



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Northern Region  
 601 Locust Street  
 Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



March 26, 2021

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

Governor's Office of Planning & Research

**Mar 29 2021**

**STATE CLEARINGHOUSE**

**Subject: Response to Project Applicant to the Early Consultation for Initial Study #2020-004 and Use Permit #2020-004 (Hooper), Assessor Parcel Numbers 137-170-12 and 137-170-13, State Clearinghouse Number 2020100366, Lassen County**

Dear Stefano Richichi:

The California Department of Fish and Wildlife (Department) has reviewed the information sent by Sierra Geotech, DBE, Inc. in response to the Department's November 13 and December 14, 2020 early consultation letters. The Department has the following comments and recommendations, which are repetitive of our previous comments in our early consultation letters:

#### General Comments

In our previous two letters, the Department requested a basic botanical, wildlife, and habitat assessment conducted at the appropriate time of year. In an email response from Senior Environmental Scientist, Amy Henderson, to Shaun Vemuri of Sierra Geotech, dated February 1, 2021, it was emphasized, *"The surveys need to be done at the appropriate time of year so looking for burrows can be done concurrently with botanical surveys. Most wildlife surveys are conducted in the spring months usually concurrently with the botanical surveys unless there is a specific protocol that says otherwise. I would recommend if you found a burrow and need to set up a trail cam to see if it is active, that you do so during the spring when the animals are more observable. The information I requested in my previous letter needs to be sent to the County and then they will forward me a referral to which I will comment on. As long as you hire qualified people and submit the reports to the County, CDFW is satisfied. I don't have the letter the County sent to you so if they have additional requirements you should make sure to follow those as well."* These comments are still applicable as Sierra Geotech staff went out in February 2021 to conduct surveys disregarding the consultation to date as well as the previous comment letters, which are attached for your review.

In the revised Biological Assessment (BA) dated February 2021, it states, *"This BA has been prepared according to the legal requirements set forth under Section 7 of the federal Endangered Species Act (FESA)(16 U.S.C. 1536 [c], C.F.R. Sec. 402.12), and presents technical information upon which later determinations regarding project effects will be developed for compliance with the California Environmental Quality Act (CEQA)."* The BA goes on to say that no federally listed species occur in the Project area. If the official

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federal species list determined there were no federally listed species or critical habitat for said species within the Project, please clarify why a Section 7 consultation is being initiated.

Table 3 identifies plant species with California Native Plant Society rankings. The table incorrectly identifies these rankings as listings. For example, Geyer's milkvetch is not a CNPS listed fairly endangered in California species nor does it appear even as a sensitive species for the U.S. Fish and Wildlife Service. It is a California Rare Plant Rank 2.2 species which means it is considered fairly endangered in California. The Department recommends revising the table so that it is not reflecting non-federal species as federal. Further information on California Rare Plant Ranking can be found in the Department's March 2018 survey protocols.

### Botanical Surveys

Conducting surveys ahead of Project approval is critical in that it allows the Department, land use planning agencies, and project proponents to make educated land use decisions. It also allows for the project proponents ample time to redesign their project to avoid and/or minimize significant impacts, if necessary. The special status plants provided in the previous comment letters and the BA have been shown to occur adjacent to or within a 5-mile radius of the Project area depicting similar habitat as the Project area. Conducting botanical surveys two weeks prior to the start of construction does not allow the Department or the Lead Agency time to fully analyze potential significant impacts to special status species; therefore, the Department recommends a thorough assessment of rare plants and rare natural communities be conducted following the Department's March 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (<https://www.wildlife.ca.gov/conservation/survey-protocols#377281280-plants>). As stated in the Protocols, these surveys must be conducted by a qualified botanist during the appropriate time of year to identify species of concern and should include areas with both direct and indirect impacts. Impacts to special status species and sensitive natural communities found during surveys should be analyzed and specific mitigation would be required to reduce any impacts to less than significant.

Mitigation Measure 12 states that special status plant species surveys will be conducted "*prior to any construction or ground disturbance activities*"; however, the construction schedule proposed states construction will begin in the winter meaning the pre-construction focused surveys will be done in the fall outside of the appropriate blooming period. The Department strongly recommends that the surveys take place beginning this spring, prior to project approval, in order of the Lead Agency and Department to consider the adequacy of mitigation measures.

Mitigation Measure 20 section (a) states if special status species are found, a "*rare plant mitigation program will be prepared and implemented.*" This measure is not a feasible mitigation measure for the following reasons. First, the fencing of the special status species needs a buffer to prevent indirect impacts to the plant population and none is proposed and re-doing the grading and construction plans right before the start of construction to include the fencing seems highly unlikely. Secondly, the measures states if avoidance of special status species cannot occur and the population is removed, a rare plant mitigation program would be prepared and implemented. Because the CEQA

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document for this project is an MND, not an Environmental Impact Report, the plan should be prepared as part of the document and success criteria included in the plan prior to Project approval. Stating a plan will be prepared without success criteria is deferring the mitigation to a future date after the Project has been approved. Third, collecting seed of annual species and replanting them in suitable habitat on the property may not be appropriate depending on the species, site, and the level of disturbance. Solar arrays often change the drainage and sunlight patterns of areas making the area unusable for replanting. Therefore, it is important to know if special status species occur on the site, where they occur, how they can be avoided through redesign, and where there is appropriate habitat to mitigate onsite prior to approval of the Project. Finally, the Department generally considers salvage and relocation (translocation) to be an inappropriate way to compensate for permanent impacts to rare, threatened, endangered, and sensitive native plants (rare plants). Rare plant translocations for mitigation have a low success rate and the Department considers such efforts experimental, unless they have been demonstrated to be effective through long-term experimentation. Successful rare plant translocations require many years of habitat surveys, habitat modeling, site selection, seed collection, plant propagation, site preparation, monitoring, and remedial actions such as management of competing plants, supplemental watering, and supplemental planting. Success is not guaranteed, and even translocations that are initially successful may fail to persist over the long term.

