



# Staff Report and Recommendations

## June 29, 2020, Agenda Item 6b

County of Ventura • Resource Management Agency • Planning Division

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### I. **REQUEST:**

Prepare a report that evaluates whether the proposed Burro Flats Cultural District, generally located at the Santa Susana Field Laboratory at 5800 Woolsey Canyon Road, Canoga Park, CA 91304 (the exact location of the cultural resources are held confidential), meets the criteria for nomination to the National Register of Historic Places in accordance with the National Historic Preservation Act of 1966, as amended.

### II. **BACKGROUND**

#### A. **Request for Report by the State of California Office of State Historic Preservation (OHP) from the Cultural Heritage Board**

On December 23, 2019, the County of Ventura (County) received a request from the OHP for the Ventura County Cultural Heritage Board (“Board” or “CHB”), which is the County’s local historic preservation commission, to prepare a report as to whether or not the Burro Flats Cultural District (District) meets the criteria of the National Register of Historic Places (National Register) under the National Historic Preservation Act of 1966 (NHPA),<sup>1</sup> to be listed in the National Register (See Exhibit 1 – OHP Request for Report and Comment, dated Dec. 23, 2019) (“OHP Request”). OHP made the request pursuant to the Certified Local Government (CLG) Agreement between the State of California (State) and the County (See Exhibit 2 – CLG Agreement). The OHP Request included excerpts of information from the nomination prepared by OHP that indicates the District is a Traditional Cultural Property (TCP) “aligned with the boundaries of the Santa Susana Field Laboratory (SSFL), 2,850 acres of open, rocky terrain above the Santa Susana Mountain Range” (Exhibit 1, pg. 2).

The OHP Request indicates that the District is eligible for listing in the National Register “at the local level of significance under Criterion A in the areas of Ethnic Heritage: Native American and Religion for its association with ceremonial solstice events,” “in the area of Archaeology: Prehistoric for the association of archaeological sites and natural features,” and “in the area of Art for its remarkable examples of prehistoric Native American rock art.” Additionally, the OHP Request indicates that the District “satisfies Criteria Consideration A: Religious Properties as a clearly defined property whose importance has been ethnohistorically documented” (Exhibit 1, pg. 2).

<sup>1</sup>

In 2014, the NHPA was revised in part and recodified from Title 16 to Title 54 of the United States Code. The NHPA may now be found at 54 United States Code, section 300101 et seq.

Planning Division Staff (Staff) requested the complete public version of the OHP nomination packet, which is attached to this report and summarized below (See Exhibit 2 – Burro Flats Cultural District NRHP Nomination).

While the OHP Request sought feedback from the CHB and the County in time for its meeting previously scheduled for January 31, 2020, the meeting was postponed for a variety of reasons to allow for the CHB and the Board of Supervisors to provide their report and comment prior to the meeting.

## **B. Regulatory Context**

The OHP Request should be considered in context with the CLG Program under the NHPA, the CLG Agreement between the County and the State, the County’s Cultural Heritage Ordinance No. 4225 (CHO), OHP’s mandatory CLG Procedures, and the NHPA’s National Register Criteria.

### 1. Federal & State Development of the CLG Program

The NHPA established the CLG program in 1980, which was adopted by the State in 1985 and is administered by OHP. The purpose of the CLG program is to encourage participation by local governments in identifying, registering and preserving historic properties within their jurisdictions. Local governments may become certified under the CLG program, and thus become eligible for OHP grants and other resources, by agreeing to develop a local historic preservation program based on federal and state standards. Participants in the CLG program must meet five basic CLG program requirements: 1) to enforce local and state standards for the designation and protection of historic resources; 2) to establish an adequate and qualified local historic preservation board; 3) to maintain a system for the survey and inventory of historic properties; 4) to provide for adequate public participation in local historic preservation programs, “*including the process of recommending properties for nomination to the National Register*”; and 5) to satisfactorily perform the responsibilities designated to the local board by the State (See Exhibit 3 – County of Ventura, Historic Preservation Plan, pg. 5 [emphasis added]; see also NHPA, § 101(c)(1)).<sup>2</sup>

### 2. The County’s Participation in the CLG Program

The County adopted its first CHO in 1968 with the stated purpose of “preserving and protecting landmarks and points of interest . . . [that] hav[e] a specific historical or aesthetic character or interest” (Exhibit 3, pg. 4 citing Ordinance § 1361 repealed). The CHO has been amended several times since it was originally enacted, including in 1991 when the County amended the CHO to meet the five basic CLG program requirements after consulting with OHP.

