

TABLE OF CONTENTS

Planning Commission October 5, 2021

FILE NUMBER: UP #2020-004, IS #2020-001
PROPERTY OWNER: Dr. Charles Hooper
TYPE OF APPLICATION: Use Permit, Initial Study

Staff Report.....	2
Abbreviated Chronology, Use Permit#2020-004, Initial Study #2020-001, Hooper	7
July 28, 2021, letter from the Lahontan Regional Water Quality Control Board.....	10
August 9, 2021, letter from the California Department of Fish and Game	13
August 12, 2021, email string between Amy Henderson and Gaylon Norwood.....	18
August 13, 2021, letter from the Lassen County Environmental Review Officer.....	21
September 15, 2021, “ <i>Environmental Settlement Agreement for CalNeva Battery Energy Storage System and Photovoltaic Solar Energy System Project Proposed by D. Charles Hooper, D.O.</i> ” submitted by Brent L Moore, Vice President, Sierra Geotech, DBE, Inc.	38
September 17, 2021, letter of support for the project from Adams Broadwell Joseph and Cardozo, and a recommendation to include several mitigation measures they contend reduce impacts to a level of less than significant and allow adoption of a Mitigated Negative Declaration.	50



County of Lassen
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

September 23, 2021

Maurice L. Anderson, Director
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Susanville, CA 96130-3912
Phone: 530 251-8269
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email: landuse@co.lassen.ca.us
website: www.co.lassen.ca.us

TO: Lassen County Planning Commission
Agenda Date: October 5, 2021

Zoning & Building
Inspection Requests
Phone: 530 257-5263

FROM: Maurice L. Anderson, Director
Environmental Review Officer

MLA for

SUBJECT: **PUBLIC HEARING: Use Permit #2020-004; Initial Study #2020-001.**

Consider the Environmental Review Officer's determination that an Environmental Impact Report is required before consideration of a proposed use permit to construct a 50-megawatt photovoltaic solar array and a battery energy storage system (BESS) that would store 25 megawatts or 100-megawatt hours of electricity, along with related infrastructure. Such infrastructure would include a substation, a dead-end tower up to 90 feet tall, 24 130-foot tall steel gen-tie transmission line poles to interconnect with the Plumas-Sierra Rural Electric 120-kV transmission line approximately 3 miles south of the project site, access roads, and perimeter fencing. The project has an approximate footprint of 278 acres, not including the proposed gen-tie lines and is located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border, and does not have addresses. The subject parcels are zoned A-1 (General Agricultural District) and have an "Extensive Agriculture" land use designation in the *Lassen County General Plan, 2000*. APN: 137-170-012 and 137-170-013. Staff Contact: Gaylon Norwood, Assistant Director

Summary:

On August 13, 2021, the Environmental Review Officer (ERO) informed the applicant that an Environmental Impact Report (EIR) is required prior to consideration of the above referenced use permit (see attached letter). That said, the ERO's recommendation has changed since August 13, 2021, as new information (summarized herein) has been provided. Accordingly, the ERO now recommends that the new information and newly proposed mitigation measures be incorporated into the project and that the Proposed Mitigated Negative Declaration be recirculated in accordance with the California Environmental Quality Act (CEQA). The Lassen County Environmental Review Guidelines (adopted through Board Resolution Number 01-043) implement CEQA in Lassen County and require the Planning Commission to determine the appropriate document since the Planning Commission is the primary decision making body for use permits.

More detailed information regarding the project can be found in the Initial Study and Proposed Negative Declaration (MND) circulated from June 28, 2021, through July 28, 2021, and other documents included in the public record (see attached list of documents).

Background:

In part, the ERO made the initial (August 13, 2021) determination that a EIR is required based on review of the following documents and a subsequent meeting with the California Department of Fish and Wildlife:

1. On July 28, 2021, a response to the notice of intent to adopt a Mitigated Negative Declaration was submitted by the law firm Adams Broadwell Joseph & Cardozo asserting that there is substantial evidence of potentially significant impacts that could result from the project. Attached in support of said response were documents prepared by Phyllis Fox Ph.D, PE and Scott Cashen, M.S.
2. On July 28, 2021, a letter was received from the Lahontan Regional Water Quality Control Board which, in summary, asserted that there is insufficient information provided to support a conclusion that there are not state wetlands on the project site.
3. On August 9, 2021, a letter was received from the California Department of Fish and Wildlife (which referenced earlier letters from the CDFW). In said letter the CDFW again asserted that a proper wetland delineation is required, that the biological assessment did not follow the CDFW's *2018 Protocols for Surveying and Evaluating Impacts to Special Status Species Native Plant Populations and Sensitive Natural Communities*, as is asserted in the biological assessment submitted by the applicant, and that, as written, certain mitigation measures are inadequate.

Many of the assertions made by Adams Broadwell Joseph & Cardozo in the above document were discussed and further supported at an August 12, 2021, meeting between California Department of Fish and Wildlife (CDFW) staff and Lassen County Planning and Building Services Department staff. A summary of said meeting can be found in the attached email exchange dated August 12, 2021, between Senior Environmental Scientist Amy Henderson of the CDFW and Assistant Director Gaylon Norwood with the Lassen County Planning and Building Services Department. In summary, CDFW concurred with many of the conclusions provided in the report prepared by the biologist Scott Cashen that was incorporated into the July 28, 2021, submittal from Adams Broadwell Joseph & Cardozo. Ms. Henderson and the other CDFW employee on the call (Curt Babcock, Program Manager) stated that there is currently insufficient support for adoption of a MND.

New Information Since August 13, 2021, EIR Determination:

The following documents have been provided to the Department since the ERO determined an EIR is required:

- August 27, 2021, “*Response to Comments on Draft Initial Study*” submitted by Sierra Geotech, DBE, Inc., asserting that there is no substantial evidence of potentially significant impacts.
- September 15, 2021, “*Environmental Settlement Agreement for CalNeva Battery Energy Storage System and Photovoltaic Solar Energy System Project Proposed by Dr. Charles Hooper, D.O.*” In summary, this agreement presents various mitigation measures that have been determined by Adams Broadwell Joseph & Cardozo to adequately respond to the concerns expressed in their July 28, 2021, letter, including the two incorporated reports. Further, pursuant to the agreement, the applicant has agreed to include said mitigation in the project.
- September 17, 2021, letter of support for the project from Adams Broadwell Joseph & Cardozo, and a recommendation to include several mitigation measures they contend reduce impacts to a level of less than significant and allow adoption of a Mitigated Negative Declaration.

Recommendation:

It is the recommendation of the ERO that the new mitigation measures and analysis described in the above documents, be incorporated into the project and that the Proposed Mitigated Negative Declaration be recirculated in accordance with CEQA. Subsection “(a)” and “(b)” of section 15073.5 of the CEQA Guidelines state:

- (a) *A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.*
- (b) *A "substantial revision" of the negative declaration shall mean:*
 - (1) *A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or*
 - (2) *The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.*

In this case, it is clear that above requirements for recirculation have been met. The ERO determined that an EIR was required after circulation of the Proposed Mitigated Negative Declaration specifically because there was substantial evidence that a fair argument could be made that there are potentially significant impacts that could result from the project. The requirement for recirculation is also demonstrated through the above referenced settlement agreement, in which both the applicant and Adams Broadwell Joseph & Cardozo agree that certain mitigation measure are necessary to reduce impacts to a level of less than significant. The ERO's initial determination that an EIR is required and the above referenced settlement agreement came after circulation of the Proposed Mitigated Negative Declaration. Thus, the only two viable options pursuant to CEQA are to either prepare an EIR or to incorporate the newly proposed mitigation into the project and recirculate the Proposed Negative Declaration.

Instead of preparing an EIR, the ERO recommends that the new mitigation measures and analysis be incorporated into the project and that the Proposed Mitigated Negative Declaration be recirculated. The ERO's recommendation to require an EIR has changed specifically because of the new information provided by the applicant and by Adams Broadwell Joseph & Cardozo, summarized above.

Planning Commission October 5, 2021, Record:

In addition to this memorandum, the following documents are included as part of the record for this public hearing:

- Notice of Intent to adopt Mitigated Negative Declaration dated June 25, 2021
- Proposed Mitigated Negative Declaration dated June 24, 2021
- Initial Study dated June 24, 2021
- *"Comments on the Initial Study / Mitigated Negative Declaration for Use Permit #2020-004, Initial Study #2020-001, SCH #2020100366, Dr. Charles Hooper"* submitted on July 28, 2021, by the law firm Adams Broadwell Joseph & Cardozo (with attached reports from Phyllis Fox PhD, PE and Scott Cashen, M.S.)
- Letter from the Lahontan Regional Water Quality Control Board in response to the Proposed MND, received July 28, 2021
- *"Comments to Technical Advisory Committee re Calneva Battery Energy Storage System and Photovoltaic Energy System Project (Use Permit #2020-004, Initial Study #2020-001, Dr. Charles Hooper; SCH #2020100366)"*, submitted on August 5, 2021, by the law firm Adams Broadwell Joseph & Cardozo (with attached reports from Phyllis Fox P.D, PE and Scott Cashen, M.S.)
- Letter from the California Department of Fish and Wildlife in response to the Proposed MND, received August 9, 2021
- August 13, 2021, letter from the Lassen County Environmental Review Officer (ERO) informing the applicant of the ERO's determination that an EIR is required

- “*Response to Comments on Draft Initial Study*” submitted by Sierra Geotech, DBE, Inc. on August 27, 2021, asserting that there is no substantial evidence of potentially significant impacts.
- “*Environmental Settlement Agreement for CalNeva Battery Energy Storage System and Photovoltaic Solar Energy System Project Proposed by Dr. Charles Hooper, D.O.*” submitted by Sierra Geotech, DBE, Inc. on September 15, 2021, in which the applicant and Adams Broadwell Joseph & Cardozo agree to certain mitigation measures.
- Letter of support for the project and proposed mitigation measures submitted by Adams Broadwell Joseph & Cardozo on September 17, 2021, proposing additional mitigation measures.

