

**PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE PROPOSED CLEANUP OF SANTA SUSANA FIELD  
LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

**WHEREAS**, past federal activities at the Santa Susana Field Laboratory (SSFL), Ventura County, California, resulted in chemical and radiological releases that impacted buildings, groundwater, and soil, and, although the United States Department of Energy (DOE) does not own any land at SSFL, DOE has cleanup responsibilities for portions of SSFL under the Atomic Energy Act of 1954, as amended (42 USC §2011 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 USC §6901 *et seq.*); the 2007 Consent Order for Corrective Action (2007 Consent Order) between DOE, the California Department of Toxic Substances Control (DTSC), The Boeing Company (Boeing), and the National Aeronautics and Space Administration (NASA); and the 2010 Administrative Order on Consent (2010 AOC) between DOE and DTSC; and

**WHEREAS**, DOE finds its three-phased proposal to (a) demolish and remove 18 DOE-owned buildings in Area IV; (b) perform groundwater cleanup and related activities on portions of SSFL; and (c) perform soil cleanup and related activities on parts of SSFL collectively constitutes an undertaking (Undertaking) subject to Section 106 of the National Historic Preservation Act (NHPA; 54 USC §306108) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

**WHEREAS**, concerning the proposed soil and groundwater cleanup, SSFL is divided into four administrative areas and two contiguous buffer zones (see Attachment 2, *Administrative Boundary Map of Santa Susana Field Laboratory*), of which DOE has responsibility for soil cleanup in 290 acres of Area IV; shared responsibility with NASA for soil cleanup in 182 acres in the Northern Buffer Zone (NBZ); and shared responsibility for groundwater cleanup with Boeing in Area IV and the NBZ, consistent with the scope of DOE's cleanup responsibility set out in the 2007 Consent Order and 2010 AOC; and

**WHEREAS**, Boeing, which owns the land in Area IV and the NBZ being cleaned up by DOE, entered into and recorded a perpetual conservation easement dated April 24, 2017, with the North American Land Trust that prohibits Boeing property described therein, which includes Area IV and the NBZ, from ever being developed or used for certain purposes, including residential, commercial, industrial, or agricultural purposes (Conservation Easement); and

**WHEREAS**, in accordance with Section 7.8.2 of the 2010 AOC, which requires DOE to use its best efforts to obtain access agreements necessary to complete work required by the 2010 AOC, Boeing and DOE executed an access agreement effective December 20, 2013, and expiring December 31, 2020 (Access Agreement), that sets forth the terms and conditions for DOE's access to Area IV and the NBZ for performing the

Undertaking; in the Access Agreement Boeing and DOE agreed to use their best efforts to ensure that any actions taken regarding cultural resources fully take into account Boeing's interests as the owner of Area IV and the NBZ; DOE acknowledges that the Access Agreement, any future access agreements, potential lapses in DOE's access, and the Conservation Easement may affect implementation of this Programmatic Agreement (PA); and

**WHEREAS**, DOE coordinated its compliance with Section 106 with the applicable requirements of the National Environmental Policy Act (NEPA) (42 USC §4321 *et seq.*) and its implementing regulations (40 CFR §§1500-1508); and

**WHEREAS**, the details of the Undertaking will be further defined through the NEPA process, consistent with the injunction in *NRDC v. DOE*, No. C-04-04448 SC, 2007 U.S. Dist. LEXIS 32374, at \*65 (N.D. Cal. May 2, 2007), and the 2007 Consent Order and through the process set forth in the 2010 AOC; and

**WHEREAS**, the inadvertent discovery provision of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC §3002(d), applies on federal lands, meaning "any land other than tribal lands which are controlled or owned by the United States," 25 USC §3001(5); the NAGPRA regulations at 43 CFR §10.2(f) state that "United States "control," . . . refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person"; and DOE has control over the portions of SSFL for which it has cleanup responsibilities consistent with 43 CFR §10.2(f) because DOE has a legal interest in cleanup sufficient to permit it to apply the NAGPRA regulations without abrogating the otherwise existing rights of the landowner, Boeing;

**WHEREAS**, DOE acknowledges that the United States supports the United Nations Declaration on the Rights of Indigenous Peoples;

**WHEREAS**, the 2010 AOC allows "Native American artifacts that are formally recognized as Cultural Resources" to be exempted from soil remediation, subject to DTSC's "oversight and approval" (2010 AOC Sections 2.1 and 2.9(4); Native American Artifacts Exemptions Clause in Attachment B of the 2010 AOC); and

**WHEREAS**, in accordance with 36 CFR §800.6(a)(1), by letter dated May 5, 2016, DOE invited the ACHP to participate in this consultation, and, by letter dated May 25, 2016, ACHP declined to participate (see Attachment 3, *Consulting and Invited Parties*); and

**WHEREAS**, DOE is consulting with the California State Historic Preservation Office (SHPO) pursuant to 36 CFR §800.2(c)(1), and the SHPO is a Signatory to this Programmatic Agreement (PA) pursuant to 36 CFR §800.6(c)(1)(ii); and

**WHEREAS**, DOE recognizes its government-to-government obligation to consult with federally-recognized Indian Tribes that may attach traditional religious and cultural

significance to historic properties, including historic properties located off Tribal lands and TCPs and traditional cultural landscapes that may be associated with resources that are eligible for or listed in the National Register of Historic Places (NRHP), that may be affected by the Undertaking; DOE is consulting with the Santa Ynez Band of Chumash Indians (SYBCI) in accordance with 36 CFR §800.2(c)(2)(ii) and DOE Order 144.1, *DOE American Indian and Alaska Native Tribal Government Policy*; and DOE invited the SYBCI to sign the PA as an Invited Signatory pursuant to 36 CFR §800.6(c)(2)(ii); and

**WHEREAS**, pursuant to 36 CFR §800.2(c)(5), DOE invited Boeing, as landowner, to participate in this consultation as a party with demonstrated interest in the Undertaking; Boeing participated in this consultation; and DOE also invited Boeing to sign the PA as an Invited Signatory pursuant to 36 CFR §800.6(c)(2)(i); and

**WHEREAS**, pursuant to 36 CFR §800.2(c)(5), DOE invited the Barbareño/Ventureño Band of Mission Indians; Fernandeno Tataviam Band of Mission Indians; Gabrielino Tongva Tribe; Kizh Gabrieleño Band of Mission Indians; and Tongva Ancestral Territorial Tribal Nation, which are non-federally-recognized Indian Tribes within California, to participate in this consultation as parties with a demonstrated interest in the Undertaking; representatives from these non-federally recognized Indian Tribes participated in this consultation in an official capacity, and some individuals from these tribes participated in an individual capacity; and DOE invited the non-federally-recognized Indian Tribes to sign the PA as Concurring Parties pursuant to 36 CFR §800.6(c)(3); and

**WHEREAS**, DOE invited DTSC, as the state regulator of cleanup activities, to participate in this consultation by letter dated May 5, 2016, and DTSC declined to participate by letter dated May 17, 2016; and

**WHEREAS**, the SYBCI, the non-federally-recognized Indian Tribes listed above, and certain individuals from non-federally-recognized Indian Tribes participating in an individual capacity, desire to be known collectively as the Indigenous Community Representatives (ICR); and

**WHEREAS**, for purposes of this PA, Consulting Parties are parties that have consultative roles in the Section 106 consultation under 36 CFR §800.2 (see Table 1 in Attachment 3, *Consulting and Invited Parties*); Signatories are parties with authority to execute, amend, or terminate this PA under 36 CFR §800.6(c)(1); Invited Signatories are invited to sign this PA by DOE under 36 CFR §800.6(c)(2) and, by signing, have the same rights to seek amendment or termination of this PA as Signatories, as well as additional rights and duties assigned to Invited Signatories in this PA, except their signature is not required to execute the PA, as set forth in 36 CFR §800.6(c)(2)(i)-(iv); Concurring Parties are invited to concur in this PA by DOE, in accordance with 36 CFR §800.6(c)(3), and, by signing, are assigned additional rights and duties assigned to Concurring Parties in this PA, but do not have authority to amend or terminate this PA and, like an Invited Signatory, their signature is not required to execute the PA; and if a

party invited to sign as an Invited Signatory or Concurring Party does not sign, that party will be treated as a Consulting Party under this PA; and

**WHEREAS**, in consultation with the SHPO and in compliance with 36 CFR §800.4(a)(1), DOE determined and documented the Undertaking's Area of Potential Effects (APE) as the entirety of Area IV (290 acres) and the NBZ (182 acres), with the exception of five buildings in Area IV owned by Boeing, and the SHPO did not object to the APE on February 25, 2015 (see Attachment 4, *Area of Potential Effects Map for the U.S Department of Energy's Undertaking*); and

**WHEREAS**, in consultation with the Consulting Parties, and in compliance with 36 CFR §800.4, DOE undertook reasonable and good faith efforts to identify historic properties within the APE (see Attachment 5, *Cultural and Architectural Surveys in the APE*); and

**WHEREAS**, the buildings proposed to be demolished and removed as a phase of the Undertaking were determined not eligible for listing on the NRHP, and the SHPO concurred on July 15, 2010; and

**WHEREAS**, DOE identified 26 archaeological sites and numerous isolated finds within the APE, conducted limited subsurface testing on 10 of the 26 archaeological sites, and determined that at least 8 of the 10 sites are individually NRHP-eligible (see Attachment 6, *Known Archaeological Resources in Area IV and the Northern Buffer Zone*); with respect to the 10 individual sites, DOE notified the SHPO of these findings on November 5, 2015 and August 6, 2018, and DOE and the SHPO are continuing to consult on the NRHP-eligibility of these sites individually and as contributors to a historic district(s) or a TCP(s) within the context of this PA; and

**WHEREAS**, NASA, in consultation with the SYBCI and pursuant to its April 2014 PA, determined that the *Burro Flats Cultural District [Traditional Cultural Property (TCP)]*, which covers the entire SSFL site, is eligible for listing on the NRHP and is under review in preparation for hearing by the State Historical Resources Commission (SHRC), co-certification by the SHPO and NASA's Federal Preservation Officer (FPO), and approval by the Keeper of the NRHP, and the SYBCI supports NASA's TCP nomination; and

**WHEREAS**, the SYBCI identified to DOE the SSFL-wide *Simi Hills Archaeological District*, which includes all archaeological sites in the APE as district contributors, for listing on the NRHP; and

**WHEREAS**, the Kizh Gabrieleño Band of Mission Indians identified to DOE the *Burro Flats Sacred Landscape*, which includes all archaeological sites in the APE as district contributors, for listing on the NRHP; and

**WHEREAS**, NASA is the nominating authority and lead agency for nominating the *Burro Flats Cultural District (TCP)* to the NRHP, and courtesy copies of the *Simi Hills Archaeological District* and *Burro Flats Sacred Landscape* NRHP nominations received by the SHPO were referred to NASA; and

**WHEREAS**, the SYBCI identified the entire SSFL site as a Native American sacred place (the *Santa Susana Sacred Sites and Traditional Cultural Property*) to the California Native American Heritage Commission in compliance with California law (Cal. Pub. Res. §5097.94) and also notified DOE of its identification of a portion of SSFL as an Indian sacred site for consideration consistent with Executive Order 13007, *Indian Sacred Sites*, by letter dated January 22, 2014; and

**WHEREAS**, construction in Area IV began in the 1950s without a cultural resource survey of the area, and therefore it is possible that additional unrecorded archaeological sites may be discovered during the Undertaking; and

**WHEREAS**, DOE considered the views of the public submitted thus far on the identification and evaluation of historic properties that may be adversely affected by the Undertaking through its procedures for public involvement under NEPA and in accordance with 36 CFR 800.2(d)(3), including comments received during scoping meetings, the public review and comment period, and public hearings for the Draft Environmental Impact Statement; and

**WHEREAS**, in accordance with 36 CFR §800.4(b)(2), §800.5(a)(3), §800.14(b)(1)(ii), and §800.14(b)(3), DOE elected to phase identification and evaluation of historic properties, assess adverse effects, and resolve adverse effects using a PA; and

**WHEREAS**, a PA is appropriate under §800.14(b)(1)(ii) because effects to historic properties from the Undertaking cannot be fully determined prior to a decision on the building demolition and removal, which is the phase of the Undertaking likely to be subject to decision first, and because the full extent and locations of the soil and groundwater cleanup activities will not be known until DOE publishes a NEPA Record of Decision on the soil and groundwater cleanup, DOE develops and DTSC approves one or more Soil Remedial Action Implementation Plan(s) (SRAIP(s)) that documents the level of cleanup for areas that DTSC approves as exemptions under the Native American Artifacts Exemptions Clause in the 2010 AOC, and DOE develops and DTSC approves a Corrective Measures Implementation (CMI) Plan that documents DOE's implementation plan for groundwater cleanup;

**NOW, THEREFORE**, DOE and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account any adverse effects of the Undertaking on historic properties and to satisfy DOE's responsibilities under Section 106 for all phases or activities of the Undertaking.

## STIPULATIONS

DOE will ensure that the following stipulations are implemented upon execution of this PA.

### I. Definitions

For purposes of this PA, Attachment 1, *Definitions*, contains definitions for the following terms used in this PA: cultural resources, ground-disturbing activities, historic property, Native American artifacts, non-ground-disturbing activities, traditional cultural landscape, and traditional cultural property. Otherwise, terms used in this PA shall be defined as found in 36 CFR §800.16.

