US Army Corps of Engineers ®
San Francisco District

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Topaz Solar Farm (Revised)

FILE NUMBER: 2009-00150S DATE: 25 March 2011 RESPONSE REQUIRED BY: 25 April 2011
PERMIT MANAGER: Holly Costa TELEPHONE: 415-503-6780 E-MAIL: holly.n.costa@usace.army.mil

1. **INTRODUCTION:** Topaz Solar Farm LLC (POC: Ashley Kenny; 510.626.7480), 1111 Broadway, 4th Floor, Oakland, California, 94607, through its agent, Althouse and Meade, Inc. (POC: LynneDee Althouse; 805.237.9626), 1602 Spring Street, Paso Robles, California 93446, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States to construct a 550 megawatt solar photovoltaic (PV) energy generating facility. The Topaz Solar Farm (Project) would be constructed on approximately 3,500 acres within approximately 9,700 contiguous acres (Project Site) under private ownership on the Carrizo Plain in eastern San Luis Obispo 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.*).

This Public Notice has been revised at the request of the applicant to clarify the Corps' proposed actions and responsibilities under the National Environmental Policy Act, as USACE is *not* the lead federal agency for this project. It also has updated information on the Environmental Impact Statement being prepared by the Department of Energy.

2. **PROPOSED PROJECT:**

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 increase the availability of electricity generated from renewable energy sources through the construction of a photovoltaic (PV) solar facility and associated transmission and support facilities that interconnect with the Morro Bay-Midway 230 kV transmission line.

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 increase the availability of electricity generated from renewable energy sources through the development, in a high-solar resource area, of a 550 megawatt (MW) photovoltaic (PV) solar facility and associated transmission and support facilities for interconnection to the Morro Bay-Midway 230 kV transmission line within eastern San Luis Obispo County, California.

The Project will generate 550 megawatts of power for the State's electrical power grid, which is enough to provide power to 100,000 to 150,000 households. By producing this sizable amount of electricity through PV generation, the Project will address the public and private need to reduce consumption of fossil fuel and reduce the carbon footprint associated with the generation of energy, as well as provide additional electricity to meet current

and future public and private energy needs. Additionally, the generated electricity will support achievement of California's Renewables Portfolio Standard that 20 percent of the state's electricity be supplied by renewable resources, as well as support the Governor's Executive Order that California obtain 33 percent of its electricity from renewable resources by 2020.

Project Site Location: The Project Site is in an unincorporated portion of eastern San Luis Obispo County, California, adjacent to Highway 58 and east of Bitterwater Road (Figures 1 and 2). The boundary straddles Highway 58 between Bitterwater Road and the northern terminus of Soda Lake Road, in relatively flat farm fields west of the Temblor Range and east of the San Juan Hills and La Panza Range. The northern limit of the Project Site is 5.5 miles north of the southern boundary. The western limit is 5 miles from the eastern boundary. The boundary "stair-steps" along the eastern side to avoid areas with significant topographic relief. The western boundary avoids relatively small (60-acre) residential parcels near Highway 58, and hilly ground in the southwest.

Approximate latitude and longitude coordinates for the center of the Project Site are 35.381121º N /120.058898º W in the La Panza NE United States Geological Survey (USGS) 7.5-minute quadrangle. The Project Site is in the La Panza NE and California Valley 7.5-minute topographic quadrangles, on all or portions of sections 7, 8, 15 to 22, 26 to 29, and 32 to 35 of Township 29 South, Range 18 East; and sections 4 and 5 of Township 30 South, Range 18 East, Mount Diablo Base and Meridian.

Project Site Description: The majority of the Project Site consists of rolling hills and gently sloping plains, while the northeastern edge of the Project Site has some larger, steeper hills. Elevations range from approximately 1,998 to 2,135 feet above mean sea level. Figure 2 is a USGS topographic map of the Project Site.

Approximately 6,205 acres of the Project Site are currently dry-farmed with barley or wheat. The dry-farmed production cycle uses summer fallow, a method widely used in dry climates to conserve soil moisture; fields are planted every other year, and plowed and left bare during years they are not planted. Cattle graze on approximately 3,465 acres of annual grassland that was historically farmed. The remainder, approximately 30 acres of the 9,700 acre total, includes roads and structures.