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<sup>2</sup> See also 54 United States Code, section 302503.

In 1992, the County entered an agreement with the State to become a certified participant in the CLG program (See Exhibit 4 – CLG Agreement). The CHO, as amended in 1991, was incorporated into the CLG Agreement together with mandatory CLG program procedures then in effect (Exhibit 4, Paragraphs 1 and 5.) The current version of the CHO was pre-approved by OHP, as required by the CLG Agreement, and adopted by the County in 2000 (See Exhibit 5 – Cultural Heritage Ordinance No. 4225). The current CLG program procedures were adopted by OHP in 2010 (See Exhibit 6 – CLG Program Application and Procedures (“CLG Procedures”)).

The CLG Procedures obligate the County to “provide for adequate public participation in all CLG programs and activities” and to “participate in the nomination of properties” to the National Register pursuant to Section 101(c)(2)(A) of the NHPA<sup>3</sup> (Exhibit 6, pgs. 11-12). Section 101(c)(2)(A) of the NHPA provides that the CHB, “after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register.” The criteria of the National Register are outlined in the National Register Bulletin publication, “How to Apply the National Register Criteria for Evaluation” (See Exhibit 7 – National Register Bulletin, Criteria for Evaluation, rev. 1995).<sup>4</sup>

Concurrent with federal and state requirements, the CHO promotes the economic and general welfare of the County by preserving and promoting public and private historic, cultural and natural resources which are of special historical or aesthetic character or interest, or relocating or recreating such resources where necessary for their preservation and for their use, education, and view by the public (Exhibit 3, pg. 2, § 1361).

Section 1364 of the CHO establishes the functions and powers of the Cultural Heritage Board (CHB), to which the CHB is required to adhere:

1. Section 1364-3: “Forward Recommendations. The Cultural Heritage Board shall make recommendations to policy makers and related staff members on issues related to the preservation and enhancement of cultural, historic, and natural features in the County.”
2. Section 1364-10 provides, in pertinent part: “Designation of Cultural Heritage Sites. Take steps necessary to preserve Cultural Heritage sites when not in conflict with the public health, safety, and general welfare.”

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<sup>3</sup> See also 54 United States Code, section 302504 (b).

<sup>4</sup> See also 36 Code of Federal Regulations, section 60.4.

### **C. Environmental History of the Burro Flats Cultural District Property**

As explained above, the District boundaries are co-extensive with the SSFL and comprise approximately 2,850 acres owned and controlled by the National Aeronautics and Space Administration (NASA), the United States Department of Energy (DOE), and the Boeing Company (Boeing) (jointly, “Responsible Parties”). The SSFL is a complex of former industrial research and development facilities historically used for testing of liquid-propellant rocket engines, water jet pumps, lasers, liquid-metal heat exchanger components, nuclear energy, and related technologies.<sup>5</sup> These former activities at the property resulted in localized releases of chemicals and radioactive elements to the soil, bedrock, and groundwater.<sup>6</sup> Contaminants have already migrated offsite (e.g., groundwater) and pose a threat of further migration to off-site areas (e.g., soils).<sup>7</sup> As a result, potential human and ecologic exposures to contaminants can occur either onsite or as a result of contaminant migration to offsite areas.<sup>8</sup> Hazardous materials, such as hazardous wastes and radioactive materials, are defined by the Health and Safety Code as any material that, because of quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.<sup>9</sup>

Multiple federal and state laws, regulations, and administrative orders govern cleanup and remediation efforts at the SSFL. In 2007, the Responsible Parties agreed to investigate the contaminated soil and groundwater and clean up the site pursuant to Administrative Orders on Consent (2007 Consent Order) entered into with the California Department of Toxic Substances Control (DTSC). The 2007 Consent Order required the Responsible Parties to clean up groundwater and soil at the SSFL to residential exposure levels.<sup>10</sup>

In 2010, NASA and DOE entered into subsequent and separate Administrative Orders on Consent with DTSC, which further defines their obligations regarding the investigation and cleanup of soil within NASA’s and DOE’s areas of responsibility (2010 Consent Order). The 2010 Consent Order does not affect the 2007 Consent Order’s requirement for groundwater or soil cleanup within

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<sup>5</sup> Department of Toxic Substances Control, *Draft Program Environmental Impact Report for the Santa Susana Field Laboratory, Ventura County, California*, September 2017.

