

TO: PLANNING COMMISSION

**FROM: LISA ANDERSON-OGILVIE, AICP, DEPUTY COMMUNITY DEVELOPMENT
DIRECTOR AND PLANNING ADMINISTRATOR**

DATE: FEBRUARY 27, 2024

**SUBJECT: SUPPLEMENTAL STAFF REPORT FOR COMPREHENSIVE PLAN CHANGE / ZONE
CHANGE CASE NO. 23-02; 5465 TURNER ROAD SE (AMANDA APPLICATION NO.
22-124542-PLN)**

BACKGROUND

On November 21, 2023, the Planning Commission opened the public hearing for consolidated Comprehensive Plan Map Amendment and Zone Change Case No. 23-02. The Planning Commission did not receive testimony and made a motion to continue the public hearing to December 19, 2023.

On December 19, 2023, the applicant requested the Planning Commission continue the public hearing to January 9, 2024. The Planning Commission did not receive testimony and made a motion to continue the public hearing to January 9, 2024.

On January 9, 2024, the applicant requested the Planning Commission continue the public hearing to February 27, 2024. The Planning Commission did not receive testimony and made a motion to continue the public hearing to February 27, 2024.

SUPPLEMENTAL INFORMATION

1. Additional Findings

Staff issued two staff reports, one on [November 21, 2023](#), and the other on [January 9, 2024](#). Findings provided in both reports address the relevant decision criteria for the Comprehensive Plan Amendment and Zone Change. Staff has been concerned about protecting Mill Creek, the abutting Riparian Area, and floodplain capacity in the area of Mill Creek. As detailed in the November 21, 2023, staff report and further explained in the supplemental report of January 9, 2024, a larger Riparian Buffer than 50-feet would be consistent with upcoming FEMA regulations and potentially the City of Salem Goal 5 inventory. Since neither of those have been adopted, the applicant contests that applying a Condition of Approval for a Riparian buffer beyond what is outlined in Salem Revised Code (SRC) is not appropriate. In addition, the applicant provided testimony related to the proposed condition of approval establishing 120-foot Riparian Area which would be restricted development.

The concerns raised by the applicant prompted Staff to address the concerns of the Industrial zones (IC and IG zones) with a condition to restrict uses on the subject property. The findings related to the protection of Mill Creek, the abutting Riparian Area, and floodplain capacity in the area of Mill Creek are still relevant but take a different approach to provide as much protection as possible in a manner that is more legally defensible.

After the supplemental staff report was issued, the applicant requested to meet in order to try to accommodate their vision and provide adequate protections for Mill Creek. The applicant and City Staff discussed the proposed conditions of approval, identified below, to address the applicable decision criteria.

2. Federal Endangered Species

Protection of species listed under the Federal Endangered Species Act (ESA) apply everywhere those species occur. Upon visiting the property, City Natural Resources Planners noted suitable habitat for streaked-horned lark (*Eremophila alpestris strigata*), which is a bird species listed as Threatened under the ESA that is known to nest in agricultural fields such as are found on the site. After completing the site visit, Staff reviewed an IPaC (Information for Planning and Consultation) report (**Attachment A**) through the US Fish and Wildlife Service website to determine if there were any other protected species with a likelihood to occur on the property that we had not previously considered, and the report did reveal multiple additional species. As part of future development, a qualified biologist should be contracted to survey the site for these species, and if any are found on the property, a US Fish and Wildlife Service consultation will be required before development can occur.

As part of this report, staff is providing the information to ensure the applicant is aware that prior to ground disturbing activity, the applicant shall provide evidence of biological survey(s) and completed consultation with the US Fish and Wildlife Service if survey(s) indicate presence of species listed under the Federal Endangered Species Act.

3. Clarification on Recommended Conditions of Approval

Revised conditions of approval below are the outcome of meetings with the applicant to meet the concerns of both City Staff and the applicant:

Condition 1: Prior to ground disturbing activity, the applicant shall provide evidence of completed consultation with the Oregon SHPO and the Tribes and demonstrated compliance with SRC 230.105, Preservation of Archaeological Resources.

This condition was addressed in the Supplemental Staff Report, dated January 9, 2024. No changes are proposed to this condition.

Condition 2: Prior to issuance of any development permits, provide a certification by a registered professional civil engineer demonstrating through hydrologic and hydraulic analysis, that the proposed development shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge or one-percent annual chance flood, pursuant to SRC Chapter 601.

Small Revision to this Condition to clarify the standard for the hydraulic analysis.