Under current land use, the Project Site is dominated by upland plant species. Dominant plant communities include dry-farmed grain crops, fallow farmland used as rangeland, and annual grassland habitat. California annual grassland habitat is a dry seasonal habitat consisting of low-lying annual grasses and forbs. It is dominated by non-native and native annual grass species, with varying percentages of native and introduced forbs due to different topography, soils, grazing regimes, and farming history. Wetland vegetation is associated with a few ponded areas in drainages and a small number of localized depressions which typically pond for long periods during normal and above normal rainfall years.

The Project Site is in the Carrizo Plain watershed (HUC 18060003), a 445-square-mile closed basin. Most of the ephemeral drainages that extend across the Project Site are historically interconnected and flow during significant rainfall events toward the main drainage, which drains to Soda Lake, a shallow, ephemeral alkali lake in the Carrizo Plain National Monument. Soda Lake is approximately 9.6 miles southeast of the point where the main drainage leaves the Site. The main drainage is the principal drainage that flows into Soda Lake.

A combination of tectonic activity, semiarid climate, and unique soils in the Carrizo Plain has led to development of many short ephemeral channels that dissipate into gently rolling fields. Stormwater moves as sheet flow across fields and re-enters a few key drainages that convey concentrated flows toward Soda Lake. Water flowing down relatively steep slopes (e.g., hills at the north end of the Project Site) forms distinct channels that become wide swales where the landform is relatively flat in the middle of the Project Site. Water concentrates in the bottom of the valley, and flows in the main drainage toward

Soda Lake, carrying sediment, dissolved solids, and other runoff from farmed fields and grazing lands.

Project Description: The applicant proposes to construct and operate a solar photovoltaic (PV) energy generating facility, the Topaz Solar Farm (Project), on lands under private ownership within the Carrizo Plain in eastern San Luis Obispo County, California. The applicant has a power purchase agreement (PPA) with Pacific Gas and Electric Company (PG&E) that allows for transmission access to the Morro Bay-Midway 230 kV transmission line. The transmission line runs west to east across the Project Site, facilitating direct access without the need for a generation tie-in line. The Project Site comprises 9,700 acres, of which approximately 3,500 acres would be fenced as numerous distinct areas to enclose the solar farm. The fenced PV facilities would be set back from Highway 58, the nearby Carrisa Plains Elementary School, and the main drainage, which conveys floodwaters from the Project Site to Soda Lake. All facilities would be set back from wetlands. The location and proposed configuration of the Project Site are shown on Figures 1 through 3.

The Project would include:

- Solar field of ground-mounted PV modules that collect solar radiation to produce electricity;
- Electrical collection system that converts generated power from direct current (DC) to alternating current (AC) and delivers it to the Project Substation;
- Project Substation that collects and converts the generated power from 34.5 kilovolt (kV) to 230 kV for delivery via a new onsite Pacific Gas and Electric Company (PG&E) Switching Station to PG&E's existing Morro Bay-Midway 230 kV transmission line;
- PG&E Switching Station;
- Operations and Maintenance (O&M) facility near the Project Substation;
- Solar Energy Learning Center near Carissa Plains Elementary School designed to accommodate students and visitors during Project operation; and
- Access and maintenance roads.

Solar Field. The Project's solar field would consist of up to 460 arrays of PV modules with the cumulative capacity to generate 550 MW of power at the point of delivery to PG&E, under peak solar conditions. Each solar array would generate at least 1.26 megawatts alternating current (MWAC) of power and would consist of at least 20,000 PV modules and one power conversion station. Each power conversion station would consist of two inverters in an enclosure and one adjacent transformer. PV modules would be mounted on steel support structures called tables. Tables would be attached at an angle to a bracket on vertical steel posts spaced approximately 8 to 10 feet center-to-center and driven into the ground to a depth of 4 to 7 feet below grade. Once mounted, the front of each table would be approximately 1.5 feet above grade, while the rear would be approximately 5.5 feet above grade. The distance from the ground to the top of the PV module table may vary depending on the topography.

