

**TECHNICAL MEMORANDUM**

DATE: June 6, 2023

TO: Robert Irwin

FROM: Jon Dauzvardis & Grant Gurnée

RE: Latigo Filing 9 – El Paso County Review - Response to Wildlife Comments

This Memorandum responds to the specific points raised in the Wildlife section of the objection comments presented to Robert Irwin of BRJM, LLC by El Paso County on June 5, 2023 regarding the Latigo Filing 9 site (Site).

I. Background

Ecosystem Services, LLC (Ecos or ecos) was retained by BRJM, LLC to perform a natural resource assessment for the proposed Latigo Trails (Project) and to prepare a Natural Features and Wetland Report (Report) pursuant to El Paso County Development Standards. Ecos prepared the Report dated October 21, 2021 covering Filings 9, 10, 11 and 13. BRJM, LLC submitted it to El Paso County (County) as part of the development review process. In addition to other required topics, the Report addressed Wildlife Communities, Federal Listed (wildlife) Species, Raptors and Migratory Birds, Summary of Potential Impacts and Regulations and Recommendations, including the Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA) and Bald & Golden Eagle Protection Act (BGEPA).

The stated purpose and intent of the “El Paso County Development Standards” section on Wildlife is: “To ensure that proposed development is reviewed in consideration of the impacts on wildlife and wildlife habitat, and to implement the provisions of the Master Plan.”

Key points of ecos’ Report are summarized below:

A. Wildlife Communities

- Looking at the Site in isolation, the Site currently provides poor to moderate habitat for wildlife. As such, ecos has determined that the wildlife impact potential for development of the Site is expected to be low.
- The Site provides no tree nesting habitat for raptors and no existing nest sites for any raptors were noted during our on-site assessment conducted on July 20, 2021.
- The COGCC Web GIS (COGCC, 2021) does not indicate the presence of any large raptor nests within a 6-mile radius of the Site.

B. Federal Listed Species

- A number of species that occur in El Paso County are listed as candidate, threatened or endangered by the USFWS under the ESA.
- Ecos compiled the Federally-listed species that may potentially occur in the general area of the Site based on the Site-specific, USFWS IPaC Trust Resources Report we ran for the Project and our onsite assessment.
- Ecos provided our professional opinion regarding the probability that these species may occur within the Site and their probability of being impacted by the Project. We concluded that the likelihood that the Project would impact any of the ESA listed species is very low to none. Most are not expected occur in the Project area or on the Site, nor will they be affected by the indirect effects of the project.

C. Raptors and Migratory Birds

- Raptors and most birds are protected by the Colorado Nongame Wildlife Regulations, as well as by the federal Migratory Bird Treaty Act (MBTA) and/or the Bald and Golden Eagle Protection Act (BGEPA).
- No raptor nests have been mapped within one mile of the Site (COGCC, 2021).
- No raptor nests were observed during the site visit.

D. Summary of Potential Impacts

Wildlife Communities - Wildlife species that utilize upland, riparian or wetland habitats benefit from well vegetated, non-weedy and unobstructed open space (private or dedicated). Implementation of a stormwater management plan will assist in protecting water quality in the drainages and wetlands and ameliorate development impacts on aquatic wildlife species. Many mixed-grass prairie specialist species avoid areas with buildings, overhead powerlines, fences and trees; thus, the Project is expected to have the most significant negative impact on these species and butterflies that utilize grassland. The following, additional recommendations are intended to reduce impacts to wildlife:

1. Preserve as much prairie as feasible either as dedicated or non-dedicated private open space.
2. Limit the use of herbicides pesticides with long residual half-lives, and fertilizers that can negatively impact aquatic wildlife species.
3. Minimize the installation of fencing that could block wildlife movement/travel corridors, injure or impact wildlife as outlined in CPW guidelines. When fencing is needed, use wildlife friendly fences and/or include specific wildlife crossings along fence lines. Pronghorn are of particular concern because they do not jump over fences and can be injured by barbed-wire fences when crawling under them.
4. Road crossings over the drainages should be designed to enable wildlife (small or large) underpass and allow use of the drainages as movement corridors to reduce collisions with vehicles.
5. Dogs should be kept in fenced pens or leashed when on walks. Unleashed, unsupervised dogs may also fall prey to coyotes. Small dogs may fall prey to raptors.
6. Cats should not be allowed outdoors as they are the number one predator of birds and native rodents. Cats may also be eaten by foxes and coyotes.

