



## Santa Susana Mountain Park Association

*Dedicated to the Preservation of the Simi Hills and Santa Susana Mountains*

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### **Comments of Santa Susana Mountain Park Association on**

#### **AMENDED NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT FOR REMEDIATION OF AREA IV AND THE NORTHERN BUFFER ZONE OF THE SANTA SUSANA FIELD LABORATORY dated February 7, 2014**

#### **SUMMARY:**

DOE's EIS must supply much still-undetermined information.

1. DOE needs guidance from DTSC on situations and actions that depend on vague language in the 2010 Administrative Order on Consent (AOC) that govern the cleanup. DOE must require DTSC to provide an authoritative and binding interpretation of the language of the AOC.
2. The current AOC-mandated date for completion of DOE's cleanup (2017) has become unrealistic. DOE must extend the cleanup deadline to permit environmental impact study approvals before executing cleanup actions. DOE should present its revised schedule and deadline in its EIS.
3. The EIS must include analysis of all practical levels of cleanup, in addition to the "cleanup to background" alternative, to comply with CEQA. DOE's EIS document must include a CEQA analysis that balances cleanup goals under various scenarios, including costs (financial and environmental), duration, and impacts.
4. The EIS must specify expected outcomes for cultural resources. Additionally, the DOE EIS must provide information on what soils are to be removed in culturally sensitive areas, and what cultural resources will remain after the cleanup. DOE will need to demand DTSC's guidance, since DTSC has sole authority to make these decisions under the AOC.
5. The EIS must specify how to obtain replacement soil that will meet the requirements in the AOC.

6. The EIS must clearly specify cumulative impacts of all related concurrent projects; viz., the DOE, NASA, and Boeing cleanups.
7. The EIS must include comprehensive surveys and mitigation methods for plants.

**ESSENTIAL POINT OF SSMPA's COMMENTARY:**

**DOE's EIS must evaluate multiple reasonable cleanup levels and approaches, protecting human health, the environment, and cultural resources for the greatest good. The evaluation should consider risks, costs, durations, and impacts of each alternative on human health and the environment, and should extend the cleanup completion deadline to ensure responsible adherence to environmental laws and best practices.**

**COMMENTS:**

**1 Guidance on AOC Language and on Site-Specific Guidelines**

- 1a.** The AOC signed by DOE charged DTSC with oversight authority for the cleanup.<sup>1a</sup> DTSC must provide DOE with a binding, authoritative interpretation of certain vague requirements in the AOC. DOE must learn what SSFL-situation-specific rules will govern decisions and actions for the cleanup.
- 1b.** DTSC must provide guidance to DOE, which is governed by the AOC, on many subject areas before DOE can complete its DEIS and EIS. Of major consequence for every decision is the ambiguous requirement under the AOC that at least 95% of any soil that has ANY amount of contamination over background level must be removed.<sup>1b</sup> This requirement has pervasive impact on every item discussed below.

**2 Project Timing and Duration**

- 2a.** DTSC does not expect to deliver its Draft EIS until sometime in late 2014. DOE needs information from the DTSC EIS in order to properly complete its own EIS so that it can be used as a decision making guide. Does this schedule not call into question the feasibility of the AOC-mandated completion date of 2017 for the DOE managed cleanup? Can the governing AOC, as currently written, therefore any longer be considered 'binding'?
- 2b.** When will DTSC's EIS, including CEQA considerations, be issued as a draft? When will it be issued in final form? It appears these documents are scheduled after the supposed start of execution of cleanup to the constraints of the AOC. That is not our understanding of how CEQA and environmental policy should work. Even Rick Brausch, then DTSC project director for the SSFL cleanup, acknowledged in the July 2011 PPG meeting that CEQA and other environmental laws still apply and indicated DTSC would follow the laws' requirements. However, DTSC's public start date for the EIS is now two years behind the schedule he outlined in July 2011.<sup>2b</sup>
- 2c.** The disparity between DOE's projected up-to-12 years to remove soil published in the

fall of 2013<sup>2c</sup> (see **Attachment 4**) needs to be reconciled with the 2017 due date for the cleanup under the AOC. An extension of the cleanup deadline under the AOC appears necessary and should be included, as an extension is preferable to an attempt to clean up before the necessary environmental EIS/EIR and CEQA reviews can be completed.

