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SANTA SUSANA FIELD LAB PHYSICIANS  
FOR SOCIAL RESPONSIBILITY/  
LOS ANGELES CHAPTER, INC.,  
PUBLIC EMPLOYEES FOR ENVIRONMENTAL  
RESPONSIBILITY, INC.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

PARENTS AGAINST SANTA SUSANA  
FIELD LAB, an association; PHYSICIANS  
FOR SOCIAL RESPONSIBILITY/LOS  
ANGELES CHAPTER, INC., a non-profit  
public benefit corporation; PUBLIC  
EMPLOYEES FOR ENVIRONMENTAL  
RESPONSIBILITY, INC., a District of  
Columbia non-profit corporation,

Petitioners,

v.

CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL, an agency of the  
State of California, CALIFORNIA  
REGIONAL WATER QUALITY CONTROL  
BOARD, LOS ANGELES REGION, an  
agency of the State of California,  
LAWRENCE HAFETZ, in his official  
capacity,

Respondents,

THE BOEING COMPANY, a Delaware  
corporation, and ROES I – X, inclusive,

Real Party in Interest.

Case No. 56-2022-00570675-CU-WM-VTA

**PETITIONERS' OPENING BRIEF IN  
SUPPORT OF PETITION FOR WRIT OF  
MANDATE**

CEQA Action

Judge: Honorable Mark S. Borrell  
Courtroom: Department 40  
Hearing Date: November 21, 2025  
Time: 10:00 a.m.

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## I. INTRODUCTION

On May 9, 2022, Respondent Department of Toxic Substances Control (“DTSC”) and Real Party in Interest The Boeing Company (“Boeing”) entered into a binding agreement that committed DTSC to rejecting more aggressive soil clean-up alternatives sought by surrounding communities for the highly contaminated Santa Susana Field Laboratory (“SSFL”), committed DTSC to selecting alternatives riddled with exceptions to soil cleanup standards, and mandated the use of weakened soil clean up levels to be applied (hereinafter the “SSFL Agreement”).

Negotiated confidentially, the SSFL Agreement made these commitments in the midst of and despite the still pending environmental review process underway pursuant to the California Environmental Quality Act (“CEQA”) addressing the cleanup of SSFL. A main debate on the 2017 Draft Program Environmental Impact Report (“Draft PEIR”) was the scope of soil clean-up alternatives being considered by DTSC. The public actively participated in that EIR process, criticizing DTSC’s consideration of clean-up alternatives and advocating for alternatives that they believe are necessary to eliminate the ongoing and health risks to residents of the neighboring communities. Numerous commenters, including Ventura and Los Angeles Counties, sought DTSC to consider alternatives excluding exceptions to health risk standards, increasing the removal of contaminated soils by Boeing, achieving prior unpolluted background levels at SSFL, or allowing for the safe implementation of rural residential/agricultural uses at the site.

However, in June, 2022, DTSC and Respondent California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) announced the existence of the SSFL Agreement. Petitioners and others were dismayed to learn that the SSFL Agreement committed DTSC to excluding numerous alternatives actively supported by public comments from further consideration in the EIR process and committing to alternatives that would allow more contamination to remain in soils at SSFL. The SSFL Agreement limited DTSC’s choices of cleanup alternatives before completion of the agency’s CEQA process and final PEIR by (1) mandating the elimination of an alternative requiring Boeing to cleanup contaminated soils to a level protecting rural residential/agricultural uses; (2) eliminating the possibility of an alternative requiring Boeing to cleanup soils to background levels; (3) limiting the total volume of soil to be disposed of offsite; (4) committing DTSC to include in the remaining alternatives generous exceptions authorizing up to a 100-fold increase in the one in a million human health risk standard where biological or cultural resources are present; (5) committing DTSC to include in the remaining alternatives an across-the-board “5X Multiplier” of the human health risk goal and

1 hazard index to exclude corrective measure study areas; and (6) requiring all alternatives to be  
2 based on weakened soil clean-up screening levels established by the SSFL Agreement. Likewise,  
3 the Regional Board’s approval of a Memorandum of Understanding with Boeing (“MOU”) and  
4 Resolution No. 2022-004 triggering the effectiveness of the SSFL Agreement also foreclosed  
5 DTSC’s consideration of alternatives for Boeing’s soil cleanup.

6 By entering into the SSFL Agreement, the agencies already decided that these limits on  
7 the scope of cleanup alternatives would nevertheless “*ensure*[] that Boeing’s areas of  
8 responsibility will be cleaned up to a stringent standard” and “*deliver*[] the stringent cleanup the  
9 community has long asked for.” (DTSC000824 [emphasis added]; LARB000329 [emphasis  
10 added].) Instead of letting the CEQA process run its course, including considering alternatives in  
11 light of public comments and criticisms on the Draft PEIR already being considered, and in  
12 direct contravention of the Supreme Court’s ruling in *Save Tara v. City of West Hollywood*  
13 (2008) 45 Cal.4th 116 and CEQA’s regulations, the SSFL Agreement foreclosed DTSC’s  
14 consideration of alternatives and associated mitigation measures prior to the completion of  
15 DTSC’s CEQA review.

16 In order to restore DTSC’s compliance with CEQA in evaluating Boeing’s portion of soil  
17 cleanup at SSFL, Petitioners respectfully request the Court to grant the Petition and issue a  
18 peremptory writ of mandate ordering Respondents and Boeing to set aside or otherwise vacate  
19 the SSFL Agreement, the MOU and Resolution No. 2022-004.

## 19 **II. FACTUAL BACKGROUND**

### 20 **A. Overview of the SSFL Site.**

21 Starting around 1948, SSFL became a sprawling site for “research, development, and  
22 testing of liquid-propellant rocket engines, water jet pumps, lasers, liquid-metal heat exchanger  
23 components, nuclear energy, and related technologies.” (DTSC024217.) One of the main  
24 activities was the testing of large rocket engines at six test areas by Respondent Boeing (and its  
25 predecessors), the National Aeronautics and Space Administration (“NASA”) and the United  
26 States Air Force. (*Id.*; See DTSC021490.) In addition, the Department of Energy (“DOE”) and its  
27 predecessor agency conducted extensive nuclear energy research at the site, including the  
28 operation and disassembly of 10 nuclear reactors. (DTSC024217.)

Rocket engine testing involved the handling and disposal of numerous hazardous  
chemicals and fuels at the site, resulting in the release of highly toxic chemicals to soil and  
groundwater at the site. (DTSC024311.) Petroleum fuel hydrocarbons, solid rocket fuel

1 components such as perchlorate, and chlorinated solvents, primarily trichloroethane (“TCE”),  
2 were used extensively at the site in large volumes. (*Id.*; DTSC024313; DTSC021490.)  
3 Polychlorinated biphenyls (“PCBs”) also were used regularly at SSFL at locations associated  
4 with rocket testing. (*See, e.g.* DTSC025404; DTSC066864.) Over 21,500 rocket tests conducted  
5 at the site involved the flushing of the test engines with TCE. (DTSC021490.) Liquid waste from  
6 engine testing were disposed of in a series of flow-through and retention ponds at the site.  
7 (DTSC024314.) Some wastes were disposed of using burn pits, ignited by workers shooting at  
8 the barrels of toxic waste. (*See* DTSC021491-21492.)

9 When it began in the late 1940s, the site was intended to be a remote field lab for work  
10 too dangerous to conduct near populated areas. (DTSC021483.) Now, however, over 150,000  
11 people live within 5 miles of the site and more than half a million people live within 10 miles.  
12 (*Id.*) Located in the southeast corner of Ventura County along the eastern border of Los Angeles  
13 County, the approximately 2,850-acre SSFL site is one mile south of the city of Simi Valley,  
14 adjacent to the community of Bell Canyon directly south of the site, and immediately west of  
15 Canoga Park, West Hills, and Chatsworth within the City of Los Angeles. (DTSC024224;  
16 DTSC024333-24334.)

17 Efforts to investigate the extent of contamination at SSFL by the United States  
18 Environmental Protection Agency (“EPA”) and Respondent DTSC began in the early 1990s  
19 while the site was still being operated. (DTSC024314.) The site has been divided into four  
20 administrative areas - Areas I through IV. (*See* DTSC024334-24336.) Boeing is responsible for  
21 soil cleanup on 672 acres of Area I (which totals about 714 acres) in the northeastern section of  
22 SSFL. (DTSC024335-24336.) Boeing is also responsible for the 119 acres within Area III. (*Id.*)  
23 The third area for which Boeing is responsible is the Southern Buffer Zone, a 1,140-acre site  
24 located south of Areas 1 through IV. (*Id.*) The agencies’ characterization of the site’s  
25 contamination has proceeded along two parallel paths for soil contamination and groundwater  
26 contamination. (*See* DTSC060472.) Petitioner’s claim is focus solely on contaminated soil for  
27 which Boeing is responsible. (Verified Petition, ¶ 89.)

