

**Subject:** FW: [EXTERNAL] Eagle Rising Habitat Assessment  
**Date:** Tuesday, October 11, 2022 at 3:48:52 PM Mountain Daylight Time  
**From:** Ron Beane <rbeane@erresources.com>  
**To:** chipita1@comcast.net <chipita1@comcast.net>  
**CC:** Courtney Marne <cmarne@erresources.com>  
**Attachments:** winmail.dat

Dave,

Fish and Wildlife Concurs that there are no endangered species concerns for Eagle's Rising. This is a little more informal than usual. Let me know if the County needs something more official?

Ron

From: Lunz, Kate S <kathleen\_lunz@fws.gov> On Behalf Of ColoradoES, FW6  
Sent: Tuesday, October 11, 2022 3:45 PM  
To: Ron Beane <rbeane@erresources.com>  
Subject: RE: [EXTERNAL] Eagle Rising Habitat Assessment

CAUTION This email originated from outside our organization. Do not click links or open attachments unless you recognize the sender and verify the email address matches their name.

Dear Mr. Beane,

Thank you for contacting the U.S. Fish and Wildlife Service (Service). The Service has reviewed your project and has no concerns with this project resulting in impacts to species listed as candidate, proposed, threatened, or endangered. We appreciate your efforts to ensure the conservation of threatened and endangered species. Thank you for contacting us and please let me know if you have any further questions.

Project Number: 2022-0003308

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Kate Lunz, Ph.D. (she/her)  
Fish and Wildlife Biologist / Preble's Lead  
Colorado Ecological Services Office  
134 Union Blvd  
Lakewood, CO 80228  
(303) 236-4752

From: Ron Beane <rbeane@erresources.com<mailto:rbeane@erresources.com>>  
Sent: Tuesday, October 11, 2022 2:40 PM  
To: ColoradoES, FW6 <ColoradoES@fws.gov<mailto:ColoradoES@fws.gov>>  
Cc: Ellwood, Leslie <leslie\_ellwood@fws.gov<mailto:leslie\_ellwood@fws.gov>>; Lunz, Kate S <kathleen\_lunz@fws.gov<mailto:kathleen\_lunz@fws.gov>>  
Subject: [EXTERNAL] Eagle Rising Habitat Assessment

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Please find an endangered species habitat assessment attached. This area is south of the Black Forest in El Paso County. Preble's meadow jumping mouse does not come up in IPaC as a concern, but the county needs a concurrence letter from the Service.

Thank you

Ron

Ron Beane  
Senior Wildlife Biologist/Principal

ERO Resources Corporation  
303.830.1188 O | [rbeane@eroresources.com](mailto:rbeane@eroresources.com)<mailto:rbeane@eroresources.com>  
DBE Update: ERO is now certified as a Minority/Women Business Enterprise (M/WBE) and Small Business Entity (SBE) by the state of Colorado, and federally as a Women-Owned Small Business (WOSB) by the U.S. Small Business Administration.

October 10, 2022

Ms. Liisa Niva  
U.S. Fish and Wildlife Service  
Eastern Colorado Field Supervisor  
134 Union Blvd.  
Lakewood, CO 80228

**RE:** Eagles Rising Subdivision Threatened and Endangered Species Habitat Assessment Update, El Paso County

Dear Ms. Niva,

Stephen Jacobs (project proponent) retained ERO Resources Corporation (ERO) to provide an endangered species habitat assessment update for the Eagles Rising Subdivision, a proposed residential development in El Paso County, Colorado (project area). This is an update of a previous assessment submitted to the U.S. Fish and Wildlife Service in 2012. The original habitat assessment was submitted to Ms. Susan Linner on September 12, 2012. The project area is northeast of Colorado Springs, and a portion of Cottonwood Creek flows along the eastern edge of the project area. The project is unchanged from 2012 and completely avoids all suitable Preble's meadow jumping mouse (*Zapus hudsonius preblei* or Preble's) habitat and wetlands. The only environmental change from 2012 is that Cottonwood Creek and the three small ponds in the project area are substantially drier as a result of water rights negotiations and drought.

## Project Location

The project area is a 70.79-acre agricultural parcel in the eastern ½ of Section 29, Township 12 South, Range 65 West of the 6th Principal Meridian in El Paso County, Colorado (Figure 1). The UTM coordinates of the approximate center of the project area are 526926mE, 4314192mN, Zone 13. The longitude/latitude of the project area is 104.689148°W/38.976294°N. The elevation of the project area is approximately 7,100 feet above sea level.