The applicant proposes to install piles to support the PV modules in five jurisdictional drainages. The rows of PV modules would be mounted on 2.12-square inch area metal piles, which would be spaced 10 feet apart in the east to west direction and 14 feet apart in the north to south direction. The PV arrays are designed to have as few support piles as is feasible while still providing the necessary stability for windloading and potential seismic events. Figure 5 shows a typical array configuration. On the basis of 33 CFR § 323.3(c)(2) (Pilings), the use of piles would not have the effect of a discharge of fill material and therefore would not require Section 404 authorization.

Electrical Collection System. The PV modules would be electrically connected by wiring harnesses running along the bottom of each table to combiner boxes that collect power from several rows of modules. The combiner boxes would feed direct current (DC) power from the modules to the power conversion stations (PCS) via underground cables. The inverters in the PCS would convert the DC electric input into AC (alternating current) electric output, and the isolation transformer would step the

current up to 34.5 kV for on-site transmission of the power to the PV combining switchgear (PVCS). Electric feeder cables would be installed in trenches that bisect each array (Figure 4).

Electrical collector cables would connect the power output from the PVCSs to the onsite Project Substation. Collector cables would be installed in underground trenches (Figure 3).

Project Substation. The Project Substation would collect the output and transform it from 34.5 kV to 230 kV. The Substation would occupy approximately 4.5 acres adjacent to the PG&E Switching Station, where the 230 kV output of the Substation would be connected and delivered to the Morro Bay-Midway 230 kV transmission line.

PG&E Switching Station. PG&E's existing Morro Bay-Midway 230 kV transmission line runs west to east across the Project Site. It extends from PG&E's Morro Bay Substation in the city of Morro Bay in western San Luis Obispo County to its Midway Substation in Buttonwillow, Kern County. The new PG&E Switching Station for the Project would be just north of and adjacent to the Morro Bay-Midway 230 kV transmission line. The Switching Station work area would be approximately 600 feet by 650 feet (9 acres) with a buffer zone and would be enclosed by a fence and separate from the adjacent Topaz Solar Farm Project Substation. The Switching Station would require additional area for the incoming and existing transmission line. Estimated dimensions for the Switching Station and the buffer zones that include the new transmission poles are 880 feet by 715 feet (about 14.5 acres). Two new 100- to 125-foot-high double-circuit lattice steel transmission towers and four steel poles would be installed within or adjacent to PG&E's transmission line right of way to accommodate the looping of the 230-kV line into the Switching Station. The towers and poles would be situated on either side of the new Switching Station to position the transmission conductors for proper ingress and egress to the station. PG&E would be responsible for the construction of the Switching Station and the interconnection to the Morro Bay–Midway 230-kV line.

PG&E Reconductoring Project. Topaz has interconnection agreements in place for the first 400 MW of Project capacity. The California Independent System Operator (CAISO) has determined that local network upgrades would be required to accommodate the Project's remaining 150 MW, as well as a second solar project in the Carrizo Plain – SunPower's California Valley Solar Ranch project. Network upgrades would include the reconductoring of the existing 230 kV transmission line between the new PG&E Switching Station onsite and the Midway Substation, a distance of 35 miles. Reconductoring is the process of installing new conductor wire on existing towers to increase the capacity of an existing transmission line and is considered part of this permit application as defined by NEPA and Section 404 Clean Water Act (CWA) review requirements.

Operations and Maintenance Facility. An approximately 11,250 square foot operations and maintenance (O&M) facility with associated parking would be constructed near the Project Substation for parts storage, security, and project monitoring. A leach field and septic system would be sited adjacent to the O&M facility to serve Project sanitary needs.

Solar Energy Learning Center. Topaz would construct and operate a Solar Energy Learning Center onsite. Topaz would work with local educators to develop exhibits, tours, and educational programs that would complement existing science and sustainability curricula. The center would be able to accommodate several class field trips per day, as well as 100 to 200 visitors per month. The center would be an ADA-compliant, 30-foot-by-30-foot enclosed building with restrooms, and would display a scale model of the solar facilities and other exhibits on solar power.

Project Impacts: Permanent fill impacts of 0.089 acre would result from construction of 10 at-grade road crossings and associated scour arrestors through ephemeral drainages (Figure 3). The 284.3 cubic yards of fill would consist of clean fill material, rip-rap, and pre-cast articulating concrete blankets with steel cable and rebar.

Temporary fill impacts of 0.045 acre (365 cubic yards) would result from the excavation of trenches in which to bury electrical collector and feeder cables.

