



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

REVISED

PUBLIC NOTICE

PROJECT: Panoche Valley Solar Farm

PUBLIC NOTICE NUMBER: 2009-00443S
PUBLIC NOTICE DATE: December 14, 2010
COMMENTS DUE DATE: February 14, 2011

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1. **INTRODUCTION:** Solargen Energy, Inc. (POC: Eric Cherniss), 20400 Stevens Creek Boulevard, Suite 700, Cupertino, CA 95014, through its agent, Power Engineers (POC: Kevin Lincoln), 3940 Glenbrook Drive, Hailey, ID 83333, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to construct a 399 megawatt solar photovoltaic energy plant. The proposed project would be constructed in five phases and include a substation, onsite access roads, and buried electrical collection conduit. The construction of three of the road crossings would result in 427 cubic yards of fill into Panoche Creek and Las Aguilas Creek, jurisdictional waters of the U.S. Electricity generated from the Panoche Valley Solar Farm would be transmitted onsite to the state's electrical grid through two existing Pacific Gas and Electric Company (PG&E) transmission lines. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The 4,855 acre (7.6 square mile) project site is located approximately three-quarters of a mile north of the intersection of Panoche Road and Little Panoche Road, approximately 30 miles south of Los Banos and 60 miles west of Fresno, in eastern San Benito County, California (Figure 1). The project site is located within Township 15S, Range 10E, Section 3-4, 8-11, 13-17, and 20-25 and Township 15S, Range 11E, Sections

18, 20, 29 and 30 of the U.S. Geologic Survey's Cerro Colorado, Llanada, Mercy Hot Springs, and Panoche 7.5-minute topographic quadrangle maps.

Project Site Description: The project site is bordered by rangeland to the north and south, by the Gabilan Range to the west, and by the Panoche Hills to the east. The site elevation ranges from approximately 1,250 feet above mean sea level near the southeast end of the project to approximately 1,400 feet above mean sea level near the west end. Panoche Creek and Las Aguilas Creek flow through the project site. In addition, there are several stock ponds and stream segments in the northern portion of the project site. During the past forty years the project site has been used for grazing. Previously, crop production had occurred over much of the project site. The project site is dominated by non-native grass species (*Bromus hordeaceus*, *Bromus diandrus*, and *Hordeum murinum*) and forb species (*Erodium botrys*, *E. cicutarium* and *Tricostema lanceolatum*).

Project Description: As shown in Figure 2, approximately 2,203 acres would be permanently disturbed by on-site facilities, and an additional 100 acres would be temporarily disturbed during construction. The proposed project will include development of the following components: installation of approximately 3 million to 4 million photovoltaic panels; photovoltaic module steel support structures; electrical inverters and transformers; an electrical substation with switchyard; buried electrical collection conduit; an operations and maintenance (O&M) building; a septic system and leach

field; a wastewater treatment facility and demineralization pond; on-site access roads; security fencing; and transmission support towers and line(s) to interconnect with a PG&E transmission line that passes through the project site. The proposed project does not include any potential upgrades to PG&E's transmission system.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to construct and operate a solar photovoltaic energy generating facility.

Overall Project Purpose: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis, and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to construct and operate a solar photovoltaic energy generating facility to support California in meeting the Renewables Portfolio Standard (RPS) mandate which requires 20 percent of the state's electricity supply to come from eligible renewable energy sources by 2010, and 33 percent by 2020.

Project Impacts: The proposed construction of three road crossings would result in 427 cubic yards of fill into Panoche Creek and Las Aguilas Creek, jurisdictional other waters of the U.S. (Figures 3 and 4).

Proposed Mitigation: The applicant has avoided and minimized impacts to waters of the U.S. by reducing the number of road crossings and eliminating impacts associated with the trenching of buried conduits. The applicant is proposing to mitigate for impacts to Las Aquilas and Panoche Creek by rehabilitating two sections of Panoche Creek and one section of Las Aquilas Creek (Figure 5). The rehabilitation will involve the removal of litter and debris.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant has recently submitted an

application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, Central Valley, Fresno Office, 1685 East Street, Fresno, California 93706, by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a Consistency Certification or has waived its right to do so. The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project would not likely affect coastal zone resources.