Federal Listed Species

- The Site is not located within any USFWS designated critical habitat or occupied habitat for federally designated threatened or endangered species. Therefore, based on the data available for this Report, no direct or indirect impacts to federally designated threatened or endangered species will occur from the implementation of the Project, including PMJM.
- While suitable habitat for PMJM may be present on Black Squirrel Creek located 2000 feet north of the Site, suitable habitat that would support the life requisites of PMJM does not exist on the Site.

Raptors and Migratory Birds

- The Project is expected to have minimal impacts on raptors and migratory birds.
- Preservation of mixed-grass prairie in open space areas (dedicated or private) and along the upland/riparian drainages will likely have a positive impact on the birds that use this habitat.
- The project is expected to have slight negative impact on mixed-grass prairie birds due to habitat alteration and increased disturbance by people, dogs, and cats.
- Negative impacts can be minimized by following the recommendations in the vegetation and wildlife sections.

E. Regulations and Recommendations

Endangered Species Act

- The Site is not located within any USFWS designated critical habitat or known occupied habitat for federally designated threatened or endangered species.
- Preble's meadow jumping mouse has been found in Black Squirrel Creek in the past, but no direct or indirect impacts to federally designated threatened or endangered species will occur from the implementation of the Project on this Site.

Migratory Bird Treaty Act & Bald and Golden Eagle Protection Act

- No raptor nests have been mapped within one mile of the Site (COGCC, 2021) and no migratory bird nests were observed within the Site during ecos' assessment.
- However, given the transitory nature of these species and there are many ground nesting birds that occupy grasslands, ecos recommends a nesting bird inventory immediately prior to construction to identify any nests within the Site or within the CPW recommended buffers of the Site.

II. Response to Wildlife Comments

A. Pronghorn

The comment letter correctly states that pronghorn are not currently listed as threatened or endangered under the ESA. Colorado Parks and Wildlife (CPW) manages hunting licenses to meet game management objectives for pronghorn. As of January 2023, CPW is seeking public input on how it intends to manage 11 pronghorn herds across the southeast region over the next 10 years. CPW says the management plans are critical because they are the basis for CPW's decisions on annual pronghorn hunting license sales. CPW relies on hunter harvest to manage pronghorn populations to meet population and sex ratio objectives.

Cumulative impacts to obligate species, like pronghorn antelope, ferruginous hawk, prairie falcon, meadow lark, jackrabbit, kit fox and other species that solely utilize broad-scale prairie/grassland landscapes in the region will be high as the region continues to develop. All development within the plains of eastern Colorado impact pronghorn habitat, and as such this is a larger issue that cannot be assigned or scrutinized at a micro-level for one Project or residential home (including that of the commentor or BRJM, LLC). This is a larger management issue for Colorado Parks and Wildlife, El Paso County and the voters of Colorado to address if protective legislation is desired.

B. Preble's Meadow Jumping Mouse

Preble's Meadow Jumping Mouse (PMJM) is a listed, threatened species under the ESA. Ecos determined in their Report that the likelihood that the Project would impact any of the species listed under the ESA is very low to none, including the PMJM. The commentor is incorrect in stating that the PMJM, "...resides in the area under consideration for development...". Suitable habitat does not exist on the Site to support the life requisites of the species. Therefore, there is no threat to this species from the proposed development of this Site. Furthermore, no potentially occupied habitat designated by CPW or Critical Habitat designated by USFWS exists on this Site.

C. Bald Eagle

The commentor states that, "A bald eagle resides in the area of developmental consideration." A location point for said Bald Eagle nest site was not provided. Several photos are provided but none of them prove the presence of a nesting Bald Eagle within the area of developmental consideration. Ecos utilized the COGCC Web GIS data to update the known locations of Bald Eagle in proximity to the Site and it indicates that the closest known nest sites are located 17.70-miles to the northeast and 18.42-miles to the southwest (refer to the attached COGCC Map).

The commentor correctly states that Bald Eagles "...are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act." and "they are part of the State of Colorado Threatened and Endangered List." The commentor also lists the definition of "take" under the BGEPA. However, in the absence of verified data regarding the location of the nest of said Bald Eagle, and verification that said nest is currently occupied by adults or chicks, these regulations do not affect the proposed development of the Site. The commentor also misconstrues the term "disturb" in the context of the BGEPA. Disturb refers to disturbance of adults, chicks or eggs, not disturbance of an entire landscape. Furthermore, given that these comments were submitted a day before the Board of County Commissioners meeting, the commentor did not give BRJM, LLC or their ecological consultant any opportunity to review the proposed location of a potential, new Bald Eagle nest within in the area of developmental consideration.