No direct fill impacts to jurisdictional wetlands or other special aquatic sites would occur as a result of the Project.

Proposed Mitigation:

Avoidance. Project planning following the EPA Section 404 (b)(1) Guidelines resulted in avoiding all impacts to wetlands, which are EPA "special aquatic sites"; no other special aquatic sites are present onsite. Additionally, all building structure pads and work areas have been oriented so as to avoid impacts to other waters of the U.S.

Minimization. Given the linear and scattered nature of the ephemeral drainages throughout the site, impacts to these "other waters of the U.S." were found to be unavoidable in designing access roads for construction and future project operation (permanent impacts), and trenches for underground electrical lines (temporary impacts). Minimization of unavoidable impacts to the ephemeral drainages includes:

- Minimizing the number of permanent at-grade road crossings to the maximum extent practicable;
- Minimizing roadway width to the maximum extent practicable in consideration of load requirements, vehicle type, and width and safety requirements;
- Utilizing an at-grade temporary trenching crossing approach to underground the electric cables;
- Minimizing ground disturbance by using piles where drainages are over-crossed by PV modules;
- Minimizing ground disturbance during construction and operations in areas adjacent to wetlands and ephemeral drainages;
- Using low-impact Project operations and maintenance adjacent to waters;
- Covering well-used roads on the Project Site with gravel to minimize sediment transport;
- Minimizing trash production in order to protect wildlife from waste materials;
- Burying natural rock scour arresters at crossings and other critical high energy surface water flow locations;
- Installing an "open cell, articulated concrete blanket" at access road crossings to reduce sedimentation;
- Re-vegetating tilled agricultural lands converted to Project use, and maintaining grassland cover during PV facility operation.

Compensation. The Applicant proposes to compensate for the loss of other waters of the U.S. (ephemeral drainage habitat) through in-kind habitat restoration (re-establishment) of a portion of the main drainage at a minimum ratio of 2:1 for permanent impacts of 0.089 acre and at a ratio of 1:1 for temporary impacts of 0.045 acre. This would result in reestablishing a minimum of 0.223 acre of ephemeral drainages by rebuilding a former portion of an aquatic resource (the main drainage), resulting in a gain in aquatic resource area and functions. The re-established drainage area would be revegetated with native vegetation typical of drainages within the Project Site. The re-established habitat would provide at a minimum functions comparable to those prior to project impacts. Implementing compensatory mitigation in the main drainage would expand its flood storage and desynchronization functions and would reduce flood damage by attenuating floodwaters following significant precipitation events. They would be protected from surrounding upland land use activities by an average 50-foot upland buffer. The mitigation area and buffer would be protected from future development by a recorded conservation easement.

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 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, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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 or within the San Francisco Bay, 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 District Office, 725 Front Street, Suite 300, Santa Cruz, California 95060-4508, by the close of the comment period.

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project: Lake and Streambed Alteration Agreement and Endangered/Threatened Species Take Authorization from the California Department of Fish and Game; Portable Engine Registration from California Air Resources Board; CEQA Environmental Impact Report certification; Grading Permit; Building Permit; and Conditional Use Permit from the San Luis Obispo County; Authority to Construct and Permit to Operate (new stationary source) and Fugitive Dust Permit from San Luis Obispo County Air Pollution Control District.

4. **COMPLIANCE WITH VARIOUS FEDERAL LAWS**:

National Environmental Policy Act (NEPA): The applicant has submitted an application to the U.S. Department of Energy (DOE) under the federal loan guarantee program pursuant to the Energy Policy Act of 2005 to support construction of the proposed Project. DOE is the lead agency for National Environmental Policy Act (NEPA) review of the Project. The Corps will be a "cooperating agency" for preparation of the NEPA Environmental Impact Statement (EIS).

DOE is preparing an EIS pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations, and the DOE NEPA implementing procedures to assess the potential environmental impacts of its proposed action of issuing a federal loan guarantee to Topaz.

