From:	GROMAN, JENNIFER A. (HQ-LD020)
To:	MSFC-SSFL-EIS
Subject:	FW: SHPO comments on Draft EIS for SSFL
Date:	Tuesday, October 01, 2013 8:28:24 AM
Attachments:	NASA110705A - Santa Susana Field Lab - SHPO Comments on Draft EIS.pdf

Official comments

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From: Beason, Mark@Parks [mailto:Mark.Beason@parks.ca.gov]
Sent: Tuesday, September 24, 2013 3:08 PM
To: Elliott, Allen (MSFC-AS01)
Cc: GROMAN, JENNIFER A. (HQ-LD020); Tom McCulloch; cvaughn@achp.gov; Roland-Nawi, Carol@Parks; Stratton, Susan@Parks; Beason, Mark@Parks
Subject: SHPO comments on Draft EIS for SSFL

Allen,
A hard copy of the attached comment letter will be mailed today. Please let me know if you have any questions.
Mark

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September 24, 2013 Reply In Reference To: NASA110705A

Allen Elliott
Santa Susana Project Director
National Aeronautics and Space Administration
George C. Marshall Space Flight Center
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RE: Draft Environmental Impact Statement for Proposed Demolition and Environmental Cleanup Activities at Santa Susana Field Laboratory, Ventura County, California

Dear Mr. Elliott:

This letter provides comments from the State Historic Preservation Officer (SHPO) on the Draft Environmental Impact Statement (EIS) and continues Section 106 consultation regarding the undertaking at Santa Susana Field Laboratory (SSFL). In a letter dated June 30, 2011, NASA notified the SHPO of its intention to substitute the National Environmental Policy Act (NEPA) process and documentation required for the preparation of the EIS to meet its Section 106 responsibilities in accordance with 36 CFR 800.8(c). NASA notified the SHPO that the Draft EIS was issued on August 2, 2013, and requested comments before the end of the public comment period on October 1, 2013. SHPO comments regarding the DEIS are included in this letter. On August 29, September 11, and September 20, 2013, further consultation meetings were held among the consulting parties, including the SHPO, regarding cultural resources. The SHPO also met with representatives from NASA, the California Department of Toxic Substances Control (DTSC), and the Santa Ynez Band of Chumash Indians on September 18, 2013.

Please note that the SHPO has no interest in delaying implementation of necessary environmental cleanup. However, several aspects of the compliance effort are problematic with regard to the treatment of historic properties. These include NASA's decision to limit alternatives under consideration, statement of purpose and need for the project, as well as NASA's level of efforts in identification and evaluation of historic properties, and proposed process to resolve adverse effects to historic properties.

Through this letter, the SHPO is notifying NASA of its concerns with these aspects of the Draft EIS and with the successful fulfillment of the 36 CFR 800.8(c) substitution process by which NASA has attempted to satisfy its Section 106 responsibilities.

<u>Foreclosure of Ability of the Advisory Council on Historic Preservation to Comment</u>

In 2007, NASA signed a Consent Order for Corrective Action with Boeing, the US Department of Energy, and the California DTSC. This order "identified the required activities for cleanup of soil, groundwater, and surface water at SSFL" (Draft EIS, ES-1).

In 2010, NASA and DTSC executed an Administrative Order of Consent (AOC), which "stipulates specific remedial requirements, including characterization and cleanup of soil contamination on the NASA-administered areas of SSFL to Look-Up Table values" (Draft EIS, ES-1).

NASA references these two agreements throughout the Draft EIS to justify the restriction of alternatives considered through the NEPA process and as evidence that NASA has committed to soil cleanup at SSFL to Background levels and the remediation work that entails.

According to its Federal Preservation Officer, NASA conducted no NEPA review or Section 106 consultation with the Advisory Council on Historic Preservation (ACHP) or the SHPO (or any other parties) regarding either of these documents (Consulting parties' conference call, August 29, 2013). By signing these two agreements, NASA committed to a course of cleanup activities that has the potential to cause adverse effects to historic properties at SSFL. Additionally, by signing these two agreements without conducting Section 106 consultation, NASA appears to have foreclosed on the opportunity of ACHP to comment on those two undertakings. By continuing to limit alternatives under consideration in the current Draft EIS based upon these two agreements, NASA is approaching a third instance of foreclosure regarding cleanup activities at SSFL.

The SHPO previously raised these concerns in conversations with NASA and in the December 3, 2012, comment letter. No response has been received as of the date of this letter.