Additionally, transplantation efforts do not replace intact ecosystems or maintain the entire range of genetic diversity at the impact site. The presence of rare plants often signifies the presence of biogeographically important sites with unusual soil, microclimate, or other conditions that are not easy to identify and difficult or impossible to duplicate. Loss of genetic material from rare plant translocation may also hinder introduced populations from withstanding changing environmental conditions over time. The most effective way to mitigate for permanent loss of rare plant habitat is therefore to protect and manage existing populations in their natural habitat.

#### Sensitive Natural Communities - Wetlands

The description of the Alkali Basins, Flats or Playas could be describing a wetland. The State Water Resources Control Board describes a wetland<sup>1</sup> as the following:

*An area is a wetland if: (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. The Procedures provide the same wetland delineation methods that are used by the Army Corps of Engineers.*

Waters of the State include more aquatic features than Waters of the U.S., which are defined by the federal government. The U.S. Fish and Wildlife Service's National Wetlands Inventory Map indicates the presence of Palustrine, Unconsolidated Shore,

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[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/wrapp/dredge\\_and\\_fill\\_draft\\_procedures\\_fact\\_sheet\\_022519\\_update.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/dredge_and_fill_draft_procedures_fact_sheet_022519_update.pdf)

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Temporarily Flooded (PUSA) occurring on the Project. The Department will consider these areas wetlands until the Project applicant can demonstrate otherwise with updated wetland surveys. The BA suggests that the consultants used data from old projects that occurred nearby to determine the playas were not wetlands. The Department could not find any recent wetland data sheets and will not accept data from a report that is decades old. The BA also states that the Project area does not have any of the features listed in the State wetlands definition; however, it appears that the areas show a presence of water and there is lack of vegetation. The alkali playa photo shown on the cover of the BA shows water was present by the cracking appearance of the soil and those same areas lack vegetation, which is two out of the three requirements under the State definition. The Department considers all wetlands sensitive, and the State has a “No Net Loss” wetland Policy<sup>2</sup>. Further, the BA states the impacts of the solar array are temporary and not permanent. The placement of the solar arrays are permanent impacts and should be discussed as such in the BA and the forthcoming environmental document. According to the BA, approximately 148 acres of alkali basin/flats/playas will be “temporarily” impacted. This is likely a permanent significant impact.

### CESA

Mitigation Measure 12 states if listed species are found (federal or state), all construction halts until corrective measures have been completed. The Department strongly encourages that surveys are conducted at the appropriate time of year when both plants and wildlife are more likely to be observed to prevent this finding from occurring during the construction period. An Incidental Take Permit would be necessary for state-listed species and Section 7 or 10 Consultation would need to be initiated with the U.S. Fish and Wildlife Service, both can be lengthy processes. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA Permit.

### Wildlife

Loggerhead shrikes, a California Species of Special Concern, were observed during the February 2021 survey. A major threat to this species is habitat loss both breeding and wintering grounds.

Pronghorn and mule deer, both game species utilize this area during the winter months which are critical for their survival. The BA states that pronghorn antelope were observed in February 2021. Impacts to wintering range should be discussed in the forthcoming environmental document.

### Nesting Bird Survey

Mitigation Measure 21 does not give a specific time for when pre-construction nesting bird

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<sup>2</sup> <https://fgc.ca.gov/About/Policies/Miscellaneous#Wetlands>

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surveys will take place. Our previous comments stated that surveys should be conducted no more than one (1) week prior to start of construction.

Mitigation Measure 22 states, "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..." It should state, "In accordance with the MBTA **and Fish and Game Code section 3503 and 3503.5**, if an active nest is observed..."

### Survey Results

All surveys should be conducted prior to approval of the Project and survey results should be submitted via email to [R1CEQARedding@wildlife.ca.gov](mailto:R1CEQARedding@wildlife.ca.gov). If any special-status species are found during surveys, the Department requests that CNDDDB forms be filled out online or sent to Sacramento and a copy of the form be emailed to the Regional office at the above address. Instructions for providing data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

### Mitigation

Avoidance and mitigation measures for impacts to special status species and sensitive habitats, if found, should be proposed in subsequent environmental review to avoid any significant effects the Project would have on the species or its habitat. Examples of mitigation measures for special status species and habitats include, but are not limited to, project modification to avoid the species and its habitat, enhancement of existing onsite habitat, offsite restoration or enhancement of habitat, or onsite/offsite preservation of habitat. Since appropriate botanical surveys were not conducted, it is unknown if those species are present, if they are impacted, or if the impact is significant to warrant mitigation.

If you have any questions, please contact Amy Henderson, Senior Environmental Scientist (Specialist), at (530) 598-7194, or by email at [Amy.Henderson@wildlife.ca.gov](mailto:Amy.Henderson@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Curt Babcock*  
974D273FEE784E2...

**Curt Babcock**

Habitat Conservation Program Manager

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