## Site Description

The project area is on the southern edge of the Black Forest, northeast of Colorado Springs (Figure 1). Vegetation in the project area consists of upland grasslands, patches of ponderosa pine and upland shrubs, and wetland/riparian vegetation along drainages. Cottonwood Creek flows from north to south through the project area and contains two small ponds contained behind earthen dams and a third excavated pond (Photos 1a through 4a). As mentioned above, the ponds are substantially drier as a result of water rights negotiations and drought (Photos 1b through 4b). Three tributaries to Cottonwood Creek connect to the

creek in the project area and an isolated pond and a small wetland occur east of Cottonwood Creek in the project area (Figure 2; Photos 5a through 7a, 5b, 6b). The project area is one of the last remaining nonresidential tracts of land along Cottonwood Creek. Rural residential development (2- to 5-acre lots) surrounds the entire project area. A single residence is in the northwest corner of the project area and a large barn, corral, and disturbed area occurs in the north-central portion of the project area (Photo 8a). The uplands in the project area are a mixture of native grassland and disturbed areas (Photos 9a and 9b). The project area has historically been used for cattle grazing, and some limited grazing continues in the southeast corner of the project area. The native upland areas are dominated by blue grama (*Chondrosium gracile*), little bluestem (*Schizachyrium scoparium*), sand dropseed (*Sporobolus cryptandrus*), threeawn (*Aristida* sp.), yucca (*Yucca glauca*), Canada wildrye (*Elymus canadensis*), intermediate wheatgrass (*Thinopyrum intermedium*), sideoats grama (*Bouteloua curtipendula*), muhly (*Muhlenbergia* sp.), and ponderosa pine (*Pinus ponderosa*) (Photos 9a and 9b). The disturbed uplands are dominated by smooth brome (*Bromopsis inermis*), diffuse knapweed (*Centaurea diffusa*), Canada thistle (*Breca arvensis*), musk thistle (*Carduus nutans*), common mullein (*Verbascum thapsus*), common teasel (*Dipsacus fullonum*), and kochia (*Bassia sieversiana*).

Wetlands occur on benches and terraces along Cottonwood Creek and its tributaries and as small fringes along the ponds. Wetlands are dominated by Nebraska sedge (*Carex nebrascensis*), Baltic rush (*Juncus arcticus*), softstem bulrush (*Schoenoplectus lacustris* subsp. *creber*), cattail (*Typha latifolia*), redtop (*Agrostis gigantea*), sandbar willow (*Salix exigua*), park willow (*Salix monticola*), greenleaf willow (*Salix lucida* subsp. *caudata*), and watercress (*Nasturtium officinale*). The riparian overstory along Cottonwood Creek is dominated by peachleaf willow (*Salix amygdaloides*) and plains cottonwood (*Populus deltoides* subsp. *monilifera*) trees. Upland shrubs in the riparian corridor include snowberry (*Symphoricarpos occidentalis*), Woods' rose (*Rosa woodsii*), golden currant (*Ribes aureum*), and chokecherry (*Padus virginiana*) (Photo 10). The soils in the project area are Pring coarse sandy loam, 3 to 8 percent slopes (Natural Resources Conservation Service 2022).

On April 27, 2022, ERO Resources Corporation (ERO) assessed the project area (2022 site visit) for suitable habitat for federally listed threatened and endangered species protected under the Endangered Species Act of 1973, as amended (16 United States Code 1531 et seq.) (ESA). The project area does not fall within U.S. Fish and Wildlife Service (Service) habitat or survey guidelines for the majority of the species listed by the Service as potentially occurring in El Paso County (Table 1). Because the project area falls within survey guidelines for Preble's and Ute ladies'-tresses orchid (*Spiranthes diluvialis* or ULTO), ERO assessed the project area for suitable habitat for these species.

**Table 1. Federally threatened, endangered, and candidate species potentially found in El Paso County or potentially affected by projects in El Paso County.**