The above documents (and this memorandum and its attachments) are available at the following URL (which is the Planning and Building Services Department’s portion of the Lassen County web site), within the “Environmental Documents, Noticing and Attachments” tab:

<http://www.lassencounty.org/dept/planning-and-building-services/environmental-documents-noticing-and-attachments>

In addition to inclusion on the above web site, the documents listed below (as Enclosures) are also included with this memorandum.

MLA:gfn

Enclosures:

- Abbreviated Chronology, Use Permit #2020-004, Initial Study #2020-001, Hooper
- July 28, 2021, letter from the Lahontan Regional Water Quality Control Board
- August 9, 2021, letter from the California Department of Fish and Game
- August 12, 2021, email string between Any Henderson and Gaylon Norwood
- August 13, 2021, letter from the Lassen County Environmental Review Officer
- September 15, 2021, “*Environmental Settlement Agreement for CalNeva Battery Energy Storage System and Photovoltaic Solar Energy System Project Proposed by Dr. Charles Hooper, D.O.*” submitted by Brent L. Moore, Vice President, Sierra Geotech, DBE, Inc.
- September 17, 2021, letter of support for the project from Adams Broadwell Joseph and Cardozo, and a recommendation to include several mitigation measures they contend reduce impacts to a level of less than significant and allow adoption of a Mitigated Negative Declaration.

Abbreviated Chronology for Use Permit #2020-004, Initial Study #2020-001, Hooper

DATE:	ACTION:	PROCESSING TIME: (noting processing days when timeline starts, stops or restarts)
June 10, 2020	Use Permit and Initial Study Applications received	30 day intake review per Permit Streamlining Act (PSA) starts
July 9, 2020	Application incomplete. Itemized letter sent	
September 11, 2020	Resubmittal from Sierra Geotech received	30 day intake review per PSA starts
October 9, 2020	Applications accepted as complete	PSA intake review concludes
October 10, 2020	Applications accepted as complete	CEQA timeline starts at day 1
October 20, 2020	Notice of Early Consultation circulated to state and local agencies	
November 13, 2020	Response to Early Consultation from CA Dept. of Fish and Wildlife received (CDFW)	
November 23, 2020	Letter forwarding 1 st biological study to CDFW	
December 22, 2020	Response Letter from CDFW received: bio study inadequate	
January 6, 2021	Letter sent, CEQA timeline on hold until appropriate response to CDFW 12-22-20 letter	CEQA environmental document preparation timeline placed on hold with approximately 74 days processing time since acceptance
March 2, 2021	Revised biological study and draft bio section of initial study received from Sierra Geotech; biological study conducted February 26, 2021	
March 4, 2021	Revised biological study and biological section forwarded to CDFW	

March 26, 2021	Response letter from CDFW: biological study inadequate	
April 1, 2021	Letter to Sierra Geotech/Hooper confirming project still on hold (per 1-6-2021 letter)	
April 13, 2021	Revised biological study and draft biological initial study section received from Sierra Geotech	
April 28, 2021	Letter from the Planning and Building Services Department itemizing reasons initial study preparation cannot resume as requested.	
May 20, 2021	Biological Assessment submitted by Sierra Geotech	CEQA environmental document preparation timeline restarts at 74 days
June 28, 2021	Begin circulation of a Proposed MND/initial Study	
July 28, 2021	Letter from the Lahontan Regional Water Quality Control Board regarding the Proposed MND	
July 28, 2021	Comments regarding the proposed MND, submitted by the law firm Adams Broadwell Joseph and Cardoza (with attached reports from Phyllis Fox PhD, PE and Scott Cashen, M.S.)	
July 28, 2021	End circulation of a Proposed MND/initial Study	
August 9, 2021	Letter from the California Department of Fish and Wildlife	
August 13, 2021	Letter from the ERO informing the	CEQA environmental document preparation

	applicant/property owner that an EIR is required	timeline on hold at 159 days
August 27, 2021	“Response to Comments on Draft Initial Study” submitted by Sierra Geotech and request for Planning Commission determination	
September 15, 2021	“Environmental Settlement Agreement for CalNeva Battery Energy Storage System and Photovoltaic Solar Energy System Project Proposed by Dr. Charles Hooper, D.O.” submitted by Sierra Geotech	
September 17, 2021	Letter of support and proposed mitigation submitted by Adams Broadwell Joseph and Cardoza.	



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GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

LASSEN COUNTY DEPARTMENT OF

Lahontan Regional Water Quality Control Board

July 28, 2021

Maurice L. Anderson
Environmental Review Officer
Lassen County Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

Additional Comments on Proposed Action for Use Permit #2020-004, Initial Study #2020-001, Hooper

Dr. Charles Hooper is proposing to construct a 50-megawatt photovoltaic solar array and battery energy storage system (BESS) and related infrastructure (Project). The anticipated Project infrastructure includes a substation, a dead-end tower up to 90-feet-tall, 24 130-feet-tall steel gen-tie transmission line poles to interconnect with the Plumas-Sierra Rural Electric 120-kV transmission line approximately 3 miles south of the Project site, access roads, and perimeter fencing.

Lassen County will serve as the California Environmental Quality Act (CEQA) lead agency for this Project and is preparing a Mitigated Negative Declaration stating that there is no substantial evidence in the record, as currently filed, which indicates that the proposed Project may have a significant effect on the environment, give mitigation measures incorporated into the Project.

This letter provides Lahontan Regional Water Quality Control Board' staff's (Water Board staff) comments on the Project, in addition to those comments previously submitted, to assist Lassen County and the Project implementor with early Project planning. Please consider both comment letters submitted by Water Board staff.

Wetlands of the State

Upon reviewing Section 6.4.3.4 of the Initial Study (IS), Water Board staff did not find an adequate level of information to justify the lack of presence of state wetlands, which are considered waters of the state, in the Project area. Water Board staff recommend that the Lead Agency conducts additional field-based studies to adequately justify the lack of impacts waters of the state in the Project area. Water Board staff also recommend that the Project implementer consider potential future Water Board permitting requirements if determined the Project will result in impacts to waters of the state.

PETER C. PUMPHREY, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

According to the State Wetland Definition and Procedures for Discharges of Dredged of Fill Material to Waters of the State (Procedures), an area is defined as a wetland as follows:

"An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation.

Based on information provided in the IS, Water Board staff are concerned that certain playa features in the Project area may meet the state's definition of a wetland and should be documented and analyzed in the IS as such. Those concerns are based on the following information:

- The IS provides information from field reconnaissance in 2019 that indicates some locations within the Project area are seasonally ponded with surface water. Water Board staff assume that ponding water at the soil surface is representative of saturated conditions in the soil below. In these locations, criteria (1) of the wetland definition in the Procedures may be met.
- As seen in pictures provided in the IS and in areal images, locations in the Project area lack vegetation. In these locations, criteria (2) of the wetland definition in the Procedures is met.
- Upon reviewing soil maps for the Project area, Water Board staff noted the presence of the Playa soil series in addition to the referenced Ragtown and Epot soil series. Playa soils are noted to contain a hydric rating, indicating that soils formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part. In these locations, criteria (3) of the wetland definition in the Procedures may be met.

Further, when making the determination that there are no wetlands that qualify as waters of the state present in the Project area, the IS, while referencing the criteria contained in the Procedures, states,

"The site of the proposed project fails to meet any of these conditions and is therefore not recognized as a wetland by current state or federal policy, despite the USFW's documentation of historical alkali flats in the region."

The justification provided in this section does not directly address why certain areas in the project site do not meet the wetland definition established in the Procedures. Water Board staff request the Lead Agency revises the IS to provide additional site-specific information about the playa features within the Project area and to provide more detail as to why the playa features do not qualify as waters of the state.

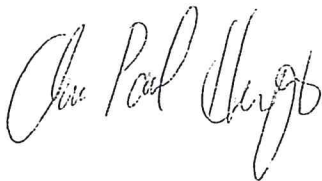
Permitting Considerations for Impacts to Waters of the State

The IS describes activities that may require a Waste Discharge Requirement for Discharges of Dredged or Fill Material to Waters of the State (WDR). The Procedures provide a wetland definition; a wetland delineation procedure; a framework to determine if a wetland is a water of the state; and procedures for the submittal, review and approval of applications for Water Quality Certifications and/or Waste Discharge Requirements for Dredge or Fill Activities.

Please review the requirements in the Procedures prior to submitting an application for Water Quality Certification. The Procedures, and supporting material, can be viewed at the following webpage:

https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html

Thank you for providing Water Board staff the opportunity to provide comments on this Project. Please contact me at adam.henriques@waterboards.ca.gov or (530) 542-5439 with any questions.



Adam Henriques
Environmental Scientist



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



AUG 09 2021

August 9, 2021

LASSEN COUNTY DEPARTMENT OF
PLANNING AND BUILDING SERVICES

Stefano Richichi, Senior Planner
County of Lassen
Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

**SUBJECT: REVIEW OF MITIGATED NEGATIVE DECLARATION FOR USE
PERMIT #2020-001 AND INITIAL STUDY #2020-004 (HOOPER), STATE
CLEARINGHOUSE NUMBER 2020100366, ASSESSOR'S PARCEL
NUMBERS 137-170-012 AND 137-17-013, LASSEN COUNTY**

Dear Stefano Richichi:

The California Department of Fish and Wildlife (Department) has reviewed the Mitigated Negative Declaration (MND) dated June 24, 2021, for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, the Department administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act, California Public Resources Code §21000 et seq.

