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Planning Commission November 2, 2021

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PROPERTY OWNER: Dr. Charles Hooper
TYPE OF APPLICATION: Use Permit, Initial Study

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LASSEN COUNTY PLANNING COMMISSION
STAFF REPORT
November 2, 2021

FILE NUMBER:	Use Permit #2020-004, Initial Study #2020-001
APPLICANT:	Charles Hooper
TYPE OF APPLICATION:	Use Permit
GENERAL LOCATION:	The subject parcels are located approximately nine miles northeast of Herlong off Calneva Road, adjacent to the Nevada Border, and do not have addresses.
ASSESSOR'S PARCEL NUMBERS:	137-170-012 and 137-170-013
PROJECT SITE ZONING:	A-1 (General Agricultural District).
GENERAL PLAN:	"Extensive Agriculture" land use designation in the <i>Lassen County General Plan, 2000</i> .
ENVIRONMENTAL DOCUMENT:	Mitigated Negative Declaration
APPEAL:	Lassen County Code Section 18.112.050 states, "any person not satisfied with the action of the planning commission... may, within ten days of the notice of the commission's action, appeal in writing to the board of supervisors."
	Gaylon F. Norwood, Assistant Director
ASSIGNED STAFF:	

AUTHORITY FOR APPLICATION:

Lassen County Code Chapter 18.112 et seq. (Use Permits) establishes the regulations for consideration of use permits.

Lassen County Code Section 18.16.050(10) allows uses allowed by use permit in the U-C-2 District, and Section 18.66.040(7) of said District allows for "Electrical generating facilities if the produced power is intended for sale or distribution off premises..." by use permit.

REGULATING AGENCIES:

<u>Agency</u>	<u>Identified Permits/Approvals</u>
Planning Commission	Use Permit/Mitigated Negative Declaration Approval
Planning and Building Services	Building Permit
Environmental Health	Approval of Hazardous Materials (if necessary)
Public Works	Encroachment Permit
California Department of Fish and Wildlife	Approval of Mitigations after Pre-Construction Survey(s)
Lahontan Regional Water Quality Control Board	Discharge Permits or Approvals (if necessary)

PROJECT DESCRIPTION: 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*.

More extensive information regarding the project can be found in the Initial Study and its supporting documents (see the Environmental Document section of this staff report).

PROJECT SITE CHARACTERISTICS: The subject parcels are located approximately nine miles northeast of Herlong off Calneva Road, adjacent to the Nevada Border, and do not have addresses. The subject parcels are located primarily in the Calneva Lake 7.5-minute Quadrangle as identified by the United States Geological Survey, although the easternmost portion of the project site is in the Flanigan 7.5-minute Quadrangle. The subject parcel is not within the 100-year flood zone as described by the Federal Emergency Management Agency. See the “Environmental Setting” Section of the Initial Study for more information.

ACCESS/REQUIREMENTS: Access to the project site is from Calneva Road, which is not in the County maintained road system. Calneva Road connects to Fort Sage Road (County Road 327). Said roads are accessible from Hackstaff Road, near Doyle and U.S. Highway 395. From the north, Wendel Road provides access to Moore and Calneva Roads to access the project site (the latter two roads are also dirt roads).

SURROUNDING PROPERTY CHARACTERISTICS: Immediately surrounding parcels are primarily unimproved (except for dirt roads) and consist of native plant species common to the area, although a Western Pacific Railroad line runs through the subject parcels. The Bureau of Land Management also manages lands to the north. Surrounding parcels are zoned as follows:

	Zoning (see notes at bottom)	Parcel Size (acres)	Land Use Designation (<i>Lassen County General Plan, 2000</i>)
North	U-C*/O-S**	40, 136, 160	“Extensive Agriculture”
South	A-1^	170, 275	“Extensive Agriculture”
West	A-1	1.37	“Extensive Agriculture”

* The U-C zoning district is the “Upland Conservation District” as defined in Chapter 18.68 of the Lassen County Code

**The O-S zoning district is the “Open Space District” as defined in Chapter 18.64 of the Lassen County Code

^The A-1 zoning district is the “General Agricultural District” as defined in Chapter 18.16 of the Lassen County Code

ZONING: The subject parcels are zoned A-1 (General Agricultural District). According to Lassen County Code Section 18.16.050(10), the A-1 district allows for “[u]ses allowed by use permit in the...U-C-2 [zoning district]...” by use permit. According to Lassen County Code Section 18.69.040(7), the U-C-2 district allows for “Electrical generating facilities if the produced power is intended for sale or distribution off premises...” by use permit. Therefore, the above-described solar array is allowed by use permit in the A-1 district.

See the attached memorandums to the Technical Advisory Committee and the Initial Study for further discussion.

GENERAL PLAN: The subject parcel’s land use designation is “Extensive Agriculture” in the *Lassen County General Plan, 2000*. The attached memorandum to the Technical Advisory Committee dated August 5, 2021, and the attached Initial Study list and discuss applicable goals, objectives, implementation measures and descriptions from the *Lassen County General Plan, 2000* pertaining to the proposal.

LOCAL GOVERNMENTAL SERVICES:

- The subject parcel is in a state responsibility fire protection district; as such, fire protection service is provided by the California Department of Forestry and Fire Protection.
- Police protection is provided by the Lassen County Sheriff’s Department
- School service is provided by the Lassen Union High School District

LASSEN COUNTY CODE: Lassen County Code Section 18.112.035 et seq. grants the Planning Commission the authority to approve, conditionally approve, or deny use permit applications in accordance with the findings set forth at Lassen County Code Section 18.112.100, found below:

18.112.035 Planning commission review of applications.

(b) If a use permit application is to be considered without a related general plan amendment and/or rezone application as described above, the planning commission shall have the authority to approve, conditionally approve or deny the use permit application, subject to the appeal provisions of this chapter. (Ord. 467-AC § 30, 2003; Ord. 467-H § 2, 1991).

18.112.100 Mandatory findings.

The following findings shall be made by the planning commission or board of supervisors, as applicable, in conjunction with any other findings which may be considered for the approval or denial of a use permit application:

(1) That the project will or will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or to the general welfare.

(2) That the project is or is not consistent with the Lassen County general plan, or any applicable area plan or resource plan adopted as part of the general plan.

ENVIRONMENTAL DOCUMENT: The Environmental Review Officer (ERO) of Lassen County prepared an Initial Study and Mitigated Negative Declaration for the proposed project. Said Mitigated Negative Declaration and supporting Initial Study were circulated for public review from June 28, 2021, through July 28, 2021. The ERO prepared a Notice of Intent to Adopt a Mitigated Negative Declaration, dated June 25, 2021, that was sent to the State Clearinghouse for distribution to state agencies. The Initial Study and Proposed Mitigated Negative Declaration (and other pertinent documents) are available on the Planning and Building Services Department's portion of the Lassen County website at the following URL, within the "Environmental Noticing and Attachments" tab:

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

The mitigation measures agreed to during the Initial Study process have been incorporated as conditions of approval and are shown in Exhibit "A" of the draft resolution of approval. Also attached to this staff report is a proposed mitigation monitoring and reporting program for the Planning Commission's consideration.

The attached memorandum to the Planning Commission dated September 27, 2021, details actions taken by the ERO after circulation of the Proposed MND/IS. Information regarding the comments that were received during circulation of the environmental document are summarized in said memorandum.

A public hearing was conducted by the Planning Commission on October 5, 2021, and the Planning Commission determined that there is no need to recirculate the environmental document (see attached minute excerpts from said meeting).

OTHER CORRESPONDENCE: At the October 5, 2021, Planning Commission meeting, the following Exhibits were introduced:

- Exhibit D; letter to the Planning Commission from Brent Moore of Sierra Geotech, dated September 28, 2021, referencing the appeal of the Environmental Review Officers determination to prepare a environmental impact report (EIR) for Use Permit Number 2020-004
- Exhibit E; letter from SSL, law Firm LLP, dated October 5, 2021, regarding Calneva Solar Facility, Use Permit Number 2020-04.
- Exhibit F; letter from Peter Heimbigner, Director of the Lassen County Public Works Department, dated September 29, 2021.

At the above meeting, the Planning Commission concurred with the recommendation that the Initial Study does not need to be re-circulated. The following conditions have been drafted to incorporate the Public Works Department's request from the above memorandum dated September 29, 2021:

- The applicant shall provide a construction haul route plan and address the traffic impacts to the local roads (primarily Hackstaff and Fortsage Roads) used for accessing the project site. The maintenance and rehabilitation will be in accordance with AASHTO concept of serviceability and equivalent single axle load (ESAL) evaluation methods for damage caused by additional construction vehicles, compared to the existing typical traffic. The haul route plan and proposed mitigation measures shall be submitted to the Planning and Building Services Department who shall forward the same to the Public Works Department. The Public Works Department shall have authority to approve said plan and mitigation or make any modifications necessary to maintain the integrity of roads and safety of the traveling public. No building permit(s) associated with this project shall be issued until the Public Works Department has approved said haul route plan and the associated mitigation measures.
- During construction of the facility, the applicant shall at all times comply with the haul route plan and mitigation approved by the Public Works Department. Upon the recommendation of the Director of Public Works, the Building Official may suspend or revoke any associated building permit(s), in accordance with section 105.6 of the 2019 California Building Code, or other applicable code or regulation, if the applicant fails to comply with the requirements of the haul route plan and approved mitigation.

The above conditions have been included in Exhibit A of the draft resolution contained in the November 2, 2021, Planning Commission packet.

FINDINGS and/or RECOMMENDATIONS BY TAC: The Technical Advisory Committee (TAC) met on August 5, 2021, and has developed recommended findings and conditions for consideration by the Planning Commission. The recommended findings and conditions can be found in the memos to the TAC. In addition, the recommended conditions can be found in Exhibit "A" of a draft resolution of approval that is included in this packet.

PLANNING COMMISSION RECORD: In addition to this staff report and its attachments, information and records pertaining to this application and its review can be found within the Planning and Building Services Department's portion of the County website at the following URL:

<http://www.lassencounty.org/dept/planning-and-building-services/meeting-agendas-and-packets>

TECHNICAL ADVISORY COMMITTEE
RECOMMENDED FINDINGS AND CONDITIONS
August 5, 2021
Use Permit File Number 2020-004, Hooper

Use Permits:

- ☒ County Planning Director
- ☒ County Public Works Director
- ☒ County Surveyor
- ☒ County Sanitarian (no conditions)
- ☒ County Fire Warden
- ☒ County Assessor (no conditions)



County of Lassen

Department of Planning and Building Services

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

August 5, 2021

Maurice L. Anderson, Director

707 Nevada Street, Suite 5

Susanville, CA 96130-3912

Phone: 530 251-8269

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TO: Technical Advisory Committee
Agenda Date: August 5, 2021

Zoning & Building

Inspection Requests

Phone: 530 257-5263

FROM: Maurice L. Anderson, Director

RE: **USE PERMIT #2020-004, INITIAL STUDY #2020-001, HOOPER.** 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*. The subject parcels are located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border, and do not have addresses. APNs: 137-170-012 and 137-170-013. Staff Contact: Stefano Richichi, Senior Planner

The Planning Division of the Lassen County Department of Planning and Building Services finds as follows:

1. The subject parcels are zoned A-1 (General Agricultural District).
2. The subject parcels have an "Extensive Agriculture" land use designation in the *Lassen County General Plan, 2000*.
3. The subject parcel is not within the 100-year flood zone as described by the Federal Emergency Management Agency (FEMA).
4. The applicant is proposing 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.
5. The subject parcels are located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border, and do not have addresses.