Common Name	Scientific Name	Status <sup>1</sup>	Habitat	Suitable Habitat Present
<b>Mammals</b>				
Preble's meadow jumping mouse <sup>2</sup>	<i>Zapus hudsonius preblei</i>	T	Shrub riparian/wet meadows	Yes
Gray wolf	<i>Canis lupus</i>	E	Wolves can thrive in a wide range of habitats; a highly adaptable species that occurs in temperate forests, mountains, and grasslands	No - this species does not currently occur in Douglas County and project activities would not result in appreciable take
<b>Birds</b>				
Eastern black rail	<i>Laterallus jamaicensis</i>	T	Shallow cattail wetlands and wet sedge meadows with dense cover in the Arkansas River drainage in southeastern Colorado and the Republican River in east-central Colorado	Yes
Piping plover <sup>3</sup>	<i>Charadrius melodus</i>	T	Sandy lakeshore beaches, river sandbars	No - not in South Platte River Basin
<b>Fish</b>				
Greenback cutthroat trout	<i>Oncorhynchus clarki stomias</i>	T	Cold, clear, gravel headwater streams and mountain lakes	No
Pallid sturgeon <sup>3</sup>	<i>Scaphirhynchus albus</i>	E	Large, turbid, free-flowing rivers with a strong current and gravel/sand substrate	No - not in South Platte River Basin
<b>Invertebrates</b>				
Monarch butterfly	<i>Danaus plexippus</i>	C	Dependent on milkweeds ( <i>Asclepiadoideae</i> ) as host plants and forage on blooming flowers; a summer resident	No
<b>Plants</b>				
Ute ladies'-tresses orchid	<i>Spiranthes diluvialis</i>	T	Moist to wet alluvial meadows, floodplains of perennial streams, and around springs and lakes below 7,800 feet in elevation	No
Western prairie fringed orchid <sup>3</sup>	<i>Platanthera praeclara</i>	T	Moist to wet prairies and meadows	No - Not in So. Platte Basin

<sup>1</sup>T = Federally Threatened Species, E = Federally Endangered Species, C = Federal Candidate Species.

<sup>2</sup>Preble's were not listed on the official threatened and endangered species list on IPaC, but is still addressed here.

<sup>3</sup>Water depletions in the South Platte River may affect the species and/or critical habitat in downstream reaches in other counties or states.

Source: Service 2022.

The proposed project would not affect the gray wolf, greenback cutthroat trout, or monarch butterfly because the project area is outside of the known range of the species and lacks suitable habitat. The piping plover, pallid sturgeon, and western prairie fringed orchid are species that are affected by continued or ongoing water depletions to the Platte River system. Cottonwood Creek is a tributary to the Arkansas River and therefore no action is necessary regarding these species. The project area is outside of the elevation

range for ULTO; therefore, no action is necessary regarding this species. Potential habitat for Preble's and eastern black rail is present in the project area and a more detailed discussion is provided below.

## **Preble's Meadow Jumping Mouse**

### **Species Background**

Preble's is listed as a threatened species in Colorado. Under existing regulations, either a habitat assessment or a full presence/absence survey for Preble's is required for any habitat-disturbing activity within areas determined to be potential Preble's habitat (generally stream and riparian habitats along the Colorado Front Range). Typically, Preble's occurs below 7,600 feet in elevation, generally in lowlands with medium to high moisture along permanent or intermittent streams and canals (Meaney et al. 1997). Preble's occurs in low undergrowth consisting of grasses and forbs, in open wet meadows, riparian corridors near forests, or where tall shrubs and low trees provide adequate cover (Service 1999; Meaney et al. 1997). Preble's typically inhabits areas characterized by well-developed plains riparian vegetation with relatively undisturbed grassland and a water source nearby.

### **Potential Habitat and Possible Effects**

ERO assessed the project area for potential Preble's habitat. Cottonwood Creek and its adjacent wetlands and riparian corridor support vegetation with characteristics similar to those described as suitable Preble's habitat. This potentially suitable habitat was mapped during the 2012 and 2022 site visits (Figure 2). Most of the wetland areas described above and the adjacent uplands provide vegetation structure and composition that is characteristic of Preble's breeding, wintering, and foraging habitat. However, the project area is completely surrounded by suburban development and fragmented from other suitable habitat both upstream and downstream by human dwellings, roads, and small culverts. The habitat characteristics along this segment of Cottonwood Creek appears to have been influenced by a series of small earthen dams and ponds that hold water, raise ground water tables in the immediate vicinity, and provide the hydrology capable of supporting woody riparian vegetation. Less than 1.5 miles downstream, at Black Forest Road, Cottonwood Creek abruptly becomes incised and severely eroded with steep unvegetated banks incapable of supporting riparian vegetation or Preble's populations.

A trapping survey was conducted on the Highlands Property to the south and east of the project area and no Preble's were found (Service 2000). Several other habitat evaluations and a trapping survey have been conducted downstream of the project area along Cottonwood Creek with no Preble's or suitable habitat found (Feature Homes, Inc. 2002; Ensign Technical Services, Inc. 1999). In addition, the closest known population of Preble's is more than 6 stream miles downstream of the project area along Cottonwood Creek.