#### 28 **B. The 2007 Consent Order and Standardized Risk Assessment Methodology Workplan.**

In 2007, DTSC and the three parties who contaminated the site, including Boeing,  
entered into a Consent Order for Corrective Action which defined the parameters of investigation  
and cleanup of soil and groundwater at the SSFL. (DTSC060467.) The 2007 Consent Order

1 established a deadline for the “[r]emediation of chemically contaminated soils by June 30, 2017  
2 or earlier, utilizing the Standardized Risk Assessment Methodology (SRAM) Workplan (Rev. 2)  
3 [“SRAM Rev. 2”]....” (DTSC060476.) The SRAM Rev. 2 was approved by DTSC in November  
4 2005. (DTSC061480.) SRAM2 set forth, *inter alia*, a procedure for identifying Chemicals of  
5 Potential Concern. (DTSC061530-61531.) For purposes of assessing health risks to future users,  
6 the SRAM Rev. 2 determined that “the future resident was conservatively selected as the most  
7 highly exposed receptor for all units.” (DTSC061549.) The SRAM Rev. 2 acknowledges that  
8 “[r]esidents could be exposed to compounds in soil via consumption of produce grown in  
9 backyard gardens.” (DTSC061553.)

10 In August 2014, DTSC approved an addendum to the SRAM Rev. 2 incorporating a list  
11 of calculated Human Health Risk-Based Screening Level (“RBSL”) thresholds for hundreds of  
12 toxic contaminants present in contaminated soils at SSFL. (DTSC051180; DTSC052252-52254.)  
13 The RBSLs are receptor-specific and a key element to conducting the human health cancer risk  
14 and noncancer risk hazard estimates from the contaminants at SSFL. (*See* DTSC051192,  
15 DTSC052249-50.)

16 “The SRAM is a ‘living document’ and new contaminants can be added to the list, as  
17 needed.” (DTSC024319.) As one of the many EPA documents relied upon by DTSC emphasizes,  
18 when establishing screening levels that rely on EPA guidance, “when comments are received at  
19 individual CERCLA sites questioning the use of the approaches recommended in this guidance,  
20 the comments should be considered and an explanation provided for the selected approach.”  
21 (DTSC011256.)

22 **C. The Draft PEIR for the SSFL Remediation Project Relies Extensively on the**  
23 **2104 SRAM Rev. 2 to Formulate Its Alternatives and Mitigations.**

24 On November 22, 2013, DTSC issued a Notice of Preparation (“NOP”) announcing the  
25 agency’s intent to prepare the Draft PEIR for contaminated soil and groundwater remediation  
26 projects at SSFL. (DTSC025442.) The Draft PEIR was released in 2017. (DTSC024206.) The  
27 purpose of the Draft PEIR is to “evaluate the environmental impacts and to identify and  
28 minimize, to the extent feasible, potentially significant environmental effects associated with soil  
and groundwater remediation activities” at SSFL. (DTSC024215.) The Draft PEIR provides that,  
relevant to Boeing, the 2007 Consent Order “establish[es] the requirements for the investigation  
and cleanup of soil and groundwater at the project site.” (DTSC024221.) The Draft PEIR  
explains that the 2007 Consent Order “also specifically states: Cleanup plans ‘shall detail the



1 methodology for developing and evaluating potential corrective measures [cleanup actions] to  
2 remedy chemical contamination at the Facility utilizing the [SRAM Rev. 2].” (DTSC024319;  
3 DTSC024227-24228.)

4 SRAM Rev. 2 is relied on extensively by the 2017 Draft PEIR to formulate the proposed  
5 range of cleanup alternatives, the impact of which is to be considered under CEQA. “[T]he  
6 SRAM specifies that a garden pathway will be evaluated.” (DTSC024320.) Three scenarios were  
7 highlighted in the SRAM and the Draft PEIR:

8 The USEPA default-based (with garden) scenario assumes that 25 percent of all  
9 produce consumed by the resident over a time frame of 30 years is contaminated.  
10 The SSFL SRAM-based (with garden) scenario assumes that 100 percent of all  
the produce consumed is contaminated being grown in garden. The SSFL SRAM-  
based (no garden) scenario assumes no exposure to home grown produce.

11 (*Id.* See DTSC052249.) These scenarios were then incorporated into alternatives either proposed  
12 to be addressed or rejected by the Draft EIR. The Draft EIR relies upon the SRAM Rev. 2 human  
13 health risk-based screening levels approved by DTSC in 2014 to project the extent of soil  
14 removal, backfilling, truck trips, and other activities necessary to achieve those screening levels.  
15 (DTSC024340; DTSC025401-25404 [Appendix B-1]; DTSC024342 [Table 3-2, n. D]; *See also*  
DTSC024319-24320; DTSC024360-24363.)

16 The proposed project selects the USEPA default-based (with garden) scenario as the main  
17 proposal evaluated in the Draft PEIR. (DTSC024228 [“the PEIR analyzes the environmental  
18 impacts of the most extensive set of cleanup activities evaluated and proposed for the Boeing  
19 project, Suburban Residential use with garden consumption of 25 percent of total diet”].) Thus,  
20 the amount of soil that would need to be removed from the site is based on the amount necessary  
21 to achieve the risk levels calculated for that alternative:

22 The estimated soil cleanup volumes and acreage presented in this PEIR for the  
23 Boeing portion of SSFL are based on the Suburban Residential with garden  
24 consumption of 25 percent of total diet, and provide a reasonable volume estimate  
for this PEIR.

25 (*Id.* See DTSC024340; DTSC024230 [Table 1-3, n. B].) The soil cleanup volumes in turn dictate  
26 the number of truck trips and backfilling that are estimated for the cleanup project and their  
associated impacts. (*See* DTSC024237.)

27 The Draft PEIR identified but proposed to reject the SSFL SRAM-based (with garden)  
28 scenario assuming 100 percent consumption of all produce grown on site as a possible alternative  
to cleanup Boeing’s areas of responsibility. (DTSC025193.) The Draft PEIR also proposed to

1 reject for further analysis a SSFL SRAM-based (no garden) scenario alternative. (*Id.*) The Draft  
2 PEIR also proposed to reject consideration of an alternative that would clean up the Boeing areas  
3 to background levels, as was agreed to by NASA and DOE in their areas of responsibility at  
4 SSFL. (DTSC025192; DTSC024316.) The Draft PEIR also proposed to reject consideration of a  
5 “Future Land Use Alternative.” (DTSC025191.)

6 The Draft PEIR identifies an alternative that would allow exceptions to the cleanup  
7 standards in order to avoid significant impacts to either sensitive species or cultural resources.  
8 (DTSC025198.) Although vague, the Draft PEIR suggests these exceptions will be available for  
9 all of the responsible parties: “These biological and cultural resources protections are described  
10 as “exceptions” in the 2010 AOCs.<sup>1</sup> For ease of reference, this PEIR uses that terminology to  
11 describe these protections *for all RPs* [responsible parties], even though Boeing is not subject to  
12 the AOCs.” (DTSC024355-24356 [emphasis added].) Likewise, the map depicting the areas of  
13 its application also extends into Boeing’s areas of responsibility, including Areas I and III.  
14 (DTSC025200 [Fig. 6-2]; DTSC024359. *But see* DTSC024789 [stating that AOC exception for  
15 cultural resources not applicable to Boeing-owned property].) DTSC identified this as the  
16 Environmentally Superior Alternative other than the No Project Alternative. (DTSC025238.)

17 The availability of these exceptions is a substantial component of the mitigation measures  
18 that are proposed for the clean-up’s biological resource impacts. (*See* DTSC024664-24665;  
19 DTSC024668-24670 [BIO-7 – Santa Susana Tarplant];<sup>2</sup> DTSC024675 [BIO-19 – Sensitive  
20 Habitats]; DTSC024678; DTSC024633 [exception may be applied to areas containing substantial  
21 Santa Susana tarplant populations and soils above the LUT values].) For many of the wildlife  
22 impacts described in the Draft PEIR, the Draft PEIR suggests that the significance and  
23 unavailability of impacts in most cases appears to turn on the availability of the exception. (*See*,  
24 *e.g.* DTSC024638 [in regard to impacts of overall site cleanup to special status species, “DTSC  
25 has not determined whether to apply an AOC exception to protect special-status species.  
26 Therefore, for purposes of this analysis and making a significance determination, it is assumed  
27 that the AOC exception area would not be applied...”].)

28 <sup>1</sup> AOC refers to Administrative Orders on Compliance issued to the federal agencies.

<sup>2</sup> Santa Susana tarplant is a prevalent special-status species observed within Area I and throughout the SSFL site. (*See* DTSC024577 [Figure 4.3-4a]; DTSC024574; DTSC024600.)

