



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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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:

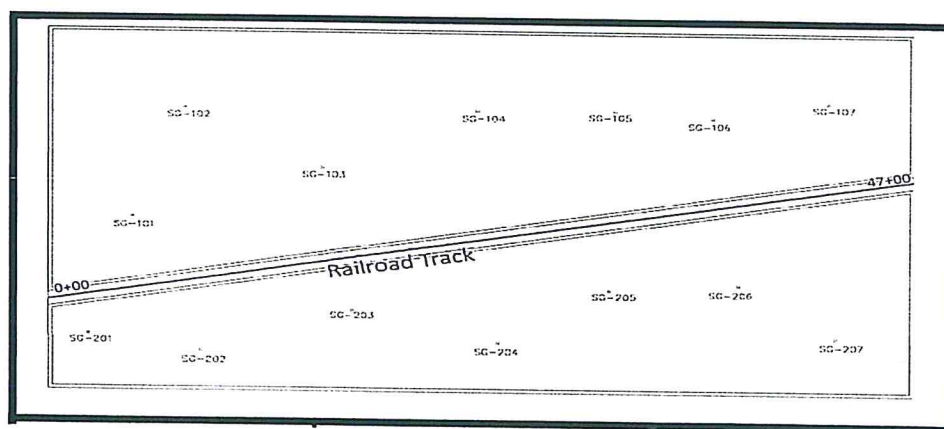
The California Department of Fish and Wildlife (Department) has reviewed the Mitigated Negative Declaration (MND) dated June 24, 2021, for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, 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."

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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*

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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>).

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)

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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

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ec's continued:

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