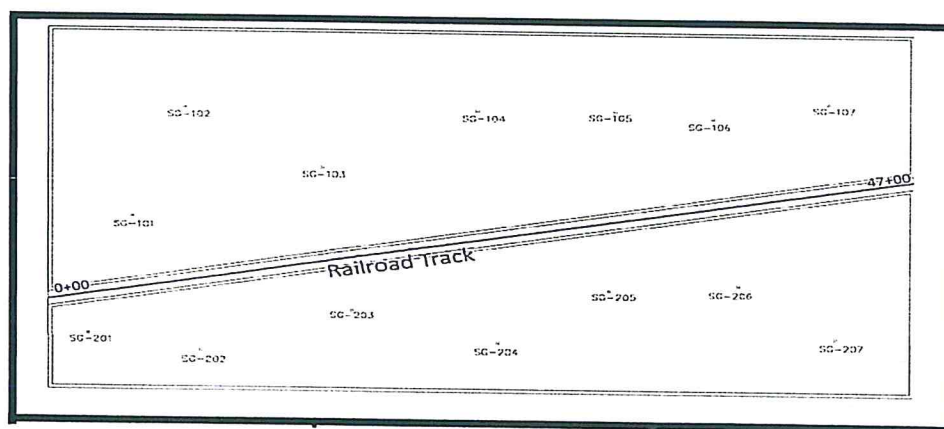
Project Description

The Project as proposed is "Proposal to construct a 50-megawatt photovoltaic solar array and a battery energy storage system (BESS) that would store 25 megawatts or 100 megawatt hours of electricity, along with related infrastructure. Such infrastructure would include a substation, a dead-end tower up to 90 feet tall, 24 130-foot-tall steel gen-tie transmission line poles to interconnect with the Plumas-Sierra Rural Electric 120-kV transmission line approximately 3 miles south of the project site, access roads, and perimeter fencing. The project has an approximate footprint of 278 acres, not including the proposed gen-tie lines. The subject parcels are zoned A-1 (General Agricultural District) and have an "Extensive Agriculture" land use designation in the Lassen County General Plan, 2000."

Conserving California's Wildlife Since 1870

Stefano Richichi, Senior Planner
 County of Lassen
 August 9, 2021
 Page 3

Determination process. No wetland delineation was conducted or submitted to the Corps for this project. A wetland delineation would have determined (1) if the playas were wetlands and (2) if they were jurisdictional wetlands. In this case, a playa could still be considered a wetland but not a jurisdictional wetland. Instead of a jurisdictional delineation, which are conducted by biologists, Sierra Geotech conducted a soil survey and geotechnical analysis with fourteen borings. The boring locations figure (shown below) only depicts boring locations on a blank background with no aerial imagery background as reference. Multiple soil pits should have been conducted over the 278-acre site. The Department recommends a wetland delineation be conducted by a qualified biologist following established regulatory standards, guidance, and protocol, such as the 1987 *Corps of Engineers Wetland Delineation Manual* along with appropriate regional supplements.



The BA further explains the rationale for the playas not conforming to wetland standards by stating, "*The alkali basin/flat/playas on the project lease area do not qualify as jurisdictional wetlands because of the lack of hydrophytic vegetation and lack of wetland hydrology and hydric soils. Wetland hydrology is not present due to low average annual precipitation and low frequency of rainfall during the growing season, and the alkali basins/flats/playas abilities to dry rapidly following a rainfall event.*" The BA supports the lack of jurisdictional wetlands with the following arguments:

1. Alkali basin/flat/playas do not qualify as jurisdictional wetlands because of the lack of hydrophytic vegetation within the playas.

According to the U.S. Army Corps of *Engineer's Arid West Supplement (Version 2) September 2008*, "*Other potential waters of the United States in the Arid West include but are not limited to tidal areas, desert playas, mud*

Stefano Richichi, Senior Planner
 County of Lassen
 August 9, 2021
 Page 5

of these wetlands lack hydric soil indicators due to limited saturation depth, saline conditions, or other factors." The Department does not have enough information to determine if adequate wetland surveys were conducted.

The BA discusses the soils within the project lease area as Epot-Ragtown-Playas complex 0-2 percent slopes. The BA argues this soil complex is well-drained, has very high runoff characteristic, saline, and "incapable of continuous or recurrent saturation of the upper substrate caused by groundwater." However, this soil interpretation is incorrect. According to the NRCS Soil Survey¹ Epot series is "Well drained; very high surface runoff; slow permeability." The Ragtown series "consists of very deep, moderately well drained soils that formed in lacustrine deposits derived from mixed rocks." The playa series, which was left out of the soil description in the BA, is described as having negligible runoff, moderately well-drained, frequent ponding, within Soil Group D, and having a hydric soil rating. Soil Group D consists of soils that have a slow infiltration rate when thoroughly wet. The soils consist mainly of clays, soils in a high-water table, have a claypan, and are shallow over nearly impervious material. The Department recommends rewriting and reanalyzing this section within the BA and include the playa portion of the soil complex in the analysis.

Wetlands are considered extremely valuable natural resources. The Department considers all wetlands sensitive, and the State has a "No Net Loss" wetland Policy². Overall, the Department does not consider the geotechnical report provided to be an adequate substitute for a wetland delineation. The Department recommends a wetland delineation be conducted by qualified individuals familiar with the 1987 *Corps of Engineers Wetland Delineation Manual* along with the appropriate regional supplements. The Corps has reporting and mapping standards on their website

([https://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum Standards for Delineation with Template-final.pdf](https://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum%20Standards%20for%20Delineation%20with%20Template-final.pdf)).

Vegetation Communities

In our previous comment letters, the Department recommended using the Department's 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (Protocol). The Protocol specifically focuses on how to conduct botanical surveys and how to map sensitive natural communities. The BA states that the Protocol was used, however, plant communities were mapped using Holland, an older vegetation classification, and the Department's *California Wildlife Habitat Relationship System*, which is not a vegetation classification. The BA states desert sink scrub,

¹<https://websoilsurvey.nrcs.usda.gov/app/>

² Fish and Game Commission Wetlands Resources Policy (Amended 8/18/05)

Stefano Richichi, Senior Planner
County of Lassen
August 9, 2021
Page 7

and 3503.5, including their nests and eggs, one of the following shall be implemented:

- a. Vegetation removal and other ground-disturbance activities associated with construction shall occur between September 1 and January 31, when birds are not nesting; or
- b. If vegetation removal or ground disturbance activities occur during the nesting season, a pre-construction nesting survey shall be conducted by a qualified biologist to identify active nests in and adjacent to the work area. Surveys shall begin prior to sunrise and continue until vegetation and nests have been sufficiently observed. The survey shall take into account acoustic impacts and line-of sight disturbances occurring as a result of the project in order to determine a sufficient survey radius to avoid nesting birds.

At a minimum, the survey report shall include a description of the area surveyed, date and time of the survey, ambient conditions, bird species observed in the area, a description of any active nests observed, any evidence of breeding behaviors (e.g., courtship, carrying nest materials or food, etc.), and a description of any outstanding conditions that may have impacted the survey results (e.g., weather conditions, excess noise, the presence of predators, etc.). The results of the survey shall be submitted to the CDFW upon completion at R1CEQARedding@wildlife.ca.gov. The survey shall be conducted no more than one week prior to the initiation of construction. If construction activities are delayed or suspended for more than one week after the preconstruction survey, the site shall be resurveyed.

If active nests are found, the Project proponent shall consult with the USFWS and CDFW regarding appropriate action to comply with the CESA, Migratory Bird Treaty Act and California FGC sections 3503 and 3503.5. Compliance measures may include, but are not limited to, exclusion buffers, sound-attenuation measures, seasonal work closures based on the known biology and life history of the species identified in the survey, as well as ongoing monitoring by biologists.

Restoration Plan

Mitigation measures MM 16: Project Lease Area Restoration Plan and MM17: Seed Mix and Success Criteria should be rewritten. Plans for restoration and revegetation should be prepared by persons with expertise in northern California Great Basin ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and/or seeding rates; (c) a schematic depicting the mitigation area; (d) planting/seeding schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation; (g) specific

Stefano Richichi, Senior Planner
County of Lassen
August 9, 2021
Page 9

ec's continued:

Matthew J. Roberts
U.S. Army Corps of Engineers
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State Clearinghouse
State.Clearinghouse@opr.ca.gov

Amy Henderson
California Department of Fish and Wildlife
Amy.Henderson@wildlife.ca.gov

Gaylon Norwood

From: Henderson, Amy@Wildlife <Amy.Henderson@wildlife.ca.gov>
Sent: Thursday, August 12, 2021 2:16 PM
To: Gaylon Norwood
Cc: Babcock, Curt@Wildlife; McKannay, Adam@Wildlife; Maurice Anderson; Stefano Richichi; Matthew May
Subject: RE: Hooper solar project - Lassen County

This message comes from an external sender. EXTERNAL SENDER WARNING!

Gaylon,

I reviewed your summary and have provided my clarifications in red below.

Best,

Amy Henderson
Senior Environmental Scientist (Specialist)
Interior Conservation and Cannabis Planning
California Department of Fish and Wildlife Northern Region
601 Locust St.
Redding, CA 96001
530-598-7194 (cell)
Amy.Henderson@wildlife.ca.gov

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From: Gaylon Norwood <GNorwood@co.lassen.ca.us>
Sent: Thursday, August 12, 2021 1:44 PM
To: Henderson, Amy@Wildlife <Amy.Henderson@wildlife.ca.gov>; Babcock, Curt@Wildlife <Curt.Babcock@wildlife.ca.gov>
Cc: Maurice Anderson <MAnderson@co.lassen.ca.us>; Matthew May <MMay@co.lassen.ca.us>; Stefano Richichi <SRichichi@co.lassen.ca.us>
Subject: Hooper solar project - Lassen County

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Curt and Amy:

We would like to thank you for the time you took to meet with us by zoom in regard to the above referenced project. We would also like to thank you for the multiple letters and advise you have provide throughout this project.