The Draft EIS is currently available at http://www.nepa.energy.gov/1676.htm. Interested parties will be able to comment on this Draft EIS during the 45-day comment period that will begin when the Environmental Protection Agency publishes a Notice of Availability of this Draft EIS in the *Federal Register*. During this public comment period, DOE will convene a public hearing that will include a question-and-answer session, a brief overview presentation on the Draft EIS, and an opportunity for members of the public to provide oral and written comments for the record. The date, time and location of the public hearing will be posted on the Loan Programs Office's Public Involvement Website: www.lgprogram.energy.gov/NEPA_PI.html and the DOE NEPA website: www.nepa.energy.gov

and will be published in local newspapers at least 15 days prior to the hearing.

To obtain additional information about this EIS or to receive a copy of the draft EIS when it is issued, contact Angela Colamaria by telephone: 202-287-5387; toll-free number: 800-832-0885 ext. 75387; or electronic mail: Angela.Colamaria@hq.doe.gov. The final EIS will be incorporated into the decision document that provides the rationale for issuing or denying a Department of the Army Permit for the project.

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 decision document, with the incorporated EIS analysis, will 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 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. USACE has made a preliminary determination that the project site is not within any listed species critical habitat, but that the following species currently listed or proposed for listing under the federal Endangered Species Act are known to occur on the project site:

- San Joaquin kit fox (*Vulpes macrotis mutica*): ESA Endangered
- Longhorn fairy shrimp (*Branchinecta longiantenna*): ESA Endangered
- Vernal pool fairy shrimp (*Branchinecta lynchi*): ESA Threatened
- Mountain plover (*Charadrius montanus*): ESA Proposed Threatened

Presence of San Joaquin kit fox within and near the Project site was determined by a scat survey, DNA analysis of scat collections and visual surveys. There is a high variation in habitat quality for kit fox utilization within the Project Site, ranging from good to poor. The spring 2010 survey data for kit fox natal dens found 2 occupied dens located in the extreme southern and eastern ends of the Project study area. The den sites are located in annual grassland habitat that has not been plowed in over 20 years. Survey data from winter 2010 indicates these areas are still occupied by kit fox. The Project may adversely affect San Joaquin kit fox through direct and/or indirect effects to individuals, populations and habitat, even though the overall long-term effect of the Project on kit fox is expected to be beneficial.

Longhorn fairy shrimp was detected in two pools within the Project Site in the south half of Section 20, a farm field in active cultivation with dry-farmed grain. Vernal pool fairy shrimp was detected in 11 vernal pools in Section 4, in the extreme south end of the Project Site. Although the likelihood is extremely low, the Project could potentially adversely affect these species during construction or operation of the facility.

Mountain plovers were found on four occasions between January and March 2010, with a high count of 17 birds observed in the eastern end of Section 35 in March. The Project is not expected to appreciably reduce the reproduction numbers or distribution of the wintering mountain plover population in the Carrizo Plain region; therefore the Project may affect, but is not likely to adversely affect this species.

In addition, bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) (both non-nesting) were occasionally detected foraging within the Project Site, but were not found to be nesting. Since bald eagles were delisted from the ESA in 2007, the Bald and Golden Eagle Protection Act (Eagle Act), as implemented by the USFWS, provides the primary legal protection for this species. The golden eagle, although never listed under the ESA, is also governed by the Eagle Act. The Project may affect the bald eagle and golden eagle. However the potential adverse effect would be discountable (i.e., extremely unlikely to occur and essentially not expected to occur) and insignificant (i.e. will not reach a scale where "disturbance" or "take" occurs) due to factors analyzed and explained in the project Biological Assessment.

As the lead federal agency for this project, DOE initiated formal consultation with the USFWS under Section 7 of the federal Endangered Species Act (ESA), for potential impacts to federally listed species, by letter dated February 17, 2011. USACE will be relying upon and utilizing the results of this Section 7 consultation for its permit decision. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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 DOE and the applicant concerning the consultation process.

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*. No fishery resources occur within the Project Site as the site contains no permanent or semi-permanent bodies of water, only wetlands and ephemeral drainages.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRS 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 lead federal agency for this project, DOE will consult with the State Historic Preservation Officer regarding Section 106 of the NHPA. USACE will be relying upon and utilizing the results of these Section 106 consultations for its permit decision. If unrecorded archaeological resources are discovered during

project implementation, those operations affecting such resources will be temporarily suspended until DOE 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 although the project as proposed, is not expected to discharge into such sites. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

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 on the project from this notice and from the Final EIS being prepared by DOE 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 Ms. Holly Costa, 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/.