Purpose and Need Is Unjustified

In the June 30, 2011, letter initiating Section 106 consultation, NASA defined the undertaking as demolition and cleanup activities on the NASA-administered portion of SSFL. In the December 3, 2012, comment letter, the SHPO stated that the Draft EIS should "contain a clear and complete explanation of any and all actions that are anticipated to follow from the cleanup and remediation activities that may affect cultural resources, including any possible excess property declaration and plans for disposal that may include transfer out of federal ownership. Demolition, cleanup, and disposal all constitute Undertakings as defined in 36 CFR Part 800."

NASA responded that the purpose of the undertaking was remediation of contaminated soils and groundwater, and that General Services Administration (GSA) will be conducting separate environmental compliance for the disposal of the property.

The Draft EIS states the following Purpose and Need for the Action: "The purpose of the Proposed Action is to remediate the environment to a level that meets NASA's environmental cleanup responsibilities and to undertake the demolition actions necessary to support both remediation and **property disposition** of the NASA-administered portion of SSFL (emphasis added)."

Inclusion of "disposition" in the Purpose and Need presents several problems for this consultation. The Draft EIS contains no analysis or specifications for what portion of demolition of architectural resources is related to cleanup, and what portion of demolition is related to disposition.

In the September 11, 2013, consulting parties meeting and conference call, NASA representatives stated that demolition of up to 100% of the buildings and structures is intended to prepare the property for disposal rather than to facilitate soil or groundwater cleanup. On the same occasion, the GSA representative stated that his agency has communicated no requirements for demolition to NASA, and no binding agreements between the two agencies on this subject exist. Instead, GSA told NASA that disposition will be easier if there are no buildings or structures remaining.

In a meeting on September 18, 2013, the state DTSC clarified that neither the 2007 Consent Order nor the 2010 AOC mandates demolition of buildings and structures. Instead, the documents requested that NASA submit a demolition plan, and DTSC would determine if it was sufficient to facilitate soils and groundwater remediation. If buildings not proposed for demolition hindered full cleanup to background levels, DTSC could require further demolition. If NASA has submitted a demolition plan, the SHPO has not received a copy of it.

It appears that total demolition to facilitate disposal is a discretionary decision on NASA's part that is not mandated by the cleanup agreements, and nothing restricts NASA from considering alternatives that include something less than total demolition. Yet, the DEIS does not contain sufficient analysis of such alternatives, because NASA maintains that their "hands are tied" by the AOC which, in their interpretation, precludes all other alternatives except those included in the DEIS.

Furthermore, it is the SHPO's opinion that splitting environmental compliance for cleanup activities from compliance for disposition artificially and improperly segments the undertaking, which appears to be NASA's disposal of its property at SSFL. The Section 106 consultation and EIS should take into account both the cleanup activities and disposition of the property rather than falsely contend that they are separate and unrelated activities.

Insufficient Consideration of Feasible Alternatives

In the Draft EIS, NASA has chosen to limit the number of alternatives considered to two: a No Action alternative; and the Proposed Action, which complies with the 2007 Consent Order and 2010 AOC by including demolition of up to 100% of the architectural features at SSFL, soil cleanup to Background levels through excavation, disposal, and some in situ methods, and groundwater cleanup to risk-based levels. (However, the most recent consulting parties meeting on September 11, 2013, revealed that demolition is not specifically mandated in either of these agreements.)

According to the Draft EIS, NASA eliminated from further consideration three other alternatives. These included cleanup of soils at SSFL to Residential, Commercial / Industrial, or Recreational levels, all of which require less remediation than Background level cleanup. According to the Draft EIS, "These risk-based alternatives were eliminated from further consideration because they would not meet the requirements of the 2010 AOC" (Draft EIS, 2-34).

Other than the No Action alternative, which is mandated by NEPA, NASA has not given full consideration to reasonable alternatives that would avoid the adverse effects to historic properties that will result from the Proposed Action. The Draft EIS contains no evidence that NASA has made an effort to analyze the feasibility of retaining any of the historic buildings and structures or to avoid large-scale soil removal at SSFL.

The magnitude of adverse effects / significant impacts that will result from the Proposed Action warrants serious consideration of alternatives that avoid or minimize effects / impacts. These should be analyzed at the alternatives stage rather than suggested as possible mitigation measures at the end of the process.

Section 106 Consultation Under 36 CFR 800.8(c) – Substitution of NEPA for Section 106

When a federal agency chooses to use the NEPA process for Section 106 purposes, the documentation submitted must meet the standards outlined in 36 CFR Part 800.8(c)(1)(i-v), which are intended to accomplish the goals of the consultation process outlined in 36 CFR Part 800.3 through 6. The SHPO finds that these standards have not been met during this consultation and that the substitution process has not been sufficient for the following reasons.

Defining the Undertaking

As described above, NASA has excluded disposition of its property from the undertaking and consultation, but is using disposition as justification for an unspecified amount of demolition of historic structures at SSFL. The undertaking should properly consider both cleanup activities and disposition if disposition influences the Proposed Action. If it does not, then disposition should not factor into the Purpose and Need for the Proposed Action / Undertaking.

