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GAVIN NEWSOM, Governor
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Governor’s Office of Planning & Research

Oct 13 2021

STATE CLEARINGHOUSE

October 13, 2021

Matthew Sundt
Community Development Director
City of Gonzales
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147 Fourth Street
Monterey, California 93926
msundt@ci.gonzales.ca.us

**Subject: Vista Lucia (Project)
Notice of Preparation
State Clearinghouse Number 2020039056**

Dear Mr. Sundt:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the City of Gonzales for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include section 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515, respectively. CDFW prohibits and cannot authorize take of any fully protected species.

PROJECT DESCRIPTION SUMMARY

Proponent: Cielo Grande Ranch LLC c/o Pembroke Development

Objective: The objective of the Project is to annex and pre-zone the Project into the City of Gonzales for future development of urban communities. The primary development that will take place is neighborhood commercial uses, schools, parks, pedestrian and bicycle trails, and open space for agricultural buffers. Road improvements will also take place (widening existing roads, new roads, and the highway interchange).

Location: The annexation (Project Area) is on the east side of the City of Gonzales. The Project Area is approximately 768 acres and is situated between Fanoe Road, Associated Lane, Iverson Road, and Johnson Creek Road. Current land use consists

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primarily of actively farmed agricultural land. The following Assessor's Parcel Numbers (APNs) comprise the Project Area: 223-032-024, 223-032-026, 223-032-027.

Timeframe: Nonspecific for when the Project will take place. The specific plan provides guidance for how the Project Area will be developed over an assumed 20-year time frame.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City of Gonzales in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The Project Area and the surrounding landscape contain a variety of resources that wildlife may use or inhabit. Currently the land is in active agricultural production and contains agricultural support structures, irrigation ditches, ponds, and unimproved roadways. These features have the potential to support sensitive biological resources. CDFW therefore recommends that the Project Area be evaluated for sensitive biological resources prior to any approvals that would allow ground-disturbing activities or land use changes. Specifically, CDFW is concerned regarding the potential for future ground-disturbing activities to impact special-status species including, but not limited to: the State fully protected white-tailed kite (*Elanus leucurus*), the State species of special concern burrowing owl (*Athene cunicularia*) and American badger (*Taxidea taxus*), and special-status plant species including the California Rare Plant Ranked (CRPR) 1B.1 Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*). In order to adequately assess any potential impacts to biological resources, CDFW recommends that focused biological surveys be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project Area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts to species protected under CESA and other species of concern.

The specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation, when an Environmental Impact Report (EIR) is prepared. The CEQA document must provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels.

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I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: White-tailed kite

Issue: State fully protected white-tailed kites have the potential to nest and/or forage in the vicinity of the Project Area (CDFW 2021). Without appropriate mitigation measures, Project activities conducted within occupied territories have the potential to significantly impact this species.

Specific Impacts: Potentially significant impacts that may result from Project activities include nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

Evidence impact would be significant: The Project will involve noise, groundwork, and movement of workers that may occur directly adjacent to large trees and other features with potential to serve as nest sites. Therefore, the Project has the potential to significantly impact white-tailed kite.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to white-tailed kite, CDFW recommends conducting the following evaluation of the Project area, incorporating the following mitigation measures into the CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: White-Tailed Kite Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its vicinity (i.e., within ½ mile) contains suitable habitat for white-tailed kite .

Recommended Mitigation Measure 2: White-Tailed Kite Surveys

CDFW recommends that focused surveys be conducted by experienced biologists within the Project Area prior to Project implementation. To avoid impacts to these species, CDFW recommends conducting these surveys in accordance with protocols developed by CDFW (CDFG 2010). If Project activities are to take place during the typical bird breeding season of February 1 through September 15, CDFW

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recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project activity.

Recommended Mitigation Measure 3: White-Tailed Kite Avoidance

In the event white-tailed kite is detected within ½ mile of the Project Area, implementation of avoidance measures is warranted. CDFW recommends that a qualified wildlife biologist be on-site during all Project-related activities and that a ½-mile no-disturbance buffer be implemented. If the ½-mile no-disturbance buffer cannot feasibly be implemented, contacting CDFW for assistance with additional avoidance measures is recommended. Fully addressing potential impacts to white-tailed kite and requiring measurable and enforceable mitigation in the CEQA document is recommended.

COMMENT 2: Burrowing Owl (BUOW)

Issue: BUOW may occur near the Project area (CDFW 2021). BUOW inhabit open grassland or adjacent canal banks, rights-of-way (ROWs), vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery indicates that some of the Project Area is bordered by fallowed agricultural fields and earthen irrigation ditches, and therefore BUOW may be present within the Project Area.

