

TOLLING AGREEMENT FOR POTENTIAL CHALLENGES UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT RELATING TO THE SANTA SUSANA FIELD LABORATORY

THIS TOLLING AGREEMENT (“Agreement”) is made and effective on the Effective Date (defined below) by and among the California Department of Toxic Substances Control (“DTSC”); The Boeing Company (“Boeing”), a Delaware corporation; the United States, on behalf of the United States Department of Energy (“DOE”) and the National Aeronautics and Space Administration (“NASA”); the City of Los Angeles; the City of Simi Valley; the County of Los Angeles; and the County of Ventura. These entities are hereinafter collectively referred to as the “Parties.”

The Parties enter into this Agreement to facilitate settlement discussions with respect to potential legal challenges to the Final Programmatic Environmental Impact Report that DTSC certified for cleanup of contamination at the former Santa Susana Field Laboratory property under the California Environmental Quality Act (“CEQA”), Pub. Res. Code §§ 21002.1, 21061, 21080, 21080.1 et seq.; Title 14, Division 6, Chapter 3 Guidelines §§ 15080–15081.5, within the period of time provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

RECITALS

- A. WHEREAS, the Santa Susana Field Laboratory (“SSFL”) consists of approximately 2,850 acres in the Simi Hills in the southeast corner of Ventura County, California, and was historically used for industrial and research and testing purposes in support of U.S. Government programs, including, among others, rocket engine testing, research and development of fuels and propellants, the development and testing of nuclear reactors, and the operation of a liquid metals research center; and
- B. WHEREAS, DTSC, as the lead agency under the CEQA, released a Draft Program Environmental Impact Report (“Draft PEIR”) under CEQA on September 7, 2017, to evaluate the environmental impacts, alternatives, and mitigation measures for the proposed remediation of contamination at SSFL, and made the Draft PEIR available for public review and comment through December 7, 2017; and
- C. WHEREAS, the non-DTSC Parties provided substantive comments on the record on the Draft PEIR; and
- D. WHEREAS, in June 2023, DTSC released a Final Program Environmental Impact Report (“Final PEIR”), and on July 19, 2023, DTSC certified the Final PEIR as in compliance with CEQA (“Certified Final PEIR”); and
- E. WHEREAS, after certifying the Final PEIR, DTSC anticipates that Boeing, NASA, and DOE will continue to submit for DTSC’s approval draft cleanup plans detailing how each proposes to clean up soil and groundwater; and

F. WHEREAS, DTSC anticipates receiving from Boeing, NASA, and DOE draft cleanup plans (collectively “Cleanup Plans” and individually “Cleanup Plan”), as listed in Attachment A to this agreement, which will be released for public review and comment; and

G. WHEREAS, DTSC has stated as a matter of public record that “the PEIR does not approve any cleanup standards” at SSFL; and

H. WHEREAS, DTSC also has stated as a matter of public record that “the act of certifying the Final PEIR does not constitute approval of any project” under CEQA; and

I. WHEREAS, DTSC has further stated as a matter of public record upon certifying the Final PEIR that “subsequent, independent steps must be taken before a public agency can commit itself to, or otherwise legally approve, a project,” and that “DTSC is not taking such steps at this time,” which instead “will be performed when DTSC makes the first project approval based on the [Final] PEIR”; and

J. WHEREAS, as part of its review and evaluation, DTSC will make the draft Cleanup Plans, including the CEQA documentation DTSC intends to rely upon when acting on each final Cleanup Plan, available for public review and comment, and DTSC will select and approve each final Cleanup Plan for implementation only after the public comment period for each draft Cleanup Plan closes and DTSC considers all public comments; and

K. WHEREAS, per CEQA Guidelines Section 15094, DTSC will file a separate Notice of Determination (“NOD”) for each final Cleanup Plan approval, as listed in Attachment A, with the Office of Planning and Research within five days of approval; and

L. WHEREAS, the intent of the Parties is to preserve all of their rights, claims, and defenses, except as expressly stated herein, relating to the SSFL site; and

M. WHEREAS, without admitting the validity or merits of any cause of action, argument, or defense related to the Certified Final PEIR, the Parties desire and agree to toll all statutes of limitation, if such statutes of limitation exist, applicable to any CEQA challenge brought by a Party in accordance with this Agreement.

THEREFORE, in consideration of the covenants contained herein, the Parties agree as follows:

AGREEMENT

1. Effective Date. The Effective Date is the date upon which DTSC, DOE, NASA and Boeing have all executed the Agreement.

2. Term of Agreement. The tolling period for challenges by the Parties under CEQA shall be from the Effective Date until 120 days after DTSC files the last of the NODs indicating its approval of the Cleanup Plans listed in Attachment A. The Parties may agree to extend the

tolling period under this Agreement by written agreement prior to the expiration of the tolling period. If DTSC determines that there should be a change to the list of Cleanup Plans in Attachment A, it will provide written notice to all Parties, and all Parties hereby agree to promptly provide written agreement to a conforming modification to Attachment A.

