



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Kentucky Ecological Services Field Office  
330 West Broadway, Suite 265  
Frankfort, Kentucky 40601  
(502) 695-0468

July 21, 2015

Ms. Tara Hackney  
MSE of Kentucky, Inc.  
624 Wellington Way  
Lexington, KY 40503

Re: FWS 2015-B-0577; Northeast Regional Industrial Development Authority; East Park Regional Industrial Park, site B; located in Boyd and Geenup counties, Kentucky

Dear Ms. Hackney:

Thank you for the opportunity to provide comments on the above-referenced project. The U.S. Fish and Wildlife Service (Service) has reviewed the revised report attached to a July 20, 2015 email from Ms. Laura Heil at T.H.E. Engineers, Inc. regarding this proposed project. We offer the following comments in accordance with the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

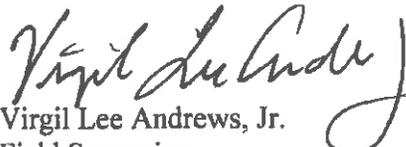
### **Indiana bat**

#### **Northern long-eared bat**

The proposed project is located in "potential habitat" for the Indiana bat and the northern long-eared bat. According to the July 20, 2015 habitat assessment from T.H.E. Engineers, Inc., the buildable boundary of the proposed project was modified to avoid all the forested habitat at the site. The habitat assessment also states that no potential winter habitat was identified on maps or during the field assessment of the site. Because the proposed project will not impact winter hibernacula or summer roosting habitat and the foraging resources on the site are of marginal quality, we concur that the proposed project is not likely to adversely affect the Indiana bat or the northern long-eared bat.

Thank you again for your request. Your concern for the protection of endangered and threatened species is greatly appreciated. If you have any questions regarding the information that we have provided, please contact Jessi Miller at (502) 695-0468 extension 104.

Sincerely,

  
Virgil Lee Andrews, Jr.  
Field Supervisor



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Kentucky Ecological Services Field Office  
J C Watts Federal Building, Room 265  
330 West Broadway  
Frankfort, KY 40601-8670  
Phone: (502) 695-0468 Fax: (502) 695-1024  
<http://www.fws.gov/frankfort/>

In Reply Refer To:

September 05, 2019

Consultation Code: 04EK1000-2019-SLI-1576

Event Code: 04EK1000-2019-E-04584

Project Name: EastPark Infrastructure and Development AML Pilot Program Project

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

To Whom It May Concern:

Your concern for the protection of endangered and threatened species is greatly appreciated. The purpose of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.) (ESA) is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. The species list attached to this letter fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the ESA to provide information as to whether any proposed or listed species may be present in the area of a proposed action. This is not a concurrence letter; additional consultation with the Service may be required.

### **The Information in Your Species List:**

The enclosed species list identifies federal trust species and critical habitat that may occur within the boundary that you entered into IPaC. For your species list to most accurately represent the species that may potentially be affected by the proposed project, the boundary that you input into IPaC should represent the entire “action area” of the proposed project by considering all the potential “effects of the action,” including potential direct, indirect, and cumulative effects, to federally-listed species or their critical habitat as defined in 50 CFR 402.02. This includes effects of any “interrelated actions” that are part of a larger action and depend on the larger action for their justification and “interdependent actions” that have no independent utility apart from the action under consideration (e.g.; utilities, access roads, etc.) and future actions that are reasonably certain to occur as a result of the proposed project (e.g.; development in response to a new road). If your project is likely to have significant indirect effects that extend well beyond the project footprint (e.g., long-term impacts to water quality), we highly recommend that you

coordinate with the Service early to appropriately define your action area and ensure that you are evaluating all the species that could potentially be affected.

We must advise you that our database is a compilation of collection records made available by various individuals and resource agencies available to the Service and may not be all-inclusive. This information is seldom based on comprehensive surveys of all potential habitats and, thus, does not necessarily provide conclusive evidence that species are present or absent at a specific locality. 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 note that “critical habitat” refers to specific areas identified as essential for the conservation of a species that have been designated by regulation. Critical habitat usually does not include all the habitat that the species is known to occupy or all the habitat that may be important to the species. Thus, even if your project area does not include critical habitat, the species on the list may still be present.

Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the ESA, the accuracy of this species list should be verified after 90 days. 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 associated information. To re-access your project in IPaC, go to the IPaC web site (<https://ecos.fws.gov/ipac/>), select “Need an updated species list?”, and enter the consultation code on this letter.