<sup>6</sup> U.S. Department of Energy, *Final Environmental Impact Statement for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory*, November 2018.

<sup>7</sup> Department of Toxic Substances Control, *Draft Program Environmental Impact Report for the Santa Susana Field Laboratory, Ventura County, California*, September 2017.

<sup>8</sup> Ibid.

<sup>9</sup> Health and Safety Code Chapter 6.95, Section 25501(n).

<sup>10</sup> Department of Toxic Substances Control, *Draft Program Environmental Impact Report for the Santa Susana Field Laboratory, Ventura County, California*, September 2017.

Boeing’s areas of responsibility. Groundwater for all of the SSFL, and soil within Boeing’s administrative areas, continue to be regulated by the 2007 Consent Order.<sup>11</sup>

DTSC is the lead regulatory agency overseeing the investigation and cleanup of contaminated soil and groundwater at the SSFL, consistent with federal and state law under the 2007 Consent Order and the 2010 Consent Order. Numerous environmental documents have been prepared or are currently being prepared for each of the entities which own or have regulatory control over portions of the subject site, all of which are to evaluate the environmental effects associated with soil and groundwater remediation activities and termination of operations at SSFL. A general chronological overview of milestones in the cleanup, remediation, and environmental review of the SSFL is provided in Exhibit 7 – Summary of Environmental Regulatory History at SSFL. An overview of environmental regulatory documents prepared or under development for the subject site is also provided in Exhibit 7.

### **III. NATIONAL REGISTER OF HISTORIC PLACES NOMINATION**

On June 11, 2020, Staff received the public and redacted version of the nomination form from OHP (Nomination).<sup>12</sup> The Nomination indicates that the District is eligible for listing consistent with the National Register criteria identified in the OHP Request (Compare Exhibit 1 with Exhibit 2).

The criteria of the National Register, including Criterion A and Criteria Consideration A that are identified in the Nomination as the criteria that qualify the District, may be found in the National Register Bulletin publication, “How to Apply the National Register Criteria for Evaluation” (Exhibit 7, pgs. 11-13 and 25-28).<sup>13</sup> As detailed therein, the basis for judging a property’s significance and, ultimately, its eligibility under the National Register Criteria is historic context. The use of historic context allows a property to be evaluated in any number of capacities in order to determine whether the characteristics or associations of the property are significant (Exhibit 7). After identifying the relevant historic context(s) with which the property is associated, the four National Register Criteria are applied to the property. Within the scope of the historic context, the National Register Criteria define the kind of significance that the properties represent. National Register Criteria recognize different types of values embodied in districts, sites, buildings, structures, and objects (Exhibit 7). These values fall into the following categories:

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<sup>11</sup> Ibid.

<sup>12</sup> The OHP redacts archaeological/ethnographic nominations to protect sensitive cultural and often religious information that may be included in such nominations.

<sup>13</sup> See also 36 Code of Federal Regulations § 60.4.

- Associative value (Criteria A and B): Properties significant for their association or linkage to events (Criterion A) or persons (Criterion B) important in the past;
- Design or Construction value (Criterion C): Properties significant as representatives of the manmade expression of culture or technology; and
- Information value (Criterion D): Properties significant for their ability to yield important information about prehistory or history.