### **Discussion**

Current guidelines recommend that projects within 300 feet of 100-year floodplains on drainages that are potential Preble's habitat be assessed as to their potential to impact Preble's and its habitat (Service 1999). ERO has determined that vegetation characteristic of suitable Preble's habitat is present in the project area, although the project area is unlikely to support a viable population of the species due to existing human disturbance in and surrounding the project area and isolation from other suitable habitat or known

populations. ERO has recommended a “No Build Zone” for the project area based on topography and actual vegetation characteristics of the project area. The project proponent incorporated this recommendation in their preliminary plan and has established a “prudent line – no construction disturbance limit” that avoids and protects both wetlands and riparian vegetation (Figure 3).

### **Rationale for excluding the project area as potential Preble’s habitat**

ERO evaluated the project area and determined the proposed project would not likely adversely affect Preble’s habitat because—

- The project area is completely surrounded by residential development.
- Woody riparian vegetation in the project area is isolated and fragmented from other nearby suitable Preble’s habitat.
- Woody riparian vegetation health is declining as a result of decreased flows in Cottonwood Creek and substantially reduced storage of water in the ponds.
- A trapping survey was conducted on Cottonwood Creek southeast of the project area with no Preble’s found (Service 2000). Numerous other surveys and habitat assessments for Preble’s have been conducted upstream and downstream of the project area with no Preble’s populations or suitable habitat found.
- The project proponent has established a “prudent line – no construction disturbance limit” that avoids and protects both wetlands and riparian vegetation.

Given the above information, it is unlikely that the project area supports a population of Preble’s or that the continued existence of Preble’s would be adversely affected by the proposed project. In addition, a search of species potentially occurring in the project area on IPaC did not indicate that Preble’s may be affected by the proposed project (Attachment A).

## **Eastern Black Rail**

### **Species Background**

The eastern black rail was listed as a threatened species by the Service on October 8, 2020 under the ESA (see Federal Register Vol. 85, No. 196:63764-63803). The eastern black rail ranges throughout central and eastern North America and south through the Caribbean and Brazil. This species has been documented along the Arkansas River drainage in southeastern Colorado and the Republican River in east-central Colorado. Threats include habitat fragmentation and conversion resulting in the loss of wetland habitats; sea level rise and tidal flooding; land management practices (e.g., incompatible fire management practices, grazing, haying/mowing, and other mechanical treatment activities); and increasing storm intensity and frequency. There are no exact counts of eastern black rail populations at the present time, so analysis units based on habitat have been identified across the United States. Colorado is included in the Great Plains analysis unit (Service 2019).

The eastern black rail is dependent on wetland and marsh vegetation that contains a mix of wet, saturated, and some dry edges around the periphery. The subspecies requires dense overhead cover and soils that are moist to saturated (occasionally dry) and interspersed with or adjacent to very shallow water (Service 2019). In Colorado, this species has been documented in cattail/bullrush marshes and near pond edges.

Along the Republican River in northeastern Colorado and western Kansas, the eastern black rail has been documented in riparian vegetation (U.S. Air Force Academy 2020).

### **Potential Habitat and Effects**

The project area contains herbaceous emergent wetland vegetation along Cottonwood Creek that may be considered suitable for the eastern black rail. ERO has recommended a “No Build Zone” for the project area based on topography and actual vegetation characteristics of the project area. The project proponent incorporated this recommendation in their preliminary plan and has established a “prudent line – no construction disturbance limit” that avoids and protects both wetlands and riparian vegetation (Figure 3).

### **Rationale for excluding the project area as potential eastern black rail habitat**

ERO evaluated the project area and determined the proposed project would not likely adversely affect eastern black rail habitat because—

- The project area is completely surrounded by residential development.
- The presence of emergent wetland vegetation is a relatively recent occurrence related to water rights negotiations.
- Most importantly, the project proponent has established a “prudent line – no construction disturbance limit” that avoids and protects both wetlands and riparian vegetation.

### **Other Sensitive Species**

In addition to species listed as threatened or endangered, ERO assessed the project area for potential habitat and the presence of species protected by the Migratory Bird Treaty Act (MBTA). Migratory birds, as well as their eggs and active nests, are protected under the MBTA. Migratory bird habitat typically includes trees and shrubs, but upland grasslands also are used for nesting. No raptor nests were observed in or near the project area during the 2012 or 2022 site visit. The proposed project would not result in removal of any large trees.

### **Conclusions**

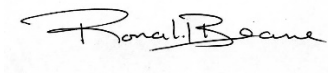
There is no suitable habitat for threatened or endangered species in the disturbance area of the project. Therefore, the proposed project would likely have no effect on federally listed species potentially present in El Paso County. Based on this habitat assessment, ERO, on behalf of Stephen Jacobs, requests that the Service disqualify the Eagles Rising Subdivision for consideration under the provisions of the ESA. After you review this information, ERO would appreciate a written determination of this request.



