservation and restoration mandate.

**I. DOE’s proposed land conveyance could lead to new nuclear development.**

TRIDEC intends to attract and site a nuclear power plant and/or nuclear fuel generation facilities on the land that DOE would convey. TRIDEC’s request that DOE convey 1,641 acres at the Hanford Site pursuant to 10 C.F.R. § 770 (hereinafter the “Proposal” or “TRIDEC’s Proposal”) explains that TRIDEC would develop an “Energy Park”<sup>1</sup> on the land. *Proposal* at 5. While the Proposal is somewhat vague, TRIDEC is actively recruiting *at least* one nuclear facility for the Energy Park. TRIDEC is courting AREVA Corporation to construct a “\$2.5 billion gas centrifuge plant” in the Energy Park. *Proposal* at 6. As DOE is almost certainly aware, a ‘gas centrifuge plant’ is a Uranium enrichment facility—meaning that AREVA would be refining and generating new nuclear material. TRIDEC also claims to be recruiting “a foreign clean energy manufacturer” for the Energy Park. *Proposal* at 6. Riverkeeper is concerned that “clean energy manufacturer” means ‘nuclear power plant;’ especially because TRIDEC’s Proposal differentiates between “clean energy” and “renewable energy” such as solar and bio-fuels. *See Proposal* at 6. Though the Proposal could be more explicit, it demonstrates TRIDEC’s intent to locate nuclear enrichment and/or nuclear power generation facilities on the land DOE would convey.

Even if TRIDEC’s plans for new nuclear development were uncertain, NEPA compels DOE find out exactly how TRIDEC would use the conveyed land. The Ninth Circuit long ago explained that NEPA imposes “an affirmative duty” on a federal agency disposing of land “to receive assurances of the plans of the private developer prior to the [conveyance].” *Nat’l Forest*

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<sup>1</sup> *See also* [http://tridec.org/energy\\_initiative/energy\\_park/](http://tridec.org/energy_initiative/energy_park/), TRIDEC’s web page discussing plans for an energy park at Hanford.

*Preservation Group v. Butz*, 485 F.2d 408, 412 (9th Cir. 1973). In short, “ignorance” by a federal agency of “the plans the private party may have for the land” will not excuse NEPA compliance. *Id.* Thus, if DOE feels that TRIDEC’s Proposal does not explain whether the land at issue would be used for new nuclear development, DOE has an affirmative duty to seek clarification and assurances from TRIDEC.

Additionally, 10 C.F.R. § 770.7(a)(1)(ii), which governs DOE land transfers, requires TRIDEC to explain the “intended use” of the real property to be transferred. TRIDEC’s explanation of how the land would be used is unacceptably vague, and states only that the use would be “industrial.” *Proposal* at 4, 5. To comply with 10 C.F.R. § 770.7(a)(1)(ii), DOE must seek further information on how TRIDEC and/or its partners would use the land.

## **II. DOE must analyze the environmental impacts of new nuclear facilities and other industrial development.**

As DOE acknowledges, any NEPA analysis of the proposed land conveyance must discuss the environmental effects of “the probable future uses of [the] lands. . . .” *DOE Notice*, 77 Fed. Reg. 58,112. When a federal agency conveys land to a private party, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) for that action must analyze the environmental impacts of any resulting private development on the conveyed land. *See Nat’l Forest Preservation Group v. Butz*, 485 F.2d at 411–12; *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 623 F.3d 633, 645–46 (9th Cir. 2010); *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, 315 F.Supp.2d 1068, 1088–90, 1094 (D. Nev. 2004). To comply with this mandate, DOE must assess how TRIDEC’s proposed development—especially new nuclear facilities—would impact the human environment. Additionally, DOE’s EA or EIS must analyze the direct, indirect, and cumulative impacts of the proposed action (*i.e.*, conveying 1,641 acres) *and* the “several” additional conveyances that TRIDEC will request in the future. *Proposal* at Cover Letter from Carl Adrian.