Condition 3: A wetland delineation with Oregon Department of State Lands (DSL) concurrence shall be submitted to the City prior to issuance of any development permits.

No Revision to this Condition is recommended by staff.

Condition 4: Prior to issuance of any development permits, the applicant shall establish and identify a Riparian Corridor along Mill Creek of 120-feet from the top of bank within the IG and IC zones and 50-feet from the top of bank for the remainder of the property.

Staff reviewed the applicant's testimony and determined that mitigation of the proposal's impact on natural resources could be achieved with the restricted uses listed in Condition 1 and a 50-foot riparian corridor instead of a 120-foot buffer. The applicant expressed concerns about the restricted uses, and discussions led to proposing the above condition.

The use restrictions were proposed to protect land zoned General Industrial and Industrial Commercial. Therefore, the proposed 120-foot riparian area associated with those zoning districts seemed logical and is supported by the City of Salem's Natural Resources Staff.

The remainder of the property adjacent to the creek, zoned MU-III, would also establish a 50-foot riparian area, subject to the same development restrictions as the western portion. This area contains steep elevations that create separation from the riparian area and has been impacted by development and utilities along the bank of Mill Creek.

Condition 5: Pursuant to SRC 800.065(a)(4), at the time of future development, dedicate or create a public access easement, along the alignment of the planned shared use path shown in the Park System Master Plan. Construction of trails and paths shall be consistent with the Park System Master Plan.

Added Condition to provided transparency of code requirements that will be triggered with future development for required paths and the construction design, which will need to meet the Parks System Master Plan. This condition is consistent with Goal 5.

Condition 6: No development activity is permitted in the Riparian Area established in Condition 4, except for the following, when they are designed and constructed to minimize impact on the riparian area:

- Restoration, as defined in SRC Chapter 808;
- Land divisions and reconfigurations;
- Paved or unpaved Pedestrian Pathway as defined by SRC 111, with associated Stormwater facilities, if required by Public Works Design Standards and SRC Chapter 71;
- Existing utilities to be repaired and replaced;
- Stormwater outfalls and associated pipes designed and constructed to Public Works Design Standards;
- In the IG zoned portion of the Riparian Area, stormwater facilities, designed and constructed to Public Works Design Standards;
- One driveway approach, approved by a Class 2 Driveway Approach Permit, which must be located within 50-feet of the northern property line connecting to Turner Road;
- One new Public or Private Street (bridge) crossing Mill Creek meeting the standards of SRC 803, including utilities to serve western portion of property; and
- Modification and/or Replacement of the existing bridge.
- Additional bridge(s) or development may be requested through a Variance application pursuant to SRC 265.020(b).

The condition restricts all development within the Riparian Area as identified in Condition 4. There is a list of exceptions to provide flexibility for development activities that are permitted under Goal 5, such as bridges, pedestrian pathways, restoration, and land divisions, provided they are “designed and constructed to minimize impact on the riparian area.”

Staff thought it was reasonable to provide an exemption for a driveway accessing Turner Road to the north. Without the exception, the northern section of the property would be land locked and have no opportunity for access with the proposed 120-foot Riparian Area. The condition requires it to be as far north as possible while still meeting City design standards.

In addition, Staff thought replacement of the existing bridge and replacement/repair of existing utilities were a reasonable exemption since the area has already been impacted and would have to meet other State and Federal Regulations for reconstruction.

All development would be evaluated at the time of development by City Natural Resources staff to ensure the development is designed and constructed to minimize impact on the riparian area.

Condition 7: Removal of trees and native vegetation is prohibited within the established Riparian Corridor along Mill Creek, established by Condition 4, without an approved Tree Removal Permit under SRC 808.

The condition is to make clear that the identified Riparian Area would protect trees and native vegetation. The City of Salem tree code protects native vegetation and trees within a current 50-foot Riparian Corridor. The condition is to ensure the applicant has the ability to apply for the same process for the greater Riparian Corridor. The intent is to preserve native vegetation and trees within the recommended 120-foot buffer. A Tree Removal Permit could be obtained if criteria are met.

Condition 8: The transportation impacts from the 390.5-acre site shall be limited to a maximum cumulative total of 1,890 PM peak hour and/or 18,820 daily trips.

No Revision to this Condition is recommended by staff.