### II. Professional Qualifications

DOE will ensure that technical work will be carried out by or under the direct supervision of professionals who meet, at a minimum, the professional qualification standards defined in *The Secretary of the Interior's Professional Qualifications Standards*, 48 Fed. Reg. 44,716 (Sept. 29, 1983) in the appropriate field.

### III. Tribal Involvement and Monitoring

#### a. Tribal Involvement:

- i. DOE will continue to consult with the SYBCI and the ICR, and provide an opportunity for the SYBCI and ICR to review and comment on documents, as set forth in this PA.
- ii. Consistent with Stipulation XIV, *Communication*, each member of the ICR will inform DOE if the member – or representative of the member – joins, changes, or leaves the ICR, and provide updated contact information, as appropriate, so that DOE can update its communication list and thus effectively communicate with all Consulting Parties. The ICR is responsible for managing its own membership and asking new members to give DOE contact information.
- iii. The SYBCI may at any time request a government-to-government meeting with DOE on account of its status as a federally recognized Indian Tribe.

#### b. Tribal Monitoring

- i. Consistent with the Monitoring Plan developed under Stipulation X, *Monitoring Plan for Tribal and Archaeological Monitors*, DOE will ensure that its contractor hires the Tribal Monitors. Tribal Monitors may be required to complete training, e.g., health and safety training, before monitoring, and will be required to follow health and safety protocols established by DOE's contractor and/or the landowner. Tribal Monitors will report in accordance with Stipulation X, *Monitoring Plan for Tribal and Archaeological Monitors*, and Stipulation XI, *Inadvertent Discovery*.

#### IV. Modification of the Area of Potential Effects

- a. The APE, as currently defined in Attachment 4, *Area of Potential Effects Map for the U.S. Department of Energy's Undertaking*, encompasses areas sufficient to accommodate all of the activities included in the Undertaking under consideration as of the date of the execution of this PA.
- b. Should DOE learn, from new sampling results, that contamination for which DOE has cleanup responsibility (as determined by DTSC) is emanating from Area IV or the NBZ, DOE will evaluate and potentially modify the APE to include the new areas where required remediation efforts may have potential to cause effects on historic properties using the following procedure, consistent with Stipulation XIII, *Review of Documents*.
  - i. DOE will consult with the Consulting Parties on a modified APE. DOE will consider the concerns and comments expressed by the Consulting Parties during this consultation, render a decision on a modified APE, and notify the Consulting Parties of that decision.
  - ii. DOE's modification of the APE pursuant to this section will not require an amendment to the PA. The modified APE will be attached to the PA as a new attachment and become effective upon distribution by DOE to all Consulting Parties. DOE will then, using the provisions and procedures set forth in this PA, (1) identify properties and evaluate their NRHP-eligibility in the sections of the APE where identification following 36 CFR §800.4 has not previously occurred; (2) assess adverse effect; and (3) if necessary resolve adverse effects, as appropriate.

#### V. Building Demolition and Removal

- a. DOE fulfilled its Section 106 obligations with respect to the buildings proposed for demolition and removal (see Attachment 7, *Building Demolition and Removal Phase*) because the 18 buildings included in this Undertaking were formally determined not eligible for listing on the NRHP, either as individual resources or as historic district contributors and there are no known archaeological sites in the immediate vicinity of the buildings.
- b. Once DOE makes public a NEPA Record of Decision on building demolition and removal, DOE may proceed with:
  - i. non-ground-disturbing activities without any further action under Section 106; and
  - ii. ground-disturbing activities, provided that the Monitoring Plan developed under Stipulation X, *Monitoring Plan for Tribal and Archaeological Monitors*, and the Inadvertent Discovery Plan developed under Stipulation XI, *Inadvertent Discovery*, are finalized before ground-disturbing activities occur and ground-disturbing activities occurring during building demolition and removal are conducted in accordance with those plans.

- c. If DOE changes this phase of the Undertaking and the proposed change has the potential to affect historic properties, DOE will reopen consultation with the Consulting Parties.

#### VI. Groundwater Investigations

DOE may proceed with activities related to investigating groundwater contamination (e.g., investigation wells) because:

- a. there are no architectural or archaeological resources identified in the proposed investigation areas described in Attachment 8, *Groundwater Investigation*;
- b. if new well installation is needed outside the proposed investigation areas, all new wells will be located to avoid identified archaeological sites, per the standard protection measures described in Attachment 8, *Groundwater Investigation*; and
- c. the wells and any groundwater investigation activities would be installed in a way that is less visible, to the extent feasible, to avoid adverse effects to the viewshed of any NRHP-eligible TCP or historic district, as described in Attachment 8, *Groundwater Investigation*.

#### VII. Soil and Groundwater Cleanup: Identification and Evaluation

- a. DOE is not required to undertake additional archaeological fieldwork in advance of soil and groundwater cleanup, unless otherwise provided in this PA.
- b. For any consultation occurring under this stipulation, DOE will first consult with the Consulting Parties, without the SHPO, and then DOE will consult with the SHPO pursuant to Stipulation XIII, *Review of Documents*, including providing the SHPO with information about the Consulting Parties' input to DOE.
- c. Consistent with 36 CFR §800.4(c)(2) and in consultation with the Consulting Parties, DOE will take the following actions for proposed historic districts and TCPs:
  - i. NASA's SSFL-wide *Burro Flats Cultural District (TCP)*: If the SHRC, SHPO, NASA's FPO, and Keeper concur with NASA's determination of eligibility that the *Burro Flats Cultural District (TCP)* is eligible for the NRHP, DOE will proceed to proceed to Stipulation VIII, *Soil and Groundwater Cleanup: Assessment of Adverse Effects*. If the SHRC, SHPO, and/or NASA's FPO does not concur with NASA's determination of NRHP-eligibility for the *Burro Flats Cultural District (TCP)* and/or the Keeper of the NRHP determines that the *Burro Flats Cultural District (TCP)* is not eligible for listing on the NRHP, DOE will not make a separate determination of NRHP-eligibility and will not address potential adverse effects to this resource.



- ii. *Simi Hills Archaeological District*: DOE will develop and submit for SHPO concurrence a determination of NRHP eligibility for the *Simi Hills Archaeological District*, which has been identified to DOE by the SYBCI. As part of developing this determination on NRHP-eligibility, DOE will seek and consider public input. If the SHPO concurs, then DOE will proceed to Stipulation VIII, *Soil and Groundwater Cleanup: Assessment of Adverse Effects*. If the SHPO does not agree with DOE's determination of eligibility for this property, DOE will seek a determination of eligibility from the Keeper of the NRHP. If the Keeper of the NRHP determines that the *Simi Hills Archaeological District* is not eligible for listing on the NRHP, DOE will not address potential adverse effects to this district.
- iii. *Burro Flats Sacred Landscape*: DOE will submit a determination of NRHP-eligibility of the *Burro Flats Sacred Landscape* to the SHPO. As part of developing this determination on NRHP-eligibility, DOE will seek and consider public input. If the SHPO concurs, DOE will proceed to Stipulation VIII, *Soil and Groundwater Cleanup: Assessment of Adverse Effects*. If the SHPO does not agree with DOE's determination of eligibility for this property, DOE will seek a determination of eligibility from the Keeper of the NRHP. If the Keeper of the NRHP determines that the *Burro Flats Sacred Landscape* is not eligible for listing on the NRHP, DOE will not address potential adverse effects to this district.
- iv. If any entities identify any other potential historic district or TCP that overlap with DOE's APE, DOE will consider the NRHP-eligibility of the property. If DOE determines that the property is eligible for the NRHP, DOE will develop and submit for SHPO concurrence a determination finding NRHP eligible for the property. As part of developing this determination on NRHP-eligibility, DOE will seek and consider public input. If the SHPO concurs, then DOE will proceed to Stipulation VIII, *Soil and Groundwater Cleanup: Assessment of Adverse Effects*. If the SHPO does not agree with DOE's determination of eligibility for the property, DOE will seek a determination of eligibility from the Keeper of the NRHP. If the Keeper of the NRHP determines that the property is not eligible for listing on the NRHP, DOE will not address potential adverse effects to the resource.
- v. If NASA, the SHPO, or the Keeper of the NRHP combines any proposed historic district or TCP with any other proposed historic district or TCP for purposes of Section 106 or nomination to the NRHP, DOE will apply the provisions of this PA to the combined historic district or TCP.
- vi. If, in response to DOE's submission on NRHP-eligibility, the SHPO notifies DOE that there is insufficient information for the SHPO to concur on DOE's determination of eligibility for the *Simi Hills Archaeological District* or the *Burro Flats Sacred Landscape*, then DOE will seek additional information, including from the tribe that identified the district, to support a revised determination of NRHP-eligibility for the district. If DOE finds that additional information is unavailable, DOE will determine that the district is not eligible for the NRHP. If the SHPO does not agree with DOE's

determination, the SHPO may raise an objection pursuant to Stipulation XVII, *Dispute Resolution*.

- d. Individual Eligibility of Archaeological Sites: If it is determined that any of the archaeological sites without SHPO concurrence on individual eligibility might be adversely affected by the soil cleanup, and the potentially affected archaeological site(s) is/are not a contributing element of an NRHP-eligible historic district or NRHP-eligible TCP, DOE will make individual determination(s) of NRHP-eligibility, submit its determination(s) to the SHPO for concurrence, and assess adverse effects for the potentially affected archaeological site(s) following the provisions and procedures of the PA, consistent with 36 CFR §800.4 and §800.5, as appropriate. DOE will address the resolution of adverse effects, as needed, in accordance with Stipulation IX, *Soil and Groundwater Cleanup: Treatment of Historic Properties*, below.
- e. DOE will not address through this PA potential effects to properties that are not eligible for listing on the NRHP. Moreover, DOE will not address through this PA potential effects to properties that NASA determines are not eligible for listing on the NRHP pursuant to its Section 106 process and April 2014 PA.

#### VIII. Soil and Groundwater Cleanup: Assessment of Adverse Effects

- a. DOE will, in consultation with the Consulting Parties, make finding(s) of effect consistent with 36 CFR § 800.5 using the following process.
  - i. DOE will integrate its assessment of adverse effects with development of its SRAIP(s) for soil and its CMI Plan for groundwater because the SRAIP(s) and CMI Plan will determine the full extent and locations of the soil removal and groundwater cleanup, respectively, or result in conditions that avoid adverse effects under 36 CFR §800.5(b).
  - ii. DOE commits to seek exemptions for historic properties (i.e., those properties determined eligible for listing through Stipulation VII, *Soil and Groundwater Cleanup: Identification and Evaluation*) in DOE's APE in the SRAIP(s) submitted to DTSC for its approval pursuant to the Native Americans Artifacts Exemptions Clause and to propose corrective measures that would avoid adverse effects to historic properties before finalizing the CMI Plan for submission to DTSC.
    - 1. DOE will consult with the Consulting Parties about proposed exemptions and proposed corrective measures and consider all Consulting Party concerns before finalizing the SRAIP(s) and CMI, respectively, for submission. This includes consultation about the scope of any exemption that DOE would seek in the SRAIP(s) for an NRHP-eligible TCP or historic district.
    - 2. DOE will seek public comment on the proposed exemptions and proposed corrective measures and consider the views of the public before finalizing the SRAIP(s) and CMI Plan, respectively, for submission to DTSC.

3. If the NRHP-eligibility of any property identified through Stipulation VII, *Soil and Groundwater Cleanup: Identification and Evaluation*, is not settled before DOE submits the SRAIP or CMI Plan to DTSC, DOE will consult with the Consulting Parties to determine whether to propose such property for exemption in the SRAIP or such corrective measure that would avoid adverse effects to historic properties in the CMI Plan.
  4. For purposes of the SRAIP, if an archaeological site is a contributing element of an NRHP-eligible historic district or TCP, DOE, in consultation with the Consulting Parties, may propose that archaeological site for exemption in the SRAIP without SHPO concurrence on individual site eligibility whether or not the entire district or TCP is proposed for exemption.
  5. If additional historic properties are identified that could be affected by DOE's soil cleanup after DOE submits the SRAIP(s) or CMI Plan to DTSC for approval, DOE will first consult with the Consulting Parties without the SHPO about those historic properties, and then DOE will consult with the SHPO, including providing the SHPO with information about the Consulting Parties' input to DOE. As appropriate, DOE further commits to approach DTSC about applying the Native American Artifacts Exemptions Clause to or modifying already-selected corrective measures that would adversely affect those newly-identified historic properties.
- iii. Based on the DTSC-approved SRAIP(s) and CMI Plan, DOE will proceed with the assessment of adverse effects.
1. DOE will apply the criteria of adverse effect to all historic properties in the APE that will be affected by the Undertaking pursuant to 36 CFR §800.5(a).
  2. DOE will then prepare finding(s) of effect, which may include:
    - a. descriptions of the exemptions in the DTSC-approved SRAIP(s) or conditions to avoid adverse effects to support a potential finding of no adverse effect;
    - b. a single finding of effect that addresses where soil and groundwater cleanup may proceed without further consultation and where soil and groundwater cleanup is subject to Stipulation IX, *Soil and Groundwater Cleanup: Treatment of Historic Properties*; and
    - c. a plan for and submittal of more than one finding of effect (e.g., organized by type of activities, timing of activities, or areas within the APE), consistent with 36 CFR §800.5(a)(3).
  3. DOE will provide the finding(s) of effect to the SHPO for review and comment, and to the other Consulting Parties for review, consistent with Stipulation XIII, *Review of Documents*. DOE may also provide the public with an opportunity to provide input on the finding(s) of effect.