Please call if you need additional information or have any questions. I look forward to hearing from you.

If you have any questions to make your determination, I can be reached at [rbeane@erresources.com](mailto:rbeane@erresources.com) or (303) 830-1188.

Sincerely,

A handwritten signature in black ink that reads "Ron Beane". The signature is written in a cursive style with a large, stylized "R" and "B".

Ron Beane  
Senior Wildlife Biologist

cc: Dave Jones, LRA

Attachments: Figures 1, 2, and 3; Photo Log; Attachment A

## Site Information

**Location:** Eastern ½ of Section 29, Township 12 South, Range 65 West of the 6th Principal Meridian in El Paso County, Colorado.

**Elevation:** Approximately 7,100 feet above sea level.

**Longitude/Latitude:** 104.689148°W/38.976294°N.

**UTM Coordinates:** 526926mE, 4314192mN, Zone 13.

**Soils:** Pring coarse sandy loam, 3 to 8 percent slopes.

**Site Hydrology:** Cottonwood Creek flows north to south along eastern side of the project area.

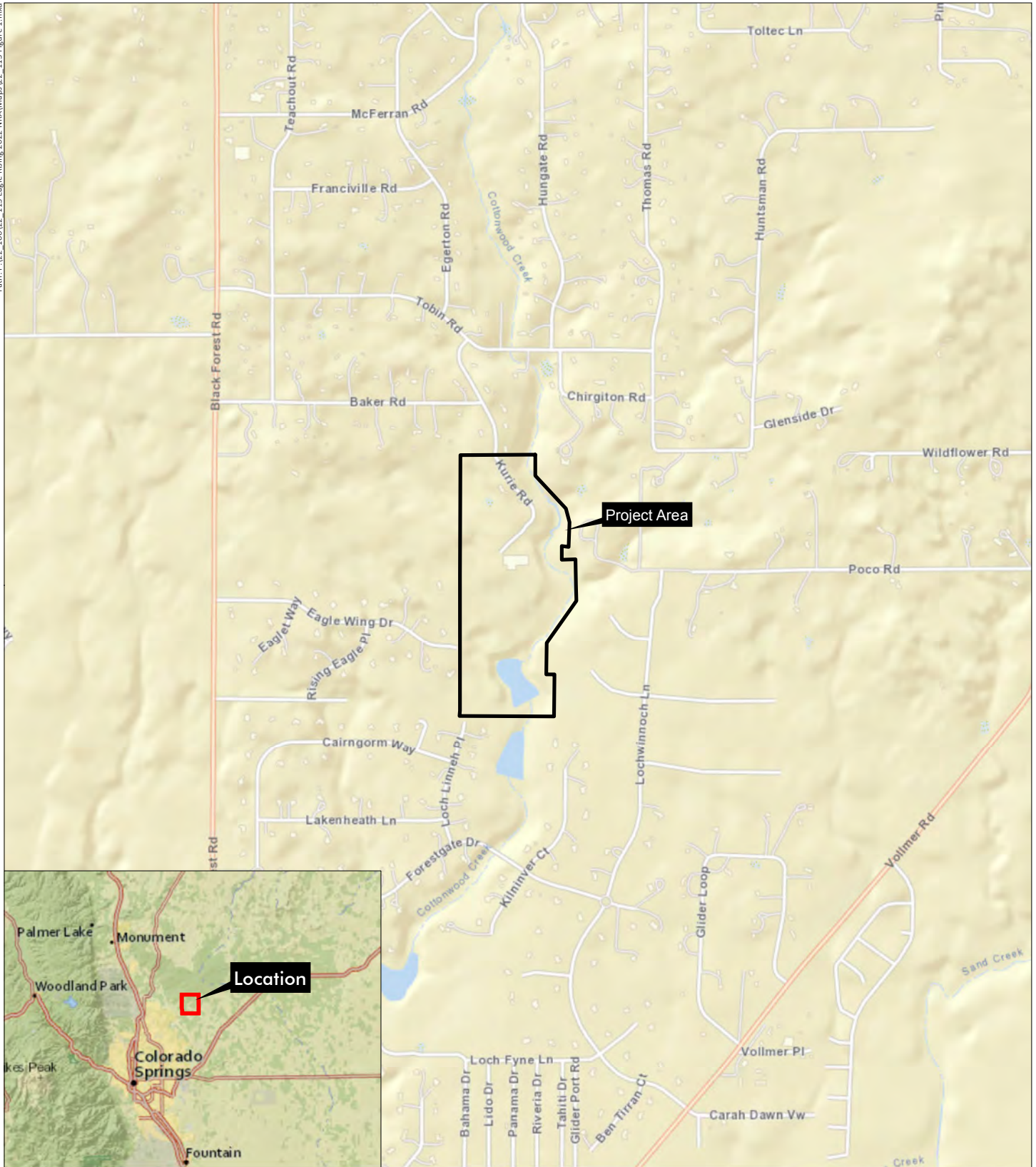
## Qualifications of Surveyors

Qualifications of Ronald D. Beane have been previously submitted to the Service and are available upon request. Mr. Beane is a certified ecologist and a Zoology Research Associate with the Denver Museum of Nature and Science. He has performed small mammal investigations for more than 20 years throughout the Western U.S. Ron has been involved in both Section 7 and Section 10 consultations with the Service, prepared the Denver Area Block Clearance Assessment, and completed more than 75 habitat assessments and 50 presence/absence surveys for Preble's over the last 10 years.

## References

- Enight Technical Services, Inc. 1999. Northern Cottonwood Creek Preble's Meadow Jumping Mouse Trapping Survey. August 18.
- Feature Homes, Inc. 2002. 7325 Silver Ponds Heights Preble's Meadow Jumping Mouse Habitat Evaluation. May 16.