1                   **D. Public Comments Raised Concerns and Fiercely Debated the Merits of the**  
2                   **Clean-up Alternatives to be Considered in the Draft PEIR.**

3                   Petitioner Physicians For Social Responsibility/Los Angeles Chapter (“PSR-LA”) and  
4 others participated vigorously in the Draft PEIR review and comment process. PSR-LA’s  
5 comments on the Draft PEIR strongly objected to the DEIR’s proposal not to consider the 100  
6 percent garden consumption. (DTSC021371 [“Cleaning up to current zoning is of key  
7 importance to PSR-LA, because a cleanup of SSFL to rural residential/agricultural uses would be  
8 sufficiently protective of public health for neighboring communities who are subject to exposure  
9 to SSFL’s highly toxic contamination through offsite migration”]; DTSC021386 [“The way to  
10 protect people nearby is to assure that DTSC’s promises (and those of Boeing) that SSFL would  
11 be cleaned up such that it would be safe to live on site, eat produce grown on it, and drink from  
12 wells are fully carried out”]; DTSC021463.) Other interested parties made similar comments. For  
13 example, the Natural Resources Defense Council (“NRDC”) commented that:

14                   the DTSC-approved inputs are found in the current SRAM (Standardized Risk  
15 Assessment Methodology Rev. 2 Update) and produce the SRAM-based suburban  
16 residential garden RBSLs that should have been used in the PEIR, but were  
17 inappropriately thrown out and replaced with far less protective RBSLs that are based on  
18 erroneous inputs (Appendix B) and with even less protective RBSLs in Appendix K.

19 (DTSC021528 [comments of NRDC and Committee to Bridge the Gap]. *See also* DTSC021365;  
20 DTSC021529; DTSC021541.)

21                   Commentors also criticized the Draft PEIR’s removal of an alternative to clean-up  
22 Boeing’s areas of responsibility to background levels. (DTSC067434 [Melissa Bumstead  
23 comments through change.org] [DTSC “must hold the polluters, the Department of Energy,  
24 Boeing and NASA accountable for the safest and most comprehensive cleanup to ‘background’  
25 levels”]; DTSC021365 [objecting to Draft PEIR’s “remov[al] from consideration cleanup to  
26 background”]; DTSC021541 [objecting that “the PEIR expressly removes from consideration  
27 even as an alternative [] cleanup of the Boeing land to background”].) As Ventura County’s  
28 comments stated plainly: “The DOE must not leave unknown quantities and concentrations of  
contamination on site, nor avoid due diligence in analyzing full remediation of known  
contaminants in excess of background levels.” (DTSC021348.)

                  Similarly, Ventura County objected to the Draft PEIR’s failure to consider an alternative  
cleanup that would allow uses authorized by the County’s existing zoning to be available:

                  Currently the General Plan designates the SSFL land Open Space and the zoning is a  
mix of Open Space and Rural Agricultural. Both the Open Space and Rural

1 Agricultural zones allow for a multitude of land uses, including residential and  
2 agricultural. However, the DPEIR uses a cleanup standard that neglects to address all  
3 of the land uses allowed by the land's zoning and instead restricts cleanup to a lesser  
4 "suburban residential" standard that precludes agriculture, despite the fact that every  
5 non-coastal zone in Ventura County allows for agricultural crop production.  
(DTSC023783.)<sup>3</sup>

6 Commentors objected to the Draft PEIR's decision to focus on its preferred alternative –  
7 the USEPA default-based (with garden) scenario assuming future residents would only eat 25  
8 percent of food they grew in their gardens. According to the Draft PEIR, this alternative would  
9 require that 921,000 cubic yards of contaminated soil be remediated in areas for which Boeing is  
10 responsible, but only assumes that 390,000 cubic yards would be excavated and shipped to a  
11 disposal site. (DTSC024230.) In their comments on the Draft PEIR, Petitioner PSR-LA and other  
12 interested parties commented that the estimated soil removal volumes are underestimated and  
13 requested that DTSC consider soil cleanup standards that would remove more soil and be more  
14 protective of human health and the neighboring communities. (DTSC021534 ["In the case of the  
15 Boeing portion, the proposed cleanup volumes appear to have been dramatically understated, so  
16 that the maximum cleanup Boeing would have to do is a tiny fraction of the amount of  
17 contaminated soil in their areas"]; DTSC024196 ["the Draft PEIR accepts soil volume estimates  
18 by Boeing that grossly underestimate the amount of contaminated soil it should clean up"];  
19 DTSC021371; DTSC021446; DTSC067434; DTSC021520-21522; DTSC021541.)

20 Petitioner PSR-LA and others objected to the proposed broad exceptions from clean-up  
21 levels based on purported concerns for biological and cultural resources. (DTSC021386 ["The  
22 PEIR asserts that vast amounts of contamination should not be cleaned up, supposedly to protect  
23 biological receptors, but there is no analysis of the harm to those receptors from the pollution  
24 that wouldn't get cleaned up"]; DTSC021370 ["DTSC's PEIR proposes to exempt from cleanup  
25 potentially huge amounts of soil contaminated with dangerous radiological and chemical  
26 contamination, claiming the contamination ... could be exempt through broad biological and

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27 <sup>3</sup> In November 2017, Ventura County amended the zoning designations for the SSFL parcels,  
28 rezoning them from "Rural Agriculture" to "Open Space." (DTSC021320-21321;  
DTSC021338.) That zone change did not change the allowed residential and agricultural uses on  
the SSFL parcels, indeed it expanded the potential agricultural uses. (DTSC021340-21343.) Nor  
did it alter the County's comments regarding clean-up of the site. (DTSC021321.)

1 cultural exemptions ...”].<sup>4</sup> Ventura County also previously objected to the exceptions, noting  
2 that the “exemption of hundreds of thousands of cubic yards of soil, on the basis that it may  
3 impact biological or cultural resources, is premature, lacks transparency, ... and if implemented,  
4 would threaten the public’s health.” (DTSC021348.)

5 Public comments also focused on the importance of the clean-up alternatives adhering to  
6 the 2014 SRAM Rev. 2 and its human health risk screening levels. (DTSC021365 [commenting  
7 that suburban residential standard based on the approved SRAM must be analyzed];  
8 DTSC021446 [“The official SRAM is the official DTSC-approved risk assessment methodology,  
9 and must be used”].) Comments also raised concerns that the screening levels replicated in the  
10 DEIR were inconsistent with the screening levels approved in 2014. (DTSC021446 [commenting  
11 that approved RBSLs were ignored, changed in the Draft PEIR “to try to dramatically further  
12 drive down cleanup goals”]; DTSC021538 [commenting that Draft PEIR Appendix K’s  
13 estimates of soil disposal volumes is inconsistent with SRAM Rev. 2 clean-up levels listed in  
14 Appendix B]; DTSC021529 [draft PEIR “erroneously dismisses the use of the official DTSC-  
15 approved suburban residential garden RBSLs (the ‘SRAM-based’ suburban residential  
16 garden)”]; DTSC021542 [“the proposed project should be a cleanup to the DTSC’s own  
17 officially approved SRAM-based suburban residential garden standard for the Boeing land”];  
18 DTSC021552 [Appendix K many times higher than approved SRAM]; *See* DTSC021593-21596  
19 [calculating elevated levels used in Appendix K to SRAM Rev. 2 levels in Appendix B].)

#### 18 **E. The SSFL Agreement and Commitments Made by DTSC.**

19 On May 9, 2022, despite the ongoing Draft PEIR process in which the public was  
20 actively engaged, DTSC and Boeing entered into the SSFL Agreement, which severely  
21 weakened the cleanup levels the public previously had been informed would apply to Boeing’s  
22

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23 <sup>4</sup> *See also* DTSC021465 [PSR-LA “expressed concern that DTSC’s DEIR would allow misuse  
24 and misapply exemptions in the AOC”]; DTSC021364 [NRDC and CBG comments] [objecting  
25 to Draft PEIR’s proposal “to leave in place large amounts of contamination based on biological  
26 and cultural considerations ...”]; DTSC021366 [objecting to Draft PEIR’s proposal “to allow an  
27 unspecified amount of soil at unspecified locations that is contaminated with unspecified  
28 concentrations of unspecified contaminants to be exempted for unspecified purported biological  
or cultural reasons. . .”]; DTSC024203 [Los Angeles Audubon Society] [“Alternative 2 is a  
scaled back cleanup that could leave as much as 99% of some contaminants on site, developed  
under the guise of avoiding impacts to sensitive cultural and biological resources”];  
DTSC021372 [“the PEIR suggests vast but unspecified exceptions to cleanup, again with no  
analysis of the ecological or public health impacts of so doing”].)

1 soil cleanup and foreclosed DTSC’s consideration of alternatives remediating the site to achieve  
2 background levels of contaminants and levels protective of agricultural and residential uses.  
3 (DTSC000001-31.) Negotiation of the SSFL Agreement was confidential, and DTSC did not  
4 provide an opportunity for public comments on a draft agreement. (*See* DTSC011253.)

