



September 28, 2021

Honorable Lassen County Planning Commission

Sent by Email:

Bill Buckman: [b\\_cbuck3@yahoo.com](mailto:b_cbuck3@yahoo.com)

Carol Clark: [marvincarol@gmail.com](mailto:marvincarol@gmail.com)

John Shaw: [JohnShaw.SRE@gmail.com](mailto:JohnShaw.SRE@gmail.com)

Mark Solomon: [mark\\_a\\_solomon@hotmail.com](mailto:mark_a_solomon@hotmail.com)

Jason Ingram: [Lcca530@gmail.com](mailto:Lcca530@gmail.com)

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SEP 28 2021

LASSEN COUNTY DEPARTMENT OF  
PLANNING AND BUILDING SERVICES

Dear Honorable Commissioners:

**Reference: Appeal Hearing of Lassen County Environmental Review Officer's Requirement to Prepare an Environmental Impact Report (EIR) under the California Environmental Quality Act for the Hooper Conditional Use Permit Application 2020-004.**

Sierra Geotech, DBE, Inc., environmental consultants on behalf of Dr. Hooper (Conditional Use Permit 2020-004 and Initial Study 2020-001) in the matter of the Appeal to the Lassen County Environmental Review Officer's (ERO) recommendation to prepare an Environmental Impact Report (EIR) on the proposed Calneva Battery Energy Storage and Photovoltaic Solar Energy System project provides the following findings for the Commission to consider in the Appeal.

We concur with the ERO's determination that the appropriate California Environmental Quality Act (CEQA) Document is a "*Mitigated Negative Declaration*" (MND). However, we do not agree with the ERO's interpretation of the CEQA Guidelines requiring "*Recirculation*" of the MND and ask the Commission to follow the CEQA Guidelines as written. The following findings demonstrate the requirement for the MND to be set for Public Hearing for consideration, not another delay as recommended by the ERO for recirculation.

**FINDING 1: NO SUBSTANTIAL REVISIONS IN PROJECT, ENVIRONMENTAL INFORMATION, OR MITIGATION MEASURES**

The ERO stated that the MND needed to be recirculated in accordance with Section 15073.5. RECIRCULATION OF A NEGATIVE DECLARATION PRIOR TO APPROVAL,

(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.

The ERO purports that the additional mitigation measures Dr. Hooper agreed to with Citizens for Responsible Industry (Citizens) constitute "*substantial revision*" as defined in 15073.5 subsection (b) above and therefor triggers recirculation of the MND.



The fact is that **NO AVOIDABLE SIGNIFICANT EFFECTS HAVE BEEN IDENTIFIED**. The ERO does not identify nor assert that there is any *new avoidable significant effect* associated with the project as required in the above cited definition of "substantial revision" (15073.5 (b)). The agreement between Dr. Hooper and Citizens was in response to potential impacts that had already been evaluated and mitigated by design and previous mitigation measures within the circulated Initial Study (IS) as issued by Lassen County. The additional mitigation measures were deemed appropriate by the two parties (Dr. Hooper and Citizens) because they clarified and amplified or augmented environmental best practices concerning construction of the project. The agreed upon mitigation measures do not modify the project nor were they added to reduce *significant effects*. These mitigation measures were agreed upon as clarifying and amplifying in nature and did not constitute *substantial revisions* to the project, and therefore, do not warrant recirculation.

The ERO in his staff report to the Planning Commission provides no evidence or facts that the project meets the test set forth under subsection (b) (2) of Section 15073.5 for the definition of "*substantial revision*", nor does the ERO find that the mitigation measures that Dr. Hooper agreed to with Citizens would cause significant impacts or fail to reduce an identified impact to less than significant level.

## **FINDING 2: NO RECIRCULATION REQUIRED IN COMPLIANCE WITH SECTION 15073.5 (C)**

The CEQA Guidelines Section 15073.5 (c) states the following:

"(c) *Recirculation is not required* under the following circumstances:

(1) Mitigation measures are replaced with *equal or more effective measures* pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are ***not new avoidable significant effects***.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration."