6. According to Lassen County Code Section 18.16.050(10), the A-1 district allows for “[u]ses allowed by use permit in the...U-C-2 [zoning district]...” by use permit. According to Lassen County Code Section 18.69.040(7), the U-C-2 district allows for “Electrical generating facilities if the produced power is intended for sale or distribution off premises...” by use permit. Therefore, the above-described solar array is allowed by use permit in the A-1 district.
7. The proposed solar array is subject to the zoning setbacks required by the A-1 district in Section 18.16.060 of the Lassen County Code. The A-1 district requires a 20-foot setback from the front property line, a 5-foot setback from the side, and 10-foot setback from the rear. The Lassen County Fire Warden will determine whether the 30-foot fire safety setback found at Lassen County Code Section 9.16.103(d)(1)(a) applies to the project.
8. The Lassen County Surveyor has found that two legal parcels underlie the subject APNs; however, said legal parcels are not coterminous with the boundaries of the APNs. As proposed, the project would encroach directly over property lines, which would be in violation of the setback requirements discussed above. Therefore, the County will require that the applicant record a lot line adjustment or merger before issuance of the building permit for this project in order to rectify this potential problem.
9. In addition, Lassen County Code Section 18.16.060(b) requires design review for all commercial and industrial structures. This use permit application accomplishes the purposes of said required design review.
10. The subject parcel is not within a Scenic Highway Corridor as depicted in the *Lassen County Energy Element, 1993*.
11. Lassen County Code Section 18.108.155 states:

Unless otherwise provided in this [Title 18 of the Lassen County Code], the following lighting requirements shall apply: all lighting, exterior and interior, shall be designed and located so as to confine direct lighting to the premises. A light source shall not shine upon or illuminate directly on any surface other than the area required to be lighted. No lighting shall be of the type or in a location so as to constitute a hazard to vehicular traffic, either on private property or on abutting streets.
12. Pursuant to Lassen County Code Section 18.112.030, the Technical Advisory Committee shall review all use permit applications (and amendments) and shall prepare recommended conditions of approval for consideration by the County (in this case, the Planning Commission).
13. The following goals, objectives, implementation measures and descriptions from the *Lassen County General Plan, 2000*, pertain to the proposal:

Designation of Land Uses

- *GOAL L-1: To maintain a system of land use designations which sets forth the County's policies pertaining to the general distribution and intensity of land uses, and which strives to ensure compatibility between land use types by providing for efficient and complimentary [sic] patterns and mixtures of land uses.*
- *Implementation Measure LU-A: The County shall utilize the zoning provisions of the Lassen County Code to adopt and enforce corresponding zoning districts, and to consider the approval of related use permits and land divisions, which implement and are compatible with the policies, general land uses and programs specified in this Land Use Element and in area plans adopted as part of the General Plan.*
- *Implementation Measure LU-B: The County recognizes the need and legal requirements for making land use decisions which are consistent with the General Plan.*

1. ISSUE: Land Use Compatibility

- *GOAL L-4: Compatibility between land use types by providing for complementary mixtures and patterns of land uses.*
- *LU-6 POLICY: The County recognizes general plan land use designations and consistent zoning as the appropriate and primary tools for attempting to achieve and maintain compatibility of land uses within the context of the County's land use authority and local control.*
- *Implementation Measure LU-F: The County shall continue to utilize the California Environmental Quality Act (CEQA) process, when applicable, to evaluate the potential impacts of proposed changes in land uses on surrounding lands and to implement appropriate mitigation measures when needed.*

2. ISSUE: Growth and Development

- *GOAL L-5: Orderly, contiguous growth and appropriate land-conserving densities as an alternative to sprawl and "leap-frog" development.*
- *Implementation Measure LU-G: The County shall phase out the use of the A-1, General Agriculture District, and shall, following appropriate public hearings, rezone all areas currently zoned A-1 to more specific zoning districts which are consistent with General Plan land use designations.*

5. ISSUE: Transportation

- *GOAL L-11: Transportation systems which compliment [sic] and support the County's land use patterns.*
- *LU25 POLICY: The County shall continue to review and, when warranted, formulate improved standards for the necessary improvement and maintenance of roads serving new development, including standards for the incremental improvement or development of public roads.*
- *Implementation Measure LU-R: Pursuant to impacts evaluated in an environmental impact report or other form of project review, the County may require mitigation measures which will insure that project developers adequately and fairly compensate or participate with the County in the necessary upgrading and/or repair of roads which will be significantly damaged by a project.*

6. ISSUE: Commercial Land Uses

- *GOAL L-12: Increase community wealth and the provision of needed commercial services through economic growth and diversification by sustaining and facilitating the expansion of existing commercial operations and by encouraging new commercial ventures.*

9. ISSUE: Agricultural Land Uses

- *Implementation Measure LU-Y: Land designated Extensive Agriculture" in the Land Use Element shall be zoned "U-C", Upland Conservation District, "U-C-2", Upland Conservation/Resource Management District" or "A-3", Agricultural District.*

NATURAL RESOURCE LAND USES

Extensive Agriculture

The Extensive Agriculture designation primarily represents typical rangeland areas with grazing and general rangeland values, natural wildlife habitat, open space and scenic values, and/or low intensity outdoor-oriented recreational values... Subject to County permit requirements and the provision of related elements of the General Plan, areas designated Extensive Agriculture may also accommodate natural resource-related production facilities...

Corresponding Zoning: "E-A", Exclusive Agriculture District; "A-3", Agricultural District; "U-C", Upland Conservation District; "U-C-2"; Upland Conservation/Resource Management District.

14. The applicant has proposed the following conditions of approval for this project:

- *Calneva BESS/PSES owner and/or contractor will develop and implement a Stormwater Pollution Prevention Plan and adopt best management practices prior to beginning construction activities.*
- *Spill prevention kits shall always be in close proximity when using hazardous materials (e.g. crew trucks and other appropriate locations).*
- *For equipment that must be fueled on-site, containment shall be provided in such a manner that any accidental spill of fuel shall not be able to enter the water or contaminate sediments that may come in contact with water.*
- *Calneva BESS/PSES owner, or construction contractor will prepare a pollutant control plan that specifies logistics and schedule for construction activities that will minimize the potential for erosion and standard practices that include monitoring and maintenance of control measures.*
- *Suspend excavation and grading activity when sustained winds exceed 20 miles per hour or when gusts exceed 25 miles per hour.*
- *Although the NOx, CO, and CO2 emissions for the construction period are within the thresholds of significance, the following mitigation measures would further reduce emissions:*
 - *Use alternative fuel or catalyst-equipped diesel construction equipment.*
 - *Minimize idling time (e.g., 10-minute maximum).*
- *A traffic control plan will be developed in coordination with the Lassen County Public Works Department for any work requiring a County Encroachment Permit.*
- *Start times and end time of the construction day will be offset from identified peak traffic hours to mitigate traffic congestion on local streets and highways. Construction personnel will typically arrive at the proposed project lease area around 6:00 a.m., before the morning peak hour (7:00 a.m. to 8 a.m.). Construction employees will typically leave between 3:00 p.m. and 4:00 p.m., before the evening peak hour (4:00 p.m. and 5:00 p.m.).*
- *UTL-1: Employ an approved Solid Waste Diversion and Recycling Plan. Calneva BESS/PSES owners, will develop a solid waste diversion and recycling plan in accordance with AB 341 (Solid Waste Diversion), which requires industrial and commercial construction efforts to recycle fifty percent of their industrial wastes. Such a plan would be implemented in conjunction with Cal Recycle (formerly [California*

Integrated Waste Management Board] and [Regional Waste Management Authority]. In addition, to the requirement diverting commercial and construction debris, Calneva BESS/PSES owners, will submit a Diversion Report within 30 days of completing the project to the [Regional Waste Management Authority].

- *In the event that unanticipated archaeological resources should be accidentally discovered during project construction, a qualified archaeologist will be retained for evaluation of the find. If the find is determined to be a historical or unique archaeological resource, appropriate mitigation or avoidance measures will be taken in accordance with CEQA Guidelines 15064.5(f). During mitigation of unanticipated archaeological resources, it would not be necessary for work to halt in construction areas not affected by such finds. Any historically significant cultural materials discovered during project construction will be the subject of professional scientific analysis and a report to be prepared by a qualified archaeologist. In the event that such a discovery should contain human remains, the following steps shall be taken as outlined in CEQA Guidelines 15064.5(e)(1):*
 - (1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:*
 - (A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and*
 - (B) If the coroner determines the remains to be Native American:*
 - 1. The coroner shall contact the Native American Heritage Commission within 24 hours.*
 - 2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American.*
 - 3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating of disposing of, with appropriate dignity, the human remains, and any associated grave goods as provided in Public Resources Code Section 5097.98 or*
 - (2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further surface disturbance.*

- (A) *The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.*
- (B) *The descendent identified fails to make a recommendation; or*
- (C) *The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.*

15. The Department of Planning and Building Services has not identified the above recommended conditions as necessary for this project; however, the Planning Commission has the authority to impose the above conditions recommended by the applicant as required conditions for the project. If the Planning Commission does not require the above as conditions of approval, the applicant may still implement the above at the applicant's discretion.
16. The Planning Commission will determine whether the proposed project is consistent with the *Lassen County General Plan, 2000*, unless the proposed project is appealed to the Board of Supervisors, in which case, said body would determine the above.
17. The Environmental Review Officer circulated a subsequent mitigated negative declaration and supporting initial study for this project (IS #2020-001). The public review period was from June 28, 2021 to July 28, 2021.
18. Lassen County received comments from the law firm Adams Broadwell Joseph & Cardozo on July 28, 2021, in regard to the proposed mitigated negative declaration and supporting initial study for this project, as well as comments from other agencies during the public comment period. The Lassen County Environmental Review Officer will consider the above-referenced comments and make a future recommendation to the Planning Commission regarding the appropriate environmental document.
19. Pursuant to Section 4(b)(4) of Board Resolution Number 01-043, the Environmental Review Officer shall "prepare or cause to be prepared mitigation measures for negative declarations and [environmental impact reports], if necessary, and include those measures in any staff report on any project to which [the California Environmental Quality Act] is applicable."
20. Furthermore, according to Public Resources Code Section 21081.6(b), "A public agency shall provide [that] the measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures..."

21. The mitigation measures (from IS #2020-001, which supports a subsequent mitigated negative declaration) have also been included in this memorandum to the Technical Advisory Committee as recommended conditions to the Planning Commission. In addition to the numbering used for the conditions, the mitigation measures retain their alphanumeric from IS #2020-001 for purposes of consistency and clarity.
22. Furthermore, Section 15074(d) of the CEQA Guidelines states that “[w]hen adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.” This means that the applicant and the Lassen County Department of Planning and Building Services must agree to a proposed mitigation monitoring and reporting program (said program must be signed by the applicant and notarized) before the Planning Commission’s public hearing for Use Permit #2020-004 and Mitigated Negative Declaration #2020-001. The Department of Planning and Building Services must receive said signed and notarized proposed mitigation and monitoring program at least one week (seven days) before the above public hearing (the Technical Advisory Committee will set the date of the public hearing, but the Department of Planning and Building Services tentatively recommends September 7, 2021, as the public hearing date). If the Planning Commission conditionally approves the project, the Planning Commission will also adopt the proposed mitigation and monitoring program.

The Planning Division of the Lassen County Department of Planning and Building Services recommends the following conditions be placed on the project if approved:

1. Noncompliance with any of the following use permit conditions shall constitute grounds for revocation of the use permit (pursuant to Lassen County Code Section 18.112.060).
2. The Use Permit shall be granted for the use as approved by the Planning Commission. Substantial revisions and/or expansions of the project will require a new Use Permit, subject to the approval of the Planning Commission.
3. The mitigation measures agreed to in the Mitigation Monitoring and Reporting Program shall be adhered to for development and operation of the project.
4. BR-1: Burrowing American Badger Surveys: Calneva BESS/PSES will retain a qualified biologist to conduct burrowing American badger surveys and to identify any occupied burrows in all project action areas and buffer zones with suitable habitat. These surveys will be conducted not more than 30 days prior to initial ground-disturbing activities. If the survey results are negative (no badger dens observed), no additional work would be necessary. If the results are positive (badger dens observed), the qualified biologist shall install a game camera at the den(s) for three (3) days and three (3) nights to determine if the den is in use. If the game camera does not capture an individual entering/exiting the den, the den can be excavated by hand. If the camera captures badger use of the den, the qualified biologist shall install a one-

way door in the den opening and continue use of the game camera. Once the camera captures the individual exiting the one-way door, the den can be excavated by hand.

5. BR-2: Burrow Avoidance: If occupied burrows are identified during surveys, Calneva BESS/PSES will maintain a buffer of approximately 160 feet from occupied burrows during the nonbreeding season of October through July, and approximately 250 feet during the breeding season of August through September. Occupied burrows will not be disturbed within these buffers during the breeding season, from August through September, unless a qualified biologist has verified that the badgers have not begun mating, or the offspring from those burrows are foraging independently and capable of independent survival at a given date.
6. BR-3: Bird Nest Surveys and Monitoring: Because construction will take place during the breeding and nesting season of avian species in the project area (typically February 1 through August 31), Calneva BESS/PSES will conduct nesting bird surveys prior to construction for avian species with potential to occur on-site, or where accessible, in areas adjacent to construction. Where nesting migratory birds are found in or near the project area, the birds and their nests will be evaluated by a qualified biologist. If nest disturbance is anticipated, the biologist will ensure adequate mitigation measures are implemented in accordance with mitigation measure BR-4 below.
7. BR-4: Nesting Birds: In accordance with the MBTA, if an active nest is observed in the project area during construction, Calneva BESS/PSES will stop work within the appropriate buffer for the species and contact the biological monitor immediately. Nest disturbance is dependent on a number of site-specific and activity-specific factors, including the sensitivity of the species, proximity to work activity, amount of noise or frequency of the work activity, and intervening topography, vegetation, structures, etc. Additional mitigation may be required to minimize disturbance of detected nesting activity, such as allowing nesting activity to conclude before continuing construction in an area, restricting certain types of construction practices/activities, creating screening devices to shield nest sites from construction activity, and establishing buffer areas around active nest sites. For inactive nests, measures could include removal and/or handling of nest materials, which will be conducted under the supervision of a qualified biologist.
8. All lighting, exterior and interior, shall be designed and located so as to confine direct lighting to the premises. A light source shall not shine upon or illuminate directly on any surface other than the area required to be lighted. No lighting shall be of the type or in a location so as to constitute a hazard to vehicular traffic, either on private property or on abutting streets.