IX. Soil and Groundwater Cleanup: Treatment of Historic Properties

- a. Resolution of adverse effects to historic properties from the activities associated with soil and groundwater cleanup will be considered in the preferred order of avoidance, minimization, and mitigation and will be based on the DTSC- approved SRAIP(s), including the exemptions that DTSC approves in the SRAIP(s), and the DTSC-approved CMI Plan.
- b. For historic properties whose boundaries extend beyond DOE's APE, DOE will resolve adverse effects from the Undertaking only to the portions of those historic properties that are located within DOE's APE.
- c. Historic Properties Treatment Plan(s)
  - i. DOE will prepare one or more Historic Properties Treatment Plan(s) (HPTP(s)). The HPTP(s) will document which historic properties will be avoided, or adverse effects minimized or mitigated, consistent with the exemptions DTSC grants, if any, in the SRAIP(s) and the corrective measures that avoid adverse effects to historic properties DTSC approves, if any, in the CMI Plan; describe the scope of the adverse effects of the Undertaking on historic properties that will not be avoided, including adverse effects to tribal access and ceremonial use; and, as appropriate, include measures to minimize and mitigate such adverse effects, the manner in which these measures will be carried out, and a schedule for their implementation. The HPTP(s) will also identify report(s) that DOE will prepare documenting the results of the implementation of the HPTP(s).
  - ii. The HPTP(s) will take into account the requirements of the Access Agreement, any future access agreements, and the Conservation Easement, as well as any potential lapses in DOE's access.
  - iii. DOE will provide an opportunity for the Consulting Parties to review and comment on draft HPTP(s) and will consider Consulting Party comments when finalizing the HPTP(s) in accordance with Stipulation XIII, *Review of Documents*.
  - iv. After providing an opportunity for the Consulting Parties to review and comment on draft HPTP(s) as set forth immediately above, DOE will provide an opportunity for the public to share their views on the proposed minimization and mitigation measures and will consider the views of the public when finalizing the HPTP(s).
  - v. Because details of the soil and groundwater cleanup will be developed over time, the HPTP(s) and report(s) contemplated by this stipulation may be developed and finalized over time as well. Additionally, DOE may start preparing the HPTP(s) before DTSC approves the SRAIP(s) and CMI Plan.
  - vi. A non-exclusive, non-exhaustive list of examples of minimization and mitigation measures can be found in Attachment 9, *A Non-exclusive, Non-exhaustive List of Examples of Minimization and Mitigation Measures*.

- d. After an HPTP is finalized pursuant to Stipulation XIII, *Review of Documents*, DOE may implement soil and groundwater cleanup in the area(s) addressed by that HPTP so long as DOE implements the HPTP.

X. Monitoring Plan for Tribal and Archaeological Monitors

- a. Process: DOE will complete a Monitoring Plan for ground-disturbing activities. In accordance with Stipulation XIII, *Review of Documents*, DOE will:
  - i. consult with the SHPO, the SYBCI, ICR, and Boeing during development of the Monitoring Plan;
  - ii. provide an opportunity for the Consulting Parties to review and comment on the Monitoring Plan;
  - iii. consider comments when finalizing the Monitoring Plan;
  - iv. revise, update, and/or modify the Monitoring Plan as appropriate; and
  - v. include appropriate requirements in the contracts governing the Undertaking so that contractors will carry out these procedures.
- b. Content: The Monitoring Plan will:
  - i. identify monitoring objectives and define processes, procedures, and training needed to attain those objectives;
  - ii. incorporate and be consistent with Stipulation XI, *Inadvertent Discovery*, and Stipulation XVI, *Confidentiality*;
  - iii. include daily logging and biweekly reporting requirements for Tribal and Archaeological Monitors and processes for suspension and resumption of cleanup activities;
  - iv. establish standard protection measures, e.g., protective fencing, and a notification process for when such measures are implemented;
  - v. describe the selection criteria for Tribal Monitors;
  - vi. establish where and when monitoring by Tribal and Archaeological Monitors may not be necessary, recognizing that not every portion of the APE will contain, and not every phase or activity of the Undertaking will adversely affect, historic properties for which monitoring is appropriate; and
  - vii. take into account the requirements of the Access Agreement, any future access agreements, and the Conservation Easement.

XI. Inadvertent Discovery of Cultural Resources and Human Remains, Graves, and Associated Funerary Items and Inadvertent Discovery Plan

- a. General: The following procedures will be used in the event that previously unreported, unanticipated, and unidentified cultural resources or human remains, graves, or associated funerary items are discovered during the Undertaking in accordance with 36 CFR § 800.13(a)(1).

- b. Process: DOE will complete an Inadvertent Discovery Plan before engaging in ground-disturbing activity for the Undertaking. In accordance with Stipulation XIII, *Review of Documents*, DOE will:
  - i. consult with the SHPO, the SYBCI, ICR, and Boeing during development of the Inadvertent Discovery Plan;
  - ii. provide an opportunity for the Consulting Parties to review and comment on the Inadvertent Discovery Plan;
  - iii. consider comments when finalizing the Inadvertent Discovery Plan;
  - iv. revise, update, and/or modify the Inadvertent Discovery Plan as appropriate; and
  - v. include appropriate requirements in the contracts governing the Undertaking so that contractors will carry out these procedures.
- c. Content: The Inadvertent Discovery Plan will include and describe in detail the procedures set forth below in d and e and take into account the requirements of the Access Agreement, any future access agreements, and the Conservation Easement.
- d. Inadvertent Discovery of Cultural Resources: If previously unreported, unanticipated, and unidentified cultural resources are discovered during the Undertaking:
  - i. Any project personnel that makes the initial discovery must:
    - 1. Immediately stop ground-disturbing activities at the site of the discovery and within a 30-meter radius of the discovery (the Cultural Resources Exclusion Zone);
    - 2. Immediately limit access to the Cultural Resources Exclusion Zone according to procedures described in the Inadvertent Discovery Plan;
    - 3. Implement notification procedures described in the Inadvertent Discovery Plan, including notification of the Consulting Parties within 3 calendar days, unless DOE determines that the materials are non-cultural under d.iv.; and
    - 4. Implement interim treatment measures to protect the discovery from weather, looting, and vandalism, or other exposure to damages, as described in the Inadvertent Discovery Plan.
  - ii. As soon as practicable after receiving notification of such discovery, DOE will verify that project personnel implemented these steps.
  - iii. DOE, in consultation first with Consulting Parties and a professional archaeologist meeting the qualifications in Stipulation II, *Professional Qualifications*, and then with the SHPO, will have ten calendar days following notification to determine the NRHP-eligibility of the discovery. DOE may assume the discovery to be NRHP-eligible for the purposes of Section 106 pursuant to 36 CFR §800.13(c).
    - 1. If DOE determines that additional testing is needed to make a determination of NRHP-eligibility, DOE will consult with the Consulting Parties and professional archaeologist, and then with the SHPO, before proceeding with additional testing.

- iv. If DOE determines that the materials are non-cultural, such as stones or concretions sometimes mistaken for archaeological resources, DOE will document the work stoppage in accordance with reporting requirements in the Monitoring Plan developed under Stipulation X, *Monitoring Plan for Tribal and Archaeological Monitors*, and then DOE may proceed with its Undertaking in the Cultural Resources Exclusion Zone.
- v. If DOE determines that the materials are not eligible for listing on the NRHP, DOE will first consult with the Consulting Parties without the SHPO about those materials, and then DOE will consult with the SHPO, including providing the SHPO with information about the Consulting Parties' input to DOE. The SHPO will have ten calendar days to respond. If the SHPO concurs with DOE's determination, DOE will perform site recordation to document the materials, as appropriate, and then DOE may proceed with its Undertaking in the Cultural Resources Exclusion Zone. If the SHPO does not concur with DOE's determination after consultation, the SHPO may raise an objection pursuant to Stipulation XVII, *Dispute Resolution*.
- vi. If DOE determines that the location of that activity of the Undertaking can and should be changed (e.g., groundwater wells installed elsewhere or by horizontal directional drilling), DOE will first consult with the Consulting Parties without the SHPO about the proposed changes and whether the avoidance measures are sufficient to avoid adverse effects, and then DOE will consult with the SHPO, including providing the SHPO with information about the Consulting Parties' input to DOE. If the SHPO concurs with the proposed changes and DOE's determination that the avoidance measures are sufficient to avoid adverse effects, DOE will perform site recordation to document the materials, as appropriate, and then DOE may proceed with its Undertaking, having avoided adverse effects through relocation of the proposed Undertaking. If the SHPO does not concur with DOE's determination after consultation, the SHPO may raise an objection pursuant to Stipulation XVII, *Dispute Resolution*.
- vii. If DOE determines or assumes that the discovery is NRHP-eligible, in consultation with the SHPO, and the location of that activity of the Undertaking cannot be changed, DOE will have ten calendar days to assess adverse effects and propose measures to resolve adverse effects to the Consulting Parties. These measures may include approaching DTSC about applying the Native American Artifacts exemption, preparing an HPTP, applying minimization or mitigation measures listed in Stipulation IX, *Soil and Groundwater Cleanup: Treatment of Historic Properties*, or other measures. DOE must consult a professional archaeologist meeting the qualifications in Stipulation II, *Professional Qualifications*, in developing the proposed measures. DOE and the Consulting Parties will have ten calendar days to consult, followed by five calendar days for DOE and the SHPO to consult, and then DOE will make a decision and proceed, unless an objection is raised pursuant to Stipulation XVII, *Dispute Resolution*.

- viii. If at any time while carrying out these procedures for cultural resources, human remains, graves, and associated funerary items are discovered, the next section applies.
- e. Inadvertent Discovery of Human Remains, Graves, Associated Funerary Items, Unassociated Funerary Items, Sacred Objects, and Objects of Cultural Patrimony
  - i. The principles in ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects when addressing issues related to human remains, graves, and associated funerary objects should be taken into account when addressing the inadvertent discovery of human remains, graves, and associated funerary items. The statement is available at <https://www.achp.gov/digital-library-section-106-landing/achp-policy-statement-regarding-treatment-burial-sites-human> and at the end of this PA as Attachment 10, *ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects*.
  - ii. If previously unreported, unanticipated, and unidentified human remains, graves, associated funerary items, unassociated funerary items, sacred objects, or objects of cultural patrimony are discovered during the Undertaking:
    - 1. Work will immediately stop in the vicinity of the discovery.
    - 2. The site supervisor will immediately notify DOE and Boeing and limit access to the vicinity of the discovery.
    - 3. If the discovery might be or contain human remains, DOE will comply with Federal and California law, as applicable, with respect to the discovery. The authorized representative of the landowner will notify the County Coroner within the time period specified by California law.
      - a. If the County Coroner determines the human remains are not Native American, then DOE and Boeing will consult about next steps in compliance with applicable law.
      - b. If the County Coroner determines the human remains are Native American, then DOE will follow the procedures outlined in the Native American Graves Protection and Repatriation Act, 25 USC §3001 *et seq.*
    - 4. If the discovery consists of or includes associated funerary items, unassociated funerary items, sacred objects, or objects of cultural patrimony, DOE will follow the procedures outlined in the Native American Graves Protection and Repatriation Act, 25 USC §3001 *et seq.*
    - 5. In consultation with the SHPO, the SYBCI, ICR, and Boeing, DOE may implement interim treatment measures to protect the discovery from weather, looting and vandalism, or other exposure to damages, as described in the Inadvertent Discovery Plan.



## XII. Curation

To the extent that curation is established in an HPTP, or through consultation in the event of an inadvertent discovery in accordance with Stipulation XI, *Inadvertent Discovery*, DOE will make reasonable effort to ensure that materials and records from historic properties adversely affected by the Undertaking are curated in accordance with applicable federal law and federal curation standards, including the National Park Service Regulations on Curation of Federally-owned and Administered Archaeological Collections (36 CFR Part 79) and the Secretary of the Interior's Standards for Archaeological Documentation; applicable state law and state curation standards, namely, the California Guidelines for the Curation of Archaeological Collections (1993); and the curation guidelines of the selected repository or curation center, as appropriate. DOE recognizes a preference to curate materials and records with previous federal collections associated with SSFL within the State of California.

## XIII. Review of Documents

- a. The following requirements apply to plans and reports as identified in Stipulation IV, *Modification of the Area of Potential Effects*, Stipulation VII: *Soil and Groundwater Cleanup: Identification and Evaluation*, Stipulation VIII, *Soil and Groundwater Cleanup: Assessment of Adverse Effects*, Stipulation IX, *Soil and Groundwater Cleanup: Treatment of Historic Properties*, Stipulation X, *Monitoring Plan for Tribal and Archaeological Monitors*, Stipulation XI, *Inadvertent Discovery*, and Stipulation XV, *Annual Reporting*. Because details of the soil and groundwater cleanup will be developed over time, the plans and reports required by this PA may be developed and finalized over time, as appropriate.
- b. DOE will provide the draft(s) to the Point of Contact (POC) List identified in Stipulation XIV, *Communication*, for review and comment.
  - i. Except for the SHPO, the POCs shall respond with comments no later than 30 calendar days after receipt. Comments submitted after 30 calendar days will be considered to the extent practicable, and failure of a POC to respond will not prevent DOE from finalizing or implementing plans and reports.
  - ii. Upon request of any POC, including the SHPO, DOE may elect to hold meeting(s) to discuss Consulting Party comments on the draft(s).
  - iii. DOE may redact information about location, character, and ownership, as appropriate.
  - iv. DOE will provide all comments received from Consulting Parties to the SHPO. The SHPO will then have 14 calendar days to respond to DOE with comments. Comments submitted after 14 calendar days will be considered to the extent practicable, and failure of the SHPO to respond will not prevent DOE from finalizing or implementing plans and reports.