5 The secret negotiations began on January 22, 2021 when DTSC sent Boeing an offer to  
6 enter into a confidential mediation. (DTSC011253.) DTSC also extended an offer to the  
7 Regional Board to participate in the mediation. (*Id.*) The SSFL Agreement was completed and  
8 signed on May 9, 2022. (DTSC000030-31.) That day, DTSC issued a Community Update  
9 indicating that the SSFL Agreement had selected new clean-up standards to be applied to the  
10 cleanup of the Boeing portions of SSFL. (DTSC000818-820 [DTSC News Release: “California  
11 holds Boeing Accountable for Cleanup at Toxic Santa Susana Field Laboratory”].) As described  
12 by the press release, the SSFL Agreement “announced a comprehensive framework that  
13 *establishes* strict cleanup protocols and timelines for The Boeing Company.” (DTSC000818  
[emphasis added].)

14 **1. The SSFL Agreement commits DTSC to foreclosing alternatives considered in**  
15 **the Draft PEIR and debated in comments submitted by the public.**

16 By way of the SSFL Agreement, DTSC commits to not continue considering comments  
17 advocating for certain clean-up alternatives, requires the inclusion of less stringent soil cleanup  
18 standards for residential users, precludes any alternatives that do not include broad exceptions for  
19 biological and cultural resources, and requires the use of human health risk-based screening  
20 levels that are less stringent than those approved in 2014 and included in the SRAM Rev. 2.

21 First, the SSFL Agreement commits DTSC to rejecting the many public comments  
22 calling for a level of clean-up by Boeing equivalent to achieving a health-risked based cleanup  
23 sufficient to protect rural residential and agricultural uses, as allowed by Ventura County’s  
24 zoning. (DTSC021320-21321; DTSC021338; DTSC021340-21343.) The SSFL Agreement  
25 expressly excludes consideration of a level of cleanup that would protect the existing rural  
26 agricultural zoning:

27 The RBSLs for the rural residential (agricultural) exposure scenario do not need to  
28 be included or updated in SRAM Rev. 2 Addendum (2022). DTSC *has*  
*determined*, based on a variety of factors, that this scenario does not represent the  
reasonably anticipated future land use at SSFL.

(DTSC000123 [footnote 1] [emphasis added].)

The SSFL Agreement similarly eliminates any consideration of a clean-up to background

1 levels. The Agreement only provides for consideration of risks to four future uses of the site –  
2 future recreator, future site worker, future resident with no gardens, and future resident with  
3 garden. (DTSC000123.) This range of alternatives does not include the background option  
4 advocated by numerous residents and Ventura County. (*Id.* See DTSC067434; DTSC021348.)

5 Second, by limiting the range of alternatives to be considered, the SSFL Settlement also  
6 places a cap on the quantity of soil to be removed from SSFL and deposited off-site. The SSFL  
7 Agreement states:

8 For purposes of resolving the Parties’ dispute and accelerating the remedial  
9 activities at the SSFL, Boeing has agreed as part of this settlement that it will not  
10 contest a soil remedy decision by DTSC that is consistent with the processes,  
11 methodologies and schedule under this Agreement and the Exhibits, and is among  
12 the scenarios and within the range of estimates presented in the summary table on  
13 page iii of Appendix K to the Draft PEIR.

14 (DTSC000006.) Appendix K estimates an upward bound of 439,000 cubic yards of soil removal  
15 that would be required by the cleanup alternative based on future residential use with garden and  
16 100 percent of produce diet is homegrown. (DTSC029833.)

17 Third, the SSFL Settlement incorporates blanket exceptions to the 1 in a million ( $10^{-6}$ )  
18 health risk standard when biological and cultural resources are present. (DTSC000010.) These  
19 exceptions are required to be applied to every Boeing cleanup alternative. At the Corrective  
20 Measures Studies (“CMS”) stage, Boeing is required to “prepare a CMS for soil remediation in  
21 accordance with the specifications provided in the following Exhibits to this Agreement: ...  
22 Exhibit 11 (Biological Exception Decision Process); [and] Exhibit 12 (Cultural Exception  
23 Decision Process)....” (*Id.* [§ 4.f.1].) DTSC, in turn, “shall accept and release [the CMS] for  
24 public review ... if the CMS meets the specifications provided in the Exhibits referenced above  
25 in Section 4.f.1[.]” including the two exceptions. (DTSC000011.) Exhibit 11 provides for an  
26 unidentified process to identify “Areas of Biological Significance.” (DTSC000200 [Exhibit 11].)  
27 If an area of biological significance is in a cleanup area, and the significance is deemed moderate  
28 to high, then any site-specific cleanup or decision to leave contamination in place may allow for  
up to or even exceed 100 in a million cancer risk, i.e.  $10^{-4}$ . (*Id.* [“exception likely” when risk  
“Within Risk Management Range ( $<10^{-4}$ , resident)”]; *Id.* [“agency concurrence” required if  
human health risk “Exceeds Risk Management Range ( $>10^{-4}$ , resident)].) The same health risks  
are allowed for the presence of “moderate to high significance” cultural resources.  
(DTSC000201.) The areas of SSFL that could be subject to these exceptions extend over large

1 portions of Boeing's areas of responsibility. (*See* DTSC025200 [Fig. 6-2]. *See also*  
2 LARB000813.)

3 Fourth, the SSFL Agreement sets forth decisions regarding amendments to the SRAM  
4 Rev. 2 previously approved by DTSC in 2014. The "SRAM Revision 2 Addendum" is required  
5 by the SSFL Agreement to include a specified list of revisions. (DTSC000122-123 [SSFL,  
6 Exhibit 5].) Boeing's amendment to the SRAM must be "in accordance with the specifications  
7 provided in Exhibit 5 (SRAM Amendment Process and Summary)." (DTSC000009.) And  
8 "DTSC **will authorize** the use of the SRAM if it meets the specifications provided in Exhibit 5  
(SRAM Amendment Process and Summary)." (*Id.* [emphasis added].)

9 The agreed upon changes to the SRAM include that areas to be cleaned up to address  
10 resident with garden uses would only be identified for clean up when the cumulative risks and  
11 hazard estimates "are above 5 times the minimum cancer risk of 1 in a million or a non-cancer  
12 hazard of 1 (i.e., a cumulative cancer risk  $>5 \times 10^{-6}$  and a cumulative non-cancer hazard index  
13  $>5$ )." (DTSC000195.) All "Proposed resident with Garden clean up areas" are subject to this  
14 multiplier. (DTSC000191 [Exhibit 8] ["Proposed Resident with Garden cleanup areas **will be**  
15 **based** on a comparison of all chemicals ... as described in Attachment 1] [emphasis added].)  
16 Attachment 1 of Exhibit 8 to the SSFL Agreement sets forth the "5X Multiplier Supplement for  
17 Resident with Garden Procedures for Identifying CMS [Corrective Measures Study] Areas."  
18 (DTSC000194 [Exhibit 8, Attachment 1].) The 5X multiplier is one of the changes to the SRAM  
19 mandated by the SSFL Agreement. (DTSC000123 [SSFL Exhibit 5] ["Exposure parameters for  
20 the hypothetical resident **will be consistent with** those summarized in the Procedures for  
21 Identifying Resident with Garden CMS Areas ... attached as Exhibit[... 8 ... of the Settlement  
22 Agreement"] [emphasis added].) DTSC has committed to authorize the SRAM amendment with  
23 this 5X Multiplier change. (DTSC000009.) The SSFL Agreement also then limits Boeing's  
24 preparation of risk assessment reports "in accordance with ... Exhibit 8 (Procedures for  
25 Identifying Resident with Garden CMS Areas). (DTSC000010.) DTSC is then **required** to accept  
that risk assessment. (*Id.*)

26 In addition, the SSFL Settlement replaces the Human Health RBSLs approved by DTSC  
27 in 2014 and presented in the Draft PEIR. "The SRAM Rev. 2 Addendum (2022) will include the  
28 following: ... All methods and parameters **will be consistent** with those used in the approved  
2022 Human Health Risk-Based Screening Levels. Approved RBSLs are provided in Attachment  
3 to this procedure." (DTSC000123 [emphasis added]. *See* DTSC000132 - 137 [Attachment 3];



1 DTSC000121 [Exhibit 5].) The Human Health RBSLs for residences with gardens included in  
2 Attachment 3 of the SSFL Agreement are less stringent than the 2014 RBSLs. (*Compare*  
3 DTSC052252-52254 with DTSC000132-136. *See* LARB000844; LARB000875-878.)

## 4 **2. DTSC’s qualified reservations of authority in the SSFL Agreement.**

5 A critical aspect of the SSFL Settlement is Boeing’s agreement that:

6 if DTSC selects in the future, after required public notice and comment, soil and  
7 groundwater remedies for the Boeing Areas of Responsibility consistent with  
8 processes, methodologies and schedule under this Agreement and the Exhibits, then  
9 Boeing will not challenge, and will conduct, soil and groundwater remediation of the  
Boeing Areas of Responsibility in accordance with the terms and provisions of this  
Agreement and the Exhibits.