3. Tolling of Statute of Limitations. The Parties agree that the running of any applicable statute of limitations, repose, or other defenses or limitations on actions, to the extent such limitations exist, for all challenges under CEQA, including but not limited to, the time limitations for filing claims under CEQA, shall be tolled and suspended in accordance with this Agreement. The tolling period defined in Section 2 shall not be included in computing any statute of limitations relating to the subject matter set forth in this Agreement. Neither DTSC nor any other Party shall assert, plead, or raise against the Parties in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Term of this Agreement in any action brought by any Party under CEQA.

4. No Limitation on Potential Litigation. This Agreement does not limit the nature or scope of any claims that could be brought by a Party against DTSC or the date on which a Party may initiate litigation. This Agreement does not waive the rights of any Party to challenge the timeliness of such litigation, except as provided by the tolling period agreed to herein.

5. Option to Intervene. The Parties agree that in the event another party not named in this Agreement files a lawsuit under CEQA challenging the Certified Final PEIR during the Term of this Agreement, the Parties, acting individually or together, reserve the right to seek to intervene, in their respective sole and absolute discretion, in such lawsuit.

6. Reservation of Rights. The Parties expressly retain all rights concerning any challenges to the Certified Final PEIR or to any other decisions or actions, except for the limitations specified in Section 3 of this Agreement on objecting to challenges to the Certified Final PEIR under CEQA based on the passage of time during the tolling period.

7. No Admissions. This Agreement does not constitute an admission of liability for any Party under CEQA. Nor does this Agreement constitute any admission or acknowledgment on the part of the United States, including that any statute of limitations is applicable to any potential claims or that any such statute of limitations has run. Nothing in this Agreement is intended as, or shall be used as, evidence of an admission by any Party of liability or a waiver of any right or defense, except as expressly limited by this agreement.

This Agreement shall not be admissible for any purpose other than to rebut a defense based on the passage of time or delay, or to defend against any claim, action, or other proceeding that may be brought, instituted, or taken by one of the Parties against another in breach of this Agreement.

8. Third-Party Beneficiaries. The tolling of any statute of limitations specified in Sections 2 and 3 shall also apply to any challenge to the Certified Final PEIR under CEQA brought by any third parties.

9. Authority. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party to all the terms and conditions of this document.

10. Entire Agreement. This Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any of the Parties or agent of the Parties that is not contained in this Agreement shall be valid or binding, nor shall it be used in construing the terms of this Agreement as set forth herein.

11. Amendment in Writing. This Agreement may only be modified by written agreement executed by all the Parties.

12. Rule of Construction. Each Party has had an adequate opportunity to review each provision of this Agreement and to submit the same to legal counsel for review. Accordingly, the Parties agree that any ambiguity should not be construed for or against any Party on account of such drafting.

13. Notices. Any notices required by this Agreement shall be provided by first class mail or email to:

(a) Address for notice to DTSC:

Lawrence Hafetz, Chief Counsel
Department of Toxic Substances Control
1001 I Street
Sacramento, California 95812-0806
(916) 203-9781
Lawrence.Hafetz@dtsc.ca.gov

(b) Address for notice to Boeing:

Allison Edgar, Senior Counsel
Office of the General Counsel
The Boeing Company
2201 Seal Beach Boulevard
MC 110-SB33
P.O. Box 2515
Seal Beach, CA 90740-1515
(562) 797-3312
allison.b.edgar@boeing.com

(c) Address for notice to the Department of Justice, on behalf of DOE and NASA:

Andrew Smith, Senior Attorney
Jennifer A. Najjar, Trial Attorney
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044-7611
Tele: (505) 224-1468 (Smith); (202) 305-0476 (Najjar)
Asmith8@usa.doj.gov; Jennifer.najjar@usdoj.gov

(d) Address for notice to City of Los Angeles:

Tim McWilliams, Assistant City Attorney
tim.mcwilliams@lacity.org
Robert Mahlowitz, Deputy City Attorney
Robert.mahlowitz@lacity.org
Office of the City Attorney
200 N. Main Street, 7th Floor
Los Angeles, CA 90012

(e) Address for notice to City of Simi Valley:

Sonia A. Hehir
Senior Assistant City Attorney
City of Simi Valley
2929 Tapo Canyon Rd.
Simi Valley, CA 93063
Shehir@simivalley.org
805 583-6714

(f) Address for notice to County of Los Angeles:

Scott Kuhn, Assistant County Counsel
Office of County Counsel
500 W. Temple Street, Suite 648
Los Angeles, California 90012
Phone: 213-974-1852 * Cell: 323-719-9606
Fax: 213-680-2165
skuhn@counsel.lacounty.gov

(g) Address for notice to County of Ventura:

Jeffrey Barnes, Chief Assistant County Counsel
Office of County Counsel
800 S. Victoria Avenue, L#1830
Ventura, CA 93003
jeffrey.barnes@ventura.org

(h) Other Notice:

Shaye Diveley
Meyers Nave
1999 Harrison Street, 9th Floor
Oakland, California 94612
sdiveley@meyersnave.com


14. Counterparts. This Agreement may be executed in counterparts and via facsimile, all of which shall have full force and effect. This Agreement is effective without the requirement of filing with the Court.