RECOMMENDATION:

Staff recommends that the Planning Commission adopt the facts and findings of the staff report and **APPROVE** the following actions for the subject property that is approximately 400 acres in size and located at 5465 Turner Rd SE (Marion County Assessor's Map and Tax Lot Numbers: 082W17 / 400):

- A. APPROVE Minor Comprehensive Plan Map Amendment from "Community Service - Government" to "Single Family Residential", "Industrial Commercial", "Industrial" and "Mixed Use"; and
- B. APPROVE Zone Change from PS (Public Service) to RS (Single Family Residential), MU-III (Mixed Use – III), IC (Industrial Commercial) and IG (General Industrial) subject to the following **revised** conditions of approval:

Condition 1: Prior to ground disturbing activity, the applicant shall provide evidence of completed consultation with the Oregon SHPO and the Tribes and demonstrate compliance with SRC 230.105, Preservation of Archaeological Resources.

Condition 2: Prior to issuance of any development permits, provide a certification by a registered professional civil engineer demonstrating through hydrologic and hydraulic analysis, that the proposed development shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge or one-percent annual chance flood, pursuant to SRC Chapter 601.

Condition 3: A wetland delineation with Oregon Department of State Lands (DSL) concurrence shall be submitted to the City prior to issuance of any development permits.

Condition 4: Prior to issuance of any development permits, the applicant shall establish and identify a Riparian Area of 120-feet from the top of bank within the IG and IC zones and 50-feet from the top of bank for the remainder of the property.

- Condition 5:** Pursuant to SRC 800.065(a)(4), at the time of future development, dedicate or create a public access easement, along the alignment of the planned shared use path shown in the Park System Master Plan. Any private construction of trails and paths shall be consistent with the Park System Master Plan.
- Condition 6:** No development activity is permitted in the Riparian Area established in Condition 4, except for the following, when they are designed and constructed to minimize impact on the riparian area:
- Restoration, as defined in SRC Chapter 808;
 - Land divisions and reconfigurations;
 - Paved or unpaved Pedestrian Pathway as defined by SRC 111, with associated Stormwater facilities, if required by Public Works Design Standards and SRC Chapter 71;
 - Existing utilities to be repaired and replaced;
 - Stormwater outfalls and associated pipes designed and constructed to Public Works Design Standard;
 - In the IG zoned portion of the Riparian Area, stormwater facilities, designed and constructed to Public Works Design Standard;
 - One driveway approach, approved by a Class 2 Driveway Approach Permit, which must be located within 50-feet of the northern property line connecting to Turner Road;
 - One new Public or Private Street (bridge) crossing Mill Creek meeting the standards of SRC 803, including utilities to serve western portion of property; and
 - Modification and/or Replacement of the existing bridge.
Additional bridge(s) or development may be requested through a Variance application pursuant to SRC 265.020(b).
- Condition 7:** Removal of trees and native vegetation is prohibited within the established Riparian Area along Mill Creek, established by Condition 4, without an approved Tree Removal Permit under SRC 808.
- Condition 8:** The transportation impacts from the 390.5-acre site shall be limited to a maximum cumulative total of 1,890 PM peak hour and/or 18,820 daily trips.

Attachments:

- A. US Fish and Wildlife IPaC Report

Prepared by Olivia Dias, Current Planning Manager

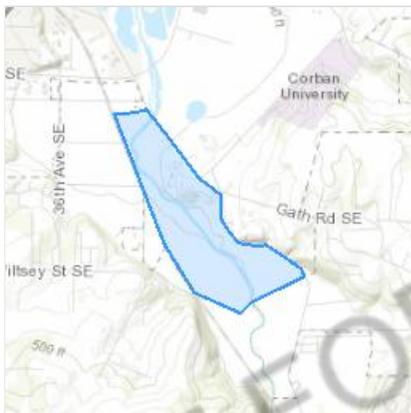
IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Marion County, Oregon



Local office

Oregon Fish And Wildlife Office

☎ (503) 231-6179

📅 (503) 231-6195

2600 Southeast 98th Avenue, Suite 100
Portland, OR 97266-1398

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species¹ and their critical habitats are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries²).

Species and critical habitats under the sole responsibility of NOAA Fisheries are **not** shown on this list. Please contact [NOAA Fisheries](#) for [species under their jurisdiction](#).