Pre-construction Conditions
(Must be satisfied before issuance of the Building Permit(s))

9. A Certificate of Merger shall be recorded in the Official Records of Lassen County prior to issuance of any permits for development by the Lassen County Building Department.

10. HM-1: The applicant shall prepare a plan that effectively addresses hazardous materials. Such plan shall include specific measures to be taken in the case of release of any hazardous materials. Such plan shall be reviewed by the Lassen County Environmental Health Department in its Certified Unified Program Agency (CUPA) function; The Environmental Review Officer may consult with the California Department of Toxic Substances Control or any other relevant agency for review of the plan. The Environmental Review Officer shall have the authority to require any modifications to said plan to ensure satisfaction of this mitigation measure.

Pre-operational Conditions
(Must be satisfied before issuance of the Authorization to Operate)

11. The applicant shall obtain all necessary building permits from the Lassen County Department of Planning and Building Services before the commencement of construction.
12. HM-4: The applicant/property owner shall submit a detailed and thorough cost estimate itemizing the complete cost to decommission the project. The Planning and Building Services Department must find said cost estimate acceptable prior to issuance of an Authorization to Operate (ATO). Funds equal to the amount of said cost estimate shall be made available to the County in a form accepted by the County prior to issuance of an ATO. County will use said funds to decommission the site if the applicant does not comply with the condition to remove all structures, associated equipment including solar panels, and all debris within six (6) months of the end of operations.

Operational Conditions
(Must be satisfied during operation of the Use Permit)

13. HM-2: At the time operations approved by this Use Permit are discontinued, all structures, associated equipment, and all debris shall be removed from the site within 6 months after securing a demolition permit. If not removed within 6 months, the County may cause the structures, associated equipment, and all debris to be removed at the expense of the operator and/or property owner.
14. HM-3: At the time of decommissioning described in Mitigation Measure HM-2 above or if any structures, equipment, or debris is removed from the site for any reason, all structures, associated equipment, and all debris shall be removed from the site in accordance with all applicable regulations concerning hazardous materials. The applicant shall submit a letter from the California Department of Toxic Substances Control to provide evidence that the above has occurred.
15. HM-5: The applicant/property owner shall adjust the amount of the mechanism for inflation or changes in the law as directed by the Planning and Building Services Department. The Department may utilize an acceptable index such as the Consumer Price Index to determine inflation.

August 5, 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

TO: Technical Advisory Committee
Agenda Date: August 5, 2021

Zoning & Building

Inspection Requests

Phone: 530 257-5263

FROM: Don Willis, Lassen County Surveyor

RE: Use Permit No. 2020-004 – Charles I. Hooper.
Assessor's Parcel Numbers: 137-170-012 and 137-170-013.

LASSEN COUNTY SURVEYOR FINDS AS FOLLOWS:

1. The subject property is currently owned by Charles I. Hooper, a married man, as his sole and separate property, as shown at Grant Deeds recorded on November 18, 2019, as Document Numbers 2019-04720 and 2019-04723, both of the Official Records of Lassen County, California. This property is represented by Assessor's Parcel Numbers 137-170-012 and 137-170-013 and is located in a portion of Section 36, Township 27 North, Range 17 East, Mount Diablo Base and Meridian.
2. The legal descriptions for the real property noted in Findings Item Number One above are described as Lots 1 and 2, the West one-half of the Northeast one-quarter (W1/2 NE1/4) and the Northwest one-quarter (NW1/4), of Section 36, Township 27 North, Range 17 East, Mount Diablo Base and Meridian, excepting therefrom the property conveyed to the Western Pacific Railway Company per deed recorded on November 17, 1905 in Book P of Deeds, Page 549, of the Official Records of Lassen County, California.
3. The parcel history for the subject property was researched by this office and it was discovered that two underlying legal parcels are present within the subject ownership. This is evidenced by two separate deeds that were recorded on December 10, 1919, in Book 4 of Deeds, Pages 488 and 489 of the Official Records of Lassen County, which describe lands separately conveyed to two different parties by J.P. Arthur and Tracey B. Arthur. The Northeast one-quarter of said Section 36 was conveyed by Book 4 of Deeds, Page 488 and the Northwest one-quarter of said Section 36 was conveyed by Book 4 of Deeds, Page 489. No mergers or lot line adjustments were discovered within the chain of title so these underlying legal parcels would still remain in existence.
4. The subject property is bisected by the right-of-way of the former Western Pacific Railway Company as described in Findings Item Number Two above. Western Pacific Railway Company recorded a second deed on January 10, 1906 in Book P of Deeds, Page 608, for "*the purpose of making the description of said land more certain and definite*" which provided a more specific description of the lands described at said Book P of Deeds, Page 549, of the Official Records. Additional right-of-way widths, lying 50 feet on each side of the previously acquired right-of-way and over lands within the Northwest one-quarter of said Section 36, were also acquired by the Western Pacific Railway Company as evidenced by a deed recorded on June 24, 1907 in Book R of Deeds, Page 130. It is unknown if access rights exist across the former Western Pacific Railway Company rights-of-way since none of the deeds mention this nor does the preliminary title report that was received mention anything.

5. The subject property is encumbered by various easements that were granted to the Tuscarora Gas Transmission Company as evidenced by *Right-of-Way Grant* documents which were recorded on November 21, 1994 in Book 607, Pages 783 through 811, inclusive, all of the Official Records of Lassen County. The two primary easements described within these documents (one being 50 feet in width and the other being 30 feet in width) are for underground pipeline purposes and are located within the subject property. The plot plan that was submitted for the project (showing the proposed solar array) appears to recognize the 50 feet wide easement, however it does not appear to recognize the 30 feet wide easement and shows the array being constructed directly over the easement. These easements are graphically shown in a Schedule "A" for each of the various easement documents cited above and a copy of one of them is hereby attached for ease of reference (See Sheet Three).
6. The subject parcel adjoins both Duck Lake Road and CalNeva Road, which are privately maintained gravel roads that are not within the County maintained road system.

**LASSEN COUNTY SURVEYOR RECOMMENDS THE FOLLOWING CONDITIONS FOR USE
PERMIT NO. 2020-004 (CHARLES I. HOOPER):**

1. No structures shall be constructed within the easements that have been granted to the Tuscarora Gas Transmission Company by *Right-of-Way Grant* documents which were recorded on November 21, 1994 in Book 607, Pages 783 through 811, inclusive, all of the Official Records of Lassen County. The various easements applicable to the subject property are described within these documents and are also graphically shown in a Schedule "A" for each document. Exceptions to this could be obtained through permission granted by the Tuscarora Gas Transmission Company and/or by termination of the easement(s). If a permit for development is issued for construction of any structure, it shall be the applicants' responsibility to demonstrate to this Department that the structure(s) are not located within the easements or any within any applicable setback limits.

Respectfully submitted,



Don Willis, L.S. 7742
Lassen County Surveyor



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

Lassen Modoc Unit
697-345 Highway 36
Susanville, CA 96130
(530) 257-4171



May 16, 2021

From: The Lassen County Fire Warden's Office
697-345 Highway 36
Susanville, CA 96130
(530) 257-4171

To: Lassen County Building and Planning Department
707 Nevada St # 5
Susanville, CA
(530) 251-8269

RE: CALNEVA Battery Energy Storage System/ Photovoltaic Solar Energy System
Project

Findings:

1. The project is not located within a Fire Protection District.
2. In regard to the Fire Responsibility Area. The portion of the project located north of the railroad track is Unprotected Local Responsibility Area (LRA) and is not in a classified Fire Hazard Severity Zone. The portion of the project located south of the railroad track is located in the State Responsibility Area (SRA) and is classified as a Moderate Fire Hazard Severity Zone.
3. Should the project require a building permit and/or use permit there are applicable standards from the Lassen County Fire Safe Regulations that apply to this project.

Conditions:

1. Fire prevention during construction-
 - a. The Gen-Tie Line Fire Management Plan, as stated in the plan, should suffice to prevent and control a fire from spreading into the surrounding vegetation.
 - b. The minor necessary modifications to the plan have previously been communicated to Brent L. Moore, Vice President, Sierra Geotech.
2. Access- The project is bisected by railroad tracks. Both sides of the project will need to be accessible to firefighting equipment.

- a. (Lassen Code 9.16.120) The road accessing the project will need to have the equivalent of two, ten-foot traffic lanes with shoulder. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided by Title 18 (Zoning). Vertical clearances shall conform to the requirements in California Vehicle Code Section 35250. All driveways shall be constructed to provide a minimum of one ten foot traffic lane, fourteen feet unobstructed horizontal clearance, and unobstructed vertical clearance of thirteen feet, six inches. (Ord. 2020-003 § 2).
- b. (Lassen Code 9.16.130) Roads shall be designed and maintained to support the imposed load of fire apparatus weighing at least seventy-five thousand pounds and provide an aggregate base.
Driveways and road and driveway structures shall be designed and maintained to support at least forty thousand pounds.
Project proponent shall provide engineering specifications to support design, if requested by the Lassen County planning and building services department. (Ord. 2020-003 § 2).
- c. (Lassen Code 9.16.140) At no point shall the grade for all roads and driveways exceed sixteen percent.
- d. (Lassen Code 9.16.200) Gate entrances shall be at least two feet wider than the width of the traffic lane(s) serving that gate and a minimum width of fourteen feet unobstructed horizontal clearance and unobstructed vertical clearance of thirteen feet, six inches. Security gates shall not be installed without approval from the fire warden and from the Lassen County planning and building services department, if a building permit is required. The Lassen County Fire Warden's office has no issue with gates installed at the facility that meet the standards. Where security gates are installed, they shall have an approved means of emergency operation. Approval shall be by the fire warden upon consultation with any applicable fire protection district. The security gates and the emergency operation shall be maintained operational at all times. (Ord. 2020-003 § 2). The proposal of a "Knox Box" style of accessing locked gates is acceptable, however, keys would have to be provided in sufficient numbers as determined by each listed Fire District, to the following Fire Districts/Departments: CALFIRE Lassen Modoc Unit, the Bureau of Land Management, the US Forest Service Plumas National Forest (station located in Doyle), the Doyle Fire District, the Sierra Army Depot Fire Department, the Herlong Community Services District Fire Department, and Milford Fire Department. Any or all of these different agencies may respond to the project location when closer resources are not available and it is not foreseeable as to which one would arrive first. If a Knox Box is installed the Lassen County Sheriffs Department would also need to be provided with Knox Box keys. An acceptable alternative would be to install a VHF radio frequency gate opening device that allow a fire resource to select the appropriate frequency and transmit the frequency allowing the gate to open, this would provide the easiest access to any responding fire agency. It is recommended to use frequency CALCORD (156.07500) or 2nd option VFIRE 22 (154.26500). It would be necessary to post at each gate a message indicating the frequency name used to open the gate. (Ex. "Gate Frequency use CALCORD")

All gates providing access from a road to a driveway shall be located at least thirty feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on that road.

3. Signage-

- a. (Lassen Code 9.16.210) To facilitate locating a fire and to avoid delays in response, all newly constructed or approved roads and buildings shall be designated by names or numbers posted on signs clearly visible and legible from the road. It will be necessary to post the road name for the County Road used to access the project at the intersection of that road and Fort Sage Road. It is unclear that the road indicated as "CALNEVA Road" is the actual name of the road accessing the site. The Lassen County Building and Planning Department needs to confirm. (Lassen Code 9. 16.220) The size of letters, numbers, and symbols for road signs shall be a minimum four inch letter height, half inch stroke, reflectorized, contrasting with the background color of the sign. (Ord. 2020-003 § 2). (Lassen Code 9.16.230) Road signs shall be visible and legible from both directions of vehicle travel for a distance of at least one hundred feet. Signs identifying intersecting roads shall be placed at the intersection of those roads. Road signs shall be posted at the beginning of construction and shall be maintained thereafter. (Ord. 2020-003 § 2). (Lassen Code 9.16.240) The address and or site name shall be posted in a location visible from the access road regardless of direction of vehicle travel. This shall be done at the beginning of construction. The size of letters, numbers, and symbols for addresses shall conform to the standards in the California Fire Code, California Code of Regulations Title 24, Part 9. A temporary sign may be used during construction.

