

To: Stephanie Jennings, NEPA Document Manager, US Department of Energy

From: Sam Cohen, Government Affairs and Legal Officer, Santa Ynez Band of Chumash Indians (“Tribe”)

RE: Santa Susana Field Laboratory (SSFL), Area IV and Northern Buffer Zone EIS and other issues for Secretary

Date: December 3, 2014

**E.O. 13175**: DOE is covered by Executive Order 13175 as reaffirmed by that Presidential Memorandum on Tribal Coordination dated November 5, 2009 that reaffirmed Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” and emphasized the importance of strengthening government-to-government relationships with Native American tribes.

**Sacred Sites MOU**: DOE is an original signatory to that MOU REGARDING INTERAGENCY COORDINATION AND COLLABORATION FOR THE PROTECTION OF INDIAN SACRED SITES (2012) and the **Action Plan to Implement the Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites dated March 5, 2013**. The Tribe believes the MOU and Action Plan should be applied to the SSFL site to engage DOE and Interior as signers to the MOU and the National Park Service as part of Interior. The Tribe hereby requests that DTSC be added as a Non-federal Partner under Section IV(9).

**Indian Sacred Site and Traditional Cultural Property**: The Tribe has already designated all of the NASA administered property as a sacred site under E.O. 13007. The Tribe has also made a similar Sacred Site designation under California State law for the entire SSFL site, including the areas leased to DOE.

### **Failure to Address Executive Order 13007**

On March 5, 2014, the Santa Ynez Band of Chumash Indians, a federally recognized tribe (“Tribe”), designated the DOE portion of the SSFL as an Indian sacred site pursuant to Executive Order 13007. This Indian sacred site also includes the former Rocketdyne and now Boeing portion of SSFL and the Tribe is open to discussing the exact boundaries at a later date.

### **Failure to address the DOE Site is a Traditional Cultural Property (TCP) eligible for protection on the National Register:**

National Register Bulletin No. 38 (hereinafter referred to as “NPS Bull. No. 38”), Guidelines for evaluating and Documenting Traditional Cultural Properties (1990; revised 1992; 1998) under NHPA

<http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>

## **Traditional Cultural Landscapes must also be included in Section 106 consultations and the EIS**

Traditional 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. The regulations at 36 CFR Section 800.4 outline several steps a federal agency must take to identify historic properties. In summary, to determine the scope of identification efforts, a federal agency, in consultation with the State Historic Preservation Officers (SHPO)/Tribal Historic Preservation Officer (THPO), must:

1. Determine and document the area of potential effect for its undertaking;
2. Review existing information; and,
3. Seek information from consulting parties including Indian tribes or Native Hawaiian organizations.

Based on the information gathered through these efforts, the federal agency, in consultation with the SHPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by the undertaking, develops and implements a strategy to identify historic properties within the area of potential effects. Identification efforts may include background research, oral history interviews, scientific analysis, and field investigations.

<http://www.achp.gov/natl-qa.pdf>

## **U.N. Declaration on the Rights of Indigenous Peoples must now be followed after December 2010**

In December 2010, the United States announced support for the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. The ACHP will now incorporate UNDRIP in the Section 106 review process:

While the Advisory Council on Historic Preservation's (ACHP) work already largely supports the United Nations Declaration on the Rights of Indigenous Peoples, additional and deliberate actions will be taken to more overtly support the Declaration. The Section 106 review process provides Indian tribes and Native Hawaiian organizations (NHOs) with a very important opportunity to influence federal decision making when properties of religious and cultural significance may be threatened by proposed federal actions. While federal agencies are required to consult with Indian tribes and NHOs and to take their comments into account in making decisions in the Section 106 review process, adding the principles of the Declaration to that consideration may assist federal agencies in making decisions that result in the protection of historic properties of religious and cultural significance to Indian tribes and NHOs. <http://www.achp.gov/docs/UN%20Declaration%20Plan%203-21-13.pdf>

## **Official recognition in the EIS need to be made of the areas surrounding Burro Flats**

The proposed cleanup of the Burro Flats site (CA-VEN-1072); could result in **significant, negative, local, and long-term** impacts to the site and would constitute an **adverse effect** under Section 106. The proposed cleanup of newly discovered and previously undiscovered archeological sites found to be NRHP-eligible could be a **significant, negative, local, and long-term** impact on archeological resources, thus resulting in a finding of **adverse effect** under Section 106. While the Southern half of Area II contains the pictographs and additional 16 sites, Area IV of SSFL needs additional investigation, including, without limitation:

- a. Geography—this areas contains numerous flat areas that would be suitable camp sites;
- b. Areas of food—this areas contains forests and riparian areas that could be utilized in the gathering of food;
- c. Support for ceremonial area in the Southern half of Area IV—It is not inconceivable that the Northern half of the SSFL site provided support for the ceremonies in the Southern half of SSFL;
- d. Separate areas for different tribes—if SSFL was an inter-tribal gathering place, then each tribe would have congregated separately in different parts of the site.

**Subsurface testing is required.**

Pedestrian surveys are of limited utility and never alone are sufficient when there are known areas of habitation or ceremony. We are informed that DOE has recently completed a Phase I Pedestrian Survey of the site. While such Phase I is an excellent first step, we request additional subsurface archaeological testing for all areas scheduled for any excavation.

**Exhaustion of Non-Excavation Methods of remediation.**

To the extent feasible, DOE should exhaust all non-excavation methods of remediation before performing any excavation that could potentially impact cultural and historic sites.

**Soil Prior disturbance is NOT Dispositive:**

The mantra that cultural sites have been disturbed and therefore automatically are not significant is oftentimes incorrect:

- a. Disturbed sites still may contain valuable information. The newer approach is to treat disturbed sites as having the potential to provide information even if they have been disturbed;
- b. Disturbed sites still have spiritual significance;
- c. Disturbance may only be on the surface, while much excavation may continue to depths of up to 20 feet.

**Need to Analyze Cumulative Impacts to Cultural Resources:**

The EIS must account for other remediation projects in other areas of SSFL:

- d. Need to add NASA cultural sites;
- e. Need to add Boeing cultural sites;
- f. Other areas within SSFL.

**NEW MITIGATION: Cultural Interpretive Center:**

- g. Can use existing building;
- h. Preferably near saved historic structure and/or test stand;
- i. Preferably away from CA-VEN-1072;

- j. Need to reserve operation and maintenance funds.

**NEW MITIGATION: Native American monitoring during any ground disturbing activities.**