The large-scale industrial development that TRIDEC proposes would have extensive environmental impacts. New industrial development near the Hanford Reach and the Tri-Cities would result in noise, light, and air pollution, and increased stormwater discharges to the Columbia. DOE must analyze how these additional sources of pollution would impact the local

environment and public health. Additionally, many industries (like the proposed solar and bio-fuels power plants) consume large amounts of water or use water to cool their facilities. Where would such water come from and where would it be discharged? Conveying the land to private corporations would also make future clean-up of this area more difficult. For example, DOE's decision to convey land would siphon agency resources away from Hanford's urgent clean-up mission.

TRIDEC's Proposal calls for an Industrial Development and Energy Park, and specifically states that TRIDEC is trying to attract new nuclear facilities (as explained above), as well as solar and bio-fuels power plants. *Proposal* at 6. DOE's Notice, though proposing to analyze the "reasonably foreseeable" impacts of development, states that DOE will analyze the impacts of "warehousing and distribution; research and development; technology manufacturing; food processing and agriculture; and 'back office' (i.e., business services)." *DOE Notice*, 77 Fed. Reg. 58,112. DOE is apparently pulling this list from a report by one of TRIDEC's consultants suggesting potential development opportunities. *See Proposal*, Attachment 7. DOE must analyze the impacts of the development that TRIDEC is *actually* proposing: new nuclear facilities and other power generation, in addition to other uses.

*a. New nuclear development is an indirect impact of the land conveyance.*

The environmental impact of TRIDEC's proposed nuclear development would be an "indirect" impact of DOE's land conveyance, within the meaning of the NEPA regulations. *See* 40 C.F.R. § 1508.25(c)(2). Thus, DOE's EA or EIS must analyze the environmental impacts of TRIDEC's proposed nuclear facilities. "Indirect" impacts are the impacts of a proposed project that occur later in time but are still "reasonably foreseeable;" indirect impacts include "induced changes in the pattern of land use . . . ." 40 C.F.R. § 1508.8(b); *see also Save the Yaak Comm. v. Block*, 840 F.2d 714, 720 (9th Cir. 1988) (explaining that the duty to analyze indirect impacts applies in EAs as well as EISs). In *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, the court held that the environmental impacts of private development following a conveyance of federal land were 'indirect' impacts of the conveyance for NEPA purposes. 315 F.Supp.2d at 1088–90. Accordingly, the court ordered the federal agency conveying the land to analyze the environmental effects of the resulting private development in the EIS for the land conveyance.

*Id.* Granting TRIDEC’s request would certainly “induce[] changes in the pattern of land use . . . .” *See* 40 C.F.R. § 1508.8(b). Moreover, constructing new nuclear facilities is *at least* “reasonably foreseeable” given that TRIDEC is actively recruiting and planning to site such facilities on the conveyed land. *Id.*; *Proposal* at 6. New nuclear facilities would be an indirect effect of the proposed land conveyance, and their environmental impacts are therefore within the scope of DOE’s NEPA analysis.

*b. New nuclear development is part of the land conveyance’s cumulative impact.*

An EA or EIS must also analyze the cumulative impact of the proposed project. 40 C.F.R. § 1508.25(c)(3); *see also Save the Yaak Comm. v. Block*, 840 F.2d at 720. “Cumulative impact” is the environmental impact of the proposed project when added to the impacts of “other past, present, and *reasonably foreseeable future actions*,” even if a federal agency is not involved in those other actions. 40 C.F.R. § 1508.7 (emphasis added). In *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, the court held that private development following a federal land conveyance was a reasonable foreseeable future action, and therefore part of the conveyance’s cumulative impact. 315 F.Supp.2d at 1088–90. Constructing new nuclear facilities on the land DOE would convey is similarly a ‘future action,’ even if DOE has no jurisdiction over the construction after it conveys the land. Additionally, the construction of nuclear facilities is ‘reasonably foreseeable’ because TRIDEC is actively trying to locate new nuclear development at the site. *See Proposal* at 6. Pursuant to 40 C.F.R. § 1508.25(c)(3), DOE’s EA or EIS must therefore analyze the environmental impacts of the new nuclear facilities TRIDEC proposes.