In particular, the meeting we had earlier today was in regard to the most recent letter we received from your Department, dated August 9, 2021, and a response to the Proposed Mitigated Negative Declaration/Initial Study prepared for this project we received from Adams Broadwell Joseph and Cardoza (which incorporated supporting letters from Phyllis Fox, PhD, PE and Scott Cashen, MS). The following are some key points we heard in the meeting we had today:

- You reiterated your letters (and in particular your most recent letter), which identified several deficiencies in the proposed MND/Initial Study and supporting Biological studies that would prevent adoption of a MND as the environmental document.
 - In particular, it was identified that further analysis is needed regarding the playas. You said that there is likely a state wetland and there may be a jurisdictional wetland. A proper wetland delineation is needed. **I said that the playas were most likely state wetlands but may not be jurisdictional wetlands (as defined by the U.S. Army Corps of Engineers)**
 - If there is a wetland, it may not be possible to mitigate.
 - Wetland information is paramount in determining the viability of this project.
- We discussed the response to the Proposed MND/Initial Study from the above attorney. In particular, we were interested in your assessment as to whether a fair argument was presented that there are potentially significant impacts. Your overall opinion was that the arguments presented seem to support a fair argument. In support of this conclusion, we discussed and you confirmed that several key assertions brought up in response are correct, including:
 - You confirmed that the references to the Doyle Wildlife Area, Honey Lake Valley Important Bird Area, and State Lands Commission were correct.
 - We discussed the validity of the information referenced from the Audubon Society. You opined that the data referenced is valid and is pertinent.
 - You noted that the nesting surveys were inadequate, that nest surveys are hard to do as nests are often camouflaged. You need to be at the project site for multiple days.
 - We discussed the assertion in the response letter that there is a **Swainson's** ~~swainson's~~ hawk nest within 10 miles and that, therefore, foraging habitat in the project area should be analyzed. Amy stated that there is likely foraging habitat at the project site but human modified habitat is used more frequently (e.g. alfalfa). Further analysis may be needed.
 - We discussed the comments concerning the potential presence of the Carson's wandering skipper and that it was not discussed by your Department primarily because it is only federally listed.
 - We discussed the validity of the language concerning impacts due to "lake effect". It was mentioned that the assessments for this project didn't analyze lake effect. In particular, Amy said, earlier solar panels had a more profound lake effect impact. **I was unsure of the type of solar panel being used and if those panels would cause the lake effect but in general Scott Cashen's point about lake effect is valid.**
 - You mentioned that the assertions in the project description saying the effects are temporary are false. Generally, if effects last longer than 6 months they are considered permanent, and this type habitat is very slow to recover.

In the end, you were comfortable reiterating statements in your letter saying that there is insufficient information/support adoption of a MND. You said your review of the arguments presented by the above attorney's expert (Scott Cashen and Phyllis Fox) seem to support their fair argument. However, you said, the applicant could possibly do more studies and data collection to assert otherwise, but there may well be obstacles to the project that cannot be mitigated (especially wetland impacts). **I did specifically state that I had not**

reviewed Phyllis Fox's letter as air quality is not something our agency reviews when commenting on environmental documents.

Is the above a fair summary of our discussion? Is there anything you wish to add or clarify?

Sincerely,

Gaylon F. Norwood
Assistant Director of Planning
and Building Services
Lassen County
707 Nevada Street Suite 5
Susanville, CA 96130
(530) 251-8269
Fax: (530) 251-8373



County of Lassen

Department of Planning and Building Services

• Planning

• Building Permits

• Code Enforcement

• Surveyor

• Surface Mining

August 13, 2021

Maurice L. Anderson, Director

707 Nevada Street, Suite 5

Susanville, CA 96130-3912

Phone: 530 251-8269

Fax: 530 251-8373

email: landuse@co.lassen.ca.us

website: www.co.lassen.ca.us

Dr. Charles Hooper
11242 Clinton Bar Road
Pine Grove, CA 95665

Zoning & Building
Inspection Requests
Phone: 530 257-5263

Brent Moore, Vice President
Sierra Geotech, DBE, Inc.
2250 Sierra Meadows Drive, Suite A
Rocklin, CA 95677

RE: Initial Study #2020-001 for Use Permit #2020-004, Hooper

As you are aware, this Department has received several letters in regard to the circulation of the proposed mitigated negative declaration and supporting initial study for your project within the last two weeks. Specifically, this Department received letters from the Lahontan Regional Water Quality Control Board on July 28, 2021, the law firm Adams Broadwell Joseph and Cardozo on July 29, 2021, and the California Department of Fish and Wildlife on August 9, 2021. Said letters identify numerous potentially significant impacts on account of the project, including impacts to air quality, greenhouse gases, biological resources, water quality, wildfire, and energy, among others. Said letters present a fair argument based on substantial evidence that the project may have potentially significant effects to the environment. In light of this, Lassen County Environmental Review Officer (ERO) has determined that an Environmental Impact Report (EIR) is required for your project.

The ERO's determination is supported by both Sections 15064(f)(1) and (g) of the 2021 CEQA Guidelines which state in part:

15064(f)(1)

[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.

15064(g)

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by fact over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Pursuant to Section 6(c) of Board Resolution No. 01-043 (attached), "Unless the applicant concurs with the preliminary determination of the [Environmental Review Officer] to begin preparation of an EIR, the primary decision-making body will make a determination as to whether an EIR or Negative

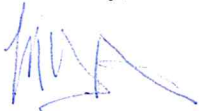
Declaration should be prepared.” As such, please inform this Department, in writing, whether or not you concur that an EIR should be prepared for this project. If you do not concur, the ERO will schedule a public hearing with the Lassen County Planning Commission, who would then make the determination as to whether an EIR must be prepared, unless appealed to the Lassen County Board of Supervisors.

Please see the attached document titled “Environmental Impact Report Preparation Process” for further information concerning the process and cost for preparation of an EIR. Please also see Section 7(b) of Board Resolution #01-043 in regard to the EIR process.

Your initial study and use permit applications are on hold until you inform this Department whether you concur that an EIR is the appropriate environmental document for this project. Please inform us of your intent in writing by October 8, 2021. If you concur that an EIR is required, the initial study preparation process is complete. In such a case, your use permit application will remain on-hold until you submit the required EIR application in accordance with the attached process. Again, if you do not concur that an EIR is required, please inform this Department in writing and a public hearing will be scheduled with the Planning Commission.

Please contact Senior Planner Stefano Richichi at srichichi@co.lassen.ca.us if you have further questions. In addition, you may contact Administrative Assistant Dana Hopkins at dhopkins@co.lassen.ca.us or at (530) 251-8269 to schedule a conference call with Planning Division staff if you wish to discuss this matter further.

Sincerely,



Maurice L. Anderson,
Director

MLA:smr

Enclosures: Board Resolution #01-043
Environmental Impact Report Preparation Process

cc: Lassen County Counsel
Shaun Vemuri, Sierra Geotech, DBE, Inc.

RESOLUTION NO. 01-043

RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF LASSEN, AMENDING PROCEDURES FOR THE ADMINISTRATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT BY THE COUNTY OF LASSEN

WHEREAS, Public Resources Code Section 21082, as a provision of the California Environmental Quality Act (CEQA), requires that all public agencies shall adopt objectives, criteria and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations; and

WHEREAS, said section requires that said objectives, criteria and procedures shall be consistent with the guidelines certified and adopted by the Secretary of the Resources Agency pursuant to Public Resources Code Section 21083; and

WHEREAS, periodic amendments to said guidelines require modification of Lassen County's procedures for environmental review, and

WHEREAS, it is in the interest of the County of Lassen to improve the efficiency and effectiveness of its environmental review procedures to better serve the public and fulfill its responsibilities under CEQA.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Lassen hereby adopts the objective, criteria and implementation procedures attached to this resolution and incorporated herein under the title of "Lassen County Environmental Review Guidelines"; and

BE IT FURTHER RESOLVED, that the Board of Supervisors hereby adopts and incorporates by reference the State CEQA Guidelines as adopted and amended by the Secretary of Resources as Chapter 3, Division 6, Title 14 of the California Code of Regulations, with the additions and modifications set forth in said "Lassen County Environmental Review Guidelines"; and

BE IT FURTHER RESOLVED, that this resolution repeals and supercedes Resolution 01-003; and

BE IT FURTHER RESOLVED that this resolution shall become effective on May 22, 2001.

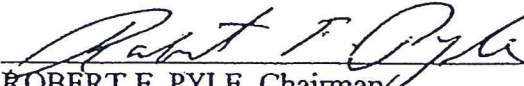
The foregoing resolution was adopted at a regular meeting of the Lassen County Board of Supervisors on the 22nd day of May, 2001, by the following vote:

AYES: Supervisors Pyle, Keefer, Dahle

NOES: Supervisor McCain

ABSTAIN: None

ABSENT: Supervisor Chapman



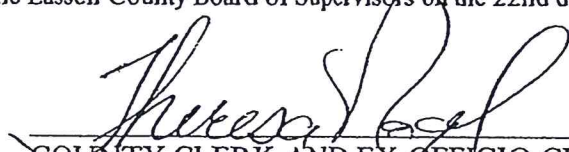
ROBERT F. PYLE, Chairman
Lassen County Board of Supervisors

ATTEST:



Theresa Nagel, County Clerk

I, THERESA NAGEL, Lassen County Clerk, and ex-officio clerk of the Board of Supervisors, do hereby certify that the foregoing resolution was adopted by the Lassen County Board of Supervisors on the 22nd day of May, 2001.



COUNTY CLERK AND EX-OFFICIO CLERK OF THE
BOARD OF SUPERVISORS

LASSEN COUNTY ENVIRONMENTAL REVIEW GUIDELINES

INTRODUCTION

The County of Lassen acknowledges and supports the basic purposes of CEQA, as set forth in the State CEQA Guidelines, Section 15002 (a). The basic purposes of CEQA are to:

- a) Inform governmental decisionmakers and the public about the potential, significant environmental effects of proposed activities.
- b) Identify the ways that environmental damage can be avoided or significantly reduced.
- c) Prevent significant, avoidable damage to the environment by requiring changes to projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- d) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

In order to ensure conformity with the State CEQA Guidelines, Lassen County hereby re-adopts said Guidelines and incorporates them by reference in the County's Environmental Review Guidelines. The objectives of the County's Guidelines are:

- a) To comply with Section 15022 of the State CEQA Guidelines which requires that each public agency shall adopt objectives, criteria and specific procedures consistent with CEQA and the State's Guidelines for administering its responsibilities under CEQA; and
- b) To establish local procedures and provisions that are necessary to tailor the general provisions of the State's Guidelines to the specific operations of the agency.