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information. IPaC only shows species that are regulated by USFWS (see FAQ).
2. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

Birds

NAME	STATUS
Northern Spotted Owl <i>Strix occidentalis caurina</i> Wherever found There is final critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/1123	Threatened
Streaked Horned Lark <i>Eremophila alpestris strigata</i> Wherever found There is final critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/7268	Threatened

Reptiles

NAME	STATUS
Northwestern Pond Turtle <i>Actinemys marmorata</i> Wherever found No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/1111	Proposed Threatened

Insects

NAME	STATUS
Fender's Blue Butterfly <i>Icaricia icarioides fenderi</i> Wherever found There is final critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/6659	Threatened
Monarch Butterfly <i>Danaus plexippus</i> Wherever found No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/9743	Candidate

Flowering Plants

NAME	STATUS
Kincaid's Lupine <i>Lupinus sulphureus</i> ssp. <i>kincaidii</i> Wherever found There is final critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/3747	Threatened
Willamette Daisy <i>Erigeron decumbens</i> Wherever found There is final critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/6270	Endangered

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

There are no critical habitats at this location.

You are still required to determine if your project(s) may have effects on all above listed species.

Bald & Golden Eagles

Bald and golden eagles are protected under the Bald and Golden Eagle Protection Act¹ and the Migratory Bird Treaty Act².

Any person or organization who plans or conducts activities that may result in impacts to bald or golden eagles, or their habitats³, should follow appropriate regulations and consider implementing appropriate conservation measures, as described in the links below. Specifically, please review the "[Supplemental Information on Migratory Birds and Eagles](#)".

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

There are bald and/or golden eagles in your project area.

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.

NAME

BREEDING SEASON

Bald Eagle *Haliaeetus leucocephalus*

Breeds Jan 1 to Sep 30

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.
<https://ecos.fws.gov/ecp/species/1626>

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read "[Supplemental Information on Migratory Birds and Eagles](#)", specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.

3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

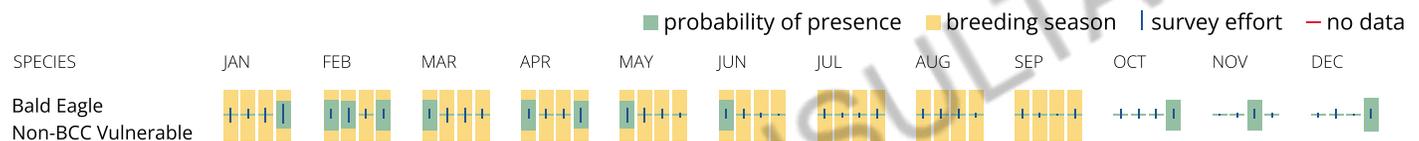
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.



What does IPaC use to generate the potential presence of bald and golden eagles in my specified location?

The potential for eagle presence is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply). To see a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs of bald and golden eagles in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to obtain a permit to avoid violating the [Eagle Act](#) should such impacts occur. Please contact your local Fish and Wildlife Service Field Office if you have questions.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats³ should follow appropriate regulations and consider implementing appropriate conservation measures, as described in the links below. Specifically, please review the ["Supplemental Information on Migratory Birds and Eagles"](#).

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
<p>Bald Eagle <i>Haliaeetus leucocephalus</i></p> <p>This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p> <p>https://ecos.fws.gov/ecp/species/1626</p>	Breeds Jan 1 to Sep 30
<p>Evening Grosbeak <i>Coccothraustes vespertinus</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds May 15 to Aug 10
<p>Lesser Yellowlegs <i>Tringa flavipes</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p> <p>https://ecos.fws.gov/ecp/species/9679</p>	Breeds elsewhere
<p>Rufous Hummingbird <i>selasphorus rufus</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p> <p>https://ecos.fws.gov/ecp/species/8002</p>	Breeds Apr 15 to Jul 15

Evening Grosbeak BCC Rangewide (CON)	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++
Lesser Yellowlegs BCC Rangewide (CON)	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++
Rufous Hummingbird BCC Rangewide (CON)	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++
Western Grebe BCC Rangewide (CON)	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++	+++++

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern \(BCC\)](#) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

Facilities

National Wildlife Refuge lands

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

There are no refuge lands at this location.

Fish hatcheries

There are no fish hatcheries at this location.

Wetlands in the National Wetlands Inventory (NWI)

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

This location overlaps the following wetlands:

FRESHWATER EMERGENT WETLAND

[PEM1C](#)

[PEM1Cx](#)

FRESHWATER FORESTED/SHRUB WETLAND

[PSSC](#)

RIVERINE

[R2UBH](#)

[R5UBFx](#)

A full description for each wetland code can be found at the [National Wetlands Inventory website](#)

NOTE: This initial screening does **not** replace an on-site delineation to determine whether wetlands occur. Additional information on the NWI data is provided below.

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate Federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.