### **III. DOE cannot satisfy NEPA for the proposed land conveyance by tiering to the EIS for the Hanford Comprehensive Land Use Plan.**

DOE should not tier to the outdated Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP EIS). DOE issued the HCP EIS and Record of Decision in 1999. 64 Fed. Reg. 61,615 (Nov. 12, 1999). Together, the Record of Decision and the HCP EIS form the Hanford Comprehensive Land Use Plan, which is essentially a zoning plan for the Hanford Site. *ROD* at 2. The HCP EIS did not analyze land disposal or conveyance because “[l]and transfer is a complicated and separate process from the [Hanford Comprehensive Land Use Plan] . . . .” *HCP EIS* at 1-3. DOE, therefore, cannot tier to the HCP EIS because the HCP

EIS acknowledges that land conveyances are outside its analysis. Even tiering to the HCP EIS for background information on Hanford is inappropriate because the HCP EIS is over a decade old. In short, DOE cannot use tiering to address the impacts of conveying land to TRIDEC because the HCP EIS did not analyze land transfer, let alone TRIDEC's proposed uses of the land. *HCP EIS* at 1-3; *see also* 40 C.F.R. § 1502.20 (NEPA regulations discussing tiering).

#### **IV. DOE must prepare an EIS to analyze the impacts of conveying land at Hanford.**

DOE's proposed land conveyance is a major federal action with significant environmental impacts, necessitating an EIS. NEPA requires an EIS whenever substantial questions exist about whether a project may significantly degrade the environment. *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1239 (9th Cir. 2005); *see also* 42 U.S.C. § 4332(2)(C). The Ninth Circuit has explained that "[t]his is a low standard." *Cal. Wilderness Coal. v. U.S.*, 631 F.3d 1072, 1097 (9th Cir. 2011). Given the large amount of land DOE would convey, and the potential for extreme environmental harm associated with nuclear development, DOE's proposal is a major federal action for which DOE must prepare an EIS. Federal agencies have prepared EISs to analyze the impacts of land transfers that are relatively minor compared to TRIDEC's request. For instance, the U.S. Army used an EIS to study the impacts of selling the 78-acre Stratford Army Engine Plant. *Town of Stratford v. Federal Aviation Admin.*, 285 F.3d 84, 87 (D.C. Cir. 2002). Similarly, the U.S. Navy completed an Environmental Impact Statement to lease and develop office space on federal land in downtown San Diego. *San Diego Navy Broadway Complex Coalition v. U.S. Dept. of Def.*, No. 11cv0154 JM(WMc), 2012 U.S. Dist. LEXIS 149520, at \*4-\*5 (S.D. Cal. Oct. 17, 2012). The threshold for preparing an EIS is "low." *Cal. Wilderness Coal. v. U.S.*, 631 F.3d at 1097. The prospect of new nuclear generation and/or enrichment facilities along the Columbia River clearly raises "substantial questions" as to whether the DOE's conveyance "may" significantly degrade the environment. *Cf. Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d at 1239. DOE must prepare an EIS.

The NEPA regulations list ten factors for evaluating whether a project's impacts—including indirect and cumulative impacts—may be significant, requiring an EIS. 40 C.F.R. §

1508.27(b). The presence of just one of these factors can necessitate an EIS. *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2005). The factors include:

- The degree to which the project affects public health or safety.
- The degree to which the project's possible effects involve unique risks.
- The project's proximity to ecologically critical areas.
- The degree to which the project may affect endangered species or critical habitat.

40 C.F.R. §§ 1508.27(b)(2), (3), (5) & (9). The above intensity factors would apply to the construction of new nuclear facilities at Hanford.