### **ESA Obligations for Federal Projects:**

Under sections 7(a)(1) and 7(a)(2) of the ESA 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.

If a Federal project (a project authorized, funded, or carried out by a federal agency) may affect federally-listed species or critical habitat, the Federal agency is required to consult with the Service under section 7 of the ESA, 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>

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)). Recommended contents of a Biological Assessment are described at 50 CFR 402.12. 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.

### **ESA Obligations for Non-federal Projects:**

Proposed projects that do not have a federal nexus (non-federal projects) are not subject to the obligation to consult under section 7 of the ESA. However, section 9 of the ESA prohibits certain activities that directly or indirectly affect federally-listed species. These prohibitions apply to all individuals subject to the jurisdiction of the United States. Non-federal project proponents can request technical assistance from the Service regarding recommendations on how to avoid and/or minimize impacts to listed species. The project proponent can choose to implement avoidance, minimization, and mitigation measures in a proposed project design to avoid ESA violations.

### **Additional Species-specific Information:**

In addition to the species list, IPaC also provides general species-specific technical assistance that may be helpful when designing a project and evaluating potential impacts to species. To access this information from the IPaC site (<https://ecos.fws.gov/ipac/>), click on the text “My Projects” on the left of the black bar at the top of the screen (you will need to be logged into your account to do this). Click on the project name in the list of projects; then, click on the “Project Home” button that appears. Next, click on the “See Resources” button under the “Resources” heading. A list of species will appear on the screen. Directly above this list, on the right side, is a link that will take you to pdfs of the “Species Guidelines” available for species in your list. Alternatively, these documents and a link to the “ECOS species profile” can be accessed by clicking on an individual species in the online resource list.

### **Next Steps:**

Requests for additional technical assistance or consultation from the Kentucky Field Office should be submitted following guidance on the following page <http://www.fws.gov/frankfort/PreDevelopment.html> and the document retrieved by clicking the “outline” link at that page. When submitting correspondence about your project to our office, please include the Consultation Tracking Number in the header of this letter. (There is no need to provide us with a copy of the IPaC-generated letter and species list.)

Attachment(s):

- Official Species List
-

## 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:

**Kentucky Ecological Services Field Office**

J C Watts Federal Building, Room 265

330 West Broadway

Frankfort, KY 40601-8670

(502) 695-0468

---

## Project Summary

Consultation Code: 04EK1000-2019-SLI-1576

Event Code: 04EK1000-2019-E-04584

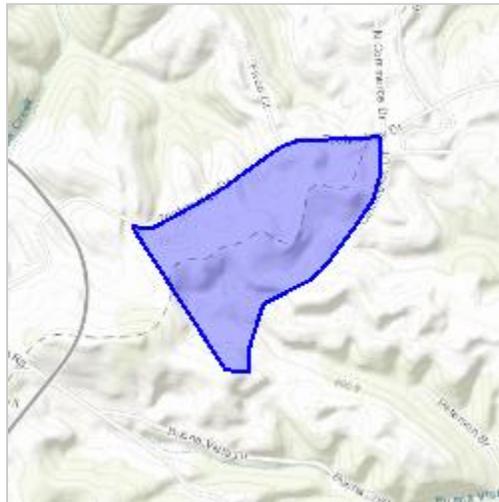
Project Name: EastPark Infrastructure and Development AML Pilot Program Project

Project Type: DEVELOPMENT

Project Description: The EastPark Infrastructure and Development AML Pilot Project consists of the construction of a “surcharge” on a vacant industrial park site. The purpose of this project is to enhance the properties of the underlying mine spoils to accommodate the eventual construction of a 1.8 million square foot aluminum manufacturing facility. The project site is located in the EastPark Industrial Park in Boyd County, KY. It can be found on the Argillite 7.5’ United States Geological Survey (USGS) quadrangle at approximately 38° 24’ 3.5” N latitude, 82° 47’ 41.3” W longitude.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/38.400294299798105N82.79559478334656W>



Counties: Boyd, KY | Greenup, KY

---

## Endangered Species Act Species

There is a total of 3 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 2 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.