### 3 EIS Must Evaluate Alternative Cleanup Levels

- 3a. NEPA and CEQA both set standards for environmental considerations that must be addressed in environmental documents, and contracts that are inconsistent with those laws do not trump NEPA and CEQA provisions. The NEPA and CEQA analyses must consider all options, not the single path set by the AOC.<sup>3a</sup>
- 3b. Exclusion of any possible cleanup alternatives, except the expected AOC-mandated cleanup approach, would be a momentous detriment to the usefulness of the EIS, and likely invalidate it under NEPA. The EIS must not exclude from consideration reasonable alternatives supported by authorized standards of the State of California, including: No Project; Cleanup under AOC; Cleanup to Open Space standards; and Cleanup to Suburban Residential standards.
- 3c. DOE's EIS must for each alternative present comparison of costs, time durations, and all related effects on transportation, biological resources, cultural resources, soil, water, and air.
- 3d. A discussion of alternatives should include what DOE will do if the Appeals Court supports the lower court decision, which will have the effect of stating that a special, negotiated cleanup standard is not permissible at SSFL under California law. An explanation should be provided to explain why the public should pay for a cleanup that is inconsistent with the law, and why local residents should be subjected to significant environmental contaminants from emissions, disturbed soil and related fugitive dust effects, and surface water runoffs that are greatly increased by unavoidable consequences of a background level cleanup of the site. See, in **Attachment 2**, the text of the District Court decision filed May 5, 2011, which prohibits DTSC from compelling compliance with SB990.<sup>3d</sup> DOE's AOC appears to operate as a substitute for a questionable law, but the justification for its position requiring a "background level cleanup" on this important site is very unclear. That DTSC and political pressure seem to have required signature of the AOC by DOE shortly before this decision was issued in May 2011 is very significant. We believe all decision makers and the public are entitled to see the impacts of all alternatives.
- 3e. There are many environmental cleanup projects in the U.S. They "all" (as far as anyone knows) **MUST** operate according to federal and state EPA laws that were passed by legislators concerned with protecting the environment. Operating under EPA processes means any toxic cleanup **MUST evaluate multiple reasonable alternatives**. The DOE SSFL cleanup was forced to be uniquely different from other projects, because the AOC was signed before any EIS-type document.<sup>3e</sup> (See **Attachment 1**.) Why the difference? How is the different treatment of these projects explained? We can fathom no reasonable explanation.

SSMPA advocates a DOE cleanup based on scientific results, testing and standards, not