4. Defensible Space-

- a. On page 3-27 and 3-28 of the Draft Initial Study and Proposed Mitigated Negative Declaration, the described construction and maintenance of the facility road system around perimeter and interior of the perimeter will suffice to provide protection from an approaching wildland fire and/or to help prevent a fire from escaping the perimeter of the project should a fire start on the site. It is acceptable to allow vegetation to grow under the solar field not to exceed 18" in height for any brush. It will be the responsibility of the site owner or designee to maintain that standard and to maintain all facility roads free of vegetation.

5. Other comments

- a. While it is the opinion of the Lassen County Fire Wardens Office that the Water Supply requirement is not applicable to this project based on Lassen Code section 9.16.270. If a water well were to be constructed, it would be highly desirable to install a Warf Style hydrant, with freeze protection and a minimum of one 2.5" Nation hose straight thread connection, to provide a water supply to firefighting resources.
- b. Nowhere in the Lassen Fire Safe Regulations does it address the concerns associated with training emergency responders to the hazards and procedures should a fire occur at the facility. It is not likely that most first responders within Lassen County are familiar with how to address fire suppression or other emergency incidents at a large solar facility, nor are they aware of the potential life safety risks. It is recommended that the

owner of the facility offer free training to responders who may respond to a fire at the facility. The Sierra Army Depot will most likely be dispatched as a mutual aid type resource to the facility along with Doyle and/ or Herlong and/ or Milford. These fire departments, at a minimum, should be provided training regarding emergencies at the facility as well as a procedural manual for response (both paper and digital format). The county wide fire dispatch center, the Susanville Interagency Fire Center (SIFC), should also be provided with such information.

Mark Rotlisberger
Battalion Chief
CAL FIRE Lassen Modoc Unit
Lassen County Fire Warden's Office

RESOLUTION NO. _____

RESOLUTION OF THE LASSEN COUNTY PLANNING COMMISSION APPROVING
USE PERMIT NUMBER 2020-004, HOOPER AND ADOPTING MITIGATED NEGATIVE
DECLARATION NUMBER 2020-001.

WHEREAS, the Planning Commission of Lassen County, after due notice and a public hearing held on November 2, 2020, has considered Use Permit #2020-004, filed by Charles Hooper, 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 located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border and does not have an address assigned. The project site includes Assessor Parcel Numbers 137-170-012 and 137-170-013; and

WHEREAS, Lassen County Code Section 18.112.100 sets forth mandatory findings that the Lassen County Planning Commission must make when considering a use permit application; and

WHEREAS, in order to stimulate economic development in Lassen County, as well as to provide electricity to local consumers at the most economic rates possible, the County supports the efforts of local utilities to obtain wholesale power at lower costs; and

WHEREAS, the County supports the use of locally produced power to ensure the reliability of power needed in Lassen County during disruption of normal power service; and

WHEREAS, the Environmental Review Officer has prepared an Initial Study and a Mitigated Negative Declaration for adoption by the Planning Commission in accordance with the California Environmental Quality Act; and

WHEREAS, on October 2, 2021, in accordance with the Lassen County Environmental review Guidelines (Board Resolution Number 01-043), the Planning Commission conducted a public hearing to determine the appropriate environmental document and determined that a Mitigated Negative Declaration is the appropriate environmental document and that an Environmental Impact Report is not required and that there is no need for recirculation of the proposed Mitigated Negative Declaration; and

WHEREAS, the applicant has agreed to the mitigation measures listed in the Mitigation Monitoring and Reporting Program included in the November 2, 2021 Planning Commission packet; and

WHEREAS, the Planning Commission has adopted said mitigation monitoring and reporting program.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. The Lassen County Planning Commission finds as follows:
 - a. The proposed project is consistent with the *Lassen County General Plan, 2000*, and the *Lassen County Energy Element, 1993*, the and the provisions of Lassen County Code Chapter 18.112, which established the regulations regarding the issuance of Use Permits.
 - b. That the project, as conditioned, will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or to the general welfare.
 - c. On the basis of the whole record before the Planning Commission, including the initial study and all comments received during the public review process, that there is no substantial evidence that the project will have a significant effect on the environment and that the mitigated negative declaration reflects the lead agency's independent judgment and analysis.
 - d. The County has noticed and requested but has not received comment from Plumas-Sierra Rural Eclectic Cooperative to obtain information during the review of this proposed commercial energy project.
 - e. The County has considered available information on the capacity and current load on existing utility transmission lines and has no information indicating that the project will exceed the available transmission capacity.
 - f. The County supports the use of existing transmission line corridors.
3. The Lassen County Planning Commission hereby adopts the Technical Advisory Committee findings contained in the Planning Commission staff report dated November 2, 2020.
4. The Planning Commission hereby adopts Mitigated Negative Declaration 2020-001 and the proposed Mitigation Monitoring and Reporting Program.
5. The Lassen County Planning Commission hereby approves Use Permit Application #2020-004, filed by Charles Hooper, subject to the conditions of approval set forth as Exhibit "A" attached hereto.

RESOLUTION NO. _____

Page **3** of **11**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Lassen, State of California, on the 2nd day of November 2021, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Chairman
Lassen County Planning Commission

ATTEST:

Maurice L. Anderson, Secretary
Lassen County Planning Commission

EXHIBIT "A"
CONDITIONS OF APPROVAL
USE PERMIT #2020-004, MITIGATED NEGATIVE DECLARATION #2020-001

1. Noncompliance with any of the following use permit conditions shall constitute grounds for revocation of the use permit (pursuant to Lassen County Code Section 18.112.060).
2. The Use Permit shall be granted for the use as approved by the Planning Commission. Substantial revisions and/or expansions of the project will require a new Use Permit, subject to the approval of the Planning Commission.

Pre-construction Conditions
(Must be satisfied before issuance of the Building Permit(s))

3. The applicant shall obtain all necessary building permits from the Lassen County Department of Planning and Building Services before the commencement of construction.
4. The applicant shall execute the Mitigation Monitoring and Reporting Program approved by the Planning Commission through this Resolution by having their signature notarized on said document. The original shall be submitted to the Planning and Building Services Department. The mitigation measures and their implementation detailed in said Mitigation Monitoring and Reporting Program shall be adhered to at all times for development and operation of the project.
5. BR-1: Burrowing American Badger Surveys: Calneva BESS/PSES will retain a qualified biologist to conduct burrowing American badger surveys and to identify any occupied burrows in all project action areas and buffer zones with suitable habitat. These surveys will be conducted not more than 30 days prior to initial ground-disturbing activities. If the survey results are negative (no badger dens observed), no additional work would be necessary. If the results are positive (badger dens observed), the qualified biologist shall install a game camera at the den(s) for three (3) days and three (3) nights to determine if the den is in use. If the game camera does not capture an individual entering/exiting the den, the den can be excavated by hand. If the camera captures badger use of the den, the qualified biologist shall install a one-way door in the den opening and continue use of the game camera. Once the camera captures the individual exiting the one-way door, the den can be excavated by hand.
6. BR-2: Burrow Avoidance: If occupied burrows are identified during surveys, Calneva BESS/PSES will maintain a buffer of approximately 160 feet from occupied burrows during the nonbreeding season of October through July, and approximately 250 feet during the breeding season of August through September. Occupied burrows will not be disturbed within these buffers during the breeding season, from August through September, unless a qualified biologist has verified that the badgers have not begun mating, or the offspring from those burrows are foraging independently and capable of independent survival at a given date.

7. BR-3: Bird Nest Surveys and Monitoring: Because construction will take place during the breeding and nesting season of avian species in the project area (typically February 1 through August 31), Calneva BESS/PSES will conduct nesting bird surveys prior to construction for avian species with potential to occur on-site, or where accessible, in areas adjacent to construction. Where nesting migratory birds are found in or near the project area, the birds and their nests will be evaluated by a qualified biologist. If nest disturbance is anticipated, the biologist will ensure adequate mitigation measures are implemented in accordance with mitigation measure BR-4 below.
8. BR-4: Nesting Birds: In accordance with the MBTA, if an active nest is observed in the project area during construction, Calneva BESS/PSES will stop work within the appropriate buffer for the species and contact the biological monitor immediately. Nest disturbance is dependent on a number of site-specific and activity-specific factors, including the sensitivity of the species, proximity to work activity, amount of noise or frequency of the work activity, and intervening topography, vegetation, structures, etc. Additional mitigation may be required to minimize disturbance of detected nesting activity, such as allowing nesting activity to conclude before continuing construction in an area, restricting certain types of construction practices/activities, creating screening devices to shield nest sites from construction activity, and establishing buffer areas around active nest sites. For inactive nests, measures could include removal and/or handling of nest materials, which will be conducted under the supervision of a qualified biologist.
9. Prior to issuance of a building permit and then also prior to issuance of a Authorization to Operate, the applicant shall provide suitable documentation to the Planning and Building Services Department from the Lassen County Fire Warden that all requirements necessary for issuance of a permit(s) and then all requirements necessary for issuance an Authorization to Operate have been satisfactorily met. Said requirements include the following (a through i, below):
 - a. Fire prevention during construction-
 - I. The Gen-Tie Line Fire Management Plan, as stated in the plan, should suffice to prevent and control a fire from spreading into the surrounding vegetation.
 - II. The minor necessary modifications to the plan have previously been communicated to Brent L. Moore, Vice President, Sierra Geotech.
 - b. Access- The project is bisected by railroad tracks. Both sides of the project will need to be accessible to firefighting equipment.
 - I. (Lassen Code 9.16.120) The road accessing the project will need to have the equivalent of two, ten-foot traffic lanes with shoulder. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided by Title 18

(Zoning). Vertical clearances shall conform to the requirements in California Vehicle Code Section 35250. All driveways shall be constructed to provide a minimum of one ten foot traffic lane, fourteen feet unobstructed horizontal clearance, and unobstructed vertical clearance of thirteen feet, six inches. (Ord. 2020-003 § 2).

- II. (Lassen Code 9.16.130) Roads shall be designed and maintained to support the imposed load of fire apparatus weighing at least seventy-five thousand pounds and provide an aggregate base.
- c. Driveways and road and driveway structures shall be designed and maintained to support at least forty thousand pounds.
- d. Project proponent shall provide engineering specifications to support design, if requested by the Lassen County planning and building services department. (Ord. 2020-003 § 2).
 - I. (Lassen Code 9.16.140) At no point shall the grade for all roads and driveways exceed sixteen percent.
 - II. (Lassen Code 9.16.200) Gate entrances shall be at least two feet wider than the width of the traffic lane(s) serving that gate and a minimum width of fourteen feet unobstructed horizontal clearance and unobstructed vertical clearance of thirteen feet, six inches. Security gates shall not be installed without approval from the fire warden and from the Lassen County planning and building services department, if a building permit is required. The Lassen County Fire Warden's office has no issue with gates installed at the facility that meet the standards. Where security gates are installed, they shall have an approved means of emergency operation. Approval shall be by the fire warden upon consultation with any applicable fire protection district. The security gates and the emergency operation shall be maintained operational at all times. (Ord. 2020-003 § 2). The proposal of a "Knox Box" style of accessing locked gates is acceptable, however, keys would have to be provided in sufficient numbers as determined by each listed Fire District, to the following Fire Districts/Departments: CALFIRE Lassen Modoc Unit, the Bureau of Land Management, the US Forest Service Plumas National Forest (station located in Doyle), the Doyle Fire District, the Sierra Army Depot Fire Department, the Herlong Community Services District Fire Department, and Milford Fire Department. Any or all of these different agencies may respond to the project location when closer resources are not available and it is not foreseeable as to which one would arrive first. If a Knox Box is installed the Lassen County Sheriff's Department would also need to be provided with Knox Box keys. An acceptable alternative would be to install a VHF radio frequency gate opening device that allow a fire resource to select the appropriate frequency and transmit the frequency allowing the gate to open, this would provide the easiest access to any

responding fire agency. It is recommended to use frequency CALCORD (156.07500) or 2nd option VFIRE 22 (154.26500). It would be necessary to post at each gate a message indicating the frequency name used to open the gate. (Ex. "Gate Frequency use CALCORD")

- e. All gates providing access from a road to a driveway shall be located at least thirty feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on that road.
- f. Signage-
 - I. (Lassen Code 9.16.210) To facilitate locating a fire and to avoid delays in response, all newly constructed or approved roads and buildings shall be designated by names or numbers posted on signs clearly visible and legible from the road. It will be necessary to post the road name for the County Road used to access the project at the intersection of that road and Fort Sage Road. It is unclear that the road indicated as "CALNEVA Road" is the actual name of the road accessing the site. The Lassen County Building and Planning Department needs to confirm. (Lassen Code 9.16.220) The size of letters, numbers, and symbols for road signs shall be a minimum four inch letter height, half inch stroke, reflectorized, contrasting with the background color of the sign. (Ord. 2020-003 § 2).
 - II. (Lassen Code 9.16.230) Road signs shall be visible and legible from both directions of vehicle travel for a distance of at least one hundred feet. Signs identifying intersecting roads shall be placed at the intersection of those roads. Road signs shall be posted at the beginning of construction and shall be maintained thereafter. (Ord. 2020-003 § 2).
- g. (Lassen Code 9.16.240) The address and or site name shall be posted in a location visible from the access road regardless of direction of vehicle travel. This shall be done at the beginning of construction. The size of letters, numbers, and symbols for addresses shall conform to the standards in the California Fire Code, California Code of Regulations Title 24, Part 9. A temporary sign may be used during construction.
- h. Defensible Space-
 - I. On page 3-27 and 3-28 of the Draft Initial Study and Proposed Mitigated Negative Declaration, the described construction and maintenance of the facility road system around perimeter and interior of the perimeter will suffice to provide protection from an approaching wildland fire and/or to help prevent a fire from escaping the perimeter of the project should a fire start on the site. It is acceptable to allow vegetation to grow under the solar field not to exceed 18" in height for any brush. It will be the responsibility of the site owner or designee to maintain that standard and to maintain all facility roads free of vegetation.