1. COUNTY LEAD AGENCY RESPONSIBILITIES

- a) These guidelines apply to "projects" in which the County of Lassen is the "Lead Agency" under the criteria set forth in CEQA. A "project", as defined in Section 21065 of Public Resources Code, includes any of the following:

- 1. An activity directly undertaken by any public agency.

2. An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 3. An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- b) The Board of Supervisors, consistent with State CEQA Guidelines Section 15025, has assigned specific functions to its Planning Commission and staff to assist in administering CEQA. In cases where the Board has delegated decision-making authority to the Planning Commission, the Commission, as the "primary decision making body," shall perform the functions of Lead Agency under the delegation of the Board.
1. The delegation of primary decision-making authority by the Board of Supervisors to the Planning Commission does not waive any appeal rights of an applicant otherwise granted by the Lassen County Code, Title 18, these guidelines, or applicable ordinances. When a project decision of the Planning Commission is appealed to the Board, the Board shall resume authority and duties of Lead Agency under CEQA relating to the project in question.
 2. Neither the Planning Commission nor the Board of Supervisors, in executing their decision-making responsibilities, shall delegate the following CEQA functions:
 - A. Reviewing and considering a final EIR or approving a Negative Declaration prior to approving a project.
 - B. The making of findings as required by State CEQA Guidelines Sections 15091 (regarding findings in an EIR) and 15093 (regarding Statements of Overriding Considerations in an EIR).
 3. Where the Planning Commission*, as an advisory board, is required to make a recommendation on a project to the decision-making body, the Commission shall also review and provide recommendations upon the EIR or Negative Declaration in draft or final form.

*References to the Planning Commission contained within these guidelines shall be also be deemed to be references to other agencies which are delegated decision-making authority by action of the Board of Supervisors.

2. RESPONSIBILITIES OF THE DIRECTOR OF THE DEPARTMENT OF COMMUNITY DEVELOPMENT

The Director of the Department of Community Development shall:

- a) Be responsible for coordinating Lassen County's environmental review procedures;
- b) Prepare administrative procedures for efficient and effective environmental review processes, including a process to evaluate activities to determine if there is no possibility that the activity may have significant effect on the environment;
- c) Identify and maintain a list of specific activities which are found to be within the categorical exemptions listed in the CEQA Guidelines, and are exempt from CEQA.
 - 1. The Director shall consider the intent of the Legislature in identifying categorical exemptions and the applicability of that intent in Lassen County, given local conditions when determining such local exemptions.
 - 2. Upon request by any person, the Director shall consider the potential effects of the specific activity set forth in the request and shall, within 30 days, either list the specific activity as categorically exempt or determine that the activity is subject to CEQA review.
 - 3. The Director shall maintain an official list of "locally exempt" activities.
- d) Identify and maintain a list of projects or permits over which the County has only ministerial authority.
- e) Advise the Board of Supervisors on State environmental review requirements, and prepare and submit to the Board proposed amendments to the County's environmental review procedures; and
- f) Advise other agencies in Lassen County, upon request, on compliance with and implementation of CEQA.

3. DESIGNATION OF ENVIRONMENTAL REVIEW OFFICER

- a) The Lassen County Director of Community Development is hereby designated to serve as the "Environmental Review Officer" (ERO) for all projects under the responsibility of the Planning Commission and Board of Supervisors that are subject to environmental review under CEQA. Functions delegated to the ERO in

this resolution shall be performed on behalf of and under the title of Lead Agency.

- b) Upon approval by the County Administrative Officer, Department Heads of the various Lassen County Departments (e.g. Public Works, Sheriff's Department, Probation, Public Health, Lassen Works, etc.) may assume ERO status and will be responsible for CEQA compliance on projects administered by their departments.

4. DUTIES OF THE ENVIRONMENTAL REVIEW OFFICER

- a) The ERO may delegate to staff members under the ERO's supervision authority to act on the ERO's behalf on all environmental matters for which the ERO is responsible.
- b) The ERO shall:
 - 1. Determine whether proposed projects are exempt from environmental review requirements of CEQA and these guidelines.
 - 2. Prepare Initial Studies and determine the environmental significance of each proposed project;
 - 3. Recommend environmental findings to the Lead Agency;
 - 4. Prepare or cause to be prepared mitigation measures for negative declarations and EIRs, if necessary, and include those measures in any staff report on any project to which CEQA is applicable;
 - 5. Prepare or cause to be prepared responses to written comments received on draft EIRs;
 - 6. Conduct public hearings pursuant to State Guidelines Section 15087 and as deemed necessary or beneficial to determine the adequacy of draft and final EIRs;
 - 7. Conduct scoping meetings and other public meetings deemed to be beneficial to the environmental review process by the ERO and Lead Agency;
 - 8. Comment on environmental documents of a Lead Agency pursuant to Guidelines 15096 (d) when the County is a Responsible Agency for the Lead Agency's project;

5. ENVIRONMENTAL REVIEW PROCESS

- a) When the County determines to carry out a project, or an entitlement proposal is accepted for processing, the following process shall be administered.
 - 1. The ERO shall conduct a preliminary review of all projects and determine, within 30 days, whether the project is ministerial or otherwise exempt from CEQA.
 - 2. An Initial Study, as defined pursuant to Section 15365 of the State CEQA Guidelines, shall be prepared by the ERO for each project which is not exempt from CEQA and for which a complete application has been accepted. The process for preparation of an Initial Study shall be as prescribed by the ERO, pursuant to Section 2 (B) of these Guidelines.

6. DETERMINATION OF THE APPROPRIATE ENVIRONMENTAL DOCUMENT

- a) The ERO shall review the Initial Study and determine whether:
 - 1. The Initial Study shows there is no substantial evidence that the project may have a significant effect on the environment and a Negative Declaration should be prepared; or
 - 2. The Initial Study identified potentially significant effects, but revisions in the project would avoid the effects or mitigate the effects to a point where no significant effects would occur, and there is no substantial evidence that the project as revised may have a significant effect on the environment, consequently a Negative Declaration should be prepared; or
 - 3. There is substantial evidence that the project may have a significant effect on the environment and an EIR should be required.
- b) The ERO may refer projects to the Planning Commission, or to the Board of Supervisors as applicable, for the purpose of making a determination of whether an EIR or a Negative Declaration shall be prepared.
- c) Except as provided in subdivision (e) of this Section, in the event that the ERO, after review of the Initial Study, makes a preliminary determination that an EIR should be prepared, the referral of the determination will be scheduled for Public Hearing by the primary decision-making body. Unless the applicant concurs with the preliminary determination of the ERO to begin preparation of an EIR, the primary decision-making body will make a determination as to whether an EIR or Negative Declaration should be

prepared. Review will not be limited to the record, and relevant new information, recommendations and public comment will be encouraged. If an appeal is made to the Board of Supervisors on a determination by the Planning Commission, the appeal shall be made pursuant to this Section.

- d) The Lead Agency shall determine within 30 days after acceptance of an application as complete whether an EIR or a Negative Declaration will be required, or whether to use a previously prepared EIR or Negative Declaration. The 30-day period may be extended 15 days upon mutual consent of the project applicant and the Lead Agency. A determination made by the ERO or the Planning Commission on behalf of the Lead Agency shall satisfy the time limits set forth in Section 15102 of the State CEQA Guidelines, regardless of any pending appeals on the determination.
- e) The ERO may forego the process of determining whether an EIR or Negative Declaration will be prepared including preparation of an Initial Study if the proponent of the project authorizes the preparation of an EIR.
- f) Any person dissatisfied with the determination of the Planning Commission to require an Environmental Impact Report or Negative Declaration, or to require a revision of a project to qualify for a Negative Declaration, may, within 10 days following such determination, appeal the same to the Board of Supervisors. The appeal shall be taken by filing a notice thereof with the ERO, stating with particularity the findings of the Planning Commission, which are claimed to be unsupported by the record of the matter. Thereupon, the ERO shall transmit the complete record of the Planning Commission action on the application, together with the Notice of Appeal, to the Clerk of the Board of Supervisors, who shall place the matter upon the agenda of the Board of Supervisors as a public hearing at its first meeting occurring at least 14, but not more than 28 days, following receipt by the Clerk of the Notice of Appeal. The Board of Supervisors shall make its independent findings and determination as to the appropriate environmental document.

Regardless of the duration or the outcome of any referral or appeal of an environmental determination, the initial determination of the ERO or the Planning Commission shall comply with and thereby satisfy the time limit requirements of State Guidelines, Section 15102.

7. PREPARATION OF ENVIRONMENTAL DOCUMENTS

a) Preparation of Negative Declarations

1. Negative Declarations shall be prepared pursuant to Sections 15070 and 15071 of the State CEQA Guidelines.
2. The ERO may require the applicant of a project to supply any additional data and information identified by the ERO, responsible agencies, and/or commenting agencies and persons as necessary for the preparation of adequate environmental documents.

b) Preparation of Environmental Impact Reports

1. Environmental Impact Reports shall be prepared in conformance with the CEQA Guidelines, Section 15080 et. Seq.
2. For EIRs related to entitlement applications, the following provisions shall apply:
 - A. When a determination has been made that an EIR is the appropriate environmental document, the project applicant shall be notified. Preparation of the Draft EIR, including the sending of Notices of Preparation, will not be initiated until the applicant has paid the appropriate EIR preparation fees. Delay in paying the fees shall suspend the running of the time periods described in the CEQA Guidelines. Failure to pay within six months of notification that an EIR will be required may result in disapproval of the project application, or an interpretation that the project has been withdrawn.
 - B. The County may hire independent contractor(s) to prepare and/or administer contracts for preparation of the EIR. The ERO shall have the discretion to determine when a contractor should be hired and the extent of contractor services.
 - C. The County shall be responsible to ensure the adequacy of the EIR and to that end, will exercise its sole discretion as to content and quality of the EIR.
 - D. The County, or its contractor(s), may make use of outside studies of environmental factors prepared by consultants not on the staff of or under the direction of the County's consultant and contracted for before the approval of the County's consultant contract. The consultant may also utilize information obtained from ongoing studies regarding factual environmental information related to the subject property and its surroundings, even though the authors are not on the staff of or under the direction of the County's consultant. In either case, the County's

consultant must independently (1) verify the professional competence and expertise of the study author(s), (2) agree with the study methodology, and (3) determine the factual validity of environmental conclusions drawn from these studies.