#### 4 EIS Must Specify Expected Outcomes for Cultural Resources

- 4a.** DOE must require DTSC to interpret the AOC on the handling of Native American cultural resources. The AOC language is vague in its definition of Archaeology, defining it as “Artifacts.” They must be “formally recognized as Cultural Resources”.<sup>4a</sup> What does “Artifacts that are formally recognized as cultural resources” mean? Who needs to recognize what to meet that odd definition? Interpretive guidance is critically needed, because, where archaeological surveys on DOE property have been done (Area IV and Northern Buffer Zone), perhaps 20 archeological sites have been located that have not been formally recorded. The future of Native American areas is yet to be articulated by DTSC. An artifact is generally understood to represent a movable, historically used, significant object. Given that definition, bedrock mortars could be eliminated. An explanation of how sites found on the DOE property will be treated must be provided by DTSC and included in DOE’s EIS.
- 4b.** In addition to the specific language quoted above, the AIPs that address this area for the AOC, indicate that no more than 5% can be excluded and any acceptance of an exception is subject to DTSC’s oversight and approval. Please explain what that means on a specific basis, naming sites under consideration and the boundaries of each site (or artifact), particularly since there is significant sampling data now available to make appropriate decisions.
- 4c.** What are the contamination levels at the archaeological sites, slated for cleanup? What safeguards will be put in place to reduce impacts as to dust, and impacts due to changes to surface water runoff if DOE chooses not replace removed soil?
- 4d.** DOE’s EIS must provide information on how the boundaries of the archaeological sites on the property have been determined. What survey methods were used? When was that done? What was found on the site? How was it tested? At what depth? When was it surveyed? What will DOE do with an artifact found in that survey, or a midden area that would not qualify as an artifact (that surely would be “contaminated”)?
- 4e.** A comprehensive survey using soil sampling techniques must be undertaken to determine the true size of the Burro Flats Archaeological District. The District extends outside the borders of Area II, possibly into Area IV. This site should not be segmented between the three RPs, but should be looked at holistically as part of the entirety of the Cultural Resources of SSFL. New, detailed surveys of this site must be accomplished prior to making irreversible decisions to “clean up” this exceptional and irreplaceable Indian Sacred Site.
- 4f.** DTSC must advise what archaeological properties can be excluded from the cleanup. DOE must specify what they will exclude, given an updated DTSC interpretation. Boundaries must be established, the site still needs a detailed evaluation by a qualified archaeologist, and careful and limited testing must be done to provide information on contamination of any part of the site. The approaches that DTSC and DOE will take to an Indian Sacred Site must be incorporated in DOE’s EIS.

- 4g.** What will be done with newly discovered archaeological Artifacts found in the process of the cleanup, that are not “culturally recognized”? How will these items be preserved or protected?
- 4h.** With respect to all cultural resources, please provide information for the groundwater and surface water effects due to soil mitigation. Specifically include consideration of the effect of all reductions in site soils resulting from only partial replacement of removed soils, including collateral re-contamination and other effects from flooding and silt runoff due to soil changes.

The impacts anticipated to archaeological cultural resources from removal of soil from parcels within the designated archaeological site must be reviewed and disclosed in the EIS.

The impacts anticipated to archaeological cultural resources from removal of soil from parcels outside of the designated archaeological site, but within the cleanup study areas must be reviewed and disclosed in the EIS.

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## **5 EIS Must Clearly Specify Requirements for Soil Cleanup**

- 5a.** DOE’s EIS must fully address how appropriate backfill soil will be sourced. DTSC must give guidance on how soils that must match the specific background levels for SSFL will be identified. Source sites from which sufficient quantities of such soils may be obtained must be identified. This is a very important issue because if adequate replacement soils cannot be located, alternative solutions, including on site treatments clearly should be allowed, and the overall approach to the cleanup may need to change.
- 5b.** The AOC requires replacement soil, not gravel. Since properties of gravel are very different from soil (specifically, little or no plant replacement will be possible, will not absorb water, runoff increases, may affect aquifer replenishment, impacts plant and wildlife unfavorably), we encourage compliance with replacement soil (not gravel). Include in the EIS applicable alternatives for replacement soil, and the impacts of what is chosen.
- 5c.** The EIS must explain why or how any soil replacement plans may remove significantly more soil from the site as will be backfilled. Can permanent reduction (by non-backfilled removal) of thousands of cubic yards of soil be deemed appropriate mitigation?

Will DOE follow NASA’s proposal in their DEIS to not replace 2/3 of the removed soil? What will happen with soil replacement on the DOE parcel, if not all removed soil needs to be replaced?

- 5d.** Surface water runoff effects resulting from any substantial reduction in surface soils must be reviewed, explained, and disclosed in the EIS, if DOE proposes to replace significantly less soil than it removes. It is well settled that a reduction in permeable surfaces (typically

associated with development) causes significantly increased runoffs. What will be the runoff effects of the decreased soil in a year with average rainfall? What is expected when rainfall is significantly over average levels?