Certain kinds of properties, including, but not limited to, religious properties, birthplaces and graves, and cemeteries are not usually considered for listing in the National Register. However, these properties can be eligible for listing if they are (1) integral parts of districts that do meet the criteria, or (2) meet certain special requirements, called Criteria Considerations, in addition to being eligible under one or more of the four Criteria and possessing integrity (Exhibit 7). The National Park Service has identified seven such Criteria Considerations, including Criteria Consideration A: “a religious property deriving primary significance from architectural or artistic distinction or historical importance” (Exhibit 7). As described, historic significance for a religious property cannot be established on the merits of a religious doctrine, but rather, for architectural or artistic values or for important historic or cultural forces that the property represents. The Criteria Consideration for Religious Properties applies if, among other reasons, the resource is presently owned by a religious institution or is used for religious purposes, and satisfies one or more of three considerations, discussed below.

The relevant National Register Criteria identified in the Nomination and the respective criteria components are detailed below together with Staff’s corresponding and interlineated evaluation of whether the District satisfies the National Register Criteria and component. Information for this evaluation is sourced from the evidence provided in the Nomination and based on the additional source material cited therein.

- National Register Criterion A – *Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.*

Discussion:

Section 5 of the Nomination indicates there are 117 sites and one object which contribute to the District, including the National Register-listed Burro Flats Site (CA-VEN-1072), a rock art and habitation site that includes areas for celebrating the winter solstice and the summer solstice, and a mourning area. The precise location of archaeological and tribal cultural resources are held confidential due to the sensitive cultural and religious nature of the resources.

The areas of significance identified in the Nomination are Native American Ethnic Heritage and Prehistoric Archaeology. The period of significance that is identified based on oral tradition is from creation to present. However, the period of significance is scientifically identified as being from 5000 BCE to present “based on artifact types excavated from CA-VEN-1072 in the 1950s” (Exhibit 2). The Nomination states that in the SSFL vicinity, the local Native American community consists of people who were removed forcefully from their traditional culture for multiple generations.

As stated in the Nomination, “The district is important for its associations with cultural practices and traditions of the Native American community.” In particular, the district is associated with the Chumash, Fernandeano, Kizh/Gabreileño, and Tataviam Tribes. The Nomination goes on to state that “Associations include the district’s past and renewed use in celebrating the winter and summer solstices and its past use as a mourning area, as well as for its associations with local beliefs, including physical places and representations of oral histories remembered by community members and recorded by early ethnographers. The district also includes locations important to the community’s history and described in their oral traditions.”

The analysis in the Nomination indicates the site has excellent integrity. Specifically, “the use of the SSFL by the government and Boeing resulted in keeping the area in a state similar to when the consultants’ ancestors used and occupied the area.” The Nomination concludes that, “[t]he district entails all aspects of integrity: location, design, setting, materials, workmanship, feeling, and association. Where access is available, the summer and winter solstice sites are still used by Native American descendants for ceremonial purposes. Consultant documents have indicated that they would use other areas of the district, if allowed to do so.” The celebration of the solstices practiced prior to the arrival of Europeans in southern California is known from ethnographic evidence.

Based on the above, the District appears to be substantially associated with cultural practices and traditions of the Native American community over an extensive time period and thus likely to meet the criteria for listing in the National Register under Criterion A. Moreover, the District retains all aspects of integrity.

- *Criteria Consideration A: A religious property is eligible if it derives its primary significance from architectural or artistic distinction or historical importance.*

Discussion:

The Criteria Consideration for Religious Properties applies if, among other reasons, the resource is presently owned by a religious institution or is used for religious purposes. In May 1996, President Clinton issued Executive Order 13007 intended, in part, to protect and preserve Indian religious practices through (1) accommodating access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2) avoiding adversely affecting the physical integrity of such sacred sites. Pursuant to this order, the SSFL properties have been designated as an Indian Sacred Site (Exhibit 2). Although public access remains limited, the local Native American community (Chumash, Fernandeño, Kizh/Gabreileño, and Tataviam Tribes) is able to visit and utilize portions of the site today. Specifically, the summer and winter solstice sites are used by Native American descendants for ceremonial purposes, warranting application of the Criteria Consideration for Religious Properties in the Nomination.