- E. The project proponent, pursuant to a funding agreement executed by the County and proponent, shall pay the cost of preparing an EIR. Such funds as may be required to meet the proponent's obligation under the funding agreement, shall be paid to the County prior to the County beginning or continuing work on the EIR. The funds shall be deposited into a non-interest bearing trust account.
- F. In the event that a project proponent withdraws an application after preparation of an EIR has begun, the following provisions shall pertain to the return of any EIR filing fees:
 - 1) If the project is withdrawn or otherwise terminated prior to the payment of the proposed contract costs, 60 percent of the EIR filing fee will be returned.
 - 2) If the project is withdrawn or otherwise terminated after a third party contract is entered into for preparation of the EIR, and before a public hearing on the Draft EIR has been initiated, 20 percent of the EIR filing fee will be returned.
 - 3) If the project is withdrawn or otherwise terminated after initiation of the public review period on the Draft EIR, no part of the EIR filing fee will be returned.

8. FINAL PROJECT DECISION BY LEAD AGENCY

- a) If an EIR was prepared to consider the environmental effects of the project, prior to making its final decision to approve or carry out the project, the County shall, follow the procedures set forth in Sections 15089 through 15091.
- b) Upon making its final decision to approve or carry out a project, the County shall,
 - 1. if a Negative Declaration was prepared to consider the environmental effects of the project, meet the requirements of Section 15075, or
 - 2. if an EIR was prepared to consider the environmental effects of the project, follow the procedures set forth in Sections 15092 through 15095

3. Upon adoption of a negative declaration, a mitigated negative declaration or certification of an EIR, the ERO shall file, within five working days, a Notice of Determination pursuant to Guidelines Section 15075 or 15094. When the approving authority acts as Responsible Agency, the ERO shall file or cause to be filed a Notice of Determination pursuant to Guidelines Section 15096 (i).

Adopted January 23, 2001, Board of Supervisors Resolution No. 01-003
Revision 1: May 22, 2001, Board of Supervisors Resolution No. 01-043
Effective Date: May 22, 2001



ENVIRONMENTAL IMPACT REPORT PREPARATION PROCESS

DEPARTMENT OF PLANNING AND BUILDING SERVICES
707 Nevada Street, Suite 5 · Susanville, CA 96130-3912
(530) 251-8269 · (530) 251-8373 (fax)
www.co.lassen.ca.us

CONSULTANT SELECTION AND CONTRACTING PROCEDURES

The following process sets forth the procedure for the selection of consultants for preparation of Environmental Impact Reports (EIR's) for projects in Lassen County in cases where the Planning Commission or Board of Supervisors is the "Lead Agency." This process is designed to minimize expenses to the County of Lassen and the applicant, while ensuring that the EIR will be both objective and adequate for the purpose of evaluating and mitigating potentially significant adverse environmental impacts.

The following excerpts are from the CEQA Guidelines:

Section 15084

- (a) The draft EIR shall be prepared directly by or under contract to the Lead Agency.
- (e) Before using a draft prepared by another person, the Lead Agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the Lead Agency. The Lead Agency is responsible for adequacy and objectivity of the draft EIR.

Summary of Process

The EIR process starts with the determination by the Lead Agency to prepare an EIR (see CEQA Guidelines section 15081).

Following the determination that an EIR will be required for a proposed project, the Planning and Building Services Department (Department) shall notify the applicant of the determination and of known environmental issues that will need to be addressed in the EIR, and shall advise the applicant of the EIR process as set forth herein. Whenever possible, applicants shall be encouraged to meet with Department staff after a determination to prepare an EIR to discuss the project and explore possible amendments to the project which may avoid or mitigate the extent of potential impacts and which could affect the scope of an EIR or the manner in which the EIR will be prepared.

The EIR will be prepared through one of the following mechanisms:

1. By far the most common and preferred arrangement for preparing an EIR for private projects in Lassen County is through a third-party contract to govern preparation of the EIR by a consultant through an independent contract with Lassen County. The applicant is not a party to the contract and the selected consultant reports directly to Lassen County.
2. In rare cases, Lassen County prepares the EIR itself, but this is admittedly unusual. Given normal staff workloads and the infrequency of EIRs in Lassen County, Lassen County does not generally have sufficient available staff time (or a staff member dedicated to EIRs) needed for

the County to prepare the EIR in a timely, economical manner, and therefore number 1 above is the most common approach.

3. Last, and only with advance written approval, the Department may allow submittal of a proposed draft EIR that was commissioned by the applicant. Any EIR that was not prepared directly under contract to Lassen County must undergo third-party review by a consultant that is under contract to Lassen County.

Application Fees and Costs are as follows:

- In accordance with Lassen County Code section 3.18.020, the EIR application fee is \$2,619.
- In addition, the applicant must pay all contracted consultant fees and costs in advance or through a funding agreement, which must be executed before an EIR application can be accepted as complete. This requirement applies regardless of whether the EIR was prepared directly under contract to Lassen County or for third-party review conducted by a consultant under contract to Lassen County for any EIR commissioned and submitted by the applicant.
- Lassen County Code section 3.18.020 requires payment of an administration fee equal to ten percent of the total contract costs if the EIR is prepared under contract to Lassen County or if third-party review is conducted under contract to Lassen County. This fee must also be paid before an EIR application can be accepted as complete.
- In cases where the EIR is prepared directly by Lassen County staff, Lassen County Code section 3.18.020 requires the applicant to pay the actual costs (time and materials) Lassen County incurs that exceed the \$2,619 application fee. Applicant's will be billed as said costs are incurred, and, if costs are not paid, the application preparation process and timeline will be placed on hold until said costs are paid.

Application Process

The applicant may initiate the preparation of the EIR by filing the following with the Department:

1. Affirmation that the applicant wishes to proceed with the application and that he/she agrees to participate in preparation of the EIR.
2. Submittal of the EIR filing fee and application. The filing fee is \$2,619.00. This is in addition to the \$2,000.00 Initial Study application fee (if an Initial Study was completed).
3. The Department shall prepare a Request for Proposals (RFP) and mail it to consultants who are on the list of consultants the county maintains. The Department may also mail the RFP to any other appropriate consultants that may be identified. The applicant may request, in writing, that the RFP be mailed to any other consultants.
4. Bid proposals will be submitted to the Planning and Building Services Department by the date specified in the RFP. The submitted proposals shall at a minimum agree with the scope of

services and proposal specifications as outlined in the RFP, and shall be valid for a definite period of time. Incomplete proposals may be rejected.

The Department shall review and evaluate the scope, content and completeness of the bid proposals in order to determine the proposal which best demonstrates the ability and qualified staff to provide the services required. The Department may hold interviews with any or all of the selected consultants to help in arriving at a decision. The scope, content, completeness and quality of services provided will be of equal importance with cost. The Department shall select a consultant for each EIR.

5. The Department's selection shall be contained in a letter to the applicant indicating the date of expiration of the proposal. Upon receipt of a letter from the applicant indicating concurrence with the environmental consultant selected, and funds sufficient to cover the consultant's fee (or execution of a funding agreement), the Planning and Building Services Department shall execute the contract. Depending on the amount, the contract may require approval by the Board of Supervisors in accordance with Lassen County's Purchasing Policy.

If it is the judgement of the Department that exceptional circumstances exist which preclude acceptance of any of the submitted proposals, following discussion with the applicant, the Department may choose an alternate consultant, or, at the request of the applicant, may release a second RFP.

Consultants with a possible conflict of interest with a project, directly or indirectly, shall not be considered as a consultant for preparation of a project's EIR.

EIR Preparation

The EIR will be prepared in compliance with the State's CEQA Guidelines. Draft EIR's shall contain the information required by Article 9.

The contract offered to the consultant selected to prepare the EIR shall specify a schedule for preparation and review so that the EIR can be processed within the required timeframes. Section 15108 of the CEQA Guidelines states:

With a private project, the Lead Agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the Lead Agency accepted the application as complete.

This one-year limit may be extended once for a period of not more than 90 days upon consent of the Lead Agency and the applicant.

The laws and rules governing the CEQA process are contained in the CEQA statute (Public Resources Code Section 21000 and following), the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 and following), published court decisions interpreting CEQA, and locally adopted CEQA procedures.

The Governor's Office of Planning and Research (OPR) serves several important functions in the administration of CEQA. First, together with the Natural Resources Agency, OPR develops the CEQA

Guidelines. The CEQA Guidelines are administrative regulations interpreting the CEQA statute and published court decisions. Second, OPR runs the State Clearinghouse which coordinates state level review of CEQA documents. Finally, OPR provides technical assistance to state and local government agencies, including the development of technical advisories on selected CEQA topics.

Additional information regarding the CEQA statute, the CEQA Guidelines, published court decisions involving CEQA, OPR's technical advisories and updates on addressing greenhouse gas emissions in CEQA documents can be found by visiting OPR's website: <https://opr.ca.gov/ceqa/>

If you have any questions about Lassen County's role in the CEQA process and the preparation of EIR's for projects in Lassen County, contact the Lassen County Planning and Building Services Department, 707 Nevada Street, Suite 5, Susanville, California 96130, (530) 251-8269.

Attachment:

CEQA Flowchart for Local Agencies, CEQA Guidelines Appendix A

**ENVIRONMENTAL SETTLEMENT AGREEMENT
FOR
CALNEVA BATTERY ENERGY STORAGE SYSTEM AND
PHOTOVOLTAIC SOLAR ENERGY SYSTEM PROJECT
PROPOSED BY
DR. CHARLES HOOPER, D.O.**

RECEIVED

SEP 15 2021

**LASSEN COUNTY DEPARTMENT OF
PLANNING AND BUILDING SERVICES**

ENVIRONMENTAL SETTLEMENT AGREEMENT

This Environmental Settlement Agreement (“Agreement”) is made effective as of this 14th day of September 2021 (the “Effective Date”) by and between Dr. Charles Hooper (“Developer”) and Citizens for Responsible Industry (“Citizens”) on behalf of itself, its members, and its participating unions. Citizens is an unincorporated association of individuals and labor organizations who are concerned about public and worker health and safety risks, and environmental and public service impacts, from industrial development. The Developer and Citizens are the Parties to this Agreement.

