



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: California Flats Solar Project

PUBLIC NOTICE NUMBER: 2012-00266S
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COMMENTS DUE DATE: September 15, 2013

PERMIT MANAGER: Ian Liffmann

TELEPHONE: 415-503-6769

E-MAIL: ian.Liffmann@usace.army.mil

1. **INTRODUCTION:** California Flats Solar, LLC, 421 SW Sixth Avenue, Suite 1000, Portland, Oregon 97204 (POC: Mr. Michael Arndt, 503-416-0836), through its agent, H.T. Harvey & Associates (POC: Ms. Kelly Hardwicke, 408-458-3236) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to place fill material in jurisdictional waters of the United States for construction of the California Flats solar project, located in southeastern Monterey County, California. 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 Project Site is located along the eastern rim of the Cholame Valley, approximately 25 miles northeast of the City of Paso Robles, California and approximately 7 miles east of Parkfield, California (Figure 1). Primary access to the site is provided by a private ranch road (access road) off of State Route 41.

Project Site Description: The approximately 2562.2 acre project site is located on a portion of the 72,000-acre Jack Ranch, a working cattle ranch. The site is generally flat, with south-facing topography, and is dominated by grasslands that have been actively grazed, disked, and dryland farmed. The dominant types of vegetation are non-native Mediterranean grasses such as soft chess brome (*Bromus hordeaceus*), wild oats (*Avena fatua*), ripgut brome (*Bromus diandrus*), and red brome (*Bromus madritensis*). The project site and adjoining access road have 4.56 acres of wetlands, predominately seasonal wetlands and perennial marsh, and approximately 5.36

acres (38,360 linear feet) of ephemeral, intermittent and perennial streams, including portions of Cottonwood Creek, that flow through the project site and adjoining access road. Perennial marsh wetland vegetation is dominated by aquatic and emergent wetland vegetation such as watercress (*Nasturtium officinale*), iris-leaved rush, (*Juncus xiphioides*) yerba mansa (*Anemopsis californica*), and chairmaker's bulrush (*Schoenoplectus americanus*); the dominant seasonal wetland vegetation includes seaside barley (*Hordeum marinum* ssp. *gussoneanum*), meadow barley (*Hordeum brachyantherum*), and adobe popcornflower (*Plagiobothrys acanthocarpus*). Ephemeral stream vegetation is generally similar to the dominant species found within adjacent upland grassland habitats. Upland grasslands and facultative wetland plants, such as seaside barley, blue wildrye (*Elymus glaucus*), and Mexican rush (*Juncus mexicanus*) are found within intermittent streams. Perennial stream vegetation includes sparse emergent wetland vegetation, such as iris-leaved rush, and perennial marsh vegetation, such as yerba mansa, and chairmaker's bulrush. The site includes some developed features such as ranch roads, culverts, small buildings, windmills, rock-lined ditches and storage tanks. (Figure 2).

Proposed Project: The proposed project would include the construction and operation of a variety of on-site energy-related infrastructure (such as mounted photovoltaic (PV) solar panels, an electrical collector system, substations, a new overhead transmission line, other new electrical generating and conveyance facilities) and facilities that are needed to operate and maintain the energy-related improvements (including a new operations and maintenance facility, wastewater system, fencing, lighting, etc.). The applicant is also proposing improvements to the existing access road and within the California Department of Transportation (Caltrans) right-

of-way at State Route 41. Project-related roadway improvements would include one crossing over Cottonwood Creek and the removal of other existing crossings. Work within USACE jurisdictional waters would also include the installation of several culverted road crossings, actions to control erosion, bank stabilization measures, grading, and the placement of panel rack footings, and other facilities. Most of the work within jurisdictional waters would be within ephemeral or intermittent drainages and seasonal wetlands. The proposed project does not include any low water crossings within perennial streams. (Figure 3).

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 an approximately 280 megawatt (MW) solar power facility. The USACE has determined that the proposed project is not water dependent.

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 purpose of the California Flats solar project is to construct and operate an approximately 280 megawatt PV solar power generation facility, including related facilities and an intertie with an existing transmission line, at a site in southern Monterey County located in close proximity to the Morro Bay—Gates 230 kilovolt transmission line.

Project Impacts: The proposed project would require the placement of fill into 0.43 acre of wetlands, 0.01 acre of perennial streams, and 1.34 acres of ephemeral and intermittent streams, totaling 1.78 acres of impacts to waters of the United States. In addition, the proposed project would temporarily impact approximately 0.70 acre of wetlands, 3.25 acres of other jurisdictional waters, and 0.02 acre of existing culverts. (Figure 4).

Proposed Mitigation: The applicant intends to further avoid and minimize impacts to jurisdictional waters by implementing the following measures: clearly delineating all features to be avoided on project plan sets; utilizing only areas marked for access or crossing during

construction; utilizing directional boring to minimize utility line impacts to deep drainages with steep banks; implementing Best Management Practices (BMPs) to avoid the spread of invasive plants or invertebrates from worker footwear or equipment; and utilizing BMPs to control site run-off, stormwater, and erosion that could degrade water quality during construction through the implementation of a project-specific Stormwater Pollution Prevention Plan. A final mitigation plan is in development and will be reviewed once received.

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 U.S., pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant will submit 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, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906.

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 proposed project does not occur in the coastal zone, and a preliminary review by USACE indicates the project would not likely affect coastal zone resources. This

presumption of effect, however, remains subject to a final determination by the California Coastal Commission.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, Central Coast Region, Santa Cruz, California 95060, by the close of the comment period.

Other Local Approvals: The applicant has applied to the County of Monterey for a Combined Development Permit and will apply to the California Department of Fish and Wildlife for other authorizations.

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 neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. 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 ensure 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 may affect the federally listed San Joaquin kit fox (*Vulpes macrotis mutica*), California red-legged frog (*Rana draytonii*), and California tiger salamander (*Ambystoma californiense*).

To address project related impacts to these species, USACE will initiate formal consultation with the USFWS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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 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. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

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 information provided by the applicant that includes latest published version of the *National Register of Historic Places* and survey information. Based on this review USACE has made a preliminary determination that historic or archaeological resources are likely to be present in or near the permit area. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. 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 asked to submit an analysis of project alternatives to be reviewed for compliance with the guidelines. USACE will conduct an independent review of project alternatives to ensure compliance with the 404(b)(1) 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 Ian Liffmann, 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 *Public Notices* tab on the USACE website:
<http://www.spn.usace.army.mil/Missions/Regulatory.aspx>.