10 (DTSC000005.) This also is reflected in Boeing’s limited covenant not to sue included in the  
11 SSFL Settlement to challenge DTSC’s final soil remedy decisions “provided that such decision  
12 results from the implementation of the remedial methodologies, processes, standards and  
13 specifications as set out in this Agreement and in the Exhibits attached to this Agreement....”

14 (DTSC000015.) Indeed, “Boeing may terminate this Agreement in the event any agency adopts a  
15 remedy decision, or issues an order or decision that results in a remedy, that is not among the  
16 scenarios and within the range of estimates presented in the summary table on page iii of  
17 Appendix K to the Draft PEIR.” (DTSC000028.) However, “if DTSC adopts a final soil remedy  
18 decision ... as set forth in Exhibit 6 (Corrective Action Schedule) that is among the scenarios and  
19 within the range of estimates presented in the summary table on page iii of Appendix K to the  
Draft PEIR for the Boeing Areas of Responsibility, this termination right expires.” (*Id.*)

20 The SSFL Agreement states that, by entering into the Agreement, “DTSC is not making  
21 any remedy decisions in this Agreement for the Boeing Areas of Responsibility.”

22 (DTSC000005.) However, the remedy decisions are bounded, as acknowledged in the very next  
sentence of the SSFL Agreement:

23 Boeing expressly understands and acknowledges that DTSC, in exercising its  
24 decision-making discretion and authority, may ultimately select, as one of the  
25 possible remedies using the processes, methodologies and schedule under this  
26 Agreement and its Exhibits, a soil remedy that requires remediation of the Boeing  
Areas of Responsibility to a residential with 100% garden standard.

27 (DTSC000006.)

28 The SSFL Agreement also reserves DTSC’s authority pursuant to CEQA “in selecting a  
soil remedy ... with regard to the Boeing Areas of Responsibility.” (DTSC000014.) However,  
that reservation is limited to alternatives proposed in the PEIR which in turn have been restricted

1 by the SSFL Agreement:

2 DTSC’s CEQA authority includes the authority to deny the proposed remediation or  
3 an alternative *in the PEIR* based on one or more significant environmental impacts  
4 identified in the PEIR; to adopt feasible mitigation measures or a feasible alternative  
5 to reduce one or more significant environmental impacts *identified in the PEIR*; or  
6 to approve the proposed remediation or an alternative in the PEIR notwithstanding  
one or more significant environmental impacts identified in the PEIR if DTSC  
determines that the significant impacts are outweighed by the social, economic,  
environmental, technological or other benefits of the Site remediation.

7 (*Id.* [emphasis added].)

8 **F. The Regional Board MOU Triggered the Effectiveness of the SSFL Agreement.**

9 The mediation also resulted in an agreement between Boeing and the Regional Board  
10 regarding industrial storm water pollution. (LARB000007 - 19 [MOU Between Boeing and the  
11 Regional Board Regarding the Contaminated Santa Susana Field Laboratory] [“MOU”]; *See*  
12 LARB000001-6 [Resolution No. 2022-004.] The SSFL Agreement and the MOU together  
13 created “a comprehensive framework ... that involves two separate but interdependent  
14 agreements.” (LARB000003 [¶ 11].)

15 The SSFL Agreement makes the Regional Board’s adoption of the Water Board MOU a  
16 condition precedent to the effectiveness of the Settlement Agreement: “[t]he Effective Date of  
17 this Agreement is the later of the following after both have occurred: (a) the day it is signed by  
18 the last signatory, and (b) the Effective Date of Water Board Agreement.” (DTSC000028.) “Both  
19 the [SSFL] Agreement and the MOU between Boeing and the Los Angeles Water Board are  
20 designed to work together: Neither the MOU nor the DTSC-Boeing Settlement Agreement are  
21 effective unless and until the MOU is approved and executed by the Los Angeles Water Board.”  
(LARB000005 [¶ 16].)

22 Unlike DTSC, the Regional Board held a public meeting on the proposed MOU prior to  
23 its adoption.<sup>5</sup> On May 9, and July 11, 2022, the Regional Board provided notice of a public  
24 meeting on the MOU and invited the public to provide comments to the Board. (LARB000005.  
25 *See* LARB000938-941; LARB000887; LARB000883-886; LARB000300-301.) On August 11,  
26 2022, the Board held a full-day public hearing on the proposals. (LARB000302-306.) As the first  
27 opportunity to provide public comments on the mediation outcome, Petitioners prepared extensive

28 <sup>5</sup> The initial plan by the Regional Board’s staff was to bypass any public hearing on the MOU.  
(LARB000456.) Due to the insistence of the then-Regional Board Chair, Larry Yee, the item was  
scheduled for a Board meeting and approval. (LARB000456-457.)

1 written and oral comments on the intertwined SSFL Agreement and the MOU. (LARB000790-882;  
2 LARB000389-434; LARB000639-740.) The comments opposed the use of exceptions to health risk  
3 standard for biological and cultural resources (LARB000812-814, 835-837); the application of a 5X  
4 Multiplier to the RBSLs (LARB000812-814, 835-837), the weakening of the previously approved  
5 RBSLs (LARB000809-812, 858-882), and the impropriety of making these critical decisions prior to  
6 completion of the PEIR (LARB000808). That evening, the Regional Board adopted Resolution  
7 No. 2022-04 approving the MOU. (LARB000006.)

#### 8 **G. The Agencies' Advocacy for Implementation of the SSFL Agreement.**

9 The agencies' public statements advocating for the SSFL Agreement confirm that DTSC  
10 already has decided that the Agreement's identified range of cleanup alternatives, specified  
11 exceptions to the one in a million health risk standard, and the maximum volume of soil removal  
12 achieve "stringent health protective cleanup standards." (DTSC000832 ["Benefits of the DTSC-  
13 Boeing Settlement Agreement include: ... *establishing* a range of stringent health protective  
14 cleanup standards"] [emphasis added]; *Id.* ["The comprehensive framework of the MOU and the  
15 DTSC Settlement Agreement *establishes* an accelerated, streamlined path for a stringent soil  
16 cleanup that is protective of groundwater, stormwater runoff, human health, and the  
17 environment"] [emphasis added]; DTSC000825.) CalEPA's public announcement of the SSFL  
18 Agreement already concludes that the range of alternatives, including the health risk exceptions  
19 and multipliers, "ensures that Boeing's areas of responsibility will be cleaned up to a stringent  
20 standard." (DTSC000824. *See also* DTSC000821, DTSC000822 [characterizing SSFL  
21 Agreement's terms as including "stringent risk-based cleanup standard selected by DTSC"].) The  
22 CalEPA's Secretary is quoted as saying that Boeing is "now under binding agreements that  
23 *compel a science-based, stringent cleanup* of the soil and water at Santa Susana." (*Id.* [emphasis  
24 added]. *See also* LARB000326 [statements of CalEPA Secretary] ["The framework establishes  
25 strict protocols and timelines for the cleanup of contaminated soil..."]; LARB000329  
26 [statements of CalEPA Secretary] ["I'm proud of the DTSC's settlement agreement because *it*  
27 *delivers the stringent cleanup* the community has long asked for"] [emphasis added].) The  
28 DTSC Director describes the range of alternatives and exceptions in the SSFL Agreement as  
"clearing the path for strong protections for people and the environment...." (DTSC000824.)

The provisions of the SSFL Agreement limiting Boeing's right to challenge any final  
cleanup remedy that is consistent with the processes, methodologies and schedule of the  
Agreement also are intended to ensure that the altered RBSLs, the exceptions and multipliers,

1 and the prohibition on considering cleanups allowing agricultural uses or cleanup to background  
2 levels are adhered to by DTSC in its future cleanup steps. As the CalEPA Secretary emphasized:

3 In terms of the chemical contamination, members of the community have long  
4 advocated for the resident with garden cleanup standard. This is a strengthening,  
5 not a weakening, of the 2007 order. The settlement agreement secures Boeing's  
6 agreement to not sue if DTSC selects that standard. ***This means we can get the  
stringent cleanup without delays*** we've faced in the past under the 2007 order.

7 (LARB000329-330 [emphasis added].) The overarching goal of the SSFL Settlement was to  
8 secure Boeing's agreement that allows DTSC to select a residential with garden clean-up  
9 scenario without dispute, as long as the other exceptions, multipliers, and changed RBSLs are  
10 embedded in the selection process. As the Regional Board's FAQs state:

11 Perhaps most importantly, however, the path established in the DTSC/Boeing  
12 settlement agreement for a stringent soil cleanup and the potential for a cleanup  
13 standard that allows people to live on site and consume produce from a backyard  
14 garden would likely be contested by Boeing in court, causing both delay in the  
15 cleanup and uncertainty as to whether the same range of cleanup standards, including  
16 a potential residential with backyard garden cleanup standard, would be achieved.