RECITALS

WHEREAS, on June 27, 2021, Lassen County (“County”) circulated an Initial Study / Mitigated Negative Declaration (“ISMND”) for the Calneva Battery Energy Storage System (“BESS”) and Photovoltaic Solar Energy System (“PSES”) Project (“Project”). The Project proposes to construct a 50-megawatt (“MW”) photovoltaic solar array and a battery energy storage system that would store 25 MW or 100 MW hours of electricity, along with related infrastructure. Such infrastructure would include a substation, a dead-end tower up to 90 feet tall, twenty-four (24) 130-foot-tall steel gen-tie line poles to interconnect with the Plumas-Sierra Rural Electric 120 kilovolt (kV) inter-tie line approximately 3 miles south of the project site, access roads, and perimeter fencing. The Project has an approximate footprint of 278 acres, not including the proposed gen-tie lines. The Project site (Assessor’s Parcel Numbers 137-170-12 and 137-170-13) is located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border, in Lassen County, California;

WHEREAS, Citizens submitted comments on the ISMND alleging various errors and omissions in the County’s environmental review of the Project under the California Environmental Quality Act (“CEQA”), including, but not limited to issues related to the analysis and mitigation of energy impacts, greenhouse gas (“GHG”) impacts, air quality impacts, and impacts to biological resources (collectively referred to as “Allegations”);

WHEREAS, the County received technical environmental advice from Sierra Geotech, DBE, Inc., an environmental consultant retained by Dr. Charles Hooper, to provide the County with a Response to Comments document on the Draft Initial Study and Proposed Mitigated Negative Declaration in September 2021 that disputed the Allegations, which was provided to Citizens for review and consideration;

WHEREAS, the Parties desire to resolve their disputes and any and all other potential issues regarding the County’s approval of the Project, and all other discretionary or ministerial past, present, and future actions, approvals, permits or other entitlements necessary to construct and operate the Project by any public or private organizations or entities, including potential modifications to conditional use approvals (the “Project Approvals”);

WHEREAS, the Parties agree that any resolution of this dispute shall not bind either Party with respect to any application of the Allegations to other projects; and

WHEREAS, by executing this Agreement, neither of the Parties admits nor concedes any of the claims, defenses or allegations which were raised or could be raised by the other party or any third party, with regard to any of the discretionary or ministerial actions taken or to be taken with regard to the Project Approvals.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions and promises contained herein, the Parties hereto fully settle, compromise and resolve all disputes and controversies between them related in any way to the Project and the Project Approvals. Following negotiations between the Parties, a settlement of all claims between the Parties was agreed to, the terms of which are set forth below.

TERMS

I. ACTIONS BY DEVELOPER.

In addition to the mitigation measures identified in the ISMND, Developer agrees that it shall implement or cause its contractors to implement the following additional measures (“Additional Measures”). Developer shall request that Lassen County incorporate the Additional Measures as conditions of approval or mitigation measures in substantially the form as follows:

1.1 Air Quality:

- 1.1.1 Construction Emissions: The Developer agrees that all diesel-powered construction equipment shall use Tier 4 Final construction equipment, to be confirmed on site by the on-site construction supervisor during each day of use. If Tier 4 Final engines are not available, controls shall be installed on the highest tier equipment available. Effective controls may also include selective catalytic reduction (SCR) for NOx, or the use of battery or biodiesel-powered construction equipment.
- 1.1.2 Construction Emissions: Apply water to disturbed soils after demolition is completed or at the end of each day of cleanup.
- 1.1.3 Construction Emissions: Limit on-site and on Calneva Road vehicle speeds to 20 miles per hour (mph).
- 1.1.4 All trucks hauling dirt, sand, soil, or other loose materials are to be tarped with a fabric cover and maintain a freeboard height of 12 inches.

1.2 **Burrowing Owl:**

- 1.2.1 **Pre-Grading Survey:** The Developer agrees to conduct a pre-grading field survey of the Project site for burrowing owls. Pre-grading survey shall mean a survey conducted prior to any ground-disturbing construction activities associated with groundbreaking of the project. Pre-grading surveys shall be conducted, to the extent feasible, between civil twilight and 10:00 a.m. and/or two hours before sunset until evening civil twilight, to provide the highest detection probabilities for burrowing owls onsite. If Project activities are delayed or suspended for thirty days or more, the survey shall be repeated. If the surveys detect burrowing owls are at the Project site, the Developer shall follow mitigation protocols from the CDFW Staff Report on Burrowing Owl Mitigation.
- 1.2.2 **On-Site Pipes:** Pipes and other den-like structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for burrowing owls before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a burrowing owl is discovered inside a pipe, that section of pipe shall not be moved until the Lassen County Department of Planning and Building Services has been contacted, who in turn will contact the California Department of Fish and Wildlife and the United States Fish and Wildlife Service.

- 1.3 **Energy Use:** The Developer agrees to charge the BESS directly from the PSES. If charging the BESS from the PSES is infeasible, the Developer agrees to provide Citizens annual summary reports documenting the BESS's operational energy use from the grid, including but not limited to times and dates of battery charging and discharging to and from the grid, and estimated battery efficiency.

1.4 **Fire Risk:**

- 1.4.1 The Project shall follow the National Fire Protection Association 855 Standard for the Installation of Stationary Energy Storage Systems to address potential fire hazards associated with the Project's battery energy storage system.
- 1.4.2 The Emergency Response Plan shall be developed in consultation with Lassen County Cal Fire-Lassen County Fire Marshall, Doyle Fire Prevention District Lassen County Environmental Health, and any additional local, State, or federal agencies which may have a mutual aid response at the project site.

II. ACTIONS BY CITIZENS

1. Citizens on their own behalf and/or through their participating members, unions, officers, representatives, business managers, agents, or attorneys will not participate in any meetings or hearings to challenge, oppose or contest the Approvals, and will not challenge, oppose, contest, take adverse actions or bring suit, administratively or judicially, regarding the Approvals.

III. MUTUAL RELEASES

A. Developer.

1. Except for the obligations provided herein, Developer and each of their owners, members, partners, representatives, agents, attorneys, successors, and assigns hereby unconditionally release, acquit and forever discharge Citizens and each of its representatives, officers, members, individuals, attorneys, agents, successors, and assigns from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, known or unknown, which Developer has had or has up through the Effective Date against Citizens arising out of, based upon, or relating directly or indirectly to the Project or the Allegations.

B. Citizens.

1. Except for the obligations provided herein, Citizens and each of its representatives, officers, members, individuals, agents, attorneys, successors, and assigns hereby unconditionally release, acquit and forever discharge Developer and each of their owners, members, partners, representatives, attorneys, agents, lenders, successors, and assigns from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, known or unknown, which Citizens has had or has up through the Effective Date against Developer arising out of, based upon or relating directly or indirectly to the Project or the Allegations.

C. California Civil Code section 1542 Waiver

1. The Parties are aware that facts may be discovered later that are different from and/or in addition to those that the Parties now know or believe to be true. The Parties acknowledge that they have been informed by their attorneys regarding, and are familiar with, California Civil Code section 1542 which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him

or her, would have materially affected his or her settlement with the debtor or released party.

The Parties expressly waive all rights under Civil Code section 1542 and intend that the foregoing releases and discharges extend to all claims either Party has had or has up through the Effective Date regarding the Project.

IV. PROSPECTIVE CLAIMS

The releases in this Agreement are limited releases that apply only to claims of any nature relating directly or indirectly to the Project and shall not apply to any claims, demands, obligations, responsibilities, suits, actions or causes of action arising out of the failure of any Party to perform its obligations as set forth in this Agreement or relating to any other written contractual arrangement between the Parties and/or their affiliates.

V. NO PRIOR ASSIGNMENTS

The Parties hereto represent and warrant that they have not heretofore assigned or transferred, or purported to assign or transfer, to any other person, entity, firm, or corporation whatsoever, any claim, debt, liability, demand, obligation, expense, action, or causes of action herein released.

VI. BINDING ON SUCCESSORS

This Agreement and its terms shall inure to the benefit of and be binding upon each of the Parties hereto and each and all of their respective successors, assignees, buyers, grantees, vendees, or transferees, and their past or present, direct or indirect, affiliates, partners, joint ventures, subsidiaries, parents, receivers, trustees, officers, directors, employees, agents, and shareholders each of them, as though they were Parties hereto, wherever located, and shall survive the transfer of the Project or Project site to any entity which acquires title to the Project whether by merger, acquisition, sale, lease or other transfer, or contribution to partnership, joint venture or any other entity. Any agreement for sale, lease or other transfer or contribution, or an agreement for merger or acquisition, including ownership or control of Developer, shall include an express assumption of the obligations of this agreement.

VII. SETTLEMENT OF DISPUTED CLAIMS

The Parties hereto understand and agree that this settlement is a final, binding settlement to resolve all issues related to the Project and is not an admission of any wrongdoing or liability by Developer or Citizens.

VIII. FACTUAL INVESTIGATION

Each Party has conducted its own factual investigation and is not relying on the other Party.

IX. UNDERSTANDING OF TERMS

The Parties hereto each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors, and such other consultants as they may have desired prior to executing this Agreement.

X. AGREEMENT MAY BE PLEADED AS A DEFENSE

This Agreement may be pleaded as a defense by the Parties hereto and may be used as the basis for an injunction against any action challenging the Project in violation of this Agreement. This Agreement is the result of negotiations between the Parties, and it is the product of all of the Parties. This Agreement shall not be construed against any Party because of the involvement of that Party or its counsel in the preparation or drafting of this Agreement.