Other Local Approvals: The applicant has also applied to the following agencies for additional authorizations for the project: California Utilities Commission, California Department of Fish and Game, California Department of Transportation, California State Historic Preservation Office, California Air Resources Board, San Benito County, and Monterey Bay Unified Air Pollution Control District.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project does not qualify for a Categorical Exclusion. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on

Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to insure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the project site, including the entire Panoche Valley, is not within any listed species designated critical habitat but that the following Federally-listed species, the threatened vernal pool fairy shrimp (*Branchinecta lynchi*), and endangered blunt-nosed leopard lizard (*Gambelia silus*), giant kangaroo rat (*Dipodomys ingens*), and San Joaquin kit fox (*Vulpes macrotis mutica*) are known to occur on the project site. Vernal pool fairy shrimp were observed during this past winter's protocol level surveys in a small pond located in the northern portion of the project site. Blunt-nosed leopard lizards were observed during 2009 and 2010 protocol level surveys in the Sections 10, 15, and 16 of the project site with all but one observation within or in the vicinity of Panoche Creek. Giant kangaroo rat burrow clusters were found on the project site during the 2009 blunt-nosed leopard lizard surveys. Habitat suitability modeling has estimated that the project site has approximately 416 acres of highly suitable habitat, 1,468 acres of moderately suitable habitat and 552 acres of low suitable habitat for giant kangaroo rat. The project site

also has potential dens for the San Joaquin kit fox. The threatened California tiger salamander (*Ambystoma californiense*) is known to breed in ponds adjacent to the project site but none have been observed on the project site during reconnaissance and species specific surveys. The endangered California condor (*Gymnogyps californianus*) has not been observed on the project site and the project site has no suitable nesting habitat however there is potential foraging habitat.

To address project related impacts to these species USACE will initiate formal consultation with USFWS pursuant to Section 7(a) of the ESA. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. As the Federal lead agency for this project, the Corps will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat, and the need to conduct consultation. Lastly, approximately 2,203 acres of the project site are wintering habitat for the mountain plover (*Charadrius montanus*). On June 28, 2010, the USFWS reinstated a proposal to list the mountain plover as threatened under ESA.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is not present at the project location or in its vicinity, and that consultation will not be required. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRSA of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of

ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has reviewed the information provided by the applicant that includes a review of archival sources including a records search at the Northwest Information Center of California Historical Resources Information System, consultation with knowledgeable individuals, and field investigations. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. As the Federal lead agency for this project, USACE will be responsible for determining the presence or absence of historic properties or archaeological resources, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from