15. Electronic Signatures. The Parties agree that to the extent they sign electronically, their electronic signature is the legally binding equivalent of their handwritten signature.

16. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties, their predecessors, successors, and assigns, if any.

IN WITNESS WHEREOF, the Parties have entered into this Tolling Agreement as of the above-referenced Effective Date.

The California Department of Toxic Substances Control consents to the terms and conditions of this Agreement by its duly authorized representatives on this 9th day of January 2024.



Lawrence Hafetz, Chief Counsel
Department of Toxic Substances Control

The Boeing Company consents to the terms and conditions of this Agreement by its duly authorized representatives on this ___ day of January 2024.

Allison Edgar, Senior Counsel
The Boeing Company

[signatures continue on next page]

(h) Other Notice:

Shaye Diveley
Meyers Nave
1999 Harrison Street, 9th Floor
Oakland, California 94612
sdiveley@meyersnave.com

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Lawrence Hafetz, Chief Counsel
Department of Toxic Substances Control

The Boeing Company consents to the terms and conditions of this Agreement by its duly authorized representatives on this 9th day of January 2024.



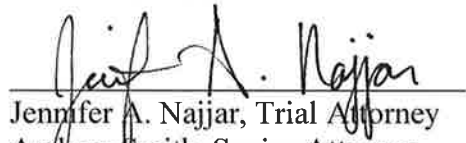
Allison Edgar, Senior Counsel
The Boeing Company

[signatures continue on next page]

The United States, on behalf of the United States Department of Energy and the National Aeronautics and Space Administration, consent to the terms and conditions of this Agreement by its duly authorized representatives on this 9th day of January 2024.



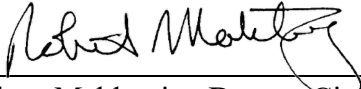
Stephen Bartell, Assistant Section Chief
Natural Resources Section
Environment and Natural Resources Division
United States Department of Justice



Jennifer A. Najjar, Trial Attorney
Andrew Smith, Senior Attorney
Natural Resources Section
Environment and Natural Resources Division
United States Department of Justice

[signatures continue on next page]

The City of Los Angeles consents to the terms and conditions of this Agreement by its duly authorized representatives on this 9th day of January 2024.



Robert Mahlowitz, Deputy City Attorney
City of Los Angeles

The City of Simi Valley consents to the terms and conditions of this Agreement by its duly authorized representatives on this ___ day of January 2024.

Approved as to Form:
Algeria R. Ford

By: _____
Sonia A. Hehir, Sr. Assistant City Attorney
City of Simi Valley

The County of Los Angeles consents to the terms and conditions of this Agreement by its duly authorized representatives on this ___ day of January 2024.

Scott Kuhn, Assistant County Counsel
County of Los Angeles

The County of Ventura consents to the terms and conditions of this Agreement by its duly authorized representatives on this ___ day of January 2024.

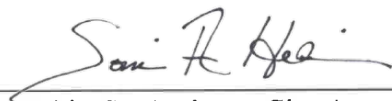
Jeffrey Barnes, Chief Assistant County Counsel
County of Ventura

The City of Los Angeles consents to the terms and conditions of this Agreement by its duly authorized representatives on this ___ day of January 2024.

Robert Mahlowitz, Deputy City Attorney
City of Los Angeles

The City of Simi Valley consents to the terms and conditions of this Agreement by its duly authorized representatives on this 9th day of January 2024.

Approved as to Form:
Algeria R. Ford

By: 

Sonia A. Hehir, Sr. Assistant City Attorney
City of Simi Valley

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Jon Scott Kuhn, Assistant County Counsel
County of Los Angeles

The County of Ventura consents to the terms and conditions of this Agreement by its duly authorized representatives on this 9th day of January 2024.



Jeffrey Barnes, Chief Assistant County Counsel
County of Ventura

Attachment A

Draft Cleanup Plan (Recital F)	DTSC Approval of Final Cleanup Plan After Public Review & Comment – DTSC Will File a Separate Notice of Determination for Each Approval (Recital K)
Boeing Groundwater Corrective Measures Study and Draft Statement of Basis	DTSC Final Boeing Groundwater Statement of Basis
Boeing Soil Corrective Measures Study and Draft Statement of Basis	DTSC Final Boeing Soil Statement of Basis
NASA Groundwater Corrective Measures Study	DTSC Final NASA Groundwater Statement of Basis
NASA Draft Soils Remedial Action Implementation Plan	DTSC Final NASA Soils Remedial Action Implementation Plan
DOE Groundwater Corrective Measures Study	DTSC Final DOE Groundwater Statement of Basis
DOE Draft Soils Remedial Action Implementation Plan	DTSC Final DOE Soils Remedial Action Implementation Plan