- i. Other comments
 - I. While it is the opinion of the Lassen County Fire Wardens Office that the Water Supply requirement is not applicable to this project based on Lassen Code section 9.16.270. If a water well were to be constructed, it would be highly desirable to install a Warf Style hydrant, with freeze protection and a minimum of one 2.5" Nation hose straight thread connection, to provide a water supply to firefighting resources.
 - II. Nowhere in the Lassen Fire Safe Regulations does it address the concerns associated with training emergency responders to the hazards and procedures should a fire occur at the facility. It is not likely that most first responders within Lassen County are familiar with how to address fire suppression or other emergency incidents at a large solar facility, nor are they aware of the potential life safety risks. It is recommended that the owner of the facility offer free training to responders who may respond to a fire at the facility. The Sierra Army Depot will most likely be dispatched as a mutual aid type resource to the facility along with Doyle and/ or Herlong and/ or Milford. These fire departments, at a minimum, should be provided training regarding emergencies at the facility as well as a procedural manual for response (both paper and digital format). The county wide fire dispatch center, the Susanville Interagency Fire Center (SIFC), should also be provided with such information.
10. A Certificate of Merger shall be recorded in the Official Records of Lassen County prior to issuance of any permits for development by the Lassen County Planning and Building Services Department.
11. HM-1: The applicant shall prepare a plan that effectively addresses hazardous materials. Such plan shall include specific measures to be taken in the case of release of any hazardous materials. Such plan shall be reviewed by the Lassen County Environmental Health Department in its Certified Unified Program Agency (CUPA) function; The Environmental Review Officer may consult with the California Department of Toxic Substances Control or any other relevant agency for review of the plan. The Environmental Review Officer shall have the authority to require any modifications to said plan to ensure satisfaction of this mitigation measure.
12. The applicant shall provide a construction haul route plan and address the traffic impacts to the local roads (primarily Hackstaff and Fortsage Roads) used for accessing the project site. The maintenance and rehabilitation will be in accordance with AASHTO concept of serviceability and equivalent single axle load (ESAL) evaluation methods for damage caused by additional construction vehicles, compared to the existing typical traffic. The haul route plan and proposed mitigation measures shall be submitted to the Planning and Building Services Department who shall forward the same to the Public Works Department. The Public Works Department shall have authority to approve said plan and

mitigation or make any modifications necessary to maintain the integrity of roads and safety of the traveling public. No building permit(s) associated with this project shall be issued until the Public Works Department has approved said haul route plan and the associated mitigation measures.

13. Prior to issuance of a building permit, the applicant shall submit evidence to the Planning and Building Services Department that all requirements of the Lahontan Regional Water Quality Control Board have been satisfactorily met. This may include, but is not limited to, Waste Discharge Requirements for Dredged or Fill Material to Waters of the State (WDR), Water Quality Certification and/or a Stormwater Pollution Prevention Plan.
14. An encroachment permit from the Public Works department is required prior to issuance of any building permit for this use permit for any work, installation of temporary or permanent facilities for power transmission within road right of way or the crossing (underground or overhead) of any County road with said facilities.
15. A traffic control plan will be developed in coordination with the Lassen County Public Works Department for any work requiring a County Encroachment Permit.
16. Start times and end time of the construction day will be offset from identified peak traffic hours to mitigate traffic congestion on local streets and highways. Construction personnel will typically arrive at the proposed project lease area around 6:00 a.m., before the morning peak hour (7:00 a.m. to 8 a.m.). Construction employees will typically leave between 3:00 p.m. and 4:00 p.m., before the evening peak hour (4:00 p.m. and 5:00 p.m.).
17. HM-4: The applicant/property owner shall submit a detailed and thorough cost estimate itemizing the complete cost to decommission the project. The Planning and Building Services Department must find said cost estimate acceptable prior to issuance of an Authorization to Operate (ATO). Funds equal to the amount of said cost estimate shall be made available to the County in a form accepted by the County prior to issuance of an ATO. County will use said funds to decommission the site if the applicant does not comply with the condition to remove all structures, associated equipment including solar panels, and all debris within six (6) months of the end of operations.

Pre-operational Conditions
(Must be satisfied before issuance of the Authorization to Operate)

18. During construction of the facility, the applicant shall at all times comply with the haul route plan and mitigation approved by the Public Works Department. Upon the recommendation of the Director of Public Works, the Building Official may suspend or revoke any associated building permit(s), in accordance with section 105.6 of the 2019 California Building Code, or other applicable code or regulation, if the applicant fails to comply with the requirements of the haul route plan and approved mitigation.
19. Prior to issuance of an Authorization to Operate, the applicant shall submit evidence to the Planning and Building Services Department that all requirements of the Lahontan

Regional Water Quality Control Board have been satisfactorily met. This may include, but is not limited to, Waste Discharge Requirements for Dredged or Fill Material to Waters of the State (WDR), Water Quality Certification and/or a Stormwater Pollution Prevention Plan.

Operational Conditions
(Must be satisfied during operation of the Use Permit)

20. All lighting, exterior and interior, shall be designed and located so as to confine direct lighting to the premises. A light source shall not shine upon or illuminate directly on any surface other than the area required to be lighted. No lighting shall be of the type or in a location so as to constitute a hazard to vehicular traffic, either on private property or on abutting streets.
21. No structures shall be constructed within the easements that have been granted to the Tuscarora Gas Transmission Company by *Right-of-Way Grant* documents which were recorded on November 21, 1994 in Book 607, Pages 783 through 811, inclusive, all of the Official Records of Lassen County. The various easements applicable to the subject property are described within these documents and are also graphically shown in a Schedule "A" for each document. Exceptions to this could be obtained through permission granted by the Tuscarora Gas Transmission Company and/or by termination of the easement(s). If a permit for development is issued for construction of any structure, it shall be the applicants' responsibility to demonstrate to the Planning and Building Services Department that the structure(s) are not located within the easements or any within any applicable setback limits.
22. At all times during construction and operation of the facility, the applicant shall comply the requirements detailed in the Gen-Tie Line Fire Management Plan detailed in the Initial Study prepared for the project. Any approved modifications to said plan must be submitted to and approved by the Planning and Building Services Department before implementation.
23. HM-2: At the time operations approved by this Use Permit are discontinued, a demolition permits shall be secured and all structures, associated equipment, and all debris shall be removed from the site within 6 months after securing a demolition permit. If not removed within 6 months, the County may cause the structures, associated equipment, and all debris to be removed at the expense of the operator and/or property owner.
24. HM-3: At the time of decommissioning described in Mitigation Measure HM-2 above or if any structures, equipment, or debris is removed from the site for any reason, all structures, associated equipment, and all debris shall be removed from the site in accordance with all applicable regulations concerning hazardous materials. The applicant shall submit a letter from the California Department of Toxic Substances Control to provide evidence that the above has occurred.
25. HM-5: The applicant/property owner shall adjust the amount of the mechanism for inflation or changes in the law as directed by the Planning and Building Services

Department. The Department may utilize an acceptable index such as the Consumer Price Index to determine inflation.

26. The applicant shall at all times comply with any permit or requirement of the Lahontan Regional Water Quality Control Board.

RESOLUTION NO. _____

RESOLUTION OF THE LASSEN COUNTY PLANNING COMMISSION DISAPPROVING
USE PERMIT 2020-004, HOOPER.

WHEREAS, the Planning Commission of Lassen County, after due notice and a public hearing held on November 2, 2020, has considered Use Permit #2020-004, filed by Charles Hooper, 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 located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border and does not have an address assigned. The project site includes Assessor Parcel Numbers 137-170-012 and 137-170-013; and

WHEREAS, Lassen County Code Section 18.112.100 sets forth mandatory findings that the Lassen County Planning Commission must make when considering a use permit application; and

WHEREAS, the County supports the development of well-planned transmission lines and pipelines which will aid the County in obtaining more economical power; and

WHEREAS, in order to stimulate economic development in Lassen County, as well as to provide electricity to local consumers at the most economic rates possible, the County supports the efforts of local utilities to obtain wholesale power at lower costs; and

WHEREAS, the County supports the use of locally produced power to ensure the reliability of power needed in Lassen County during disruption of normal power service; and

WHEREAS, the California Environmental Quality Act does not apply to projects which a public agency rejects or disapproves, pursuant to Sections 15061(4) and 15270(a) of the Guidelines.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. The Planning Commission finds as follows:
 - a. That the proposed project is not consistent with the *Lassen County General Plan, 2000*, Lassen County Code Chapter 18.16, and the provisions of Lassen County Code Chapter 18.112, which establishes the regulations regarding the issuance of Use Permits in accordance with the following:
 - i.
 - ii.
 - iii.

RESOLUTION NO. _____

- b. That the project will, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such use, and/or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare based on the following findings:
 - i.
 - ii.
 - iii.

3. The Planning Commission hereby disapproves Use Permit # 2020-004.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Lassen, State of California, on the 2nd day of November, 2021, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Chairman
Lassen County Planning Commission

ATTEST:

Maurice L. Anderson, Secretary
Lassen County Planning Commission

MITIGATION MONITORING AND REPORTING PROGRAM
MITIGATED NEGATIVE DECLARATION #2020-001, HOOPER

LEAD AGENCY: Lassen County

PROJECT NAME: Use Permit #2020-004, Mitigated Negative Declaration/Initial Study #2020-001

**APPLICANT/
PROPERTY OWNER:** Dr. Charles Hooper
11242 Clinton Bar Road
Pine Grove, CA 95665

**ASSESSOR PARCEL
NUMBERS:** 137-170-012 and 137-170-013.

**STATE CLEARINGHOUSE
NUMBER:** 2020100366

PROJECT DESCRIPTION:

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*.

PROJECT LOCATION:

Access to the project site is from Calneva Road, which is not in the County maintained road system. Calneva Road connects to Fort Sage Road (County Road 327). Said roads are accessible from Hackstaff Road, near Doyle and U.S. Highway 395. From the north, Wendel Road provides access to Moore and Calneva Roads (both Moore and Calneva are dirt roads). Assessor Parcel Numbers: 137-170-012 and 137-170-013

PUBLIC REVIEW PERIOD:

June 28, 2020, though, July 28, 2021

FINDINGS:

1. Pursuant to the California Environmental Quality Act (CEQA), CEQA Guidelines and County Resolution Number 01-043 (Lassen County Environmental Review Guidelines), Lassen County, acting as Lead Agency for the project, has reviewed the Initial Study and any comments submitted by agencies and the general public.
2. Use of the property in the manner proposed has the potential for significant impacts to Biological Resources as detailed in Section 7 of the Initial Study.
3. Use of the property in the manner proposed has the potential for significant impacts related to Hazards and Hazardous Materials, as detailed in Section 9 of the Initial Study.
4. No substantial evidence has been presented that this project, as amended to include the mitigation measures detailed in the above referenced Mitigated Negative Declaration and Initial Study and as specified below, would have a significant effect on the environment.
5. This Use Permit was conditionally approved by the Lassen County Planning Commission on November 2, 2021, through Resolution Number _____. Mitigated Negative Declaration Number 2020-001 was adopted as the environmental document for the project and this Mitigation Monitoring and Reporting Program was adopted.
6. Adherence to the requirements detailed in this Mitigation Monitoring and Reporting Program was established as a condition of approval for this project in the above resolution.