the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

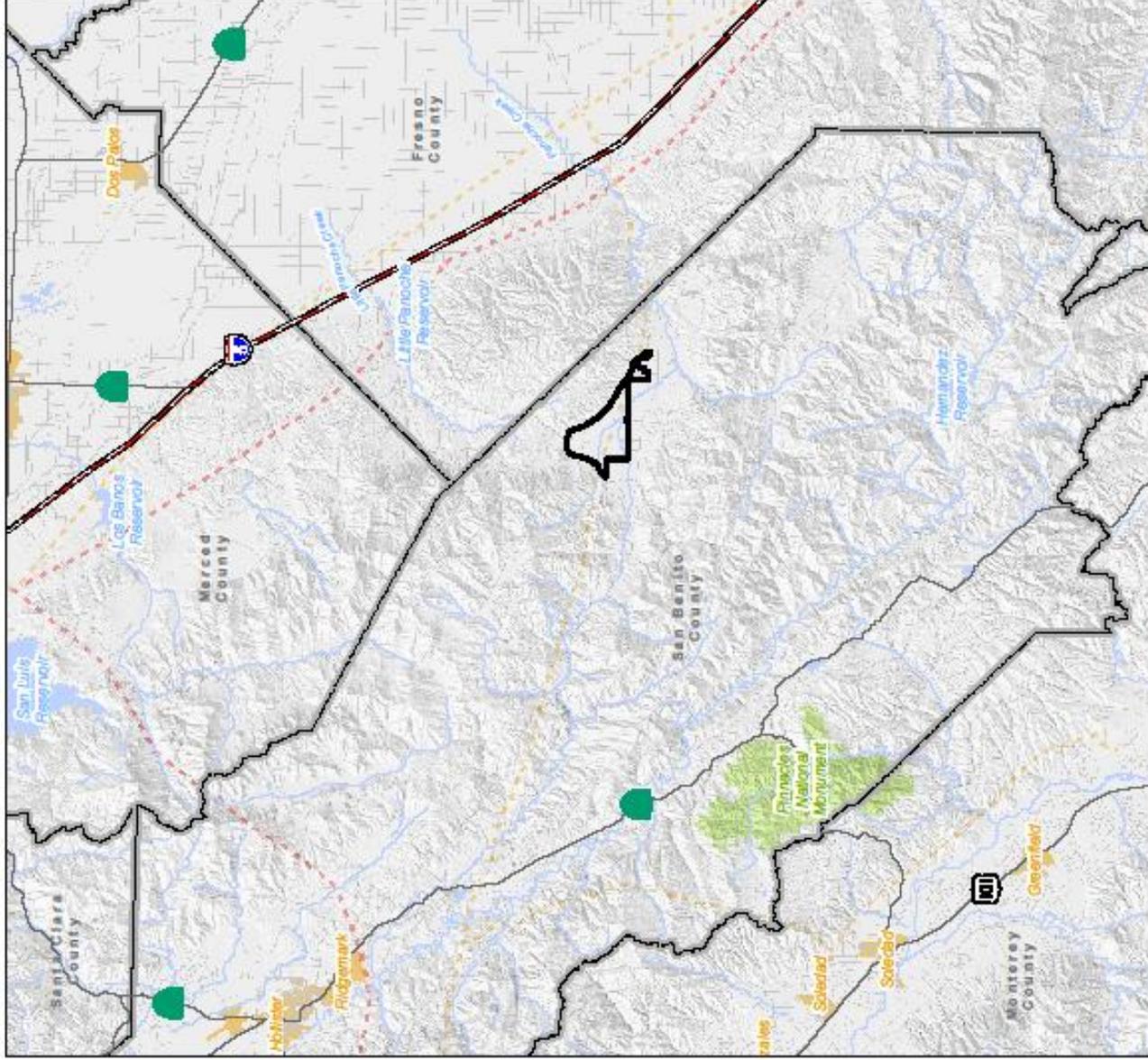
5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is not dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State and

local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

8. **SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Katerina Galacatos, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.



Panoche Valley Solar Farm

Solargen Energy, Inc

Figure 1
Project Vicinity



- | | | | |
|---------------------|---------------------|-----------------|-----------------|
| Panoche Valley | Interstate 5 | Local Road | Jurisdiction |
| Water Features | Lake or Pond | River or Stream | County Boundary |
| 500 KV Utility Line | 230 KV Utility Line | City Boundary | Pinnacles NM |