Identifying Consulting Parties

Given NASA's agreements with DTSC and reliance upon the Consent Order and AOC for determining the level of cleanup, the consultation should properly include active participation from DTSC. On several occasions, NASA has told the SHPO that DTSC has not only mandated cleanup to Background levels, but any work NASA proposes will have to be approved by DTSC. As stated above, NASA, SHPO, and Santa Ynez Band of Chumash Indians met on September 18, 2013, (ACHP declined to participate). This meeting provided much needed clarity regarding the two DTSC agreements with NASA. It would have been ideal to hold discussions such as this one early in the process as mandated by 36 CFR 800.8(c), and the SHPO encourages ongoing coordination between these consulting parties in an effort to resolve adverse effects.

It is not clear that all other potential consulting parties have been identified or contacted, such as the U.S. Army Corps of Engineers (for a Section 404 permit).

Identification and Evaluation of Historic Properties

In spite of previous requests and comments from the SHPO and other consulting parties, Historic Property Identification and Evaluation remains incomplete. Most recently, the SHPO's letter dated May 20, 2013, provided comments on archaeological identification efforts that have not been fully addressed by NASA. In order to inform and seek comments from the public, Tribal groups, agencies, and stakeholders regarding impacts to the cultural resources, the following items should be completed and the results of these studies should be included in the draft EIR.

- NASA's archaeologist(s) should write an archaeological context for the area and use it to address the potential presence of an archaeological district. The Traditional Cultural Property (TCP) study and Cultural Landscape Assessment that are currently under

preparation do not substitute for this analysis. The archaeological district identification and evaluation should take into consideration the known properties resulting from the 1-mile literature survey. There are several cultural resources on the Boeing property that may very well be considered part of an archaeological district with Burro Flats as a focal point.

- Restricting the study area to the boundaries of the NASA-administered property is insufficient. NASA contends that it is unable to conduct identification and evaluation efforts on property it does not own. The scale of adverse effects from soil removal and other remediation efforts warrants a broad study of resources in the area, including on Boeing and Department of Energy (DOE) property, because of the potential for effects to resources that span the property boundary.
- The Draft EIS states that NASA is consulting exclusively with the Santa Ynez Band of Chumash Indians with regard to the designated Sacred Site, TCP, and Cultural Landscape Assessment (Draft EIS, 4-19). Nothing in the regulations requires or justifies exclusion of the SHPO and ACHP from this consultation, and both play a regulatory role in the evaluation of historic properties such as TCPs and Cultural Landscapes.
- Along with the archaeological context and district evaluation, the TCP study and Cultural Landscape Assessment should form the cornerstone for historic property identification and evaluation efforts. Failure to complete these studies in time for them to inform alternative selection will result in a failure to adequately comply with 36 CFR 800.8(c)(1)(ii), which compels the federal agency to identify historic properties and assess effects consistent with the standards and criteria of 36 CFR 800.4 through 800.5. *Inclusion of historic preservation issues*. Completion of this identification effort is especially vital given the destructive nature of the remediation efforts and potential effects to the archaeological resources, as well as impacts to traditional cultural values and practices.
- The Burro Flats site (as well as the other two identified archaeological properties) needs to be analyzed under all National Register of Historic Places (NRHP) eligibility criteria, not just Criterion D.
    - NASA should not be relying solely on a 38-year old NRHP nomination.
    - NASA should consider updating the NRHP nomination to reflect current site conditions and also addressing all NRHP criteria.
    - NASA should reconcile all of the available information on the Burro Flat site, including but not limited to a resurvey of the site, locating / spot-checking all of the identified loci from the previous surveys and studies, etc.
    - Boundary delineation should occur at this stage to fully inform the assessment of adverse effects, rather than postponing it and considering it a mitigation measure.
- The SHPO disagrees with NASA's assertion that the boundaries of a potential archaeological district at SSFL are limited to the boundaries of the Burro Flat National Register Archaeological District.

Assessment of Adverse Effects

The SHPO concurs that the Proposed Action will adversely affect historic properties. The scale of adverse effects, while still being determined, is disturbing and disappointing. As mentioned above, the SHPO understands the necessity for environmental safety and has no interest in delaying reasonable cleanup of hazardous materials.

However, the extent of adverse effects remains unknown until the full scope of cleanup activities is known and identification and evaluation efforts are complete. NASA does not intend to complete these steps prior to its Record of Decision (ROD), making it extremely difficult to agree upon appropriate resolution of the adverse effects.