A religious property can be eligible under Criterion A for any of three reasons:

- *It is significant under a theme in the history of religion having secular scholarly recognition; or*
- *It is significant under another historical theme, such as exploration, settlement, social philanthropy, or education; or*
- *It is significantly associated with traditional cultural values*

Under this Criteria Consideration A, “[t]he district is also eligible in the area of Art for its remarkable examples of prehistoric Native American rock art that possess high artistic value and are important representatives of the aesthetic and possibly religious values of the Native American groups who created them” (Exhibit 2, pg. 41). Moreover, “within SSFL boundaries, there is excellent preservation of several rock art sites and little graffiti” (Exhibit 2, pg. 36). Based on information provided in the Nomination, the District includes distinctive examples of Native American art that have been the subject of secular scholarly recognition. In particular, “although several examples of rock art found within the district have faded over time, they are still observable with the unaided eye and more so with the aid of new technology...The Burro Flats Painted Cave is one of the best-preserved examples of polychrome rock art in California. The various examples of rock art throughout the district retain their integrity of design” (Exhibit 2, pg. 37).

Moreover, the Nomination indicates that the District has been identified through ethnographic documentation and tribal consultation as containing substantial association with traditional cultural values. Of note, “the district is important for its associations with cultural practices and traditions of the Native American community. Associations include the district’s past and renewed use in celebrating the winter and summer solstices and its past use as a mourning area, as well as for its associations with local beliefs, including physical places

and representations of oral histories remembered by community members and recorded by early ethnographers. The district also includes locations important to the community's history and described in their oral traditions." Finally, the National Register Criteria emphasize the critical importance that traditional cultural values and activities "be documented and that the associations not be so diffuse that the physical resource cannot be adequately defined" (Exhibit 7, pg. 27). According to the Nomination, the physical resources that contribute to the District have been adequately defined: the 117 sites and one object which contribute to the District, including the National Register-listed Burro Flats Site (CA-VEN-1072), a rock art and habitation site that includes areas for celebrating the winter solstice and the summer solstice, and a mourning area.

Based on the above, the District appears to be eligible for listing in the National Register under Criteria Consideration A as the properties derives their primary significance from architectural or artistic distinction or historical importance.

#### **IV. STAFF RECOMMENDATIONS**

In accordance with Section 101(c)(2)(A) of the NHPA and the CLG Agreement and Procedures (Exhibits 4 and 6), the CHB "shall prepare a report as to whether or not" the District, in the opinion of the CHB, "meets the criteria of the National Register." The County Board of Supervisors is to transmit the report of the CHB, together with Board of Supervisors' recommendation regarding the nomination of the property to the OHP. Staff concurs with the Nomination that sufficient evidence and information exist to warrant the listing of the District in the National Register. Specifically, the evidence demonstrates that the property meets Criterion A in the areas of Ethnic Heritage: Native American and Religion for its association with ceremonial solstice events and Archaeology: Prehistoric for the association of archaeological sites and natural features. Additionally, the District satisfies Criteria Consideration A: Religious Properties based on its distinctive examples of prehistoric Native American rock art and importance to that community's history, as evidenced through ethnographic documentation.

Although the listing of the District in the National Register appears to meet the technical requirements of the National Register criteria, the Nomination maybe inconsistent with the public safety, health and general welfare, and thus inconsistent with the CHB's obligation to preserve cultural sites under the CHO. As described previously, human and ecologic exposures to contaminants from past uses of the SSFL property can occur either onsite or as a result of contaminant migration to offsite areas.<sup>14</sup> These hazardous materials, such as hazardous wastes and radioactive materials, are noted by the Health and Safety Code for their ability to pose a significant present or potential hazard to

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<sup>14</sup> Department of Toxic Substances Control, *Draft Program Environmental Impact Report for the Santa Susana Field Laboratory, Ventura County, California*, September 2017.

human health and safety.<sup>15</sup> The 2007 and 2010 Consent Orders detail the legally binding requirements for the Responsible Parties to investigate the contaminated soil and groundwater and clean up the site consistent with the terms identified therein. Moreover, the numerous environmental assessments of the properties that make up the SSFL evaluate the soil and groundwater remediation requirements established for the Responsible Parties. These requirements substantiate the need for remediation of the contamination in the soil and groundwater with the objective of protecting public health, safety, and the environment.