D. Wildlife Regulatory Programs

The commentor states, "The Impact Identification Report (Impact Identification Report Summary of Impacts Latigo Trails Filling No. 9 Development) submitted by the developers does not address the negative impacts or any mitigation attempts taken to protect the animals on the Colorado State Threatened and Endangered Act, the Endangered Species Act, or the BGEPA. These include the bald eagle and the Preble's meadow jumping mouse. Further development could cause irreparable harm to the local eagle population and could cause displacement of these federally protected birds." Ecos will address each of these items separately below:

Impact Identification Report (Impact Identification Report Summary of Impacts Latigo Trails Filling No. 9 Development)

The report that ecos referenced above (i.e., Natural Features and Wetland Report dated October 21, 2021 is the final Report submitted to the County). It appears that the commentor is gaining their information from a preliminary summary, not the final formal submittal of the Natural Features and Wetland Report.

Colorado State Threatened and Endangered Act (actually Nongame, Endangered, or Threatened Species Conservation Act)

Ecos Report covers all species of concern that are listed for the Site, and the listed species addressed under the ESA for this Site are repetitive of those under the Colorado Act, as exemplified by the commentors own information. There are no gaps in data review or reporting for potential listed species of concern for this Site.

Endangered Species Act (ESA)

The commentors assertion that the ESA is not addressed in ecos Report is incorrect. Please refer to the Report and to the summary of key points of ecos' Report in Section I above. This error is likely due to the fact that the commentor is gaining their information from a preliminary summary, not the final formal submittal of the Natural Features and Wetland Report.

Bald & Golden Eagle Protection Act (BGEPA)

The commentors assertion that the BGEPA is not addressed in ecos Report is incorrect. Please refer to the Report and to the summary of key points of ecos' Report in Section I above. This error is likely due to the fact that the commentor is gaining their information from a preliminary summary, not the final formal submittal of the Natural Features and Wetland Report.

E. Habitat Conservation Plan

The commentor incorrectly states that a Habitat Conservation Plan (HCP) is required for this Site. An assessment report under the BGEPA would only be required if an occupied Bald Eagle nest were verified within 1/2-mile of the Site. Ecos performed the fieldwork in 2021 and did not locate any nests in proximity to the Site. The presence of an occupied Bald Eagle nest is an unfounded assertion by the commentor that has not been verified with evidence.

If, and only if, ESA listed species were found to be present, an HCP would not be the correct document under the ESA. Given the presence of wetland habitat and the coordination with the U.S. Army Corps of Engineers under the Clean Water Act, the appropriate document under Section 7 of the ESA would be a Biological Assessment (BA), which the ecos Report fulfills. If required (which it is not), the USFWS would review the BA and issue a Biological Opinion (BO) to concur with the BA or request further information. The Natural Features and Wetland Report will be sent to the USFWS at the appropriate time in the planning process to obtain concurrence with its findings under the ESA.

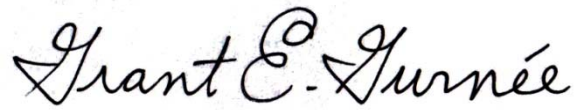
Ecos is available to address any further comments or concerns that the Board of County Commissioners deems appropriate.

Sincerely,

Ecosystem Services, LLC

A handwritten signature in black ink, appearing to read "Jon Dauzvardis". The signature is fluid and cursive, with a prominent initial "J".