17 (LARB000931. *Id.* ["the DTSC-Boeing Settlement Agreement avoids future disputes with  
18 Boeing concerning the levels of cleanup necessary to remediate the soil in the Boeing Area"].)

#### 19 **H. The Final EIR was released in June 2023.**

20 On June 8, 2023, DTSC released the final PEIR for the Santa Susana remediation  
21 program. (Petitioners' Request for Judicial Notice, Exhibit A [DTSC, Certification of Final  
22 Program Environmental Impact Report for the Santa Susana Field Laboratory Site Remediation  
23 Program (Feb. 17, 2023)].) On July 19, 2023, DTSC certified the PEIR. (*Id.*) However, DTSC  
24 did not issue a notice of determination and stated that "any legal challenges to the validity of the  
25 PEIR would not be ripe until such time as an NOD is filed." (*Id.*, p. 2. *See* DTSC000215.)

### 26 **III. LEGAL BACKGROUND AND STANDARD OF REVIEW.**

27 The purpose of CEQA is to "[e]nsure that the long-term protection of the environment ...  
28 be the guiding criterion in public decisions." (PRC § 21001(d)). To that end, CEQA requires that  
a public agency prepare an environmental impact report ("EIR") for "any project that they intend  
to carry out or approve which may have a significant effect on the environment." (PRC §  
21151(a); § 21061 "[An (EIR) is an informational document which ... shall be considered by  
every public agency prior to its approval or disapproval of a project"].) "'Project' means the  
whole of an action, which has a potential for resulting in either a direct physical change in the  
environment, or a reasonably foreseeable indirect physical change in the environment . . ." (14

1 CCR § 15378(a).)

2 “Before conducting CEQA review, agencies must not ‘take any action’ that significantly  
3 furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would  
4 ordinarily be part of CEQA review of that public project.’” (*Save Tara*, 45 Cal.4th at 138). In  
5 *Save Tara*, the California Supreme Court considered the question of what types of project  
6 approvals could be done only after the completion of environmental review under CEQA. (*Id.*).  
7 The Court found that an agency violates CEQA by failing to prepare a CEQA document prior to  
8 entering into an agreement with a project’s developer which facilitated and guaranteed the  
9 developer’s implementation of the project. (*Id.* at 124).

10 The Supreme Court reasoned that, “at a minimum an EIR must be performed before  
11 a project is approved, for if post-approval environmental review were allowed, EIR’s would  
12 likely become nothing more than *post hoc* rationalizations to support action already taken.” (*Save*  
13 *Tara*, 45 Cal.4th at 130 (citation omitted).) “Just as CEQA itself requires environmental review  
14 before a project’s approval, not necessarily its *final* approval [citation omitted], so the guideline  
15 defines ‘approval’ as occurring when the agency *first* exercises its discretion to execute a  
16 contract or grant financial assistance, not when the *last* such discretionary decision is made.” (*Id.*  
17 at 134 [emphasis supplied].)

18 CEQA’s regulatory guidelines mirror the Court’s ruling: “While mere interest in, or  
19 inclination to support, a project does not constitute approval, a public agency entering into  
20 preliminary agreements regarding a project prior to approval shall not, as a practical matter,  
21 commit the agency to the project.” (14 CCR § 15004(b)(4).) “[A]ny such pre-approval  
22 agreement should, for example: ... (B) Not bind any party, or commit to any definite course of  
23 action, prior to CEQA compliance; [and] (C) Not restrict the lead agency from considering any  
24 feasible mitigation measures and alternatives, ...” (*Id.* See also 14 CCR § 15004(a) [“Before  
25 granting any approval of a project subject to CEQA, every lead agency or responsible agency  
26 shall consider a final EIR or negative declaration or another document authorized by these  
27 guidelines to be used in the place of an EIR or negative declaration”]; § 15004(b)(2) [“To  
28 implement the above principles, public agencies shall not undertake actions concerning the  
proposed public project that would have a significant adverse effect or limit the choice of  
alternatives or mitigation measures, before completion of CEQA compliance”].) “‘Approval’  
means the decision by a public agency which commits the agency to a definite course of action  
in regard to a project intended to be carried out by any person.” (*Id.*, § 15352(a).)

1 Although the city in *Save Tara* provided a condition precedent in the agreement reserving  
2 the city’s discretion to perform CEQA review, the Court found that “[a] CEQA compliance  
3 condition can be a legitimate ingredient in a preliminary public-private agreement for exploration  
4 of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances,  
5 commits the public agency as a practical matter to the project, the simple insertion of a CEQA  
6 compliance condition will not save the agreement from being considered an approval requiring  
7 prior environmental review.” (*Id.* at 132. *See also RiverWatch v. Olivenhain Mun. Water Dist.*  
8 (2009) 170 Cal.App.4th 1186, 1214–15.) “[P]ostponing environmental analysis can permit  
9 ‘bureaucratic and financial momentum’ to build irresistibly behind a proposed project, ‘thus  
10 providing a strong incentive to ignore environmental concerns.’” (*Save Tara*, 45 Cal.4th at 135,  
11 quoting *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376,  
395.) As *Save Tara* explains:

12 When an agency has not only expressed its inclination to favor a project, but has  
13 increased the political stakes by publicly defending it over objections, putting its  
14 official weight behind it, devoting substantial public resources to it, and announcing  
15 a detailed agreement to go forward with the project, the agency will not be easily  
16 deterred from taking whatever steps remain toward the project’s final approval.

(*Save Tara*, 45 Cal.4th at 135.) “Approvals under CEQA, therefore, are not dependent on ‘final’  
17 action by the lead agency, but by conduct detrimental to further fair environmental analysis.”  
18 (*John R. Lawson Rock & Oil, Inc. v. State Air Res. Bd.* (2018) 20 Cal.App.5th 77, 99.) “The core  
principles set forth in *Save Tara* equally apply to public regulatory action.” (*Id.* at 100.)

19 The Court’s review of an agency’s compliance with CEQA “shall extend only to whether  
20 there was a prejudicial abuse of discretion.” (Pub. Resources Code § 21168.5.) “Abuse of  
21 discretion is established if the agency has not proceeded in a manner required by law or if the  
22 determination or decision is not supported by substantial evidence.” (*Laurel Heights*, 47 Cal.3d  
23 at 392, quoting Pub. Resources Code, § 21168.5.) A claim that a “lead agency approved a project  
24 with potentially significant environmental effects *before* preparing and considering an EIR for  
25 the project ‘is predominantly one of improper procedure’ to be decided by the courts  
independently.” (*Save Tara*, 45 Cal.4th at 131.)

#### 26 IV. ARGUMENT

##### 27 A. The 2022 SSFL Agreement Forecloses Alternatives and Mitigation Measures 28 That Were Actively Being Requested or Considered in the EIR Process.

By contractually mandating the elimination of alternatives, committing to include

1 generous exceptions and multipliers to a one-in-a-million human health risk standard in any  
2 cleanup alternative; committing to the use of weakened soil clean-up screening levels; and pre-  
3 deciding that these limits on the scope of the cleanup will nevertheless amount to a “stringent  
4 soil cleanup ... that allows people to live on site and consume produce from a backyard garden,”  
5 the SSFL Agreement as a practical matter limited DTSC’s choice of cleanup alternatives before  
6 completion of the agency’s CEQA compliance. (14 CCR § 15004(b)(2) & (4).) For each of these  
7 reasons, by entering into the SSFL Agreement, DTSC has taken an “action which gives impetus  
8 to a planned or foreseeable project in a manner that forecloses alternatives or mitigation  
9 measures that would ordinarily be part of CEQA review of that public project[.]” in violation of  
10 CEQA. (14 Cal. Admin Code § 15004(b)(2).); *See Save Tara*, 45 Cal.4th at 138.)

11 **1. The SSFL Agreement forecloses the consideration of clean-up alternatives to**  
12 **a level consistent with the County’s zoning allowing rural**  
13 **residential/agricultural uses or pre-SSFL background levels.**

14 Ventura County’s zoning for the SSFL authorizes a rural residential/agricultural use.  
15 (DTSC021340-21343; DTSC023783; *supra*, p. 11-12.) However, the SSFL Agreement has now  
16 eliminated consideration of any alternative requiring Boeing to clean up contaminated soils to  
17 levels allowing rural residential/agricultural uses. The SSFL Agreement states: “[Risk-Based  
18 Screening Levels] for the rural residential (agricultural) exposure scenario do not need to be  
19 included or updated in SRAM Rev. 2 Addendum (2022).” (DTSC000123 [footnote 1]; *Supra*, p.  
20 14.) DTSC reasons that its determination is based on numerous factors, few if any of which were  
21 particular to DTSC’s expertise, including for example population growth projections; market  
22 forces; and the site’s location in relation to other nearby uses. (*Id.*) Petitioners and other public  
23 commenters requested that the Draft PEIR consider a clean-up alternative requiring Boeing to  
24 clean up soils to levels allowing agricultural uses. (*See supra.*, pp. 11-12; DTSC021371;  
25 DTSC021512-21513; DTSC021518; DTSC021542-21543; DTSC023783.) By committing in the  
26 SSFL Agreement to exclude the consideration of a rural residential/agricultural exposure  
27 scenario, DTSC foreclosed consideration of this potential alternative in the EIR process.