- c. DOE will consider the comments when finalizing the draft(s) and send out the final version(s) to the POC List. DOE will then proceed unless a POC raises an objection in accordance with Stipulation XVII, *Dispute Resolution*.
- d. DOE will post final plans and reports online for the public, with information about location, character, and ownership redacted when appropriate, consistent with Stipulation XVI, *Confidentiality*.

#### XIV. Communication

- a. All Consulting Parties, except the SHPO, will provide to DOE a primary POC and an alternate POC (alternate only needed if representing an organization or government agency) to facilitate communication for the duration of this PA. Name, title, email address, and phone number of primary and alternate POCs should be provided to DOE no later than 14 calendar days after receiving a copy of the executed PA.
- b. All Consulting Parties are responsible for updating their POCs' information should the information change during the course of PA implementation. To change POC information, provide the name, title, email address, and phone number of the new POC to DOE. POC contact information may be updated as needed without an amendment to this PA.
- c. DOE will maintain an updated POC List online. This list will contain the names and titles of the POCs, and names of the entities they are representing, if any, but not the email address or phone number.
- d. For the duration of this PA, communication from DOE to the Consulting Parties, except the SHPO, will be made through the primary POC identified on the POC List maintained by DOE. Except for the SHPO, electronic mail (email) will serve as the primary distribution method for written communications, notifications, and requests for comments between DOE and the Consulting Parties regarding this PA and its provisions. Paper copies will serve as the primary distribution method for all communication from DOE or from any Consulting Party to the SHPO. DOE may also set up a secure website to share documents. Except for communication to the SHPO, paper copies will be provided only when specifically requested by a POC.

#### XV. Annual Reporting

- a. Frequency: Beginning one year after execution of this PA, DOE will prepare and distribute an annual report to the Consulting Parties until the PA expires or is fulfilled (Stipulation XVIII, *Duration*) or terminates (Stipulation XX, *Addition and Termination*), whichever comes first. After DOE distributes the progress report, DOE will arrange an annual meeting for Consulting Parties, either in

person, by phone, or by webinar. Meetings may be cancelled by mutual written consent of the Signatories and Invited Signatories.

- b. Content: The annual report will summarize the status of the Undertaking, including at a minimum:
  - i. A summary of building demolition and removal, and soil and groundwater cleanup activities completed and underway during the reporting period and a description of the location of this work, including appropriate maps and figures, and any updates or revisions to the proposed schedules;
  - ii. An update and summary of Section 106 work carried out pursuant to this PA that was completed during the reporting period and proposed for the next reporting period;
  - iii. The preliminary results from implementation of HPTP(s), as appropriate;
  - iv. Progress and status of monitoring activities established in Stipulation X, *Monitoring Plan for Tribal and Archaeological Monitors*;
  - v. Summaries of any inadvertent discoveries pursuant to Stipulation XI, *Inadvertent Discovery*, and any curation pursuant to Stipulation XII, *Curation*; and
  - vi. A summary of objections received, the process through which they were resolved, and their resolution or status (if still ongoing) pursuant to Stipulation XVII, *Dispute Resolution*.
- c. Review and Distribution: DOE will follow the procedures established in Stipulation XIII, *Review of Documents*, for review, consultation, and finalization of the progress reports, consistent with Stipulation XVI, *Confidentiality*.

#### XVI. Confidentiality

- a. Signatories, Invited Signatories, and Concurring Parties agree to maintain the confidentiality of the locations of all archaeological and reburial sites and of other information pertaining to historic properties requested to be maintained as confidential (collectively, sensitive information) to the extent permissible under applicable law.
- b. During this Section 106 consultation and under the terms of this PA, sensitive information was and will continue to be generated by, submitted to, and/or included in documentation to be generated by and/or submitted to DOE and the SHPO or distributed to facilitate consultation. For sensitive information and any documentation containing sensitive information generated by DOE, to the extent permitted by applicable law, the permission of DOE is required before any dissemination of such information by any Signatory or Invited Signatory. Should any Consulting Party indicate to DOE concern(s) about whether sensitive information or documentation containing the sensitive information can be released and the concern(s) is not already addressed by existing DOE or SHPO policies, regulations, or practices, as appropriate, DOE, in consultation with the other Signatories, Invited Signatories, and Concurring Parties, will

contact the Secretary of the Interior to implement the provisions set forth in Section 304 of the NHPA (54 U.S.C. § 307103) ("Section 304") and 36 CFR § 800.11(c). Pending implementation of the Section 304 provisions, the confidentiality of the information must be preserved by all Signatories, Invited Signatories, and Concurring Parties.

- c. This PA does not prevent any Signatory, Invited Signatory, or Concurring Party from disclosing information that is obligated to be disclosed pursuant to the Freedom of Information Act (5 U.S.C. § 552), pursuant to the California Public Records Act (California Government Code § 6250, although the exemption from release for certain archaeological information in § 6254.10 may apply), or by order of a court of competent jurisdiction, or that is otherwise publicly available (so long as the information is not publicly available as a result of a violation of this stipulation).
- d. Consulting Parties (that are not Signatories, Invited Signatories, or Concurring Parties that sign this PA) are encouraged to abide by this stipulation as well, consistent with the non-disclosure certifications that Consulting Parties signed during development of this PA.

#### XVII. Dispute Resolution

Should any Signatory, Invited Signatory, or Concurring Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, DOE shall consult with such party to resolve the objection. If DOE determines that such objection cannot be resolved, DOE will:

- a. Forward all documentation relevant to the dispute, including DOE's proposed resolution, to the ACHP. The ACHP shall provide DOE with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, DOE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and Concurring Parties, and provide them with a copy of this written response. DOE will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, DOE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, DOE shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and Concurring Parties to the PA, and provide them and the ACHP with a copy of such written response.
- c. Objections Concerning Eligibility: Notwithstanding the above, any objections or disputes concerning eligibility of properties for the NRHP between or among

DOE, the SHPO, and the SYBCI will be resolved by the Keeper of the NRHP in accordance with 36 CFR § 800.4(c)(2) and the procedures in 36 CFR Part 63.

- d. Responsibilities: The responsibilities of each Signatory, Invited Signatory, or Concurring Party to carry out all other actions according to the terms of this PA that are not the subject of the dispute remain unchanged.

#### XVIII. Duration

- a. Signatures and Effective Date: This PA shall be effective on the date of the signature of the last Signatory (Effective Date). All other parties listed below as Invited Signatories and Concurring Parties will only become Invited Signatories and Concurring Parties, respectively, to this PA upon their execution of the PA. Any Invited Signatory or Concurring Party listed below who does not execute this PA will not have rights or obligations under this PA, but will continue to be considered as a Consulting Party. DOE will provide each Consulting Party with a copy of the fully executed PA.
- b. Duration: This PA will continue in full force and effect until fulfillment of the terms of this PA under paragraph c below, or a period of five (5) years from the Effective Date, whichever occurs first, unless:
  - i. it is previously terminated in accordance with Stipulation XX, *Addition and Termination*;
  - ii. the Signatories and Invited Signatories, if any, agree to extend the agreement in accordance with Stipulation XIX, *Amendments*; or
  - iii. another agreement is executed for the Undertaking in compliance with Section 106, which supersedes this PA.
- c. Fulfillment: Upon a determination by DOE, in consultation with the other Signatories, Invited Signatories, and Concurring Parties, that all terms of this PA have been fulfilled in a satisfactory manner, DOE will then notify all Consulting Parties that the requirements of this PA have been fulfilled, that DOE's Section 106 responsibilities for the Undertaking are complete, and that the PA is no longer in effect.

#### XIX. Amendments

- a. Only Signatories and Invited Signatories who sign the PA may seek to amend this PA. Requests from Signatories or Invited Signatories to amend the PA must be in writing to the other Signatories and Invited Signatories.
- b. This PA may be amended if the amendment is agreed to in writing by all Signatories and Invited Signatories who have signed this PA.

- c. Any amendments to this PA will take effect on the date that a copy of the amended PA signed by all of the Signatories and Invited Signatories that have signed this PA is filed by DOE with the ACHP.
- d. DOE will notify all Consulting Parties of amendments to the PA and will make each executed amendment available online.

## XX. Addition and Termination

### a. Addition

- i. If DOE receives a written request from a representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur seeking to become a Consulting Party pursuant to 36 CFR §800.2(c)(3), DOE shall amend Attachment 3, *Consulting and Inviting Parties*, to add that entity or individual and will update the POC List.
- ii. If DOE receives a written request for an entity or individual with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties seeking to become a Consulting Party pursuant to 36 CFR §800.2(c)(5), DOE may consider such request in consultation with the SHPO. If DOE determines that it is appropriate to accept the entity's or individual's request, DOE will amend Attachment 3, *Consulting and Invited Parties*, to add that entity or individual and will update the POC List, provided that the entity or individual signs the non-disclosure certifications referenced in Stipulation XVI, *Confidentiality*.
- iii. If DOE determines it appropriate to amend Attachment 3, *Consulting and Invited Parties*, to add additional Consulting Parties, it shall not be necessary to open the PA.

### b. Termination

- i. If any Signatory or Invited Signatory that signs this PA determines that its terms will not or cannot be carried out, that party will immediately notify in writing the other Signatories and Invited Signatories who signed the PA explaining the reasons for termination and affording the other Signatories and Invited Signatories at least 45 calendar days to consult and seek alternatives to termination, such as an amendment following the procedures in Stipulation XIX, *Amendments*.
- ii. If an alternative to termination cannot be reached within 45 days, any Signatory or Invited Signatory that signed this PA may terminate the PA upon written notification to the other Signatories and Invited Signatories that signed the PA. Should the PA be terminated, DOE will, in writing, immediately notify the Consulting Parties who are not Signatories or Invited Signatories that signed the PA.

- iii. In the event of termination of this PA, and prior to work continuing on the Undertaking, DOE must either (a) execute a Memorandum of Agreement pursuant to 36 CFR §800.6 or a PA pursuant to 36 CFR §800.14(b), (b) revert to and proceed at the appropriate point of the Section 106 process directly under 36 CFR §§800.4, 800.5, and 800.6, or (c) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. DOE will notify all Consulting Parties regarding the course of action it will pursue.

#### XXI. Antideficiency Act

DOE's obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Antideficiency Act, 31 USC §1341 *et seq.* DOE will implement requirements established by this PA through a separate funding agreement(s), as appropriate. DOE will make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Antideficiency Act alters or impairs DOE's ability to implement the stipulations of this PA, DOE will consult in accordance with Stipulation XIX, *Amendments*, or Stipulation XX, *Addition and Termination*, of this PA.

#### XXII. General Provisions and Scope of Agreement

- a. This PA is neither intended nor shall be construed to diminish or affect in any way the right of any consulting Indian Tribe to take any lawful action to protect Native American graves from disturbance or desecration, to protect archaeological sites from damage, or to protect the consulting Indian Tribes' rights under cemetery and Native American graves protection laws or other applicable laws.
- b. This PA in no way restricts any Signatory, Invited Signatory, or Concurring Party from participating in any activity with other public or private agencies, organizations, or individuals, except as provided for in Stipulation XVI, *Confidentiality*. This PA will be subject to, and will be carried out in compliance with, all applicable laws, regulations, and other legal requirements.
- c. Sovereign Immunity: No federal, state, or tribal government waives sovereign or governmental immunity by entering into this PA, and all retain immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.
- d. Severability: Should any section of this PA be judicially determined by a court established by Article III of the U.S. Constitution to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any Signatory or Invited Signatory may initiate consultation to consider the

renegotiation of the term(s) affected by the severance in accordance with Stipulation XIX, *Amendments*.

- e. **Assumption of Risk of Liability:** Each Signatory, Invited Signatory, and Concurring Party to this PA assumes the risk of any liability arising from its own conduct. Each Signatory, Invited Signatory, and Concurring Party agrees they are not obligated to insure, defend, or indemnify any other Signatory or Invited Signatory to this PA. Nothing in this stipulation modifies any person's ability under the Administrative Procedure Act (5 U.S.C. §§ 551-559) or the NHPA to bring an action or suit related to this Undertaking or this PA.
- f. **No waiver of Legal Claims or Rights:** By entering into, or acknowledging or agreeing to this PA, no Consulting Party releases, waives, or limits any legal claim or defense available to any Consulting Party against another Party or any other party at law or in equity.
- g. **No Waiver of Property Owner Rights:** By signing this PA as an Invited Signatory, Boeing, as the landowner of Area IV and the NBZ, does not waive and expressly reserves all of its ownership rights and obligations, including all of its rights under the Access Agreement and its obligations under the Conservation Easement; any actions to be performed under the PA are subject to any access agreement obtained from the landowner in accordance with Section 7.8.2 of the 2010 AOC and to the Conservation Easement.