MITIGATION MEASURE #1

BR-1: Burrowing American Badger Surveys: Calneva BESS/PSES will retain a qualified biologist to conduct burrowing American badger surveys and to identify any occupied burrows in all project action areas and buffer zones with suitable habitat. These surveys will be conducted not more than 30 days prior to initial ground-disturbing activities. If the survey results are negative (no badger dens observed), no additional work would be necessary. If the results are positive (badger dens observed), the qualified biologist shall install a game camera at the den(s) for three (3) days and three (3) nights to determine if the den is in use. If the game camera does not capture an individual entering/exiting the den, the den can be excavated by hand. If the camera captures badger use of the den, the qualified biologist shall install a one-way door in the den opening and continue use of the game camera. Once the camera captures the individual exiting the one-way door, the den can be excavated by hand.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied prior to the issuance of a Building Permit or Authorization to Operate. The above mitigation measure will determine if Mitigation Measure #2 (BR-2) is operative.

Responsible for Monitoring: A final field report will be provided to the Lassen County Department of Planning and Building Services prior to the start of construction. If at any time the applicant fails to comply with the above mitigation, Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of the Lassen County Code.

MITIGATION MEASURE #2

BR-2: Burrow Avoidance: If occupied burrows are identified during surveys, Calneva BESS/PSES will maintain a buffer of approximately 160 feet from occupied burrows during the nonbreeding season of October through July, and approximately 250 feet during the breeding season of August through September. Occupied burrows will not be disturbed within these buffers during the breeding season, from August through September, unless a qualified biologist has verified that the badgers have not begun mating, or the offspring from those burrows are foraging independently and capable of independent survival at a given date.

Responsible Party: The applicant is responsible for complying with the above mitigation measure. The applicant will flag and identify the above buffer areas for easy identification and avoidance during construction.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied prior to a final inspection and approval of the associated of the Building Permit(s) or issuance of the Authorization to Operate. Prior to issuance of the building permit(s), the Department of Planning and Building Services must approve the flagging and identification of the buffer areas. Said flagging and identification of the buffer areas is subject to inspection by the Planning and Building Services Department at any time during construction.

Responsible for Monitoring: A final field report will be provided to the Lassen County Department of Planning and Building Services prior to the start of construction. If at any time the applicant fails to comply with the above mitigation, Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of Lassen County Code.

MITIGATION MEASURE #3

BR-3: Bird Nest Surveys and Monitoring: Because construction will take place during the breeding and nesting season of avian species in the project area (typically February 1

through August 31), Calneva BESS/PSES will conduct nesting bird surveys prior to construction for avian species with potential to occur on-site, or where accessible, in areas adjacent to construction. Where nesting migratory birds are found in or near the project area, the birds and their nests will be evaluated by a qualified biologist. If nest disturbance is anticipated, the biologist will ensure adequate mitigation measures are implemented in accordance with mitigation measure BR-4 below.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied prior to issuance of a building permit or issuance of the Authorization to Operate. The applicant must submit evidence to the Planning and Building Service Department that the California Department of Fish and Wildlife has approved any mitigation that may be required by the biologist who is retained to implement the above mitigation.

Responsible for Monitoring: The results of any nesting bird surveys shall be sent to the Department of Planning and Building Services and the California Department of Fish and Wildlife at: California Department of Fish and Wildlife, Attn: CEQA, 601 Locust Street, Redding, CA 96001. If at any time the applicant fails to comply with the above mitigation, Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of Lassen County Code.

MITIGATION MEASURE #4

BR-4: Nesting Birds: In accordance with the MBTA, if an active nest is observed in the project area during construction, Calneva BESS/PSES will stop work within the appropriate buffer for the species and contact the biological monitor immediately. Nest disturbance is dependent on a number of site-specific and activity-specific factors, including the sensitivity of the species, proximity to work activity, amount of noise or frequency of the work activity, and intervening topography, vegetation, structures, etc. Additional mitigation may be required to minimize disturbance of detected nesting activity, such as allowing nesting activity to conclude before continuing construction in an area, restricting certain types of construction practices/activities, creating screening devices to shield nest sites from construction activity, and establishing buffer areas around active nest sites. For inactive nests, measures could include removal and/or handling of nest materials, which will be conducted under the supervision of a qualified biologist.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied prior to a final inspection and approval of the associated of the Building Permit(s) or issuance of the Authorization to Operate.

Responsible for Monitoring: The results of any nesting bird surveys shall be sent to the Department of Planning and Building Services and the California Department of Fish and Wildlife at: California Department of Fish and Wildlife, Attn: CEQA, 601 Locust Street, Redding, CA 96001. If at any time the applicant fails to comply with the above mitigation, Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of Lassen County Code.

MITIGATION MEASURE #5

HM-1: The applicant shall prepare a plan that effectively addresses hazardous materials. Such plan shall include specific measures to be taken in the case of release of any hazardous materials. Such plan shall be reviewed by the Lassen County Environmental Health Department in its Certified Unified Program Agency (CUPA) function; The Environmental Review Officer may consult with the California Department of Toxic Substances Control or any other relevant agency for review of the plan. The Environmental Review Officer shall have the authority to require any modifications to said plan to ensure satisfaction of this mitigation measure.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied prior to the issuance of a Building Permit or Authorization to Operate.

Responsible for Monitoring: The hazardous material plan shall be sent to the Department of Planning and Building Services and must be approved by said Department and the Lassen County Environmental Health Department prior to issuance of any building permit.

MITIGATION MEASURE #6

HM-2: At the time operations approved by this Use Permit are discontinued, a demolition permits shall be secured and all structures, associated equipment, and all debris shall be removed from the site within 6 months after securing a demolition permit. If not removed within 6 months, the County may cause the structures, associated equipment, and all debris to be removed at the expense of the operator and/or property owner.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied within 6 months after securing a demolition permit.

Responsible for Monitoring: The Planning and Building Services Department shall monitor execution of this condition. If the condition is not met, the mechanism detailed in mitigation measure # 9 shall be used by Lassen County to ensure proper execution of said mitigation.

MITIGATION MEASURE #7

HM-3: At the time of decommissioning described in Mitigation Measure HM-2 above or if any structures, equipment, or debris is removed from the site for any reason, all structures, associated equipment, and all debris shall be removed from the site in accordance with all applicable regulations concerning hazardous materials. The applicant shall submit a letter from the California Department of Toxic Substances Control to provide evidence that the above has occurred.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The applicant shall inform the Department of Planning and Building Services when all structures, associated equipment, and all debris are complete. The applicant shall provide documentation of such from the California Department of Toxic Substances Control to the Planning and Building Services Department.

Responsible for Monitoring: Department of Planning and Building Services staff shall review and approve the above documentation provided by the applicant. If at any time the applicant fails to comply with the above mitigation, Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of Lassen County Code.

MITIGATION MEASURE #8

HM-4: The applicant/property owner shall submit a detailed and thorough cost estimate itemizing the complete cost to decommission the project. The Planning and Building Services Department must find said cost estimate acceptable prior to issuance of an Authorization to Operate (ATO). Funds equal to the amount of said cost estimate shall be made available to the County in a form accepted by the County prior to issuance of an ATO. County will use said funds to decommission the site if the applicant does not comply with the condition to remove all structures, associated equipment including solar panels, and all debris within six (6) months of the end of operations.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit, and must be satisfied prior to the issuance of the Authorization to Operate.

Responsible for Monitoring: Department of Planning and Building Services staff shall review and approve the above cost estimate. If at any time the applicant fails to comply with this MMRP, Lassen County may utilize the mechanism to perform the required mitigation. Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of Lassen County Code.

MITIGATION MEASURE #9

HM-5: The applicant/property owner shall adjust the amount of the mechanism for inflation or changes in the law as directed by the Planning and Building Services Department. The Department may utilize an acceptable index such as the Consumer Price Index to determine inflation.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit. The applicant must adjust the above mechanism within three months of being directed to do so by the Planning and Building Services Department.

Responsible for Monitoring: At its discretion, and as necessary, the Department of Planning and Building Services shall require that the applicant adjust the mechanism.

MITIGATION MEASURE #10

The additional mitigation measures detailed in the “*Environmental Settlement Agreement For Calneva Battery Energy Storage System and Photovoltaic Solar Energy System Project Proposed by Dr. Charles Hooper, D.O.*”, executed by Dr. Charles Hooper D.O., as the property owner and by Kelilah D. Federman on behalf of Citizens For Responsible Industry are attached hereto as “Exhibit A” and are included as mitigation measures required for this project.

Responsible Party: The applicant is responsible for complying with the above mitigation measure.

Implementation: The above mitigation measure is a condition of approval for this use permit.

Responsible for Monitoring: Responsibility for monitoring is in accordance with the above Settlement Agreement (Exhibit A). If at any time the applicant fails to comply with

the above mitigation, Lassen County may consider revocation of the use permit pursuant to Section 18.112.060 of Lassen County Code.

I have read the above mitigation measures and agree to incorporate them into the project:

Applicant:

Date:

Applicant:

Date:

**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 NO_x, 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

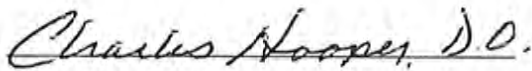
This Agreement contains the entire Agreement between the Parties and supersedes any prior agreements, whether written or oral.

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.

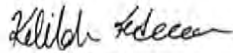
DR. CHARLES HOOPER, D.O.



By: Dr. Charles Hooper, D.O.

Its: Property Owner (Developer)

CITIZENS FOR RESPONSIBLE INDUSTRY



By: Kelilah D. Federman

Its: Attorneys

PROPOSED MITIGATED NEGATIVE DECLARATION #2020-001

LEAD AGENCY: Lassen County

PROJECT NAME: Use Permit #2020-004, Initial Study #2020-001, Hooper

APPLICANT: Dr. Charles Hooper

PROJECT DESCRIPTION:

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*.

PUBLIC REVIEW PERIOD:

June 28, 2021 through July 28, 2021

PROJECT LOCATION:

The subject parcels are located approximately nine miles northeast of Herlong off of Calneva Road, adjacent to the Nevada Border, and do not have addresses.

APNs:

137-170-012 and 137-170-013

PROPOSED FINDINGS:

1. On the basis of the attached initial study and mitigation measures below, the project will not have a significant effect on the environment.

PROPOSED MITIGATION MEASURES:

- **BR-1: Burrowing American Badger Surveys:** Calneva BESS/PSES will retain a qualified biologist to conduct burrowing American badger surveys and to identify any occupied burrows in all project action areas and buffer zones with suitable habitat. These surveys will be conducted not more than 30 days prior to initial ground-disturbing activities. If the


survey results are negative (no badger dens observed), no additional work would be necessary. If the results are positive (badger dens observed), the qualified biologist shall install a game camera at the den(s) for three (3) days and three (3) nights to determine if the den is in use. If the game camera does not capture an individual entering/exiting the den, the den can be excavated by hand. If the camera captures badger use of the den, the qualified biologist shall install a one-way door in the den opening and continue use of the game camera. Once the camera captures the individual exiting the one-way door, the den can be excavated by hand.

- **BR-2: Burrow Avoidance:** If occupied burrows are identified during surveys, Calneva BESS/PSES will maintain a buffer of approximately 160 feet from occupied burrows during the nonbreeding season of October through July, and approximately 250 feet during the breeding season of August through September. Occupied burrows will not be disturbed within these buffers during the breeding season, from August through September, unless a qualified biologist has verified that the badgers have not begun mating, or the offspring from those burrows are foraging independently and capable of independent survival at a given date.
- **BR-3: Bird Nest Surveys and Monitoring:** Because construction will take place during the breeding and nesting season of avian species in the project area (typically February 1 through August 31), Calneva BESS/PSES will conduct nesting bird surveys prior to construction for avian species with potential to occur on-site, or where accessible, in areas adjacent to construction. Where nesting migratory birds are found in or near the project area, the birds and their nests will be evaluated by a qualified biologist. If nest disturbance is anticipated, the biologist will ensure adequate mitigation measures are implemented in accordance with mitigation measure BR-4 below.
- **BR-4: Nesting Birds:** In accordance with the MBTA, if an active nest is observed in the project area during construction, Calneva BESS/PSES will stop work within the appropriate buffer for the species and contact the biological monitor immediately. Nest disturbance is dependent on a number of site-specific and activity-specific factors, including the sensitivity of the species, proximity to work activity, amount of noise or frequency of the work activity, and intervening topography, vegetation, structures, etc. Additional mitigation may be required to minimize disturbance of detected nesting activity, such as allowing nesting activity to conclude before continuing construction in an area, restricting certain types of construction practices/activities, creating screening devices to shield nest sites from construction activity, and establishing buffer areas around active nest sites. For inactive nests, measures could include removal and/or handling of nest materials, which will be conducted under the supervision of a qualified biologist.
- **HM-1:** The applicant shall prepare a plan that effectively addresses hazardous materials. Such plan shall include specific measures to be taken in the case of release of any hazardous materials. Such plan shall be reviewed by the Lassen County Environmental Health Department in its Certified Unified Program Agency (CUPA) function; The

Environmental Review Officer may consult with the California Department of Toxic Substances Control or any other relevant agency for review of the plan. The Environmental Review Officer shall have the authority to require any modifications to said plan to ensure satisfaction of this mitigation measure.