The mitigation measures co-authored between Dr. Hooper and Citizens after Dr. Hooper's environmental consultants, Sierra Geotech, provided Citizens with the technical environmental advice Sierra Geotech provided to the ERO with a Response to Comments document on the Draft Initial Study and Proposed Mitigated Negative Declaration in September 2021 disputing Citizens' Allegations and establishing that no new significant impacts were identified during the public review period or raised by comments received. The mitigation measures were developed to fully





settle, compromise, and resolve all disputes and controversies between them related in any way to the project and project approvals.

The mitigation measures in question can be accepted by Lassen County or rejected. These mitigation measures are a private agreement between two parties and has no legal bearing under CEQA and the Lead Agency. Citizens has retracted their comment letter and now fully supports the project and documented such support with a Letter to the Commission requesting project approval. It is Lassen County's prerogative incorporate or reject the recommendations from the Dr. Hooper's Agreement with Citizens as deemed appropriate as a CEQA Lead Agency. These optional mitigation measures from the Agreement would meet all four requirements defined in Section 15073.5 (C) above:

1. The added mitigation measures comply with CEQA Guidelines Section 15074.1 in that the mitigation measures were developed as a result of the CEQA public review process and were created to clarify and amplify approaches to design, construction, and operations of the project as identified in the Initial Study to further augment best environmental practices.
2. The mitigation measures were created as a result of written and verbal comments made by Citizens during the public review process. They were created based on the information in the Initial Study and no new significant effects were identified.
3. The mitigation measures were added after circulation of the MND and they were not required by CEQA and were not necessary to mitigate a significant impact.
4. Clearly the mitigation measures developed and agreed to between Dr. Hooper and Citizens were merely clarifying and amplifying.

We respectfully request the Lassen County Planning Commission follow the CEQA Guidelines as set forth in the California Code of Regulations, rejecting the ERO's erroneous interpretation recommending recirculation of the ISMND and make the following motion:

#### **MOTION BY PLANNING COMMISSION**

Move that the Lassen County Planning Commission has determined that an IS/MND is the appropriate level of CEQA compliant documentation for the proposed project because potential environmental impacts resulting from implementation of the proposed project would be below significant thresholds with mitigation. Furthermore, the IS/MND shall not be recirculated and ERO is directed to prepare the Final IS/MND to include the Initial Study/Proposed Mitigated Negative Declaration, Comments on and Responses to Comments on the Initial Study/Proposed Mitigated Negative Declaration received from Sierra Geotech September 2021, and minor corrections and clarifications regarding mitigation measures to the Proposed Mitigated Negative Declaration. Furthermore, the Lassen County Planning Commission directs the Commission Secretary to post a notice of Public Hearing at a Special Meeting of the Lassen County Planning Commission on October 19, 2021, at 1:30 pm for the consideration of Conditional Use Permit #2020-004, Hooper and intent to adopt a Mitigated Negative Declaration #2020-001.

Your consideration in this matter is appreciated. If you have any questions, please advise.



Kindly,

**SIERRA GEOTECH, DBE, INC**

*Brent L. Moore*

Brent L. Moore, CEP  
Vice President  
Cell: 916.712.9707  
4470 Yankee Hill Road, Suite 110  
Rocklin, CA 95677  
[brent@sierrageotech.com](mailto:brent@sierrageotech.com)

CC:  
Dr. Charles Hooper: [chooper714@aol.com](mailto:chooper714@aol.com)  
Maurice Anderson: [manderson@co.lassen.ca.us](mailto:manderson@co.lassen.ca.us)  
Tom Hammond: [t.hammond54@yahoo.com](mailto:t.hammond54@yahoo.com)  
Shaun Vemuri, PE: [shaun@sierrageotech.com](mailto:shaun@sierrageotech.com)