- 5e. “Onsite” (*ex situ* and *in situ* treatment) soil cleanup is a promising alternative to soil removal, where appropriate. Yet, the AOC seems to prohibit this and state the only allowable method for soil cleanup is removal.<sup>5e</sup> DOE must explain how this seeming contradiction is possible based on the AOC language. The “leave in place” remediation alternative should be considered in the NEPA and CEQA analysis because such a remediation approach would entail significantly less environmental impact, by reducing soil excavation, hauling, and soil replacement.
- 5f. The EIS should include a review of Environmental Justice which generally looks at the impacts to lower income and minority populations that will be affected by soil hauling activities. Furthermore the EIS should address such demographics in the areas that are proposed to receive, and then permanently live with possible effects from the contaminated material, such as Buttonwillow, Kettleman, and Beatty. The adequacy of the identified sites to accept the combined material volumes needs to be incorporated in the EIS, and if inadequate, alternative solutions need to be incorporated
- 5g. DOE’s EIS must commit to complete protection for all communities along transport routes from the contaminated material that the AOC requires to be removed. Effective measures for reduced dust from the trucks and containment of all materials, including dust from bumps as the material is trucked, need to be developed and implemented.
- 5h. Is remediation in a project like this where buildings are removed, adequate where a flat landscape is left after remediation? Should remediation include providing topographic restoration or variable elevations/topography, such as the site originally had?

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## 6 EIS Must Define and Disclose Cumulative and Combined Impacts

- 6a. The combined impacts of all concurrently operating SSFL projects regarding traffic and transportation-related pollution must be made specific in the EIS.
- 6b. What transportation routes will be used by all the DOE sand the other RPs? Will they use the same or different haul routes?
- 6c. What will the transportation emissions be for all projects combined? What will be the total effect on all communities?
- 6d. The number of trucks on all projects, travelling on Woolsey Canyon during daylight hours must be disclosed, as well as twilight and night truck traffic volumes for all projects combined. This disclosure should be presented in a table format, and specify the anticipated number of incoming and outgoing trucks in one hour increments during weekdays and weekends (if applicable), for all projects to present a realistic understanding of the traffic impact. Include a column for worker arrivals and departures from the site. Provide hour of the day in the rows, and in columns show incoming and outgoing traffic

for each of NASA, DOE, Boeing. Combine all workers for all projects in the last set of columns for cumulative incoming and outgoing traffic.

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## 7 EIS Must be Complete Regarding Plants

- 7a.** DOE's EIS must answer questions such as: How many plants of each type are involved? How many coast live oak (*quercus agrifolia*) trees will be removed or otherwise endangered? How many western sycamores? Santa Susana tarplants?
- 7b.** What steps will DOE take, over what period of time, to regenerate sensitive species? For example, we do not believe Santa Susana tarplant is part of the seed mix specified for replanting. How will plantings be monitored to encourage regrowth?
- 7c.** What steps will DOE take to eliminate introduction of invasive species as off-site soil is brought in as part of the soil replacement? How will plants be affected by re-filling the site with less soil than was removed? How will the segmented cleanup and backfills affect the overall health of this habitat, which in many areas is uniquely undisturbed by the major metropolitan community next door?
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## CONCLUSION AND CLOSING COMMENTS:

We believe the preceding comments taken as a whole make it clear that DOE's EIS must conform to all applicable environmental laws including CEQA and NEPA. DOE's EIS must require DTSC to deliver guidance to DOE for virtually every decision affecting archaeological resources and key soil removal approaches.

DTSC and DOE must determine and agree to robust decision-enabling guidelines, and the DOE EIS must evaluate multiple reasonable alternatives for the cleanup, protecting human health, the environment, and cultural resources for the greatest good.

Additionally, it is dangerous to adhere to the 2017 completion date for cleanup that the AOC arbitrarily mandates. DTSC has not yet provided an EIS, and DOE has not yet moved forward beyond initial scoping hearings. Cleanup needs to be performed after environmental documents are prepared, not before they are prepared. A hurried cleanup will likely become an irrevocable mistake, due to significant negative impacts to soil and cultural resources that may occur.