- HM-2: At the time operations approved by this Use Permit are discontinued, all structures, associated equipment, and all debris shall be removed from the site within 6 months after securing a demolition permit. If not removed within 6 months, the County may cause the structures, associated equipment, and all debris to be removed at the expense of the operator and/or property owner.
- HM-3: At the time of decommissioning described in Mitigation Measure HM-2 above or if any structures, equipment, or debris is removed from the site for any reason, all structures, associated equipment, and all debris shall be removed from the site in accordance with all applicable regulations concerning hazardous materials. The applicant shall submit a letter from the California Department of Toxic Substances Control to provide evidence that the above has occurred.
- HM-4: The applicant/property owner shall submit a detailed and thorough cost estimate itemizing the complete cost to decommission the project. The Planning and Building Services Department must find said cost estimate acceptable prior to issuance of an Authorization to Operate (ATO). Funds equal to the amount of said cost estimate shall be made available to the County in a form accepted by the County prior to issuance of an ATO. County will use said funds to decommission the site if the applicant does not comply with the condition to remove all structures, associated equipment including solar panels, and all debris within six (6) months of the end of operations.
- HM-5: The applicant/property owner shall adjust the amount of the mechanism for inflation or changes in the law as directed by the Planning and Building Services Department. The Department may utilize an acceptable index such as the Consumer Price Index to determine inflation.

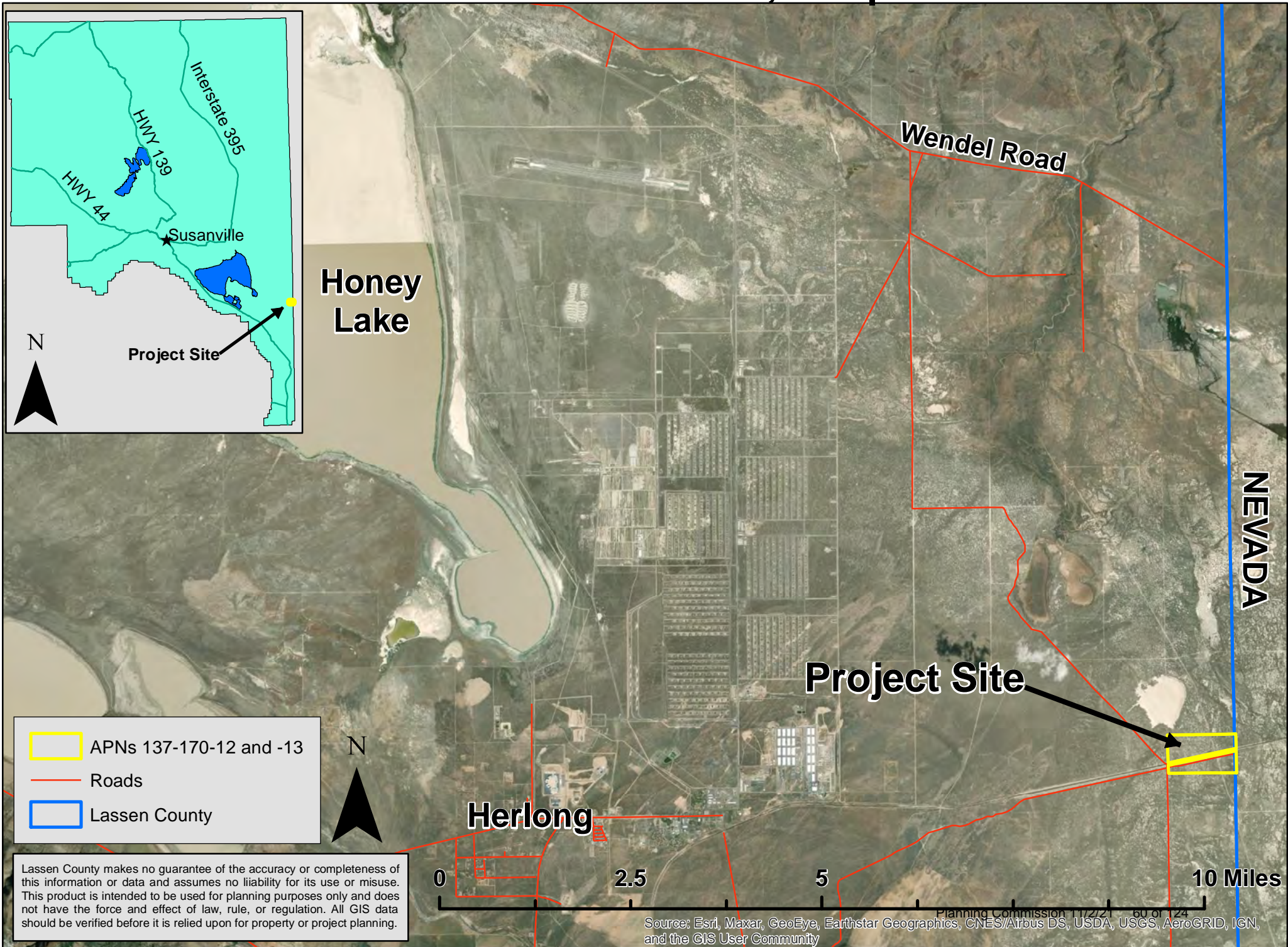
Signature:


Maurice L. Anderson,
Environmental Review Officer

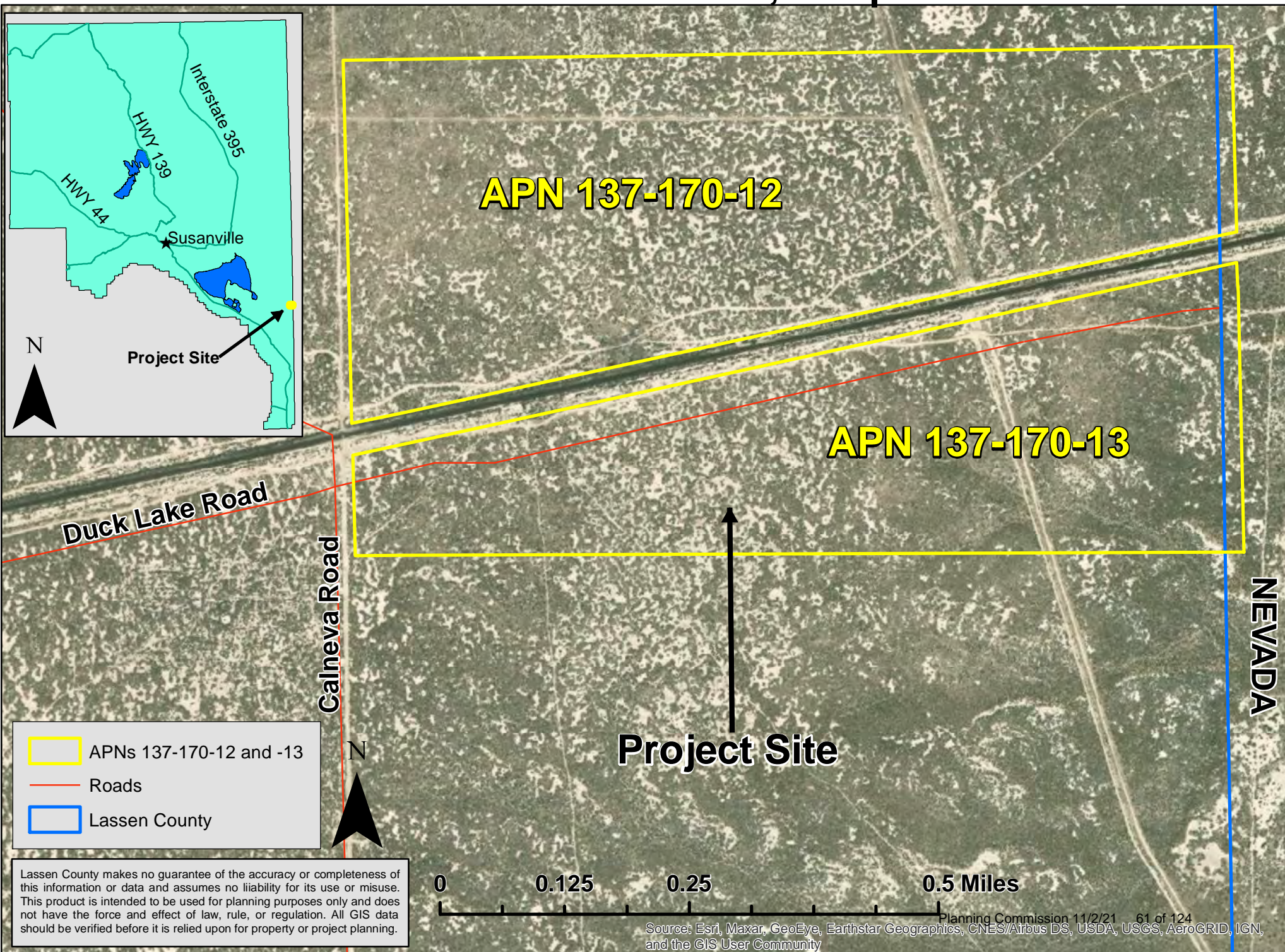
Date:

6-24-21

Use Permit #2020-004, Hooper



Use Permit #2020-004, Hooper



UNAPPROVED MINUTES
LASSEN COUNTY PLANNING COMMISSION
October 5, 2021

The Commission convened in regular session at 1:10 p.m. at 707 Nevada Street Susanville, CA. Vice Chairman Jason Ingram presided with Commission members Bill Buckman, Carol Clark and John Shaw present. Commissioner Solomon was absent. Also present were Gaylon Norwood (Assistant Director and Acting Planning Commission Secretary), Planning and Building Services Department staff; and Recording Secretary Anetia Elliott.

(**Note:** The following is summary minutes of this meeting and is not a transcript. Contact the Planning and Building Services Department {530} 251-8269 to determine if an audio recording is available.)

The following are excerpts from the above meeting.

PUBLIC HEARING: Use Permit #2020-004; Initial Study #2020-001 Hooper. 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 do 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. Gaylon Norwood, Assistant Director presented the staff report.

Exhibit D: Letter to Commissioners from Sierra Geotech, Brent L. Moore, CEP, referencing the 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.

Exhibit E: Letter from SSL, Law Firm LLP, re: Calneva Solar Facility Use Permit #2020-004; Initial Study #2020-001, Hooper.

Exhibit F: Letter from Pete Heimbigner, Director of the Department of Public Works/Transportation.

The public hearing was opened at 2:31 p.m.

Dr. Charles Hooper, property owner thanked the Commission and the Sierra Geotech for being here and spoke in favor of the project wanting to move forward without recirculation.

Brent Moore, CEP, with Sierra Geotech stated he wanted to make it clear for the record, the agreement they have with Adams and Broadwell created clarification of those items that were already in the Initial Study and the mitigated measures that were spelled out in the Initial Study. They created what Dr. Hooper and the other party thought was a clearer wording for the way they approached managing the environment on this project.

They do concur with the staff carrying out their administrative duties and feel there is no reason for recirculation of the Mitigated Negative Declaration and move forward with the project. He would like for the Planning Commission to make a motion to have a special meeting on October 19, 2021, so that they don't have further delay on this project and can move forward to the final decision.

Mr. Norwood responded that it requires a public hearing in order to approve the project and that requires a particular notice published in the paper and circulated to agencies and surrounding property owners. Because of the procedural things that have to be done a special meeting can't be done in that amount of time because of the noticing.

Discussion was held on whether or not a special meeting could be done before the November 2, 2021, Planning Commission meeting. It's possible the project could go to the November meeting, with a lot of hard work from staff procedurally with what the law requires. The Brown Act requires that notices must go out 10 days prior to the Public Hearing which would give staff 4 days to put out the notice and then the next couple of weeks to finalize the final conditions of approval. Lassen County doesn't have a weekly paper it is done on line, Counsel has directed staff to use the Modoc paper as the Lassen County published paper.

Mr. Heimbigner, Lassen County Public Works Director, clarified that he publishes in the Modoc County weekly and County Counsel at that time Robert Burns directed staff to publish in the Modoc paper for Lassen County and that the hard copy of the paper is circulated in Lassen County.

Mr. Norwood stated that the noticing is necessary and important for the agencies and public be notified at the right time before the meeting.

The public hearing was closed at 2:50 p.m.