Jon Dauzvardis, P.W.S.
Owner - Restoration Ecologist

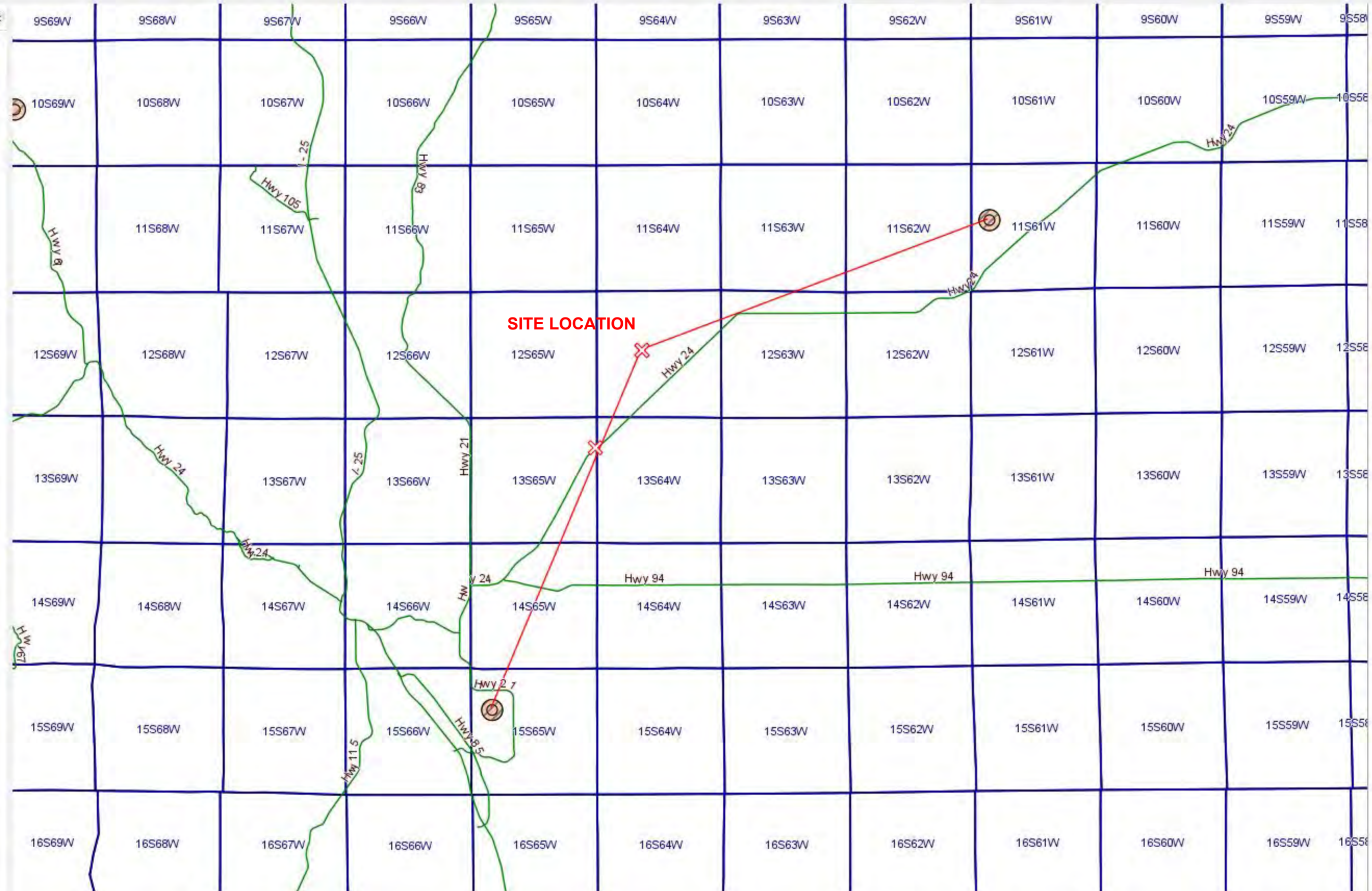
A handwritten signature in black ink, appearing to read "Grant E. Gurnée". The signature is elegant and cursive, with a prominent initial "G".

Grant E. Gurnée, P.W.S.
Owner - Restoration Ecologist



Layers

- Points
- Measure
- Wells
 - Well (API Spot)
 - Underground Injection Control (UIC)
- Locations
 - Pending Well (Form 2) Permit
 - Approved Well (Form 2) Permit
 - Pending Location (Form 2A) Permit
 - Approved Location (Form 2A) Permit
- Facilities
 - Directional Wellbores
 - Flowlines Fluid Type (APPROVED)
 - Flowlines (APPROVED)
- COGCC
 - Staff Contacts (Mouseover For Flyout)
 - Environmental
 - Oil & Gas Fields
 - Orders
 - Projects Rulison & Rio Blanco
 - Rules
 - Seismic Permits
 - Orphaned Well Program
 - Other Projects
- Historic Wells
- Roads & Railroads (CDOT)
- Water Resources (DWR & CDPHE)
- Floodplains (FEMA)
- Environmental Sites
- Air Quality (CDPHE)
- Section, Township, & Range (PLSS)
- Local Government Designees (LGDs)
- Parks & Wildlife (CPW)
- State Land (SLB)
- Tribal Lands
- Federal Land (BLM)
- Surface Features
 - Places
 - Airports
 - School Districts
 - Surface Owner
 - Cities
 - Counties
- Soil Survey (NRCS)
- Mining
- Geology
- Topography



Measure Distance

Click a start and end point.

Measure units:

Miles

Segment: 94028.03 (Feet)

Segment: 17.81 (Miles)

Total: 191860.63 (Feet)

Total: 36.34 (Miles)

- To measure multiple distances, continue clicking new points.
- To finish, click "Stop".
- For reference, feet are always displayed above selected unit of measurement.
- You can pan or zoom and continue measuring by clicking "Resume".
- To start over, click "Clear".

Clear Resume