28 Similarly, by agreeing to exclude any cleanup to pre-SSFL background levels, DTSC  
undercut the comments advocating for the EIR to evaluate and DTSC to select that alternative.  
(*Supra*, p. 11; DTSC000123; DTSC067434, DTSC021348.) As a practical matter, the SSFL  
Agreement resolved this comment prior to the completion of the CEQA process and the issuance  
of the Final PEIR.

1                   **2. The SSFL Agreement prejudged the validity of an alternative which cleans**  
2                   **up more than 444,000 cubic yards of soil**

3                   As a practical matter, the SSFL Agreement commits DTSC to require the excavation of  
4 no more than 439,000 cubic yards of soil from those areas of the SSFL for which Boeing is  
5 responsible. (*Supra*, p. 15; DTSC000006; DTSC029833.) The SSFL Agreement establishes an  
6 effective cap of 439,000 cubic yards of soil removal that would be required for the future  
7 resident with garden and 100 percent consumption cleanup alternative. (DTSC029833.) By  
8 capping the volume of soil excavation it would require, DTSC forecloses consideration of any  
9 cleanup alternatives that would require more soil to be excavated from the site. Comments on the  
10 DEIR state that the volume of soil necessary to clean-up is underestimated in the Draft PEIR.  
11 (DTSC021534; DTSC024196.) Comments also criticize the insufficiency of the cleanup efforts  
12 discussed in the Draft EIR and advocating for consideration of alternatives that would remove  
13 more soil in order to cleanup Boeing soil contamination to background levels. (DTSC021371;  
14 DTSC021446; DTSC067434; DTSC021520-21522; DTSC021541.) By agreeing up front that it  
15 would not require more than 439,000 cubic yards of soil to be excavated in order to avoid a  
16 challenge by Boeing, DTSC has foreclosed consideration of the more robust cleanup alternatives  
17 requested by the Petitioners, City of LA, and others.

18                   **3. The SSFL Agreement forecloses any alternatives that do not include a**  
19                   **hundredfold increase in the one in a million human health risk standard to**  
20                   **mitigate wildlife and cultural resource impacts.**

21                   The SSFL Agreement requires that any Corrective Measures Studies to be prepared by  
22 Boeing will include a hundredfold or more increase in the one in a million human health goal  
23 where there is an impact from cleanup activities to either moderately significant areas of  
24 biological or cultural resources. (*Supra*, p. 15; DTSC000010; DTSC000200-201.) Only if these  
25 modifications weakening the one in a million standard are included in Boeing's Corrective  
26 Measures Study can DTSC accept the CMS and release it for public review. (DTSC000200-201.)  
27 The Draft PEIR floated this exception alternative, though DTSC stated at the time it had not yet  
28 decided whether to agree to the robust exceptions. (*Supra*, p. 10; DTSC025198.) These  
exceptions were being hotly debated in the public comments to DTSC. (*Supra*, pp. 12-13;  
DTSC021386; DTSC021370; DTSC021372; DTSC021465; DTSC021364; DTSC021366;  
DTSC024203; DTSC021348.) DTSC's commitment in the SSFL Agreement to include this  
exception forecloses consideration of an alternative without these exceptions.



1                   **4. The SSFL Agreement forecloses an alternative without a “5X Multiplier” of**  
2                   **the purported one in a million human health risk standard.**

3                   The SSFL Agreement further forecloses alternatives considering a cleanup to the 2014  
4                   Human Health RBSLs or more stringent levels by multiplying the Human Health RBSLs by 5  
5                   times above those levels for Boeing’s areas of responsibility. (*Supra*, pp. 15-16; DTSC000009-  
6                   10; DTSC000191; DTSC000195; DTSC000122-123.) This mandated multiplier cut short the  
7                   public comments asking that DTSC implement a cleanup consistent with the 2014 RBSLs and  
8                   health risk goal of one in a million cancers and non-cancer hazard of 1 without exceptions.  
9                   (*Supra*, pp. 12-13; DTSC021365; DTSC021446; DTSC021446; DTSC021538; DTSC021529;  
10                  DTSC021542; DTSC021552.) As a result, the SSFL Agreement improperly forecloses cleanup  
11                  alternatives that would ordinarily be part of CEQA review for the Project, including considering,  
12                  for example, a cleanup applying the 2014 Human Health RBSLs without multipliers. (14 Cal.  
13                  Admin Code § 15004(b)(2).); *See Save Tara*, 45 Cal.4th at 138).

14                   **5. The SSFL Agreement supersedes the human health risk-based screening**  
15                   **levels approved by DTSC in 2014.**

16                  The SSFL Agreement supersedes the Human Health RBSLs approved by DTSC in 2014  
17                  and sets significantly less stringent standards for site cleanup and remediation. The Human  
18                  Health RBSLs approved by DTSC in 2014 addressed 182 chemical constituents.  
19                  (LARB000835.) Of those, 147 are weakened by the SSFL Agreement, 34 are strengthened, and  
20                  one remains the same. (*Id.* *See* LARB000864-882 [comparing RBSLs pursuant to 2007 Consent  
21                  Order to RBSLs in 2022 SSFL Agreement].) Groups commented on the Draft PEIR that DTSC  
22                  should implement the 2014 Human Health RBSLs and correct its errors in the DEIR purporting  
23                  to apply those soil clean-up levels. In committing to new RBSLs which supersede and weaken  
24                  the RBSLs approved by DTSC in 2014, DTSC has foreclosed consideration of alternative clean-  
25                  up plans relying on those current screening levels. (*Supra*, pp. 13, 16.) Any discussion of this  
26                  alternative has now been rendered superfluous by the SSFL Agreement.

27                   **B. DTSC’s Advocacy for the Implementation of the SSFL Agreement Establish Its**  
28                   **Commitment to Its Implementation**

                  In addition to the terms of the SSFL Agreement, the court must “look not only to the  
terms of the agreement but to the surrounding circumstances to determine whether, as a practical  
matter, the agency has committed itself to the project as a whole or to any particular features, so  
as to effectively preclude any alternatives or mitigation measures....” (*Save Tara*, 45 Cal.4th at  
139; *John R. Lawson Rock & Oil*, 20 Cal.App.5th at 100–01 [advisory statements by agency staff

1 following through on agency board’s direction was an approval under CEQA[.]) In *Save Tara*, the  
2 Supreme Court looked to the City’s public announcements and newsletter to ascertain the city’s  
3 determination to follow through with the Project at issue in that case. (45 Cal.4th at 141–42.)

4 DTSC, the Regional Board’s and CalEPA’s public statements advocating for the SSFL  
5 Agreement and the MOU demonstrate the agencies’ intention to only select a soil cleanup  
6 consistent with the SSFL Agreement. The agencies’ public statements also make clear that  
7 DTSC intends to comply fully with the soil cleanup terms of the SSFL Agreement in order to  
8 avoid potential lawsuits by Boeing and resulting delays in the SSFL cleanup. These further  
9 assurances of the agencies’ views of the importance of the SSFL Agreement and the imperative  
10 to implement its cleanup terms establish DTSC’s commitment to its terms dictating the form of  
11 cleanup alternatives to be considered and eliminating alternatives from consideration.

12 DTSC and its parent agency – CalEPA – expressed unwavering faith in the merits of the  
13 limited range of alternatives, and the accompanying exceptions and multipliers, already  
14 established by the SSFL Agreement. (*Supra*, pp. 19-20; *See, e.g.* DTSC000832 [emphasizing that  
15 SSFL Agreement “*establishes*” a stringent and health protective soil cleanup] [emphasis added];  
16 DTSC000822 [“stringent risk-based cleanup standard *selected* by DTSC”] [emphasis added];  
17 825 [SSFL Agreement “*ensures* that Boeing’s areas of responsibility will be cleaned up to a  
18 stringent standard”]; LARB000329 [SSFL Agreement “*delivers the stringent cleanup*”].)

19 DTSC and its sister agencies’ public statements also emphasized the importance of  
20 implementing the SSFL Agreement to avoid Boeing legal challenges and resulting delays in the  
21 cleanup – none of which would be realized unless the agencies comply with the SSFL  
22 Agreement’s soil cleanup measures. (DTSC000832 [“DTSC Settlement Agreement establishes  
23 an accelerated, streamlined path for a stringent soil cleanup...”]. SSFL Settlement “means we  
24 can get the stringent cleanup without delays....” (LARB000329.) The Regional Board staff  
25 emphasized that avoiding litigation delays by Boeing was perhaps the most important benefit of  
26 the SSFL Agreement, unequivocally stating that the SSFL “Agreement avoids future disputes  
27 with Boeing.” (LARB000931.) The only way that the SSFL Agreement avoids these feared  
28 disputes and achieves the accelerated path envisioned by the agencies is its full implementation,  
including the limited range of alternatives, its mandated exceptions and multipliers, and its  
mandated weakened RBSLs.