The proposed land conveyance's impacts, including new nuclear development, are 'significant' because they involve unique risks and have the potential to endanger public health and safety. *See* 40 C.F.R. §§ 1508.27(b)(2) & (5). Hanford's toxic legacy and the recent Fukushima nuclear disaster in Japan demonstrate that nuclear technology is uniquely and inherently risky and poses grave threats to public safety. Lack of a meaningful plan for disposing of the incredibly dangerous and long-lived nuclear material that TRIDEC's facilities would generate further compounds these risks. TRIDEC's proposal poses unique and serious risks for the local community and everyone who lives downstream and downwind of the Hanford site. Pursuant to 40 C.F.R. §§ 1508.27(b)(2) & (5), DOE must prepare an EIS.

The impact of DOE's proposal is also 'significant' because the Hanford Reach, adjacent to the conveyance, is an ecologically critical area that supports endangered salmon and steelhead. *See* 40 C.F.R. §§ 1508.27(b)(3) & (9). The Hanford Reach is the last free flowing, non-tidal stretch of the Columbia River. *Presidential Proclamation establishing the Hanford Reach National Monument*, Proc. 7319 (June 9, 2000). The Hanford Reach contains some of the most productive salmon spawning habitat in the Northwest, and approximately 80 percent of Upper-Columbia River Fall Chinook spawn there. *Id.* Additionally, endangered Upper-Columbia River Spring-run Chinook and threatened Upper-Columbia River Steelhead inhabit the Hanford Reach

adjacent to the proposed land conveyance.<sup>2</sup> The Hanford Reach is designated critical habitat for these listed species.<sup>3</sup> The potential impacts of more than a thousand acres of new industrial development next to the Hanford Reach range from nuclear contamination to increased stormwater discharge into the Columbia. Such impacts would disrupt the unique ecological qualities of the Hanford Reach and harm endangered salmonids and their critical habitat. Accordingly, DOE should prepare an EIS pursuant to 40 C.F.R. §§ 1508.27(b)(3) & (9).

**V. DOE must consult with NMFS and USFWS regarding impacts to threatened and endangered species and designated critical habitat.**

DOE must comply with Section 7(a)(2) of the Endangered Species Act (ESA) because threatened and endangered species and critical habitat may be present in the action area. The action area for ESA purposes includes “all areas to be affected directly *or indirectly* by the Federal action and *not merely the immediate area involved in the action.*” 50 C.F.R. § 402.02 (emphasis added). The Hanford Reach, adjacent to TRIDEC’s proposed Industrial and Energy Park, contains ESA-listed salmonids and designated critical habitat.<sup>4</sup> The Hanford Reach is within the ESA action area because TRIDEC’s proposed industrial and nuclear development would very likely impact the Columbia River. Accordingly, DOE should initiate Section 7 consultation by complying with 50 C.F.R. §§ 402.12(c) & (d).

**V. Conclusion**

Riverkeeper is deeply concerned by the prospect of new nuclear facilities at the Hanford Site and opposes DOE’s proposal to give away public land that the public is paying to restore. Until the Hanford Site is clean and safe, side-projects like the proposed land conveyance only detract from DOE’s critical clean-up mission. DOE should put all available resources toward eliminating the radioactive and toxic threat to the Pacific Northwest’s people and the Columbia

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<sup>2</sup> *NMFS Decision maintaining Upper Columbia River Spring-run Chinook Endangered status*, 70 Fed. Reg. 37,160, 37,163 (June 28, 2005); *NMFS Decision Listing Upper Columbia River Steelhead as Threatened*, 71 Fed. Reg. 834 (Jan. 5, 2006).

<sup>3</sup> *NMFS Critical Habitat Designation for 12 Evolutionarily Significant Units of West Coast Salmon and Steelhead*, 70 Fed. Reg. 52,630, 52,733, 52,760 (Sept. 2, 2005).

<sup>4</sup> 70 Fed. Reg. 37,160, 37,163; 71 Fed. Reg. 834; 70 Fed. Reg. 52,630, 52,733, 52,760.



River ecosystem. Riverkeeper will continue to participate in DOE's NEPA process and other administrative decisions related to the proposed land conveyance.

Sincerely,

Miles Johnson  
Clean Water Attorney, Columbia Riverkeeper