Specific impact: Potentially significant direct impacts associated with subsequent ground-disturbing activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW (Gervais et al. 2008). Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project Area, incorporating the following mitigation measures into the CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

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Recommended Mitigation Measure 4: BUOW Surveys

CDFW recommends that a qualified biologist assess if suitable BUOW habitat features are present within or adjacent to the Project Area (e.g., burrows). If suitable habitat features are present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season of April 15 to July 15, when BUOW are most detectable.

Recommended Mitigation Measure 5: BUOW Avoidance

CDFW recommends that no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 6: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a

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ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

COMMENT 3: American Badger

Issue: American badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et al. 1990). The Project Area may support these requisite habitat features. Therefore, the Project has the potential to impact American badger.

Specific impact: Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include direct mortality or natal den abandonment, which may result in reduced health or vigor of young.

Evidence impact is potentially significant: Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project has the expectation to promote the growth of the City of Gonzales, resulting in a high degree of land conversion and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of American badger.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to American badger associated with the Project, CDFW recommends conducting the following evaluation of the Project sites, incorporating the following mitigation measures into the CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 7: American Badger Surveys

CDFW recommends that a qualified biologist assess if suitable American badger habitat features are present within or adjacent to the Project Area (e.g., dens, friable soils, rodent populations). If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

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Recommended Mitigation Measure 8: American Badger Avoidance

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around occupied dens and a 250-foot no-disturbance buffer around natal dens or potential natal dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

COMMENT 4: Special-Status Plant Species

Issue: The Project area may contain habitat suitable to support special-status plant species meeting the definition of rare or endangered under CEQA Guidelines section 15380 including, but not limited to, the California Rare Plant Ranked (CRPR) 1B.1 Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*). Congdon's tarplant has been observed throughout the Salinas Valley, and within the vicinity of the Project Area (CDFW 2021). Congdon's tarplant is severely threatened by development (CNPS 2021). Therefore, the Project has the potential to impact special-status plants.

Specific impact: Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include inability to reproduce and direct mortality.

Evidence impact would be significant: Special-status plant species known to occur in the vicinity of the Project Area are threatened by development activities and associated impacts including introduction of non-native plant species (CNPS 2021).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plant species associated with the Project, CDFW recommends conducting the following evaluation of the Project Area, incorporating the following mitigation measures into the CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 9: Special-Status Plant Surveys

CDFW recommends that a qualified botanist assess if habitat suitable to support Congdon's tarplant (i.e., grassland) or other special-status plant species is present within or adjacent to the Project area. If suitable habitat is present, CDFW recommends that the Project Area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes the identification

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of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Recommended Mitigation Measure 10: Special-Status Plant Avoidance

CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 11: State-listed Plant Take Authorization

If a plant species listed pursuant to CESA or State designated as rare is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section 2081, subdivision (b) for State-listed threatened or endangered plants or pursuant to the Native Plant Protection Act and Fish and Game Code section 1900 et seq. for State designated rare plants.

II. Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project implementation occur outside the bird nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project Area to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting

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from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

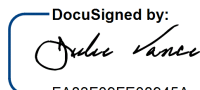
CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Gonzales in identifying and mitigating Project impacts on biological resources.

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More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table, which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist, at Aimee.Braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachments

A. MMMRP for CDFW Recommended Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Jeff Cann, CDFW

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REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Game (CDFG). 2010. Bald Eagle Breeding Survey Instructions. California Department of Fish and Game, April 2010.
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.
- California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.
- CDFW. 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed September 21, 2021.
- California Native Plant Society (CNPS), Rare Plant Program. 2021. Inventory of Rare and Endangered Plants of California (online edition, v9-01 1.0). Website <http://www.rareplants.cnps.org>
- Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.
- Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne. 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.
- Zeiner, D. C., W. F. Laudenslayer, Jr, K. E. Mayer, and M. White. 1990. California's Wildlife Volume I-III. California Department of Fish and Game, editor. Sacramento, CA, USA.

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
 (MMRP)**

PROJECT: Vista Lucia

SCH No.: 2020039056

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: White-Tailed Kite Habitat Assessment	
Mitigation Measure 2: White-Tailed Kite Surveys	
Mitigation Measure 4: BUOW Surveys	
Mitigation Measure 6: BUOW Passive Relocation and Mitigation	
Mitigation Measure 7: American Badger Surveys	
Mitigation Measure 9: Special-Status Plant Surveys	
Mitigation Measure 11: State-listed Plant Take Authorization	
<i>During Construction</i>	
Mitigation Measure 3: White-Tailed Kite Avoidance	
Mitigation Measure 5: BUOW Avoidance	
Mitigation Measure 8: American Badger Avoidance	
Mitigation Measure 10: Special-Status Plant Avoidance	