The target date for completion of the cleanup must be extended.

A revised target date of 2020 will permit meaningful evaluation, compliant with CEQA processes, of multiple, reasonable cleanup alternatives and their impacts. An orderly and logical cleanup can then be executed responsibly, thereby avoiding unwarranted destruction of irreplaceable cultural and natural resources.

Santa Susana Mountain Park Association looks forward to seeing DOE's responses to our comments in upcoming environmental documents. We primarily represent Chatsworth and West Hills, two areas that will be most affected by the tens of thousands of truckloads of materials that are required to be moved by the AOC. In a manner similar to that voiced so clearly by the NASA Inspector General<sup>8</sup>, we too, have great difficulty seeing that cleanup to a special, pre-emptive AOC standard is of any tangible benefit to anyone. (See **Attachment 3.**) But we certainly see the detriment to communities local and remote, and we see the huge governmental costs all taxpayers will pay.

Please be assured that SSMPA resolutely supports cleanup of SSFL to "reasonable" levels. We believe the "Suburban Residential" cleanup standard, set by the 2007 Consent Order, is a very reasonable cleanup level, significantly exceeding requirements, if the land will become open space, as almost all who are familiar with the property desire.

Sincerely,



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**About Santa Susana Mountain Park Association:**

Santa Susana Mountain Park Association is a 42 year-old non-profit organization based in Chatsworth, Los Angeles, California.

We represent approximately 700 members and concerned citizens, and we partner with many organizations to promote ecological and recreational quality in Southern California.

**SSMPA's mission is to preserve and protect the Simi Hills, Santa Susana Mountains, and surrounding open space.**

SSMPA Board of Directors:

Teena Takata, John Luker, Vanessa Watters, Diana Dixon-Davis, Bob Dager,  
Carla Bollinger, Warren Stone, Donna Nachtrab, Tom Nachtrab, Sarah Stone

## ATTACHMENTS: TABLE OF CONTENTS

- Attachment 1, (ref 3e) U. S. District Court Central District of California, Case CV-10-04839-JFW (MANx), Plaintiff the Boeing Company's Statement of Uncontroverted Facts and Conclusions of Law, p. 46-56 [http://www.DOE-ssfl.com/files/lib\\_boeinglawsuit%5Clegaldocs/64849\\_Boeing\\_statement\\_uncontroverted\\_facts.pdf](http://www.DOE-ssfl.com/files/lib_boeinglawsuit%5Clegaldocs/64849_Boeing_statement_uncontroverted_facts.pdf) retrieved 8/20/2013
- Attachment 2, (ref 3d) U. S. District Court Central District of California, Case CV-10-04839-JFW (MANx), Judgment Pursuant to Fed. R. CIV. p. 1-2 [http://www.DOE-ssfl.com/files/lib\\_boeinglawsuit%5Clegaldocs/64933\\_DOEvTheBoeingCoJudgement05-05-2011.pdf](http://www.DOE-ssfl.com/files/lib_boeinglawsuit%5Clegaldocs/64933_DOEvTheBoeingCoJudgement05-05-2011.pdf) retrieved 1/7/2014
- Attachment 3, (ref 8) Audit Report: NASA's Environmental Remediation Efforts at the Santa Susana Field Laboratory, Report No. IG-13-007, Feb. 14, 2013, p. 10, <http://oig.nasa.gov/audits/reports/FY13/IG-13-007.pdf> retrieved 3/31/2014
- Attachment 4, (ref 2c) Rough Order of Magnitude Estimates for AOC Soil Cleanup Volumes in Area IV, and Associated Truck Transport Estimates based on DTSC Look-up Table Values – DRAFT, Table 4, [http://www.etec.energy.gov/Library/Cleanup\\_and\\_Characterization/EIS/Draft\\_Area\\_IV\\_ROM\\_Soil\\_Volume\\_Estimate\\_020714.pdf](http://www.etec.energy.gov/Library/Cleanup_and_Characterization/EIS/Draft_Area_IV_ROM_Soil_Volume_Estimate_020714.pdf) retrieved 3/31/2014