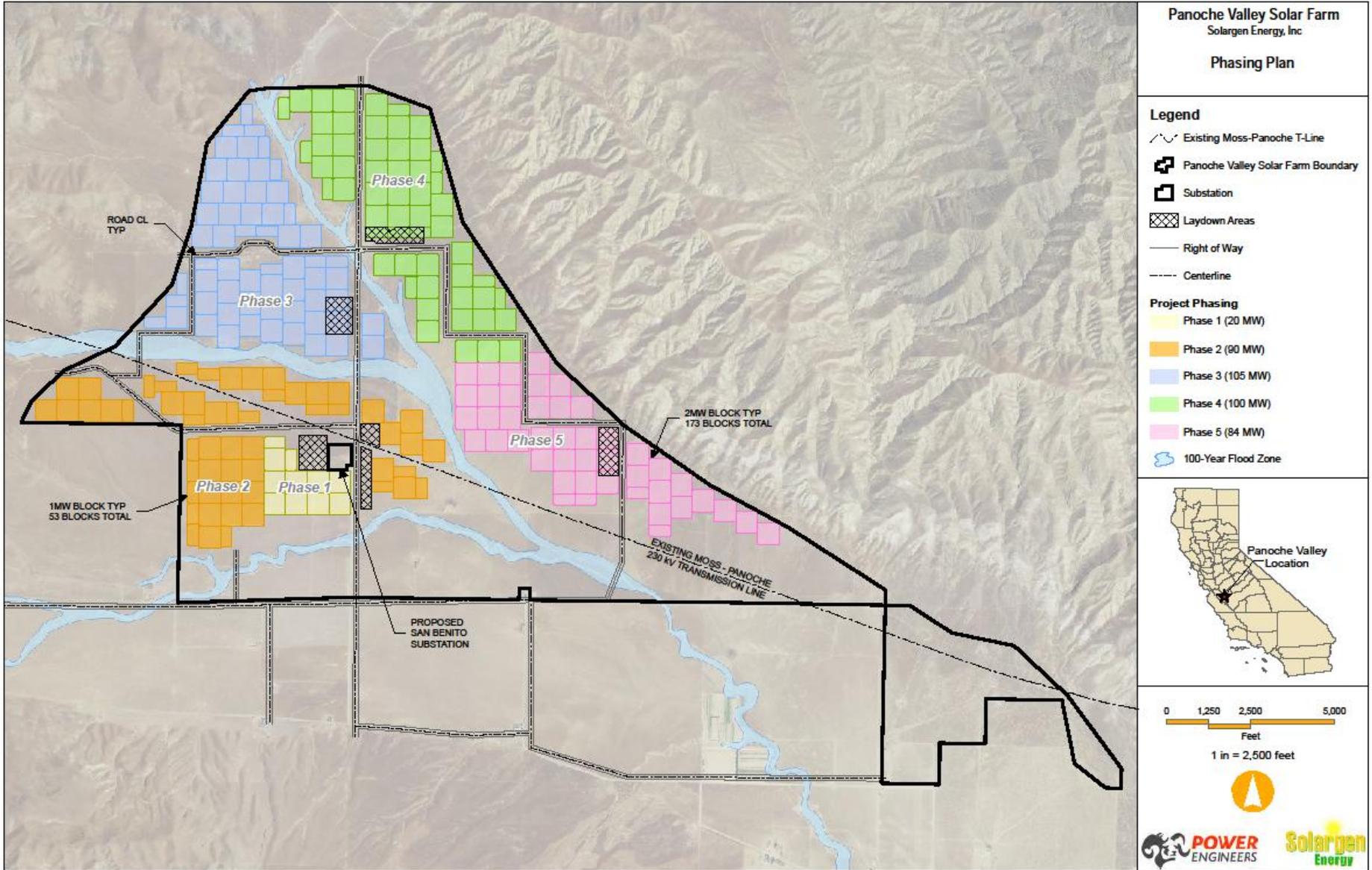


Figure 2

Panoche Valley Solar Farm

Study Area Impact Map
Revised 8/26/2010

Legend

-  PV Panel Block
-  Underground Cable
-  Existing Transmission Line
-  Road
-  Ordinary High Water Mark
-  Substation
-  Study Area

Impact Area #1
Access Road - Ford
69 Linear Feet
50 CY fill

Impact Area #3
Access Road - Culvert Crossing
30 Linear Feet
247 CY fill

Impact Area #2
Access Road - Culvert Crossing
27 Linear Feet
130 CY fill



1 inch = 0.5 miles

0 0.25 0.5 0.75 Miles



Date Printed: August 26, 2010
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Figure 3