### XXIII. Execution

Execution of this PA by DOE and the SHPO and implementation of its terms evidence that DOE has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment in accordance with Section 106 of the NHPA, 54 USC §306108. Each of the undersigned certifies that s/he has full authority to bind the party that s/he represents for purposes of entering into this PA.



**PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE PROPOSED CLEANUP OF SANTA SUSANA FIELD  
LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

United States Department of Energy, SIGNATORY

By:

  
\_\_\_\_\_

John Jones  
ETEC Director

Date:

9/12/19  
\_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

California State Historic Preservation Office, SIGNATORY

By:

  
\_\_\_\_\_

Date:

9/13/19

 Julianne Polanco  
California State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT  
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LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

Santa Ynez Band of Chumash Indians, INVITED SIGNATORY

By:



Date:



**PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE PROPOSED CLEANUP OF SANTA SUSANA FIELD  
LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

The Boeing Company, INVITED SIGNATORY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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REGARDING THE PROPOSED CLEANUP OF SANTA SUSANA FIELD  
LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

Barbareño/Ventureño Band of Mission Indians, CONCURRING PARTY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

Fernandeño Tataviam Band of Mission Indians, CONCURRING PARTY

By:

\_\_\_\_\_

Date:

\_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY  
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LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

Gabrielino Tongva Tribe, CONCURRING PARTY

By:

\_\_\_\_\_

Date:

\_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

Kizh Gabrieleño Band of Mission Indians, CONCURRING PARTY

By:

\_\_\_\_\_

Date:

\_\_\_\_\_



**PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE PROPOSED CLEANUP OF SANTA SUSANA FIELD  
LABORATORY AREA IV AND NORTHERN BUFFER ZONE, VENTURA COUNTY,  
CALIFORNIA**

Tongva Ancestral Territorial Tribal Nation, CONCURRING PARTY

By:

\_\_\_\_\_

Date:

\_\_\_\_\_

## **LIST OF ATTACHMENTS**

1. Definitions
2. Administrative Boundary Map of Santa Susana Field Laboratory
3. Consulting and Invited Parties
4. Area of Potential Effects Map for the U.S. Department of Energy's Undertaking
5. Cultural and Architectural Surveys in the APE
6. Known Archaeological Resources in Area IV and the Northern Buffer Zone
7. Building Demolition and Removal Phase
8. Groundwater Investigation
9. A Non-exclusive, Non-exhaustive List of Examples of Minimization and Mitigation Measures
10. ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects

## **ATTACHMENT 1**

### **Definitions**

For purposes of this PA, the following terms shall be defined as listed herein.

**Cultural resources:** The term "cultural resources" has the same definition as it does in the Final Environmental Impact Statement (EIS) for Remediation of Area IV and the NBZ of the SSFL and is used to refer to resources that may or may not be eligible for the NRHP. Final EIS, Section 3.11.1 states: "Cultural resources are districts, buildings, sites, structures, areas of traditional use, or objects with historical, architectural, archaeological, cultural, or scientific importance. Cultural resources include archaeological resources (both pre-contact and post-contact eras); historic architectural resources (physical properties, structures, or built items); and traditional cultural resources."

**Ground-disturbing activities:** Examples of ground-disturbing activities include removal of building foundations and other below-ground features; removal of pavement and vegetation; digging, moving, and removing soil; driving vehicles off-road; and staging activities on previously undisturbed areas.

**Historic property:** The term "historic property" (plural: "historic properties") has the same definition as 36 CFR §800.16(l) and is used to refer to properties that are eligible for listing on the National Register of Historic Places (NRHP).

**Native American Artifacts:** The term "Native American Artifacts" is defined in the 2010 AOC, which allows "Native American artifacts that are formally recognized as Cultural Resources" to be exempted from soil remediation, subject to DTSC's "oversight and approval" (2010 AOC Sections 2.1 and 2.9(4); Native American Artifacts Exemptions Clause in Attachment B of the 2010 AOC), and its scope will be clarified through the Soil Remedial Action Implementation Plan (SRAIP) process.

**Non-ground-disturbing activities:** Examples of non-ground-disturbing activities include removal of above-ground structures and use of staging areas on existing paved areas or otherwise previously disturbed areas.

**Traditional Cultural Landscape:** The term "traditional cultural landscape" is based on the definition from the Final EIS and guidance provided by the Advisory Council on Historic Preservation (ACHP) and may be associated with resources that may or may not be eligible for listing on the NRHP. Final EIS, Section 3.11.1 states: "Cultural landscapes are geographic areas where cultural and natural resources and wildlife have been associated with historic events, activities, or people, or which serve as an example of cultural or aesthetic value. The four types of cultural landscapes are: historic sites (e.g., battlefields, properties of famous historical figures); historic designed landscapes (e.g., parks, estates, gardens); historic vernacular landscapes (e.g., industrial parks, agricultural landscapes, villages); and

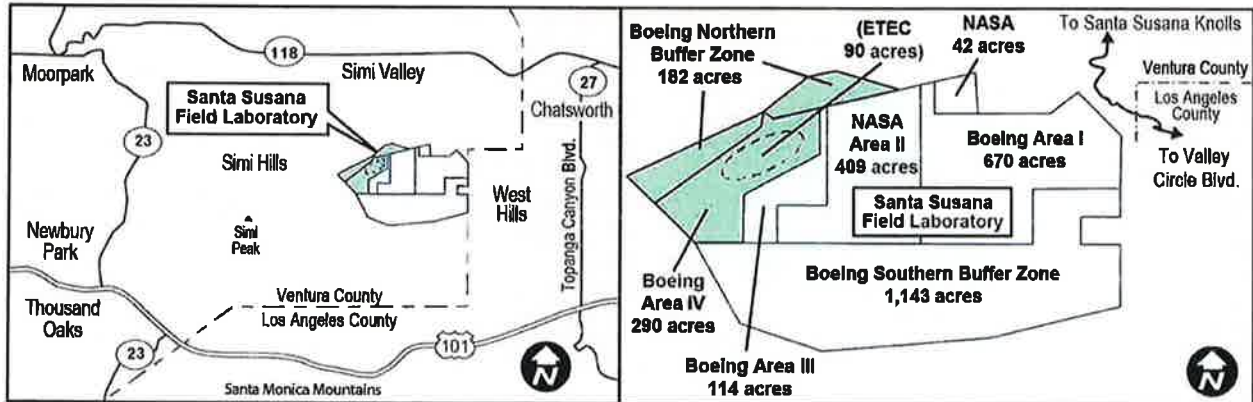
ethnographic landscapes (contemporary settlements, religious sites, massive geological structures) (Birnbaum 1994) . . . ” According to ACHP’s guidance, “Native American Traditional Cultural Landscapes and the Section 106 Review Process: Questions and Answers,” “[t]he term “traditional cultural landscape” has not yet been formally defined by the National Park Service, the agency responsible for defining historic properties and maintaining the National Register of Historic Places (NRHP).” Instead, “[t]raditional cultural landscapes are considered by the NRHP to be a type of significance rather than a property type. Property types are limited to those specified in the NHPA and the NRHP regulations and include districts, buildings, structures, sites, and objects. Traditional cultural landscapes can and often do embrace one or more of these property types.” In the Section 106 process, “[t]raditional cultural landscapes, because they are often a property type such as a district or site, are identified in the same manner in the Section 106 process as other types of historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations.” For further information, see <https://www.achp.gov/sites/default/files/guidance/2018-06/NativeAmericanTCLsintheSection106ReviewProcessQandAs.pdf>.

**Traditional Cultural Property:** The term “traditional cultural property” (TCP) has the same definition as it does in the Final EIS and is used to refer to resources that are eligible for listing on the NRHP. Final EIS, Section 3.11.1 states: “Traditional cultural properties are resources that are associated with the cultural practices or beliefs of a living community, that link the community to its past and are ‘important in maintaining the continuing cultural identity of the community’, and that are eligible for or are listed on the NRHP (DOI 1998). Most traditional cultural resources or sacred sites in the SSFL region are associated with Native Americans. Traditional cultural properties or resources may also be associated with other traditional lifeways, such as agriculture. Traditional cultural properties can include archaeological resources, locations of pre-contact or post- contact events, sacred areas, sources of raw materials used in the manufacture of tools and/or sacred objects, certain plants, traditional hunting and gathering areas, or landscapes (NPS 1998).”

## ATTACHMENT 2

### Administrative Boundary Map of Santa Susana Field Laboratory

The Santa Susana Field Laboratory is divided into four administrative areas (Areas I, II, III, and IV) and two contiguous buffer zones north and south of the administrative areas (Northern Buffer Zone and Southern Buffer Zone).



## ATTACHMENT 3

### Consulting and Invited Parties

**Table 1: List of Consulting Parties**

The following parties participated in the Section 106 process for the Undertaking, including the drafting of this Programmatic Agreement. These parties are therefore considered "Consulting Parties" under this Programmatic Agreement.

Name	Affiliation	Individual or Official Capacity	Tribal Member	ICR Member
<b>State Historic Preservation Officer (36 CFR §800.2(c)(1)(i))</b>				
	California State Historic Preservation Officer	Official		
<b>Federally Recognized Tribe (36 CFR Part 800.2(c)(2)(ii))</b>				
Sam Cohen	Tribal Counsel, Santa Ynez Band of Chumash Indians	Official		X
Kenneth Kahn	Chair, Santa Ynez Band of Chumash Indians	Official	X	
Freddie Romero	Cultural Resources Coordinator, Santa Ynez Band Tribal Elders Council	Official	X	X
<b>Individuals and Organizations with a Demonstrated Interest (36 CFR Part 800.2(c)(5))</b>				
Gary M. Brown	Cultural Resources Program Manager, Santa Monica Mountains National Recreation Area	Official		
Tina Orduno Calderon	Gabrielino Tongva/Chumash	Individual	X	X
Christina Conley-Haddock	Gabrielino Tongva Indians of California	Individual	X	X
David Dassler	The Boeing Company	Official		
Beverly Folkes Salazar	Chumash, Fernandefio Tataviam Band of Mission Indians	Individual	X	X
Pat Havens	Simi Valley Historical Society	Individual		
Brian Holguin	Santa Ynez Band of Chumash Indians	Individual	X	X
Stephen Johnson	North American Land Trust	Official		
Bonnie Klee	-	Individual		
Albert Knight	Santa Barbara Museum of Natural History Anthropology Department	Individual		
John Luker	Santa Susana Mountain Park Association	Individual		
Cheryl Martin	Chumash, Fernandefio Tataviam Band of Mission Indians	Individual	X	X
Rudy J. Ortega	Tribal President, Fernandefio Tataviam Band of Mission Indians	Official	X	X
Mark Osokow	San Fernando Valley Audubon Society	Individual		
Kathleen Pappo	Barbarefio/Venturefio Band of Mission Indians	Individual	X	X
John Tommy Rosas	Tribal Administrator, Tongva Ancestral Territorial Tribal Nation	Official	X	X
Bruce Rowe	-	Individual		
Christine Rowe	-	Individual		
Andrew Salas	Chair, Kizh Gabrieleño Band of Mission Indians	Official	X	X
Alan Salazar	Chumash, Fernandefio Tataviam Band of Mission Indians	Individual	X	X

Clark Stevens	Resource Conservation District of the Santa Monica Mountains	Individual		
Gary Stickel	Kizh Gabrieleño Band of Mission Indians	Individual		X
Brian Sujata	-	Individual		
Barbara Tejada	Associate State Archaeologist, California State Parks	Official		
Patrick Tumamait	Barbareño/Ventureño Band of Mission Indians	Individual	X	X
Christina Walsh	-	Individual		
Abraham Weitzberg	SSFL Community Advisory Group	Individual		
Anthony Zepeda	-	Individual		
Peter Zorba	NASA Site Management Office, SSFL	Official		

**Table 2: List of Invited Parties that are not Consulting Parties**

The following parties were invited to, but did not participate in, the Section 106 process for the Undertaking. They are therefore not considered "Consulting Parties" under the terms of this Programmatic Agreement.

Name	Affiliation	Individual or Official Capacity	Tribal Member
<b>Advisory Council on Historic Preservation ((36 CFR §800.2(b))</b>			
	Advisory Council on Historic Preservation	Official	
<b>Local Government with Jurisdiction (36 CFR §800.2(c)(3))</b>			
	California Department of Toxic Substances Control	Official	
<b>Individuals and Organizations with a Demonstrated Interest (36 CFR Part 800.2(c)(5))</b>			
	Ventura County Archaeological Society	Official	
Vincent Armenta	Former Chair, Santa Ynez Band of Chumash Indians	Official	X
Joe Calderone	Chumash, Tongva, Mexican	Individual	X
Colin Cloud Hampson	Fernandeño Tataviam Band of Mission Indians	Individual	X
Karen DiBiase	-	Individual	
Nicole Doner	Ventura County Cultural Heritage Board	Official	
Sandonne Goad	Gabrielino/Tongva Nation	Individual	X
Randy Guzman-Folkes	Chumash, Fernandeño Tataviam, Shoshone Paiute, Yaqui	Individual	X
Adam Loya	Gabrielino/Tongva Nation	Individual	X
Frances Ortega	Fernandeño Tataviam Band of Mission Indians	Individual	X
Steve Ortega	Fernandeño Tataviam Band of Mission Indians	Individual	X
Tim Poyorena-Miguel	Kizh Gabrieleño Band of Mission Indians	Individual	X
David Syzmanski	Santa Monica Mountains National Recreation Area, National Park Service	Official	
Julie Lynn Tumamait-Stennsle	Barbareño/Ventureño Band of Mission Indians	Individual	X
Alec Uzemeck	SSFL Community Advisory Group	Official	
Joanne Yvanek-Garb	West Hills Neighborhood Council	Individual	
Ronald Ziman	SSFL Community Advisory Group, Bell Canyon	Individual	



## ATTACHMENT 4

### Area of Potential Effects Map for the U.S. Department of Energy's Undertaking

The U.S. Department of Energy determined and documented the Undertaking's Area of Potential Effects (APE) as the entirety of Area IV (290 acres) and the NBZ (182 acres), with the exception of five buildings in Area IV owned by Boeing, and the SHPO did not object to the APE on February 25, 2015.