**C. The Reservation of CEQA Discretion in the SSFL Agreement Does Not Excuse  
DTSC from Its Duty to Conduct Timely CEQA Review.**

1 The SSFL Agreement acknowledges that DTSC is conducting CEQA review for the  
2 remediation of the site and that, by signing the SSFL Agreement the agency “reserves all of its  
3 rights, powers, discretion and authority as the CEQA and HWCL lead agency for the remediation  
4 of contamination at the SSFL in selecting a soil remedy ... with regard to the Boeing Areas of  
5 Responsibility.” (DTSC000014.)

6 Despite that effort to claim its CEQA process is unaffected by the SSFL Agreement, the  
7 Agreement’s commitments still improperly foreclose alternatives without CEQA review. As the  
8 Supreme Court held in *Save Tara*, if the circumstances surrounding an agreement commit the  
9 agency to the project, “the simple insertion of a CEQA compliance condition will not save the  
10 agreement from being considered an approval requiring prior environmental review.” (*Save*  
11 *Tara*, 45 Cal.4th at 132.) “[C]ourts should look not only to the terms of the agreement but to the  
12 surrounding circumstances to determine whether, *as a practical matter, the agency has*  
13 *committed* itself to the project as a whole *or to any particular features, so as to effectively*  
14 *preclude any alternatives* or mitigation measures that CEQA would otherwise require to be  
15 considered....” (*Id.* at 139 [emphasis added].) As discussed above, the terms of the SSFL  
16 Agreement foreclose consideration of alternatives with more stringent soil cleanup levels to  
17 allow for rural agriculture or soil remediation by Boeing to background levels and site uses.  
18 (*Supra*, pp. 14-15.) It also forecloses any alternatives that do not include exceptions and  
19 multipliers to the one in a million human health risk threshold. (*Supra*, p. 15.) It also forecloses  
20 any alternative utilizing the RBSLs approved by DTSC at the time of the Draft PEIR. (*Supra*, pp.  
21 15-16.) In the SSFL Agreement, DTSC commits to these restrictions on considering potential  
22 alternatives despite an ongoing EIR process in which members of the public and local cities had  
23 submitted comments advocating for their inclusion and adoption. Lastly, the agencies’ public  
24 statements confirm their commitment to abide by the terms of the SSFL Agreement and ensure a  
25 streamlined process undeterred by any legal challenge by Boeing. (*Supra*, pp. 19-20. *See John R.*  
26 *Lawson Rock & Oil*, 20 Cal.App.5th at 101 [agencies public statements and confirmation of  
27 intent to alter regulations evidence of premature commitment under CEQA].) Therefore, despite  
28 the inclusion of a CEQA compliance provision in the SSFL Agreement, DTSC has foreclosed  
alternatives and cut off the public review and comment process in violation of CEQA.

**D. The Regional Board Improperly Foreclosed Alternatives and Mitigation Measures  
by Approving the Memorandum of Understanding.**

CEQA forbids *any* approval regarding a project to be completed before the completion of

1 the project’s review if such approval forecloses alternatives or mitigation. (14 CCR §§ 15004(a)  
2 & (b)(2).) DTSC and Boeing made the SSFL Agreement contingent on the approval by the  
3 Regional Board of the MOU. (DTSC000028.) By deciding to make the SSFL Agreement  
4 effective, the Regional Board also foreclosed alternatives and mitigation measures in violation of  
5 CEQA. When adopting Resolution No. 2022-004, the Regional Board was aware that its decision  
6 was to put the SSFL Agreement into effect. “Both the DTSC-Boeing Settlement Agreement and  
7 the MOU between Boeing and the Los Angeles Water Board are designed to work together:  
8 Neither the MOU nor the DTSC-Boeing Settlement Agreement are effective unless and until the  
9 MOU is approved and executed by the Los Angeles Water Board.” (LARB000005.) In response  
10 to the question “[w]hat happens if the Los Angeles Water Board does not approve the MOU?[,]”  
11 the Regional Board FAQ states, “[i]f the Los Angeles Water Board fails to approve the draft  
12 MOU, then the settlement agreement that Boeing has reached with DTSC will not go into  
effect....” (LARB0000931 [emphasis in original].)

13 The Regional Board also was aware that many members of the community, including  
14 Petitioners, objected strongly to the sufficiency of the SSFL Agreement and concerned that it  
15 would block many of the cleanup outcomes the community was in the midst of advocating for in  
16 the CEQA process. Despite those many concerns, the Board understood that its approval was in  
17 furtherance of implementing the substantive terms of the SSFL Agreement. The agencies’ joint  
18 press release expressly identifies that goal, stating that the “framework,” including the MOU,  
19 “ensures that Boeing’s areas of responsibility will be cleaned up to a stringent standard” and that  
20 “[t]hrough the framework released today, the State of California is taking a major step forward to  
21 restore the Santa Susana site for safe use by future generations.” (DTSC0000818.) The Board’s  
22 FAQs frankly acknowledge that “[t]he draft MOU supports DTSC’s settlement agreement and  
23 **together, these documents establish an accelerated, streamlined path for *a stringent soil cleanup***  
24 ***that is protective of human health, groundwater, surface water and the environment.***”  
25 (LARB0000931 [emphasis added]. See also *id.* [FAQ No. 4] [citing an advantage of the MOU as  
26 “[t]he draft MOU supports DTSC’s settlement agreement and together, these documents  
27 establish an accelerated, streamlined path for a stringent soil cleanup that is protective of human  
28 health, groundwater, surface water and the environment”].)

Knowing its decision was determinative of making the SSFL Agreement effective and  
despite the public concerns raised at its public hearing, the Regional Board approved the MOU.  
(LARB0000006.) Thus, the Board passed judgment on the merits of the SSFL Agreement and put

1 the Agreement into effect. In doing so, the Regional Board violated CEQA by taking an action  
2 that significantly furthered the SSFL remediation project in a manner that foreclosed alternatives  
3 or mitigation measures, despite the then ongoing review of the Project through the Draft PEIR  
4 process. Both DTSC and the Regional Board in effect approved the SSFL Agreement - a  
5 preliminary approval of the remediation project that foreclosed alternatives and associated  
6 mitigations. It is such premature approvals that are forbidden by CEQA. (14 CCR § 15004(a).)

7 **E. The Issuance of a Final PEIR Does Not Moot DTSC's Violation of CEQA.**

8 Any argument by Respondents or Real Party that DTSC's issuance and certification of  
9 the Final PEIR moots Petitioners' claims challenging the SSFL Agreement already has been  
10 resolved by the California Supreme Court in *Save Tara*. In *Save Tara*, petitioners sought to set  
11 aside a development agreement that as a practical matter committed the local agency to a project  
12 prior to completing its environmental review under CEQA. (*See* 45 Cal.4th at 142.) As the case  
13 made its way through the appeal courts, the city prepared and finalized an EIR for the project at  
14 issue, which EIR was not judicially challenged. (*Id.* at 127, 143.) The Supreme Court agreed  
15 with petitioners that "the preparation and certification of an EIR does not render the appeal  
16 moot." (*Id.*) "No irreversible physical or legal change has occurred during pendency of the  
17 action, and *Save Tara* can still be awarded the relief it seeks, an order that City set aside its  
18 approvals" of the development agreement. (*Id.* at 127-128.)

19 The same reasoning applies to this case even more strongly. In contrast to the final EIR in  
20 *Save Tara*, the Final PEIR here has only been certified and is not yet ripe for judicial review.  
21 (Pet. RJN, Ex. A, p. 2.) An order requiring DTSC and Boeing to set aside the SSFL Agreement,  
22 and for the Regional Board to vacate its MOU will remedy the violation of CEQA alleged by  
23 Petitioners and constitute effective relief. (45 Cal.4th at 128).

24 **V. CONCLUSION**

25 For all of the above reasons, Petitioners respectfully request that the Court issue a  
26 peremptory writ of mandate directing DTSC, the Regional Board, and Boeing to vacate the SSFL  
27 Agreement and the MOU.

28 July 11, 2025



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1 **PROOF OF SERVICE**

2 I, Toyer Grear, declare as follows:

3 I am a resident of the State of California, and employed in Oakland, California. I am  
4 over the age of 18 years and am not a party to the above-entitled action. My business address is  
5 1939 Harrison Street, Suite 150 Oakland, CA 94612. On July 11, 2025, I served a copy of the  
6 following documents:

7 **PETITIONERS' OPENING BRIEF IN SUPPORT OF  
8 PETITION FOR WRIT OF MANDATE**

9 on the following parties by electronically mailing a true and correct copy to the addresses set  
10 forth below:

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I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed July 11, 2025 at Oakland, California.

  
Toyer Grear