MOTION:

It was moved by Commissioner Buckman, seconded by Commissioner Clark, and carried adopt the Mitigated Negative Declaration without recirculation, Use Permit #2020-004; Initial Study #2020-001 Hooper. Commissioner Ingram, Buckman, Clark and Shaw voted "Aye". Commissioner Solomon was absent.

EXHIBIT

10/5/21



September 28, 2021

Honorable Lassen County Planning Commission

Sent by Email:

Bill Buckman: b_cbuck3@yahoo.com

Carol Clark: marvincarol@gmail.com

John Shaw: JohnShaw.SRE@gmail.com

Mark Solomon: mark_a_solomon@hotmail.com

Jason Ingram: Lcca530@gmail.com

RECEIVED

SEP 28 2021

LENN COUNTY DEPARTMENT OF
PLANNING AND 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

CC:

Dr. Charles Hooper: chooper714@aol.com
Maurice Anderson: manderson@co.lassen.ca.us
Tom Hammond: thammond54@yahoo.com
Shaun Vemuri, PE: shaun@sierrageotech.com



505 MONTGOMERY STREET, SUITE 620
SAN FRANCISCO, CA 94111
TELEPHONE: 415.814.6400
FACSIMILE: 415.814.6401

ZACHARY R. WALTON
DIRECT TEL: 415.243.2685
zack@sslfirm.com

RECEIVED

October 5, 2021

OCT 05 2021

VIA EMAIL

County of Lassen
Lassen County Planning Commission
Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

LASSEN COUNTY DEPARTMENT OF
PLANNING AND BUILDING SERVICES

EXHIBIT E

Email: landuse@co.lassen.ca.us; b_chuck3@yahoo.com; marvincarol@gmail.com;
mark_a_solomon@hotmail.com; lcca530@gmail.com; manderson@co.lassen.ca.us;
Gnorwood@co.lassen.ca.us; dhopkins@co.lassen.ca.us; mmay@co.lassen.ca.us

Re: Calneva Solar Facility (Use Permit #2020-004; Initial Study #2020-001, Hooper; SCH #2020100366)

Dear Members of the Planning Commission –

We are submitting this letter on behalf of Dr. Charles Hooper (Applicant), regarding the County's environmental evaluation of the Calneva 50-megawatt photovoltaic solar energy facility (Project) pursuant to the California Environmental Quality Act (CEQA). The Project includes a photovoltaic solar energy system (PSES) and a battery energy storage system (BESS).

The Staff Report recommends recirculating for public review the initial study (IS) and mitigated negative declaration (MND) due to certain measures the Applicant has agreed to incorporate into the Project to resolve a dispute with Citizens for Responsible Industry (CRS). CRS, however, withdrew its opposition to the Project and requested the County to approve it without delay. We encourage the County to do so.

Prior History

County staff previously determined after an extensive analysis to adopt a MND for the Project instead of preparing an environmental impact report (EIR). Staff reached this conclusion based on an approximately 800-page initial study (IS) and months of review. The County circulated the MND for public review and the Adams Broadwell Joseph Cardozo law firm (Adams Broadwell) submitted comments on behalf CRS asserting an EIR was necessary. CRS is an association of labor unions and others, and Adams Broadwell has challenged numerous renewable energy projects in California on their behalf.

The Applicant and CRS resolved their dispute. They also entered into a settlement agreement whereby the Applicant agreed to incorporate certain "Additional Measures" addressing four different topics into the Project. The agreement does not define these measures as mitigation measures. The agreement instead directs the Applicant to request the County to include these measures as conditions of approval or mitigation measures. The Additional Measures supplement the conditions of approval or mitigation measures that already apply to the Project. They do not mitigate new impacts.

For example:

- Air Quality. The agreement requires the Applicant to request the County to include measures to reduce construction-related emissions such as using selective catalytic equipment or battery powered equipment. The IS/MND concluded the Project will not cause significant air quality impacts and that mitigation measures are unnecessary. The Applicant nevertheless included additional measures to reduce construction-related emissions such as catalyst-equipped construction equipment or alternative fuels. These are substantially the same.
- Burrowing Owl: The agreement requires the Applicant to request the County to include measures to retain a qualified biologist to perform surveys prior to ground-disturbing activities for the presence of owls and burrows. The IS/MND includes a mitigation measure that requires the Applicant to retain a qualified biologist to perform surveys prior to ground-disturbing activities for the presence of owls and burrows. These are the same.
- Energy Use: The agreement requires the Applicant to request the County to include a measure to charge the BESS directly from the PSES. The Project is designed to charge the BESS directly from the PSES.
- Fire Risk. The agreement requires the Applicant to request the County to include a measure to design the Project according to National Fire Protection Association standards. The Project is designed according to National Fire Protection Association standards.

The terms of the agreement are consistent with Project's design and the measures in the IS/MND. We submit there is no compelling reason to recirculate the IS/MND under these circumstances.

CEQA Guidelines and Case Law

Section 15073.5(a) of the CEQA Guidelines requires a lead agency to recirculate a negative declaration "when the document must be substantially revised" prior to adoption. A substantial revision is necessary when a new significant impact is identified, and mitigation measures must be added to address it or the lead agency determines that the proposed mitigation measures will not reduce potential effects to less than significant without new or revised mitigation measures. Section 15073.5(b). Recirculation is not required when:

- Mitigation measures are replaced with equal or more effective mitigation measures.
- The project is revised to respond to public comment about environmental effects that are not new.
- Measures or conditions are added that are not required by CEQA.

CEQA Guideline § 15073.5(c). This guideline was evaluated in the recent case, *Clews Land and Livestock, LLC. v. City of San Diego* (2017) 19 Cal.App.5th 161 (*Clews Land*). The project at issue involved the construction of a school on property adjacent to the petitioner's equestrian center. The petitioner alleged the City's MND did not evaluate appropriately fire hazards, traffic, noise, recreation, and cultural resources. The applicant prepared a brush management plan and revised an emergency evacuation plan to address these concerns, and voluntarily prepared a shuttle bus plan. The City considered the new information and recharacterized the emergency evacuation impact from "no impact" to "less than significant." *Id.* at 177.

The petitioner argued these changes required recirculation. The Court disagreed. It held that the shuttle bus plan and revision to the evacuation plan were voluntary and could not be a basis for recirculation. *Id.* at 197. The petitioner had not shown that the plans were added or revised to reduce significant effects. *Id.*

And it considered the additional information about the project's design, including the brush management and revisions to the evacuation plans, all of which were placed in the record after circulation, "clarifying and amplifying in nature [that] did not make substantial revisions to the project." *Id.*, citing CEQA Guideline § 15126.4.

Recirculation of the Calneva IS/MND is not required

The Staff Report explains that the environmental review officer (ERO) initially determined that an EIR was required based on the comments received on the IS/MND. The Applicant subsequently submitted detailed responses to comments in support of the County's initial decision to adopt an MND. The ERO also considered the settlement agreement with CRS and the letter of support from Adams Broadwell. The ERO concluded based on this information that an EIR is not required.

Despite this, the ERO determined recirculation is required because it previously concluded an EIR was warranted and the agreement with CRS includes "certain mitigation measures [that] are necessary to reduce impacts to a level of less than significant." The ERO concluded there are "only two viable options" to proceed: prepare an EIR or recirculate the MND.

We respectfully suggest there is another approach based on the following:

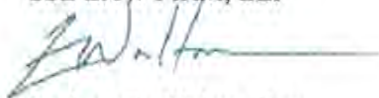
- First, the fact that the ERO initially believed an EIR was necessary but subsequently changed his mind does not cross a threshold in the CEQA Guidelines or case law that requires recirculation. The Court in *Clews Land* did not require recirculation even though the City considered the applicant's revisions to the project and submittal of new plans. CEQA Guideline § 15073.5 requires recirculation if substantial revisions to the MND are necessary. Substantial revisions to the MND are not necessary.
- Second, the Staff Report is not correct that the parties agreed the Additional Measures were necessary to mitigate impacts to less than significant. The settlement agreement is emphatic that the Additional Measures may be included as mitigation measures OR conditions of approval. Regardless, recirculation is not required when mitigation measures are replaced with equal or more effective measures. CEQA Guideline § 15073.5(c)
- Third, the Additional Measures are "clarifying and amplifying in nature and [do] not make substantial revisions to the" Project. *Clews Land* at 197. The Project for all intents and purposes is the same.

Conclusion

CEQA requires careful evaluation of a project, but it does not require process for process's sake. The County has carefully evaluated the Project, considered the comments received, and concluded that an MND remains the appropriate means of complying with CEQA. We ask that the Planning Commission approve the Project now, without recirculating the MND.

Sincerely,

SSL LAW FIRM, LLP



Zachary R. Walton, Esq.

DEPARTMENT of PUBLIC WORKS

County of Lassen



PETE HEIMBIGNER, Director
Public Works/Transportation

707 Nevada Street, Suite 4
Susanville, CA 96130

☎ 530) 251-8288
FAX: (530) 251-2675

BGC1
2021/137

EXHIBIT 1

September 29, 2021

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

FROM: *Pete* Department of Public Works/Transportation

RE: Public Hearing for Use Permit #2020-004; Initial Study #2020-001

The Department of Public Works/Transportation requests that the Planning Commission consider that the Applicant provide a construction haul route plan and address the construction traffic impacts to the local roads for accessing the project site. With the haul route plan also include the proposed mitigations to these impacts. The final haul route plan and mitigation measures shall be subject to approval and modification by this Department to maintain the integrity of roads and safety to traveling public.

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SEP 29 2021

LASSEN COUNTY DEPARTMENT OF
PLANNING AND BUILDING SERVICES

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Planning Commission October 5, 2021

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PROPERTY OWNER: Dr. Charles Hooper
TYPE OF APPLICATION: Use Permit, Initial Study

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County of Lassen
Department of Planning and Building Services

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

September 23, 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

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

MAF
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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JUL 28 2021



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.

A handwritten signature in black ink, appearing to read "Adam Henriques". The signature is fluid and cursive, with the first name "Adam" and last name "Henriques" clearly distinguishable.

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.

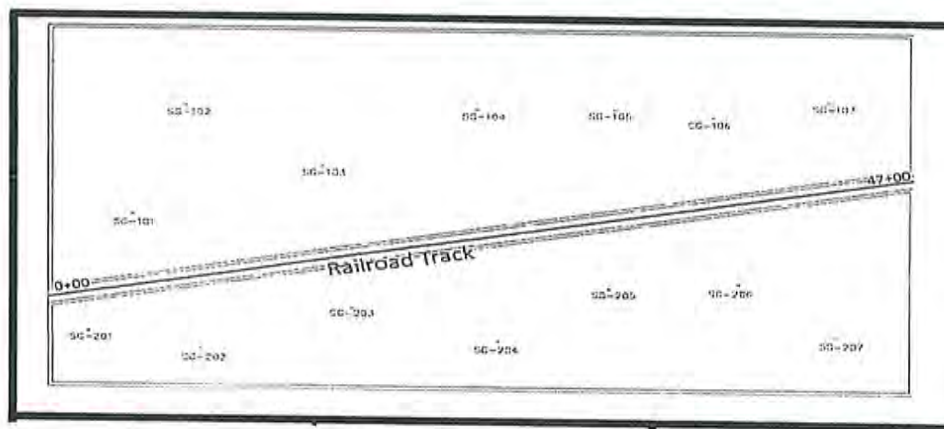
Project Description

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
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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](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)

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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:

Matthew J. Roberts
U.S. Army Corps of Engineers
Matthew.J.Roberts@usace.army.mil

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

Every Californian should conserve water. Find out how at:



SaveOurWater.com · Drought.CA.gov

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.

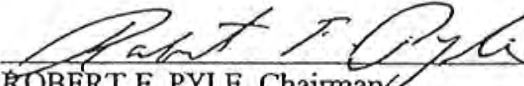
The foregoing resolution was adopted at a regular meeting of the Lassen County Board of Supervisors on the 22nd day of May, 2001, by the following vote:

AYES: Supervisors Pyle, Keefer, Dahle

NOES: Supervisor McCain

ABSTAIN: None

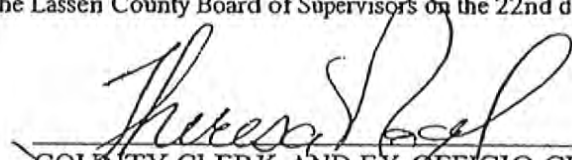
ABSENT: Supervisor Chapman


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 NO_x, 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

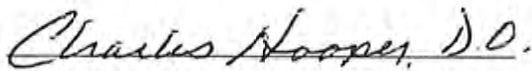
This Agreement contains the entire Agreement between the Parties and supersedes any prior agreements, whether written or oral.

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.

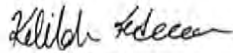
DR. CHARLES HOOPER, D.O.



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

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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.

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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.