Unanticipated Discoveries

The Draft EIS contains language that, "Appropriate measures, such as preparing a plan for unanticipated discoveries, should be implemented to address the possibility of impacts on buried resources from the undertaking" (Draft EIS, C-52). However, the document does not specify when this plan will be written, how or when consulting parties will be able to review and comment on it, or how NASA will demonstrate its commitment to following the plan.

Resolution of Adverse Effects

As mentioned above, the full extent of adverse effects remains unknown. NASA proposes to continue working on the TCP and Cultural Landscape analysis and will adjust the Area of Potential Effects in accordance with the findings of these studies. However, NASA has offered no plan to allow consulting parties to comment on this analysis, either prior to release of the Final EIS or after it is released.

Furthermore, the mitigation measures included in the Draft EIS are premature and insufficient.

- NASA proposes the retention of a single test stand as a mitigation measure.
    - Retention of a test stand would properly be considered an avoidance or minimization measure, but first should be included in the alternative analysis.
- NASA proposes HABS / HAER recordation of the nine individually-eligible structures at SSFL.
    - The nine individually-eligible structures are not the only historic properties proposed for demolition. Recordation should properly include all contributors to the three historic districts associated with the test stands, too.
    - No level of recordation is specified.
- NASA proposes to produce an in-depth ethnographic study based upon research from the TCP study.
    - An ethnographic study should be produced prior to issuance of the Final EIS so NASA can use it to identify and evaluate historic properties, assess effects, and develop appropriate avoidance, minimization, and mitigation measures.
- NASA proposes to delineate the boundaries of the Burro Flats Painted Cave archaeological site, which was listed in the NRHP in 1976.
    - As with the ethnographic study, the boundaries of this site (and a possibly associated archaeological district) should be delineated prior to issuance of the Final EIS so NASA can use it to identify and evaluate historic properties, assess effects, and develop appropriate avoidance, minimization, and mitigation measures.
- NASA proposes to design and install temporary protection measures for the Burro Flats site during implementation of the proposed action.
    - The SHPO appreciates NASA's willingness to implement protection measures, but these should be part of the scope of work rather than a mitigation measure.
    - Consultation regarding protection measures should also include Tribal groups.

  - NASA also should prepare a permanent protection plan for Burro Flats that extends beyond the duration of cleanup activities, and propose a Section 106 consultation plan for its implementation.
  - NASA has not proposed protection measures for any of the other historic properties at SSFL.
- As discussed in the August 29 consulting parties' conference call, the SHPO agrees that existing historic property recordation and nominations should be updated as a mitigation measure.

Throughout the consultation process and in the Draft EIS, NASA states that resolution of adverse effects and the Section 106 process will be finalized in the Record of Decision for the Final EIS. Given the schedule NASA has for adoption of the ROD and the limits of current cultural resource identification noted above, a resolution of adverse effects that would meet minimum standards consistent with 36 CFR Part 800.8(c)(1)(i-v) cannot be reasonably achieved. Without a substantive and enforceable agreement document, the requirements of 36 CFR 800(c) are not satisfied and the SHPO would have to consider submitting objections to NASA in accordance with 36 CFR 800.8(c)(2)(ii).

The SHPO continues to believe, as stated on several occasions during this consultation, that an agreement document would be a more appropriate vehicle for resolving adverse effects, given the complexity of the undertaking, phased identification contemplated, scale of adverse effect, and multiple years required to implement the undertaking. Whichever document is utilized, it is essential that NASA enter into a legally-binding and enforceable agreement to resolve adverse effects to historic properties.

Finally, outstanding issues remain from the 2010 AOC, including the definition of "Native American artifacts" and the manner by which NASA can apply the 5% exception provision to historic properties. Per the September 18, 2013, meeting with DTSC, NASA, SHPO, and Santa Ynez Band of Chumash Indians, neither NASA nor DTSC could provide an explanation of how the 5% exemption was determined or what scientific or other basis informed this decision. It appears that the exemption of 5% is arbitrary and capricious and artificially limits the consideration of alternatives, options for avoidance and minimization, and mitigation of adverse effects to historic properties. Along with discussions about extending the timeline, the SHPO recommends ongoing discussions with DTSC and signatory parties to resolve these issues.

The SHPO appreciates the opportunity to comment on the NEPA document and looks forward to continuing consultation on this undertaking in order to resolve these issues. If you have any questions regarding these comments, please contact me directly at (916) 445-7043 / carol.roland-nawi@parks.ca.gov, or Dr. Susan Stratton at (916) 445-7023 / susan.stratton@parks.ca.gov, or Mark Beason, at (916) 445-7047 / mark.beason@parks.ca.gov.

Sincerely,

Carol Roland-Nawi, Ph.D.

Carol Roland-Nawi, Ph.D.
State Historic Preservation Officer