## ATTACHMENT 5

### Cultural and Architectural Surveys in the APE

<b>Author(s)/Entity</b>	<b>Year</b>	<b>Title and Pertinent Information</b>
C.W. Clewlow, Jr. and Michael R. Walsh	1999	<i>Cultural Resource Assessment and Report on Archival Research, Surface Reconnaissance, and Limited Subsurface Evaluation at Rocketdyne Santa Susana Field Laboratory, Ventura County, California</i>  An archaeological survey of a portion of SSFL, consisting of a proposed 5.5-acre soil borrow area, did not identify any cultural resources.
W&S Consultants	2001	<i>Class III Inventory/Phase I Archaeological Survey of the Santa Susana Field Laboratory Area 4, Ventura County, California</i>  An archaeological survey of Area IV in 2001 was the first systematic archaeological survey conducted at SSFL. This study consisted of an on-foot, intensive survey of the 290-acre Area IV. The study identified four previously unknown archaeological sites, and recommended them as ineligible for listing in the NRHP.
Craft, Andrea and Soraya Mustain	2007	<i>Archaeological Survey Report for Southern California Edison Company Energy Circuit 16kV O/O Chatsworth Sub DSP Project, Ventura County, California</i>  An archaeological survey for Southern California Edison of the Energy Circuit 16kV O/O Chatsworth Distribution Substation Plan identified one isolated, pre-contact-era artifact, but no archaeological sites in the approximately 30.1-acre region of influence.
Orfila, Rebecca S.	2009	<i>Archaeological Survey for the Southern California Edison Company: Replacement of Two Deteriorated Power Poles on the Saugus-Haskell-Solemint 66kV Line, Newhall, Los Angeles County, One Deteriorated Pole on the Burro Flats-Chatsworth-Thrust 66kV Line</i>  An archaeological survey for Southern California Edison Company of a deteriorated power pole on the Burro Flats-Chatsworth-Thrust 66-kilovolt transmission line did not identify any cultural resources within 30 meters of the pole.
Post, Pamela	2009	<i>Historic Structures/Sites Report for Area IV of the Santa Susana Field Laboratory</i>  A historic structures/sites report for Area IV concluded that Area IV was not eligible for listing in the NRHP or the California Register as a historic district. Area IV was considered to lack sufficient integrity to convey its historic appearance or association with the history of nuclear power research and development in the United States and the post-World War II transformation of California. Moreover, none of the buildings, structures, or features within Area IV was considered to be individually eligible for listing in the NRHP or the California Register.
Romani, Gwen	2009	<i>Archaeological Survey Report: Southern California Edison Proposed Fiber Optic Moorpark East Copper Cable Replacement Project, Los Angeles and Ventura Counties, California</i>  An archaeological survey for the Southern California Edison Company identified one lithic scatter in Areas III and IV of SSFL.
Hogan, Michael and Bai "Tom" Tang	2010	<i>Cultural Resources Identification Survey: Northern Undeveloped Land at the Santa Susana Field Laboratory Site, Simi Hills Area, Ventura County, California</i>  An archaeological survey of the Northern Undeveloped Land (now referred to as the NBZ) was completed. This study of approximately 182 acres identified two lithic scatters and a natural water cistern with an associated lithic scatter. Hogan and Tang concluded that the historical significance of the three sites could not be determined without further archaeological investigations. Five locations of isolated artifacts were also identified in this study.
Guttenberg, Richard and Ray Corbett	2010	<i>Project Description and Cultural Resources Assessment, Santa Susana Field Laboratory, Northern Buffer Zone Radiological Study, Ventura County, California</i>  This study was undertaken to provide a description of known and potential cultural resources for the USEPA's Radiological Characterization Survey of the NBZ. For this study, previous archaeological investigations conducted on the property and records at the SCCIC at California State University, Fullerton, were reviewed.

<b>Author(s)/Entity</b>	<b>Year</b>	<b>Title and Pertinent Information</b>
Corbett, Ray, Richard B. Guttenberg, and Albert Knight	2012	<i>Final Report Cultural Resource Compliance and Monitoring Results for USEPA's Radiological Study of the Santa Susana Field Laboratory Area IV and Northern Buffer Zone, Ventura County, California</i>  From July 2010 through August 2012, JMA provided cultural resources compliance and monitoring for USEPA's radiological study of Area IV and the NBZ. A total of 19 archaeological sites and 54 new isolated artifacts in Area IV and the NBZ were recorded during this time.
Bryne, Stephen	2014	<i>Archaeological Survey, Site Verification, and Monitoring Performed During the Phase 3 Soil Chemical Sampling in Area IV, the Northern Buffer Zone, and Adjacent Lands Santa Susana Field Laboratory Ventura County, California</i>  From 2011 through 2014, Leidos surveyed for and monitored completion of Phase 3 soil chemical sampling on Area IV and the NBZ; this included surface and subsurface sampling and excavation of geological test pits and trenches. Fieldwork included verifying the location of previously recorded sites, updating records and site boundaries, and documenting two previously unrecorded isolates.
Bryne, Stephen	2015	<i>Extended Phase 1 Testing and National Register of Historic Places Eligibility Recommendations for 10 Archaeological Sites in Area IV of the Santa Susana Field Laboratory Ventura County, California</i>  Leidos conducted an extended phase 1 testing program to evaluate the NRHP eligibility of 10 archaeological sites in the APE. This program of limited subsurface excavation was developed in consultation with SHPO and EIS cooperating agencies, including the federally recognized Santa Ynez Band of Chumash Indians, as well as non-federally recognized tribes. Based on this evaluation program, 8 of the 10 archaeological sites were recommended individually eligible for inclusion on the NRHP and 2 sites were recommended individually ineligible for listing on the NRHP.

California Register = California Register of Historical Resources; EIS = Environmental Impact Statement; JMA = John Minch and Associates, Inc.; NBZ = Northern Buffer Zone; NRHP = National Register of Historic Places; SCCIC = South Central Coastal Information Center; SHPO = State Historic Preservation Officer; SSFL = Santa Susana Field Laboratory; USEPA = United States Environmental Protection Agency.

Source: Record searches from the Information Center of the California Historical Resources Information System, December 22, 2009 (SCCIC, #10100.6981), and June 10, 2014, (SCCIC, #14058.219); SSFL Area IV EIS administrative record.

## ATTACHMENT 6

### Known Archaeological Resources in Area IV and the Northern Buffer Zone

<b>Trinomial Site Number</b>	<b>Site Description</b>	<b>NRHP Status -- Individual Eligibility</b>	<b>Burro Flats Cultural District (TCP) (NASA, 2019)<sup>p</sup></b>	<b>Simi Hills Archaeological District (SYBCI, Sept 2018)</b>	<b>Burro Flats Sacred Landscape (Kizh 2018)</b>
VEN-1302	Lithic scatter	Eligible <sup>a</sup>	X	X	X
VEN-1355	Low-density marine shell scatter	Unevaluated	X	X	X
VEN-1411	Large rockshelter/shallow cave with associated midden and dense lithic scatter	Unevaluated	X	X	X
VEN-1412	Rockshelter with associated lithic scatter	Eligible <sup>a</sup>	X	X	X
VEN-1413	Rockshelter with midden, bedrock mortar, and pictographs	Unevaluated	X	X	X
VEN-1414	Bedrock mortar with associated lithic scatter	Eligible <sup>a</sup>	X	X	X
VEN-1415	Lithic scatter	Unevaluated	X	X	X
VEN-1416	Rockshelter with associated lithic scatter	Eligible <sup>a</sup>	X	X	X
VEN-1417	Rockshelter with associated lithic scatter	Unevaluated	X	X	X
VEN-1418	Rockshelter with one associated lithic artifact	Eligible <sup>a</sup>	X	X	X
VEN-1419	Lithic scatter	Unevaluated	X	X	X
VEN-1420	Lithic scatter	Ineligible <sup>a</sup>	X	X	X
VEN-1421	Rockshelter with associated lithic scatter	Unevaluated	X	X	X
VEN-1422	Rockshelter with an associated lithic scatter	Unevaluated	X	X	X
VEN-1423	Rockshelter/cave with associated rock feature	Unevaluated	X	X	X
VEN-1425	Rockshelter/cave with an associated lithic scatter	Unevaluated	X	X	X
VEN-1426	Rockshelter with one associated lithic artifact	Unevaluated	X	X	X
VEN-1427	Rockshelter with an associated lithic scatter and faunal remains	Unevaluated	X	X	X
VEN-1428	Lithic scatter	Ineligible <sup>a</sup>	X	X	X
VEN-1772	Rockshelter with historic pictograph and artifacts	Eligible <sup>a</sup>	X	X	X
VEN-1773	Rockshelter with associated artifacts	Eligible <sup>a</sup>	X	X	X

<b>Trinomial Site Number</b>	<b>Site Description</b>	<b>NRHP Status – Individual Eligibility</b>	<b>Burro Flats Cultural District (TCP) (NASA, 2019)<sup>b</sup></b>	<b>Simi Hills Archaeological District (SYBCI, Sept 2018)</b>	<b>Burro Flats Sacred Landscape (Kizh 2018)</b>
VEN-1774	Single bedrock mortar	Unevaluated	X	X	X
VEN-1775	Rockshelter with midden and associated artifacts	Eligible <sup>a</sup>	X	X	X
VEN-1803	Lithic scatter	Unevaluated	X	X	X
VEN-1804	Lithic scatter	Unevaluated	X	X	X
VEN-1805	Lithic scatter with natural water cistern	Unevaluated	X	X	X

Kizh = Kizh Indian Nation; NASA = National Aeronautics and Space Administration; NHRP = National Register of Historic Places; SYBCI = Santa Ynez Band of Chumash Indians;

TCP = Traditional Cultural Property

<sup>a</sup> DOE determined individual eligibility based on limited subsurface testing (Leidos 2015); SHPO did not concur on the eight sites that DOE determined individually eligible.

<sup>b</sup> The nomination form says the TCP "includes any archaeological sites and trails found within the SSFL", but does not include a list of individual sites.

## ATTACHMENT 7

### Building Demolition and Removal Phase

This attachment provides information to support the Programmatic Agreement (PA) prepared to guide management of cultural resources for the Department of Energy's (DOE) compliance with Section 106 of the National Historic Preservation Act (NHPA) for the proposed cleanup of Santa Susana Field Laboratory (SSFL) Area IV and Northern Buffer Zone (NBZ), Ventura County, California (the Undertaking). This attachment specifically addresses the building demolition and removal phase of the Undertaking. The following provides a detailed description of the proposed activities, which is summarized from the *Final Environmental Impact Statement (EIS) for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory* (DOE 2018). The following also discusses the historic properties potentially affected by the building demolition activities, and describes the conditions to avoid adverse effects.

Contingent on the implementation of building demolition and removal as described in this attachment, DOE has determined in consultation with the Consulting Parties that DOE may proceed with demolition and removal upon execution of the PA, issuance of the Record of Decision under the National Environmental Policy Act, and, for ground-disturbing activities, completion of the Monitoring Plan and Inadvertent Discovery Plan. If DOE changes this phase of the Undertaking and the proposed change has the potential to affect historic properties, as defined in Stipulation V.c, *Building Demolition and Removal*, DOE will consult with the Consulting Parties.

#### Description of Proposed Activities

DOE proposes to demolish 18 DOE-owned structures in Area IV and dispose of or recycle the materials off site (see Figure 7-1). Seven of the 18 structures are metal sheds used for material storage; the other 11 are more-substantial structures, consisting of prefabricated metal upper buildings constructed on grade-level concrete platforms or with formed concrete basements or buildings with cinder block/concrete walls and metal roofs. The more substantial structures are the Sodium Pump Test Facility (Buildings 4462 and 4463); Energy Technology Engineering Center (ETEC) Office Building (Building 4038); Building 4057; Hazardous Waste Management Facility (HWMF) (Buildings 4029 and 4133); Radioactive Materials Handling Facility (RMHF) (Buildings 4021, 4022, and 4034); and former reactor complex buildings (Buildings 4019 and 4024). The seven metal sheds are part of the RMHF (Buildings 4044, 4075, 4563, 4621, 4658, 4665, and 4688). In addition to the structures, the associated parking lots would also be removed as part of the building demolition activity.

The above-ground and below-ground structures would be demolished and the entirety of demolition debris would be completely removed from the site. Conventional heavy equipment consistent with construction and demolition projects would be used for building demolition, such as excavators (i.e., backhoes), cranes, loaders with various tooling, and a variety of conventional equipment for sorting and loading debris. Existing roads would be used to the extent feasible. Following removal of the slabs and subgrade structures, radiological surveys of building footprints, including soil sampling for chemicals and radionuclides, would be conducted.