The CHO provides that the CHB is to “take steps necessary to preserve Cultural Heritage sites *when not in conflict with the public health, safety, and general welfare*” (Exhibit 5, § 1364-10 [emphasis added]). To the extent the preservation of the cultural and tribal value of District will impede or otherwise impair the cleanup requirements at the District imposed by federal and state law, and the 2007 and 2010 Consent Orders, such preservation efforts necessarily conflict with the public health, safety and general welfare. If there is a conflict, the CHB support of the Nomination conflicts with the CHO at section 1364-10.

Therefore, consistent with the recommended actions identified below, Staff recommends that the CHB direct to Staff prepare and submit a report to the Board of Supervisors for transmission to the OHP indicating that 1) the District meets the criteria for listing in the National Register; and 2) consistent with the CHO and the protection of the public health, safety and general welfare, the listing should not be granted unless the Nomination will not interfere or otherwise impede remediation efforts, as outlined in the 2007 Consent Order and the 2010 Consent Order.

## **V. PUBLIC COMMENTS**

As of the date of this report preparation, Staff has received one formal comment on this item (See Exhibit 9 – Public Comments Received, Attachment A). The comment letter was submitted from the Natural Resources Defense Council and the Committee to Bridge the Gap via Daniel Hirsch on June 22, 2020. The comment letter expresses opposition to the proposed Nomination of Burro Flats Cultural District to the National Register for the reasons described therein.

Additionally, Staff has received several inquiries from residents in the vicinity of the project area who have been following the SSFL remediation efforts and have expressed interest in the Nomination process and its implication on the clean-up efforts. Any comments received following publication of this report and prior to the hearing will be provided to Cultural Heritage Board members and

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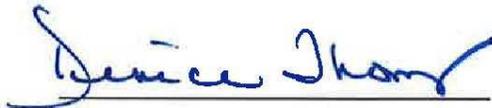
<sup>15</sup> Health and Safety Code Chapter 6.95, Section 25501(n).

included in the record. Members of the public will also have the opportunity to provide comment during the hearing.

**VI. RECOMMENDATION ACTIONS:**

- A. **CONDUCT** the public hearing, **RECEIVE** oral and written testimony, and **CONSIDER** the Planning Division staff report and all exhibits and attachments hereto;
- B. Based on the preceding evidence and analysis, **ADOPT** Staff's recommendation that the proposed Burro Flats Cultural District meets the criteria for the National Register of Historic Places;
- C. Based on the requirements of Cultural Heritage Ordinance No. 4225 Section 1364-10 and the preceding evidence and analysis, **ADOPT** Staff's recommendation that the proposed Burro Flats Cultural District nomination conflicts with the public health, safety, and general welfare to the extent the nomination impairs or impedes the legally mandated clean-up efforts at the proposed District; and
- D. **DIRECT** staff to **TRANSMIT** the Cultural Heritage Board recommendations and findings via a report to the County of Ventura Board of Supervisors for transmission to the California State Office of Historic Preservation in advance of the August 14, 2020 State Historical Resources Commission meeting.

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**Exhibits and Attachments:**

- Exhibit 1 – OHP Request for Report and Comment
- Exhibit 2 – Burro Flats Cultural District NRHP Nomination
- Exhibit 3 – County of Ventura Historic Preservation Plan
- Exhibit 4 – CLG Agreement
- Exhibit 5 – Cultural Heritage Ordinance No. 4225
- Exhibit 6 – CLG Program Application and Procedures

Exhibit 7 – National Register Bulletin, Criteria for Evaluation

Exhibit 8 – Summary of Environmental Regulatory History at SSFL

Attachment A – 2007 Consent Order

Attachment B – SB 990

Attachment C – NPDES Order No. R4-2004-0111

Attachment D – NASA 2010 AOC

Attachment E – DOE 2010 AOC

Attachment F – Ninth Circuit Court of Appeals Decision

Attachment G – DTSC Draft Program EIR Cultural Resources Mitigation Measures

Attachment H – 2014 NASA Programmatic Agreement

Attachment I – NEPA 36 CFR 800.8(c)

Attachment J – DOE DTSC Consent Order Press Release 05/20/20

Exhibit 9 – Public Comments Received

Attachment A – Natural Resources Defense Council and the Committee to Bridge the Gap, June 22, 2020