- Meaney, C.A., A. Deans, N.W. Clippenger, M. Rider, N. Daly, and M. O'Shea-Stone. 1997. Third year survey for Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in Colorado. Under contract to Colorado Division of Wildlife, Boulder, CO.
- Natural Resources Conservation Service. 2022. Web Soil Survey of El Paso County Area, Colorado. Department of Agriculture. <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Last accessed May 12, 2022.
- U.S. Air Force Academy. 2020. "Personal Communication between Brian Mihlbachler (USAFA) and April Estep."
- U.S. Fish and Wildlife Service (Service). 1999. Survey Guidelines for Preble's Meadow Jumping Mouse. USFWS, Colorado Field Office. Revised: April 2004.
- U.S. Fish and Wildlife Service (Service). 2000. Preble's meadow jumping mouse (*Zapus hudsonius preblei*) trapping database for scientific collection activities conducted under section 10 of the Endangered Species Act.

U.S. Fish and Wildlife Service (Service). 2022. Endangered, Threatened, Proposed and Candidate Species. <http://ecos.fws.gov/ipac/>. Last accessed April 27, 2022.



### Eagle Rising 2022 Natural Resources Assessment

Section 29, T12S, R65W; 6th PM

UTM NAD 83: Zone 13N; 526926mE, 4314192mN

Longitude 104.689148°W, Latitude 38.976294°N

USGS Falcon NW, CO Quadrangle

El Paso County, Colorado

Figure 1  
Vicinity Map

Prepared for: Steve Jacobs  
File: 22\_113 Figure 1.mxd (GS)  
April 27, 2022



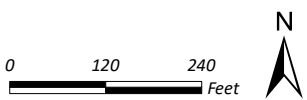


Eagle Rising 2022 Natural Resources Assessment

- Data Point
- Project Area Boundary
- ☁ Open Water
- ▨ Wetland

Image Source: Maxar Technologies©, May 24, 2021

Figure 2  
Existing Conditions



Prepared for: Steve Jacobs  
File: 22\_113 Figure 2.mxd (GS)  
June 21, 2022





Eagle Rising 2022 Natural Resources Assessment





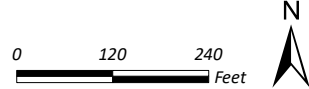
-  Open Water
-  Wetland
-  Construction/Disturbance Limit
-  Project Area Boundary