At least two staging areas would be established to support building demolition and soil remediation work. The main staging area would be within the north-central portion of Area IV, near Building 4024, and would be situated on level ground on existing hardscape. This staging

area may be supplemented by an additional area south of Building 4038 that would include a contractor trailer, worker parking, portable restrooms, heavy equipment parking, and a decontamination pad. Neither grading nor major vegetation clearance would be required to prepare the staging areas. Other, more-temporary staging and stockpiling areas would be placed within 300 feet of facilities undergoing demolition. These more-temporary staging areas would be located on asphalt, concrete, or previously disturbed ground to the maximum extent feasible.

### **Identification of Historic Properties**

*Architectural Resources:* DOE has determined that the buildings proposed to be demolished are not eligible for listing on the National Register of Historic Places (NRHP), and the State Historic Preservation Officer (SHPO) concurred on this determination on July 15, 2010. Therefore, no historic properties related to architectural resources would be affected by the proposed building demolitions.

*Archaeological Resources:* Area IV has been surveyed, and there are no identified archaeological sites in the immediate vicinity of buildings to be demolished. Additionally, all ground disturbing activities, such as removal of building foundations and other below-ground features, removal of pavement and vegetation, digging and moving soil, driving vehicles off-road, and staging activities on previously undisturbed areas, will comply with the PA, which includes procedures for monitoring and the discovery and treatment of unanticipated finds. Therefore, no historic properties related to archaeological resources or proposed historic districts would be affected by building demolitions.

*Traditional Cultural Properties (TCPs):* DOE intends to make eligibility determinations on proposed TCPs during the implementation of the PA. Building demolitions would not adversely affect proposed TCPs, such as the proposed *Burro Flats TCP*. Removal of buildings could be considered beneficial because potentially intrusive structural elements would be eliminated from the viewshed around and from potential historic properties.





Figure 7-1. Remaining Structures in Area IV (from the *Final EIS for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory*)

## ATTACHMENT 8

### Groundwater Investigation

This attachment provides information to support the Programmatic Agreement (PA) prepared to guide management of cultural resources for the Department of Energy's (DOE) compliance with Section 106 of the National Historic Preservation Act (NHPA) for the proposed cleanup of Santa Susana Field Laboratory (SSFL) Area IV and Northern Buffer Zone (NBZ), Ventura County, California (the Undertaking). This attachment specifically addresses the groundwater investigations. The following provides a detailed description of the proposed activities, which is summarized from the *Final Environmental Impact Statement (EIS) for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory* (DOE 2018). The following also discusses the historic properties potentially affected by the groundwater investigations, and describes the standard protection measures to avoid adverse effects.

Contingent on the implementation of groundwater investigation activities as described in this attachment, DOE has determined in consultation with the Consulting Parties that DOE may proceed with groundwater investigation activities upon execution of the PA.

#### Description of Proposed Investigation Activities

As of May 2018, the Area IV groundwater monitoring well network consisted of 124 wells (66 deep bedrock wells and 58 shallow wells), with additional wells planned. There are six primary areas within Area IV that require remediation measures to protect the groundwater: the Former Sodium Disposal Facility (FSDF) trichloroethylene (TCE) plume; the Building 4100/56 landfill TCE plume; the Building 4057 perchloroethylene (PCE) plume; the tritium plume (in the area of the former Building 4010); the Hazardous Materials Storage Area (HMSA) TCE plume; and the Radioactive Materials Handling Facility (RMHF) bedrock strontium-90. Additionally, two other areas with lower concentrations of groundwater contamination, mainly solvents, are being evaluated: the RMHF TCE plume and the Metals Clarifier TCE plume. The FSDF TCE and tritium plumes extend into the NBZ; the boundary of the RMHF TCE plume is uncertain and may extend into the NBZ, but likely at concentrations below the maximum containment level.

A *Draft Groundwater Corrective Measures Study, Area IV* (Draft Corrective Measures Study) (CDM Smith 2018) was developed concurrently with the EIS to identify, evaluate, and select groundwater treatment technologies (e.g., monitored natural attenuation, pumping and treatment [commonly called pump and treat], bedrock soil vapor extraction, source isolation, removal of bedrock, enhanced groundwater treatment) to be applied as remedial actions. DOE may select any or all of these technologies for action depending on the contaminant, source, and location of the impacted groundwater.

To inform selection of the groundwater corrective measures, DTSC may require DOE to conduct investigation activities, which would include installation of monitoring wells. At the time of execution of this PA, DOE was aware of the need for six additional groundwater wells, and did not believe any further wells would be required. Each well would consist of a drilled borehole. Shallow wells would have polyvinylchloride or stainless steel well pipe inside the borehole, with a screen (slotted open portion) to allow water to enter the well. The size, length, material, and other details of the pipe would depend on the intended use of the well. Deep wells installed into the bedrock would have a metal casing installed through the alluvium to keep the upper part of



the well from collapsing, but the bedrock portion typically would remain open (no well pipe would be used). Materials for well construction and support would be brought to the site on trucks. Water to develop the well would be brought to the site by a tanker truck. Drilling would take place along and off existing roads.

### **Identification of Historic Properties & Assessment of Effects**

*Architectural Resources:* There are no structures in the NBZ, and no structures in Area IV that are listed or eligible for listing on the National Register of Historic Places (NRHP). Therefore, no architectural historic properties would be affected by the groundwater investigation activities.

*Archaeological Resources:* Area IV and the NBZ has been surveyed, and there are no identified archaeological sites within the proposed investigation areas known at the time of execution of the PA. Further, all new wells be would located to avoid identified archaeological sites within the APE. Therefore, with standard protection measures in place, as described below, no historic properties related to archaeological resources or proposed historic districts would be affected by any proposed groundwater investigation activities.

*Traditional Cultural Properties (TCPs):* DOE intends to make eligibility determinations on proposed TCPs during the implementation of the PA. The potential installation and operation of above-ground modern elements (e.g., treatment systems, storage tanks, overland piping) could have a minor, temporary effects on a TCP. However, above-ground elements would be installed and designed to minimize visibility and avoid adverse effects on historic properties.

### **Standard Protection Measures**

- Archaeological and Native American review of proposed investigation well locations, including identifying the boundaries of nearby archaeological resources to ensure avoidance.
- Modification of the location of investigation wells if they are located within 50 feet of any archaeological resource.
- Archaeological and Native American monitoring of all ground disturbance, including vegetation removal, digging and moving soil, driving vehicles off-road, and staging activities on previously undisturbed areas.
- Flag archaeological site boundaries/buffer areas located within 30 feet of any activity associated with new well installation, equipment staging, and/or off-road use, and avoid all activity within the flagged areas.
- Above-ground elements will be designed to minimize visibility on the landscape.

## **ATTACHMENT 9**

### **A NON-EXCLUSIVE, NON-EXHAUSTIVE LIST OF EXAMPLES OF MINIMIZATION AND MITIGATION MEASURES**

- **Minimization:** The following minimization measures are potentially appropriate ways to minimize adverse effects from the Undertaking to one or more historic properties:
  - **Training:** DOE would require training for cleanup personnel to teach best practices for conducting activities near and in historic properties.
  - **Targeted soil removal:** At certain times and in certain areas, as specified in the HPTP, DOE would recommend or require the use of hand tools rather than heavy machinery to move and remove soil.
  - **Flagging:** At certain times and in certain areas, as specified in the HPTP, DOE would recommend or require that specific locations be flagged so that personnel know the location of sensitive areas where procedures described in the HPTP should be followed.
- **Mitigation:** The following mitigation measures (not listed in order of preference) are potentially appropriate mitigation for the adverse effects from the Undertaking to one or more historic properties:
  - **Data Recovery:** If this measure is chosen, DOE would develop a Data Recovery Plan. The Data Recovery Plan would include a plan for Tribal monitoring during data recovery. DOE would consult with the Consulting Parties on the Data Recovery Plan, including providing an opportunity for the Consulting Parties to review and comment on a draft Data Recovery Plan. The Consulting Parties acknowledge that data recovery is destructive and is not a preferred mitigation where other options are consistent with the DTSC-approved SRAIP(s).
  - **Outreach and Education:** If this measure is chosen, DOE would develop an Outreach and Education Plan. For example, the Outreach and Education Plan might commit DOE to develop or contribute to the development of interpretive brochures, signs, or a website related to SSFL's history. DOE would consult with the Consulting Parties on the Outreach and Education Plan, including providing an opportunity for the Consulting Parties to review and comment on a draft Outreach and Education Plan. DOE would also seek public comment on proposed outreach and education efforts and consider the views of the public when finalizing this plan.
  - **Reseeding and Restoration:** If this measure is chosen, when DOE restores the landscape after soil removal, DOE would develop and implement reseeded and restoration measures that attempt to restore the landscape, viewscape, and natural topography of the historic properties, including native vegetative communities. As appropriate and feasible, DOE would use historical documentation on SSFL conditions before 1947 and take into consideration, among other items that Consulting Parties

might raise during consultation on HPTP(s), the Conservation Easement, any applicable permits, and potential effects to runoff to inform the development of any reseeding and restoration measure. Reseeding and restoration may be complicated by the volume of soil removed and the type of soil used for replacement. DOE would consult with Boeing in developing this measure.

- Botanicals of Cultural Significance: If this measure is chosen, DOE would plant native, non-invasive plants of similar age and type, so long as feasible and appropriate, to mitigate the adverse effects to culture that removal of botanicals of cultural significance has on any NRHP-eligible TCP. For example, a mature oak tree, rather than a young tree, would be planted if DOE removed an ancient oak tree. DOE would take into consideration the Conservation Easement and consult with Boeing in developing this measure.
- Design to minimize visibility: If this measure is chosen, DOE would design above-ground elements to minimize visibility on the landscape.

## ATTACHMENT 10

### ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects



*Preserving America's Heritage*

#### ADVISORY COUNCIL ON HISTORIC PRESERVATION

##### POLICY STATEMENT REGARDING

##### TREATMENT OF BURIAL SITES, HUMAN REMAINS AND FUNERARY OBJECTS

**Preamble.** This policy offers leadership in resolving how to treat burial sites, human remains, and funerary objects in a respectful and sensitive manner while acknowledging public interest in the past. As such, this policy is designed to guide federal agencies in making decisions about the identification and treatment of burial sites, human remains, and funerary objects encountered in the Section 106 process, in those instances where federal or state law does not prescribe a course of action.

This policy applies to all federal agencies with undertakings that are subject to review under Section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. § 470f), and its implementing regulations (36 CFR Part 800). To be considered under Section 106, the burial site must be or be a part of a historic property, meaning that it is listed, or eligible for listing, in the National Register of Historic Places.

The Advisory Council on Historic Preservation (ACHP) encourages federal agencies to apply this policy throughout the Section 106 process, including during the identification of those historic properties. In order to identify historic properties, federal agencies must assess the historic significance of burial sites and apply the National Register criteria to determine whether a property is eligible. Burial sites may have several possible areas of significance, such as those that relate to religious and cultural significance, as well as those that relate to scientific significance that can provide important information about the past. This policy does not proscribe any area of significance for burial sites and recognizes that the assessment must be completed on a case-by-case basis through consultation.

The policy is not bound by geography, ethnicity, nationality, or religious belief, but applies to the treatment of all burial sites, human remains, and funerary objects encountered in the Section 106 process, as the treatment and disposition of these sites, remains, and objects are a human rights concern shared by all.

This policy also recognizes the unique legal relationship between the federal government and tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions, and acknowledge that, frequently, the remains encountered in Section 106 review are of significance to Indian tribes.

Section 106 requires agencies to seek agreement with consulting parties on measures to avoid, minimize, or mitigate adverse effects to historic properties. Accordingly, and consistent with Section 106, this policy does not recommend a specific outcome from the consultation process. Rather, it focuses on issues and perspectives that federal agencies ought to consider when making their Section 106 decisions. In many cases, federal agencies will be bound by other applicable federal, tribal, state, or local laws that do

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prescribe a specific outcome, such as the Native American Graves Protection and Repatriation Act (NAGPRA). The federal agency must identify and follow applicable laws and implement any prescribed outcomes.

For undertakings on federal and tribal land that encounter Native American or Native Hawaiian human remains and funerary objects, NAGPRA applies. NHPA and NAGPRA are separate and distinct laws, with separate and distinct implementing regulations and categories of parties that must be consulted.<sup>1</sup> Compliance with one of these laws does not mean or equal compliance with the other. Implementation of this policy and its principles does not, in any way, change, modify, detract or add to NAGPRA or other applicable laws.

**Principles:** When burial sites, human remains, or funerary objects will be or are likely to be encountered in the course of Section 106 review, a federal agency should adhere to the following principles:

**Principle 1:** Participants in the Section 106 process should treat all burial sites, human remains, and funerary objects with dignity and respect.

**Principle 2:** Only through consultation, which is the early and meaningful exchange of information, can a federal agency make an informed and defensible decision about the treatment of burial sites, human remains, and funerary objects.

**Principle 3:** Native Americans are descendants of original occupants of this country. Accordingly, in making decisions, federal agencies should be informed by and utilize the special expertise of Indian tribes and Native Hawaiian organizations in the documentation and treatment of their ancestors.