XI. ENFORCEMENT

This Agreement shall be interpreted under the laws of the State of California. The Parties agree that money damages would be difficult to ascertain for any breach (or threatened breach) of this Agreement and agree that this Agreement may be enforced by a preliminary or permanent, mandatory, or prohibitory injunction, by a decree of specific performance, or other such order or decree of a court of competent jurisdiction. The agreed remedies set forth herein shall not be construed to limit or derogate from any legal or equitable remedy authorized by applicable law, including an action for damages.

XII. AUTHORITY TO EXECUTE AGREEMENT

Each person signing this Agreement warrants that he or she has authority to execute this Agreement and to thereby bind the Party on whose behalf he or she is signing to the terms of this Agreement.

XIII. LEGAL FEES AND COSTS

Each Party shall bear its own legal fees and costs resulting from the preparation, negotiation and execution of this Agreement and from the Action and Appeal.

XIV. REPRESENTATIONS AND WARRANTIES OF CITIZENS

Citizens represents and warrants as follows:

1. Citizens is an ad hoc coalition of labor organizations and individual members duly organized, validly existing and in good standing under the laws of the United States with all necessary power and authority to execute, deliver and perform its obligations under this Agreement.
2. This Agreement has been duly entered into by Citizens and constitutes a legal, valid and binding obligation of Citizens enforceable against Citizens, its participating labor organizations and the members of such participating labor organizations, in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting generally the enforcement of creditors' rights.
3. To the best of Citizens' knowledge as of the date of this Agreement, no written statement of fact made or to be made by Citizens to Developer pursuant to this Agreement, if any, contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statement therein contained not misleading.

XV. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer represents and warrants as follows:

1. Developer possesses all necessary power and authority to execute, deliver and perform its obligations under this Agreement.
2. This Agreement has been duly entered into by Developer and constitutes a legal, valid and binding obligation of Developer enforceable against Developer, in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting generally the enforcement of creditors' rights.

XVI. NO OBLIGATION OF DEVELOPER TO PROCEED

Nothing in this Agreement shall obligate Developer to proceed with the Project or any portion of the Project. If Developer does not proceed with the Project, Developer shall not be required to take any of the actions outlined in this Agreement.

XVII. DOCUMENTS TO BE FILED OR EXECUTED

The Parties agree to cooperate to execute any other documents reasonably required to effectuate the intent of this Agreement and, if a party does not so cooperate, any party to this Agreement may obtain judicial intervention to obtain judicial signature in lieu of party signature, upon noticed motion and supporting affidavit.

XVIII. MATERIALITY OF BREACH; THIRD PARTY BENEFICIARIES

Any breach of this Agreement, at the option of any Party, shall be treated as material and a complete failure of consideration. Except in the event that there is the danger of imminent irreparable harm, before any Party may assert any claim associated with a breach of this Agreement in any federal, state, county or local court or administrative process, or otherwise, such Party must first inform the other Party in writing and give the other Party a reasonable opportunity, not to exceed thirty (30) calendar days from the notice, to cure the breach. Except as expressly provided with respect to the mutual releases set forth herein, the terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

XIX. WAIVER

The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

XX. AMENDMENTS

No provision of this Agreement may be modified, unless in writing and signed by the Party against whom the enforcement of such modification is sought.

XXI. PARAGRAPH HEADINGS

Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the Parties.

XXII. SEVERABILITY

If any portion of this Agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.

XXIII. INTEGRATION

This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

XXIV. TIME OF THE ESSENCE

Where a specific time or date is specified for performance, time is of the essence in this Agreement.

XXV. NOTICES

All notices or other communications which one party may give to the other required by or in connection with this Agreement, shall be confirmed in writing and shall be emailed and either hand-delivered or sent by overnight delivery to the following addresses:

If to the Developer:

Dr. Charles Hooper, D.O.
CDR (Ret) MC USN
Board Certified Family Practice
11242 Clinton Bar Road
Pine Grove, CA 95665
Phone: (530) 514-0135
Email: Chooper714@aol.com

If to Citizens:

Adams Broadwell Joseph & Cardozo
Attn: Kelilah Federman
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Phone: (650) 589-1660
Email: kfederman@adamsbroadwell.com

Either party may alter that Party's contact information for purposes of notice, at any time, by giving written notice of such change in conformity with the provisions of this Agreement.

Notice shall be deemed to be effective: if hand delivered, when delivered; if emailed, within 24 hours; if mailed, at midnight on the third (3rd) business day after being sent by registered mail; and if sent by internationally recognized overnight delivery service, on the next business day following delivery to such delivery service.

The Parties acknowledge and agree that the foregoing provisions for the giving of notice are not intended to cover day-to-day communications between the Parties in the course of performing each such Party's duties and obligations hereunder.

XXVI. RECITALS

The Recitals set forth in this Agreement are a material part of this Agreement and are hereby expressly incorporated by reference as though expressly set forth herein.

XXVII. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction). Any action, proceeding, or suit arising out of or based upon this Agreement shall be instituted in the Superior Court for the State of California for the County of Lassen.

XXVIII. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the Parties and supersedes any prior agreements, whether written or oral.

XXIX. COUNTERPARTS

This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on the Parties.

IN WITNESS WHEREOF, the Parties have executed one or more copies of this Agreement as of the Effective Date.

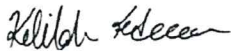
DR. CHARLES HOOPER, D.O.



By: Dr. Charles Hooper, D.O.

Its: Property Owner (Developer)

CITIZENS FOR RESPONSIBLE INDUSTRY



By: Kelilah D. Federman

Its: Attorneys

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

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kfederman@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
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TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. MESSING

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

**Not admitted in California.
Licensed in Colorado.*

September 17, 2021

VIA EMAIL

Stefano M. Richichi, Senior Planner
Maurice Anderson, Planning Director and Environmental Review Officer
County of Lassen
Planning and Building Services
707 Nevada Street Ste 5
Susanville, CA 96130
Email: srichichi@co.lassen.ca.us; manderson@co.lassen.ca.us;
landuse@co.lassen.ca.us

RE: Calneva BESS and PSES Project (Use Permit #2020-004, Initial Study #2020-001, Hooper; SCH # 2020100366)

Dear Mr. Richichi, Mr. Anderson:

This firm represents Citizens for Responsible Industry ("Citizens") with regard to the above-referenced Calneva Battery Energy Storage System ("BESS") and Photovoltaic Solar Energy System ("PSES") Project ("Project"). On July 29, 2021, we submitted comments on behalf of Citizens stating objections and concerns regarding the Initial Study / Mitigated Negative Declaration ("MND") prepared for the Project.

We are pleased to report that as a result of direct discussions with the Applicant, the Applicant has agreed to an extensive set of additional measures beyond the measures currently proposed in the MND to address the potential air quality, biological, energy use, and fire risk impacts identified in the Citizen comments.

These additional mitigation measures fully resolve the issues and concerns raised in our comments. Citizens hereby requests that Lassen County incorporate the measures set forth in Exhibit 1 as additional CEQA mitigation measures or as conditions of Project approval.

4961-013acp

September 17, 2021
Page 2

With the adoption of the measures set forth in Exhibit 1, Citizens' objections to the Project and the MND are fully resolved, and we respectfully request that Lassen County adopt the MND and approve the Project.

Please let me know if you have any questions.

Sincerely,



Kelilah D. Federman

KDF:acp

4961-013acp

EXHIBIT 1
Measures Requested for Adoption as Mitigation Measures or Conditions of Approval

1.1 Air Quality:

- 1.1.1 Construction Emissions: The Developer agrees that all diesel-powered construction equipment shall use Tier 4 Final construction equipment, to be confirmed on site by the on-site construction supervisor during each day of use. If Tier 4 Final engines are not available, controls shall be installed on the highest tier equipment available. Effective controls may also include selective catalytic reduction (SCR) for NOx, or the use of battery or biodiesel-powered construction equipment.
- 1.1.2 Construction Emissions: Apply water to disturbed soils after demolition is completed or at the end of each day of cleanup.
- 1.1.3 Construction Emissions: Limit on-site and on Calneva Road vehicle speeds to 20 miles per hour (mph).
- 1.1.4 All trucks hauling dirt, sand, soil, or other loose materials are to be tarped with a fabric cover and maintain a freeboard height of 12 inches.

1.2 Burrowing Owl:

- 1.2.1 Pre-Grading Survey: The Developer agrees to conduct a pre-grading field survey of the Project site for burrowing owls. Pre-grading survey shall mean a survey conducted prior to any ground-disturbing construction activities associated with groundbreaking of the project. Pre-grading surveys shall be conducted, to the extent feasible, between civil twilight and 10:00 a.m. and/or two hours before sunset until evening civil twilight, to provide the highest detection probabilities for burrowing owls onsite. If Project activities are delayed or suspended for thirty days or more, the survey shall be repeated. If the surveys detect burrowing owls are at the Project site, the Developer shall follow

mitigation protocols from the CDFW Staff Report on Burrowing Owl Mitigation.

- 1.2.2 **On-Site Pipes:** Pipes and other den-like structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for burrowing owls before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a burrowing owl is discovered inside a pipe, that section of pipe shall not be moved until the Lassen County Department of Planning and Building Services has been contacted, who in turn will contact the California Department of Fish and Wildlife and the United States Fish and Wildlife Service.

- 1.3 **Energy Use:** The Developer agrees to charge the BESS directly from the PSES. If charging the BESS from the PSES is infeasible, the Developer agrees to provide Citizens annual summary reports documenting the BESS's operational energy use from the grid, including but not limited to times and dates of battery charging and discharging to and from the grid, and estimated battery efficiency.

- 1.4 **Fire Risk:**

- 1.4.1 The Project shall follow the National Fire Protection Association 855 Standard for the Installation of Stationary Energy Storage Systems to address potential fire hazards associated with the Project's battery energy storage system.
- 1.4.2 The Emergency Response Plan shall be developed in consultation with Lassen County Cal Fire-Lassen County Fire Marshall, Doyle Fire Prevention District Lassen County Environmental Health, and any additional local, State, or federal agencies which may have a mutual aid response at the project site.