Image Source: Maxar Technologies©, May 24, 2021

Figure 3  
Proposed Subdivision

Prepared for: Steve Jacobs  
File: 22\_113 Figure 3.mxd (GS)  
June 21, 2022



EAGLES RISING SUBDIVISION  
PHOTO LOG  
MARCH 19, 2012 AND APRIL 27, 2022



**Photo 1a** - Cottonwood Creek at the southern boundary of the project area. View is to the south.



**Photo 1b** - Cottonwood Creek at the southern boundary of the project area. View is to the south.



**Photo 2a** - Wetlands along Cottonwood Creek in the project area. View is to the south.



**Photo 2b** - Wetlands along Cottonwood Creek in the project area. View is to the south.



**Photo 3a** - Pond 1 in the project area. View is to the east.



**Photo 3b** - Pond 1 in the project area. View is to the east.

EAGLES RISING SUBDIVISION  
PHOTO LOG  
MARCH 19, 2012 AND APRIL 27, 2022



**Photo 4a** - Pond 2 in the project area.  
View is to the northwest.



**Photo 4b** - Pond 2 in the project area.  
View is to the northwest.



**Photo 5a** - Tributary 2 in the project area.  
View is to the northwest.



**Photo 5b** - Tributary 2 in the project area.  
View is to the northwest.



**Photo 6a** - Pond 3 in the project area.  
View is to the northwest.



**Photo 6b** - Pond 3 in the project area.  
View is to the northwest.



EAGLES RISING SUBDIVISION  
PHOTO LOG  
MARCH 19, 2012 AND APRIL 27, 2022



**Photo 7a** - Wetland 9 in the project area.  
View is to the southeast.



**Photo 7b** - Wetland 9 in the project area.  
View is to the southeast.



**Photo 8a**- Disturbed uplands and barn in the project area.  
View is to the northeast.



**Photo 8b** - Disturbed uplands and barn in the project area.  
View is to the northeast.



**Photo 9a** - Native uplands in the project area.  
View is to the northeast.



**Photo 9b** - Native uplands in the project area.  
View is to the northeast.

EAGLES RISING SUBDIVISION  
PHOTO LOG  
MARCH 19, 2012 AND APRIL 27, 2022



**Photo 10a** - Riparian corridor in the project area.  
View is to the southeast.



**Photo 10b** - Riparian corridor in the project area.  
View is to the southeast.



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Colorado Ecological Services Field Office  
Denver Federal Center  
P.O. Box 25486  
Denver, CO 80225-0486  
Phone: (303) 236-4773 Fax: (303) 236-4005

In Reply Refer To:  
Project Code: 2022-0043357  
Project Name: Eagle's rising

June 16, 2022

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

**Migratory Birds:** In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

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Attachment(s):

- Official Species List
  - USFWS National Wildlife Refuges and Fish Hatcheries
  - Migratory Birds
  - Wetlands
-

## **Official Species List**

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

### **Colorado Ecological Services Field Office**

Denver Federal Center  
P.O. Box 25486  
Denver, CO 80225-0486  
(303) 236-4773

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## Project Summary

Project Code: 2022-0043357  
Event Code: None  
Project Name: Eagle's rising  
Project Type: Commercial Development  
Project Description: 71 acre large lot residential development  
Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.97599195,-104.68880895709418,14z>



Counties: El Paso County, Colorado

## Endangered Species Act Species

There is a total of 8 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 4 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [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.

## Mammals

NAME	STATUS
<p><b>Gray Wolf</b> <i>Canis lupus</i></p> <p>Population: U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, IA, IN, IL, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA. Mexico.</p> <p>There is <b>final</b> critical habitat for this species. The location of the critical habitat is not available.</p> <p>This species only needs to be considered under the following conditions:</p> <ul style="list-style-type: none"> <li>▪ Lone, dispersing gray wolves may be present throughout the state of Colorado. If your activity includes a predator management program, please consider this species in your environmental review.</li> </ul> <p>Species profile: <a href="https://ecos.fws.gov/ecp/species/4488">https://ecos.fws.gov/ecp/species/4488</a></p>	<p>Endangered</p>

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## Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10477">https://ecos.fws.gov/ecp/species/10477</a>	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is <b>final</b> critical habitat for this species. The location of the critical habitat is not available. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska.</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/6039">https://ecos.fws.gov/ecp/species/6039</a>	Threatened

## Fishes

NAME	STATUS
Greenback Cutthroat Trout <i>Oncorhynchus clarkii stomias</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/2775">https://ecos.fws.gov/ecp/species/2775</a>	Threatened
Pallid Sturgeon <i>Scaphirhynchus albus</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska.</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/7162">https://ecos.fws.gov/ecp/species/7162</a>	Endangered

## Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

## Flowering Plants

NAME	STATUS
Ute Ladies'-tresses <i>Spiranthes diluvialis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/2159">https://ecos.fws.gov/ecp/species/2159</a>	Threatened
Western Prairie Fringed Orchid <i>Platanthera praeclara</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska.</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/1669">https://ecos.fws.gov/ecp/species/1669</a>	Threatened

## **Critical habitats**

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

# **USFWS National Wildlife Refuge Lands And Fish Hatcheries**

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 OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

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## Migratory Birds

Certain birds are protected under the Migratory Bird Treaty Act<sup>1</sup> and the Bald and Golden Eagle Protection Act<sup>2</sup>.