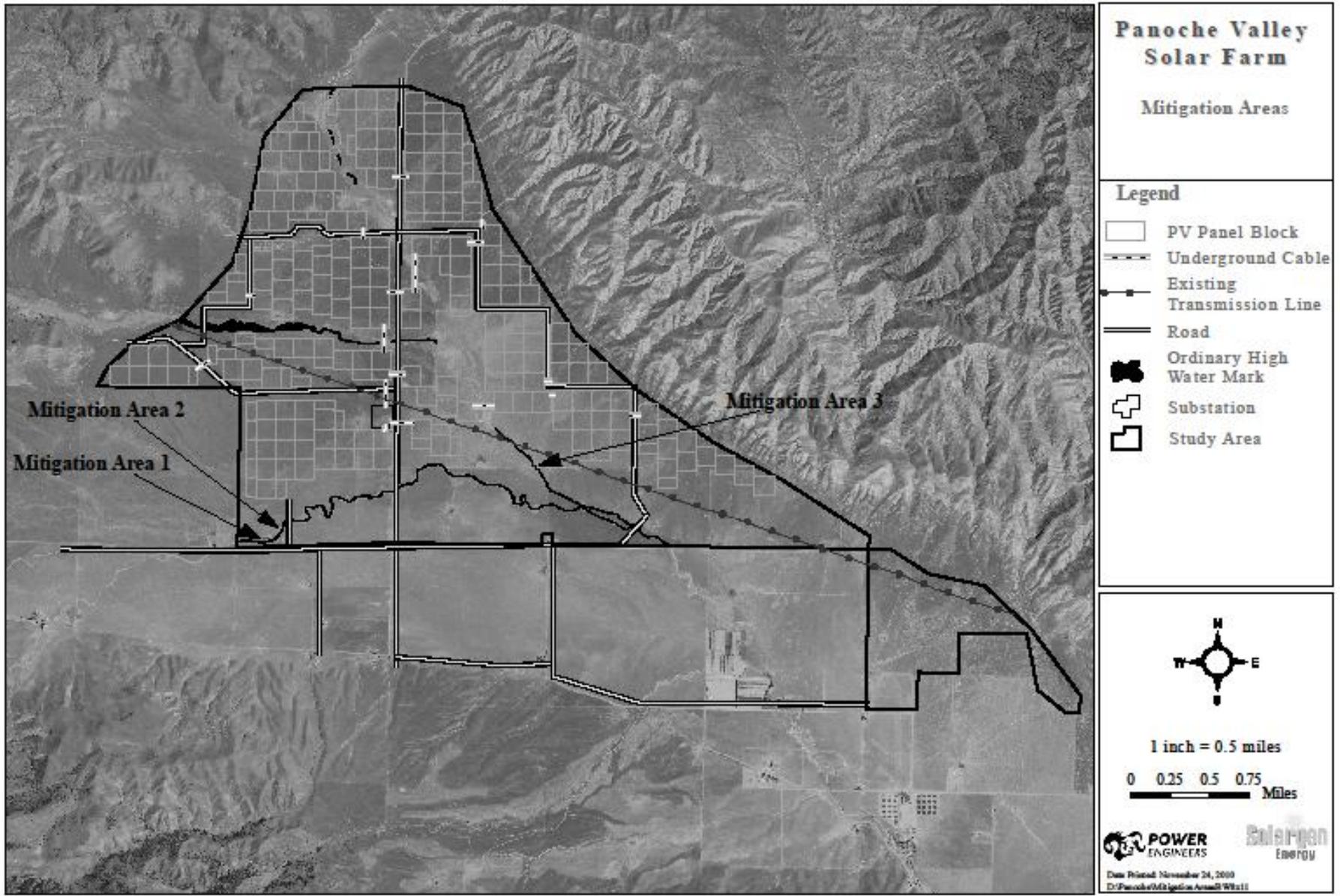


Figure 5