**Principle 4:** Burial sites, human remains and funerary objects should not be knowingly disturbed unless absolutely necessary, and only after the federal agency has consulted and fully considered avoidance of impact and whether it is feasible to preserve them in place.

**Principle 5:** When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully, and in a manner developed in consultation.

**Principle 6:** The federal agency is ultimately responsible for making decisions regarding avoidance of impact to or treatment of burial sites, human remains, and funerary objects. In reaching its decisions, the federal agency must comply with applicable federal, tribal, state, or local laws.

**Principle 7:** Through consultation, federal agencies should develop and implement plans for the treatment of burial sites, human remains, and funerary objects that may be inadvertently discovered.

**Principle 8:** In cases where the disposition of human remains and funerary objects is not legally prescribed, federal agencies should proceed following a hierarchy that begins with the rights of lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations.

<sup>1</sup> The ACHP's publication *Consulting with Indian Tribes in the Section 106 Process* and the National Association of Tribal Historic Preservation Officers' publication *Tribal Consultation: Best Practices in Historic Preservation* provide additional guidance on this matter.

## **DISCUSSION:**

**Principle 1: Participants in the Section 106 process should treat all burial sites, human remains, and funerary objects with dignity and respect.**

Because the presence of human remains and funerary objects gives a historic property special importance as a burial site or cemetery, federal agencies need to consider fully the values associated with such sites. When working with human remains, the federal agency should maintain an appropriate deference for the dead and the funerary objects associated with them, and demonstrate respect for the customs and beliefs of those who may be descended from them.

Through consultation with descendants, culturally affiliated groups, descendant communities, and other parties, federal agencies should discuss and reach agreement on what constitutes respectful treatment.

**Principle 2: Only through consultation, which is the early and meaningful exchange of information, can a federal agency make an informed and defensible decision about the treatment of burial sites, human remains, and funerary objects.**

Consultation is the hallmark of the Section 106 process. Federal agencies must make a "reasonable and good faith" effort to identify consulting parties and begin consultation early in project planning, after the federal agency determines it has an undertaking and prior to making decisions about project design, location, or scope.

The NHPA, the ACHP's regulations, and Presidential Executive Orders set out basic steps, standards, and criteria in the consultation process, including:

- Federal agencies have an obligation to seek out all consulting parties [36 CFR § 800.2(a)(4)], including the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) [36 CFR § 800.3(c)].
- Federal agencies must acknowledge the sovereign status of Indian tribes [36 CFR § 800.2(c)(2)(u)]. Federal agencies are required to consult with Indian tribes on a government-to-government basis in recognition of the unique legal relationship between federal and tribal governments, as set forth in the Constitution of the United States, treaties, statutes, court decisions, and executive orders and memoranda.
- Consultation on a government-to-government level with Indian tribes cannot be delegated to non-federal entities, such as applicants and contractors.
- Federal agencies should solicit tribal views in a manner that is sensitive to the governmental structures of the tribes, recognizing their desire to keep certain kinds of information confidential and that tribal lines of communication may argue for federal agencies to provide extra time for the exchange of information.

- Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined eligible for inclusion on the National Register [16 U.S.C. § 470a(d)(6)(A)], and federal agencies must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such historic properties [16 U.S.C. § 470a(d)(6)(B) and 36 CFR § 800.2(c)(2)(u)(D)].

**Principle 3:** Native Americans are descendants of original occupants of this country. Accordingly, in making decisions, federal agencies should be informed by and utilize the special expertise of Indian tribes and Native Hawaiian organizations in the documentation and treatment of their ancestors.

This principle reiterates existing legal requirements found in federal law, regulation and executive orders, and is consistent with positions that the ACHP has taken over the years to facilitate enfranchisement and promote broad participation in the Section 106 process. Federal agencies must consult with Indian tribes on a government-to-government basis because they are sovereign nations.

Indian tribes and Native Hawaiian organizations bring a special perspective on how a property possesses religious and cultural significance to them. Accordingly, federal agencies should utilize their expertise about, and religious and cultural connection to, burial sites, human remains, and associated funerary objects to inform decision-making in the Section 106 process.

**Principle 4:** Burial sites, human remains and funerary objects should not be knowingly disturbed unless absolutely necessary, and only after the federal agency has consulted and fully considered avoidance of impact and whether it is feasible to preserve them in place.

As a matter of practice, federal agencies should avoid impacting burial sites, human remains, and funerary objects as they carry out their undertakings. If impact to the burial site can be avoided, this policy does not compel federal agencies to remove human remains or funerary objects just so they can be documented.

As this policy advocates, federal agencies should always plan to avoid burial sites, human remains, and funerary objects altogether. When a federal agency determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate, the agency should minimize disturbance to such sites, remains, and objects. Accordingly, removal of human remains or funerary objects should occur only when other alternatives have been considered and rejected.

When a federal agency determines, based on consultation with Section 106 participants, that avoidance of impact is not appropriate, the agency should then consider any active steps it may take to preserve the burial site in place, perhaps through the intentional covering of the affected area, placement of markers, or granting of restrictive or other legal protections. In many cases, preservation in place may mean that, to the extent allowed by law, the locations of burial sites, human remains, and funerary objects should not be disclosed publicly. Alternatively and consistent with the Section 106 regulations [36 CFR § 800.5(a)(2)(vi)], natural deterioration of the remains may be the acceptable or preferred outcome of the consultation process.

**Principle 5: When human remains or funerary objects must be disinterred, they should be removed carefully, respectfully, and in a manner developed in consultation.**

When the federal agency decides that human remains or funerary objects must be disturbed, they should be removed respectfully and dealt with according to the plan developed by the federal agency in consultation. "Careful" disinterment means that those doing the work should have, or be supervised by people having, appropriate expertise in techniques for recognizing and disintering human remains.

This policy does not endorse any specific treatment. However, federal agencies must make a reasonable and good faith effort to seek agreement through consultation before making its decision about how human remains and/or funerary objects shall be treated.

The plan for the disinterment and treatment of human remains and/or funerary objects should be negotiated by the federal agency during consultation on a case-by-case basis. However, the plan should provide for an accurate accounting of federal implementation. Depending on agreements reached through the Section 106 consultation process, disinterment may or may not include field recordation. In some instances, such recordation may be so abhorrent to consulting parties that the federal agency may decide it is inappropriate to carry it out. When dealing with Indian tribes, the federal agency must comply with its legal responsibilities regarding tribal consultation, including government-to-government and trust responsibilities, before concluding that human remains or funerary objects must be disinterred.

**Principle 6: The federal agency is ultimately responsible for making decisions regarding avoidance of impact to or treatment of burial sites, human remains, and funerary objects. In reaching its decisions, the federal agency must comply with applicable federal, tribal, state, or local laws.**

Federal agencies are responsible for making final decisions in the Section 106 process [36 CFR § 800.2(a)]. The consultation and documentation that are appropriate and necessary to inform and support federal agency decisions in the Section 106 process are set forth in the ACHP's regulations [36 CFR Part 800].

Other laws, however, may affect federal decision-making regarding the treatment of burial sites, human remains, and funerary objects. Undertakings located on federal or tribal lands, for example, are subject to the provisions of NAGPRA and the Archaeological Resources Protection Act (ARPA). When burial sites, human remains, or funerary objects are encountered on state and private lands, federal agencies must identify and follow state law when it applies. Section 106 agreement documents should take into account the requirements of any of these applicable laws.

**Principle 7: Through consultation, federal agencies should develop and implement plans for the treatment of burial sites, human remains, and funerary objects that may be inadvertently discovered.**

Encountering burial sites, human remains, or funerary objects during the initial efforts to identify historic properties is not unheard of. Accordingly, the federal agency must determine the scope of the identification effort in consultation with the SHPO/THPO, Indian tribes and Native Hawaiian



organizations, and others before any archaeological testing has begun [36 CFR § 800.4(a)] to ensure the full consideration of avoidance of impact to burial sites, human remains, and funerary objects.

The ACHP's regulations provide federal agencies with the preferred option of reaching an agreement ahead of time to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking. In the absence of prior planning, when the undertaking has been approved and construction has begun, the ACHP's post-review discovery provision [36 CFR § 800.13] requires the federal agency to carry out several actions:

- (1) make reasonable efforts to avoid, minimize, or mitigate adverse effects to such discovered historic properties;
- (2) notify consulting parties (including Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to the affected property) and the ACHP within 48 hours of the agency's proposed course of action;
- (3) take into account the recommendations received, and then
- (4) carry out appropriate actions.

NAGPRA prescribes a specific course of action when Native American and Native Hawaiian human remains and funerary objects are discovered on federal or tribal lands in the absence of a plan—cessation of the activity, protection of the material, notification of various parties, consultation on a course of action and its implementation, and then continuation of the activity. However, adherence to the plan under Principle 5 would cause new discoveries to be considered "intentional excavations" under NAGPRA because a plan has already been developed, and can be immediately implemented. Agencies then could avoid the otherwise mandated 30 day cessation of work for "inadvertent discoveries."

**Principle 8:** In cases where the disposition of human remains and funerary objects is not legally prescribed, federal agencies should proceed following a hierarchy that begins with the rights of lineal descendants, and if none, then the descendant community, which may include Indian tribes and Native Hawaiian organizations.

Under the ACHP's regulations, "descendants" are not identified as consulting parties by right. However, federal agencies shall consult with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to burial sites, human remains and associated funerary objects, and be cognizant of their expertise in, and religious and cultural connection to, them. In addition, federal agencies should recognize a biological or cultural relationship and invite that individual or community to be a consulting party [36 CFR § 800.3(f)(3)].

When federal or state law does not direct disposition of human remains or funerary objects, or when there is disagreement among claimants, the process set out in NAGPRA may be instructive. In NAGPRA, the "ownership or control" of human remains and associated funerary objects lies with the following in descending order: specific lineal descendants; then tribe on whose tribal lands the items were discovered; then tribe with the closest cultural affiliation; and then tribe aboriginally occupying the land, or with the closest "cultural relationship" to the material.

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#### Definitions Used for the Principles

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- **Burial Site:** Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited [25 U.S.C. 3001.2(1)].
- **Consultation:** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 review process [36 CFR § 800.16(f)].
- **Consulting parties:** Persons or groups the federal agency consults with during the Section 106 process. They may include the State Historic Preservation Officer, the Tribal Historic Preservation Officer, Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; and/or any additional consulting parties [based on 36 CFR § 800.2(c)]. Additional consulting parties may include individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties [36 CFR § 800.2(c)(6)].
- **Disturbance:** Disturbance of burial sites that are listed in or eligible for listing in the National Register of Historic Places will constitute an adverse effect under Section 106. An adverse effect occurs when "an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling, or association." [36 CFR § 800.5(a)(1)].
- **Federal land:** Lands under a federal agency's control. Mere federal funding or permitting of a project does not turn an otherwise non-federal land into federal land (see *Abenaki Nation of Missisquoi v. Hughes*, 805 F. Supp. 234 (D. Vt. 1992), aff'd, 990 F. 2d 729 (2d Cir. 1993) (where the court found that a Clean Water Act permit issued by the US Army Corps of Engineers did not place the relevant land under federal "control" for NAGPRA purposes).
- **Funerary objects:** "Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains" [25 U.S.C. 3001(3)(B)].
- **Historic property:** "Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register of Historic Places criteria" [36 CFR § 800.16(1)].
- **Human remains:** The physical remains of a human body. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets [see 43 CFR § 10.2(d)(1)].
- **Indian Tribe:** "An Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" [36 CFR § 800.16(m)].
- **Native American:** Of, or relating to, a tribe, people, or culture that is indigenous to the United States [25 U.S.C. 3001 (9)]. Of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii [43 CFR 10.2(d)].

- **Native Hawaiian:** Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii [36 CFR § 800.16(c)(2)].
- **Native Hawaiian Organization:** Any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians [36 CFR § 800.16(c)].
- **Policy statement:** A formal statement, endorsed by the full ACHP membership, representing the membership's collective thinking about what to consider in reaching decisions about select issues, in this case, human remains and funerary objects encountered in undertakings on federal, tribal, state, or private lands. Such statements do not have the binding force of law.
- **Preservation in place:** Taking active steps to ensure the preservation of a property.
- **Protection of Historic Properties: Regulations** [36 CFR Part 800] implementing Section 106 of the National Historic Preservation Act.
- **Section 106:** That part of the National Historic Preservation Act which establishes a federal responsibility to take into account the effects of undertakings on historic properties and to provide the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such action.
- **State Historic Preservation Officer:** The official appointed or designated pursuant to Section 101(b)(1) of NHPA to administer the state historic preservation program.
- **Tribal Historic Preservation Officer:** The official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of NHPA.
- **Treatment:** Under Section 106, "treatments" are measures developed and implemented through Section 106 agreement documents to avoid, minimize, or mitigate adverse effects to historic properties.

**Acronyms Used for the Policy Statement**

- ACHP: Advisory Council on Historic Preservation
- ARPA: Archaeological Resources Protection Act [16 U.S.C. 4703a-mm]
- NHPA: National Historic Preservation Act [16 U.S.C. § 470f]
- NAGPRA: The Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq]
- SHPO: State Historic Preservation Officer
- THPO: Tribal Historic Preservation Officer

*[The members of the Advisory Council on Historic Preservation unanimously adopted this policy on February 23, 2007]*