## REFERENCES:

- 1a Docket No. HSA-CO 10/11 – 037 ADMINISTRATIVE ORDER ON CONSENT FOR REMEDIAL ACTION, section 7.19.1, [http://www.etec.energy.gov/Library/Cleanup\\_and\\_Characterization/SSFL\\_DOE\\_AOC\\_Final.pdf](http://www.etec.energy.gov/Library/Cleanup_and_Characterization/SSFL_DOE_AOC_Final.pdf) retrieved 3/31/2014
- 1b Final Agreement in Principle between The U.S. Department of Energy and the State of California, p. 1-2 [http://www.etec.energy.gov/Library/Cleanup\\_and\\_Characterization/SSFL\\_DOE\\_AOC\\_Final.pdf](http://www.etec.energy.gov/Library/Cleanup_and_Characterization/SSFL_DOE_AOC_Final.pdf) retrieved 3/31/2014
- 2b Public Participation Group Summary - Meeting 6, Wednesday, July 27, 2011, p.3 [http://www.dtsc-ssfl.com/files/lib\\_pub\\_involve%5Cmeeting\\_agendas/65154\\_SSFLPPGMtgSummary0711.pdf](http://www.dtsc-ssfl.com/files/lib_pub_involve%5Cmeeting_agendas/65154_SSFLPPGMtgSummary0711.pdf) retrieved 3/31/2014
- 2c Rough Order of Magnitude Estimates for AOC Soil Cleanup Volumes in Area IV, and Associated Truck Transport Estimates based on DTSC Look-up Table Values – DRAFT, Table 4, [http://www.etec.energy.gov/Library/Cleanup\\_and\\_Characterization/EIS/Draft\\_Area\\_IV\\_ROM\\_Soil\\_Volume\\_Estimate\\_020714.pdf](http://www.etec.energy.gov/Library/Cleanup_and_Characterization/EIS/Draft_Area_IV_ROM_Soil_Volume_Estimate_020714.pdf) retrieved 3/31/2014
- 3a U. S. District Court Central District of California, Case CV-10-04839-JFW (MANx), Plaintiff the Boeing Company's Statement of Uncontroverted Facts and Conclusions of Law, p. 36-37 [http://www.DOE-ssfl.com/files/lib\\_boeinglawsuit%5Clegaldocs/64849\\_Boeing\\_statement\\_uncontroverted\\_facts.pdf](http://www.DOE-ssfl.com/files/lib_boeinglawsuit%5Clegaldocs/64849_Boeing_statement_uncontroverted_facts.pdf) retrieved 3/31/2014
- 3d U. S. District Court Central District of California, Case CV-10-04839-JFW (MANx), Judgment Pursuant to Fed R. CIV. p. 1-2 [http://www.DOE-ssfl.com/files/lib\\_boeinglawsuit%5Clegaldocs/64933\\_DOEvTheBoeingCoJudgement05-05-2011.pdf](http://www.DOE-ssfl.com/files/lib_boeinglawsuit%5Clegaldocs/64933_DOEvTheBoeingCoJudgement05-05-2011.pdf) retrieved 1/7/2014
- 3e U. S. District Court Central District of California, Case CV-10-04839-JFW (MANx), Plaintiff the Boeing Company's Statement of Uncontroverted Facts and Conclusions of Law, p. 35-37
- 4a Final Agreement in Principle between the U.S. Department of Energy and the State of California, p. 2
- 5e Final Agreement in Principle between the U.S. Department of Energy and the State of California, p. 3
- 8 Audit Report: NASA's Environmental Remediation Efforts at the Santa Susana Field Laboratory, Report No. IG-13-007, Feb. 14, 2013, p. 10