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

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1. The [Migratory Birds Treaty Act](#) of 1918.
  2. The [Bald and Golden Eagle Protection Act](#) of 1940.
  3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

**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, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle <i>Haliaeetus leucocephalus</i> 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.	Breeds Oct 15 to Jul 31
Ferruginous Hawk <i>Buteo regalis</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA <a href="https://ecos.fws.gov/ecp/species/6038">https://ecos.fws.gov/ecp/species/6038</a>	Breeds Mar 15 to Aug 15

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NAME	BREEDING SEASON
<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><a href="https://ecos.fws.gov/ecp/species/9679">https://ecos.fws.gov/ecp/species/9679</a></p>	Breeds elsewhere
<p>Lewis's Woodpecker <i>Melanerpes lewis</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p> <p><a href="https://ecos.fws.gov/ecp/species/9408">https://ecos.fws.gov/ecp/species/9408</a></p>	Breeds Apr 20 to Sep 30
<p>Red-headed Woodpecker <i>Melanerpes erythrocephalus</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds May 10 to Sep 10

## 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 and understand the FAQ "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.

### 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 (|)

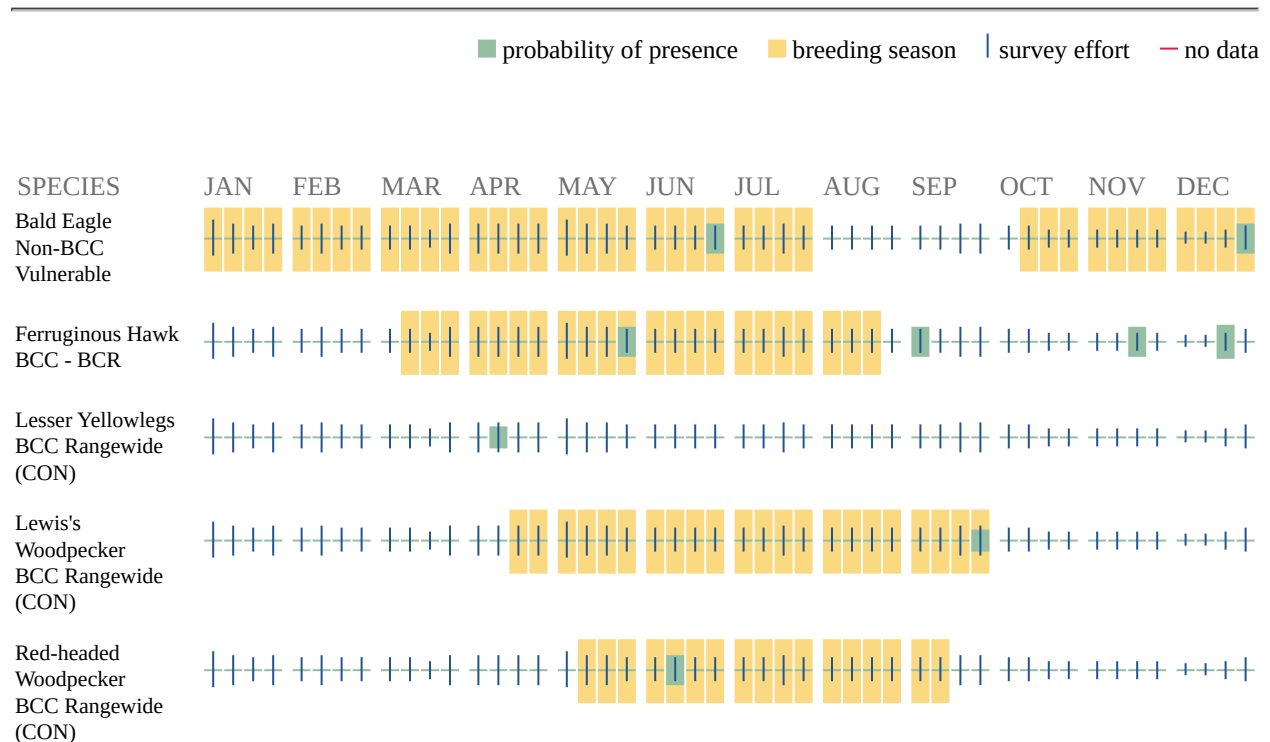
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

### 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.



Additional information can be found using the following links:

- Birds of Conservation Concern <https://www.fws.gov/program/migratory-birds/species>
- 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>

## Migratory Birds FAQ

**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 migratory birds potentially occurring 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 [AKN Phenology 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, migrating or present year-round in my project 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 refer to the following resources: [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your

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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

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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.

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## Wetlands

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.

### RIVERINE

- [Riverine](#)

### FRESHWATER POND

- [Palustrine](#)
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## **IPaC User Contact Information**

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