- 
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>Gray Bat <i>Myotis grisescens</i></p> <p>No critical habitat has been designated for this species.            Species profile: <a href="https://ecos.fws.gov/ecp/species/6329">https://ecos.fws.gov/ecp/species/6329</a>            General project design guidelines:  <a href="https://ecos.fws.gov/ipac/guideline/design/population/21/office/42431.pdf">https://ecos.fws.gov/ipac/guideline/design/population/21/office/42431.pdf</a></p>	Endangered
<p>Indiana Bat <i>Myotis sodalis</i></p> <p>There is <b>final</b> critical habitat for this species. Your location overlaps the critical habitat.            This species only needs to be considered under the following conditions:</p> <ul style="list-style-type: none"> <li>All activities in this location should consider possible effects to this species. The project area includes "potential" habitat.</li> </ul> <p>Species profile: <a href="https://ecos.fws.gov/ecp/species/5949">https://ecos.fws.gov/ecp/species/5949</a>            General project design guidelines:  <a href="https://ecos.fws.gov/ipac/guideline/design/population/1/office/42431.pdf">https://ecos.fws.gov/ipac/guideline/design/population/1/office/42431.pdf</a></p>	Endangered
<p>Northern Long-eared Bat <i>Myotis septentrionalis</i></p> <p>No critical habitat has been designated for this species.            This species only needs to be considered under the following conditions:</p> <ul style="list-style-type: none"> <li>The specified area includes areas in which incidental take would not be prohibited under the 4(d) rule. For reporting purposes, please use the "streamlined consultation form," linked to in the "general project design guidelines" for the species.</li> </ul> <p>Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>            General project design guidelines:  <a href="https://ecos.fws.gov/ipac/guideline/design/population/10043/office/42431.pdf">https://ecos.fws.gov/ipac/guideline/design/population/10043/office/42431.pdf</a></p>	Threatened

## Critical habitats

There is 1 critical habitat wholly or partially within your project area under this office's jurisdiction.

NAME	STATUS
<p>Indiana Bat <i>Myotis sodalis</i></p> <p><a href="https://ecos.fws.gov/ecp/species/5949#crithab">https://ecos.fws.gov/ecp/species/5949#crithab</a></p>	Final

## IPaC Information for Planning and Consultation U.S. Fish &amp; Wildlife Service

# 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.

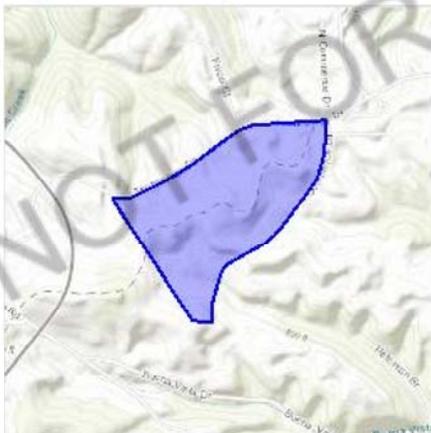
## Project information

### NAME

EastPark Infrastructure and Development AML Pilot Program Project

### LOCATION

Boyd and Greenup counties, Kentucky



### DESCRIPTION

The

EastPark Infrastructure and Development AML Pilot Project consists of the construction of a "surcharge" on a vacant industrial park site. The purpose of this project is to enhance the properties of the underlying mine spoils to accommodate the eventual construction of a 1.8 million square foot aluminum manufacturing facility. The project site is located in the EastPark Industrial Park in Boyd County, KY. It can be found on the Argillite 7.5' United States

Geological Survey (USGS) quadrangle at approximately 38° 24' 3.5" N latitude, 82° 47' 41.3" W longitude.

## Local office

Kentucky Ecological Services Field Office

☎ (502) 695-0468

📠 (502) 695-1024

J C Watts Federal Building, Room 265  
330 West Broadway  
Frankfort, KY 40601-8670

<http://www.fws.gov/frankfort/>

NOT FOR CONSULTATION

# 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. Log in to IPaC.
2. Go to your My Projects list.
3. Click PROJECT HOME for this project.
4. Click REQUEST SPECIES LIST.

## Listed species

<sup>1</sup> 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 Fisheries<sup>2</sup>).

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.
  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:

## Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/6329">https://ecos.fws.gov/ecp/species/6329</a>	Endangered
Indiana Bat <i>Myotis sodalis</i> This species only needs to be considered if the following condition applies: <ul style="list-style-type: none"> <li>All activities in this location should consider possible effects to this species. The project area includes "potential" habitat.</li> </ul> There is final critical habitat for this species. Your location overlaps the critical habitat. <a href="https://ecos.fws.gov/ecp/species/5949">https://ecos.fws.gov/ecp/species/5949</a>	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> This species only needs to be considered if the following condition applies: <ul style="list-style-type: none"> <li>The specified area includes areas in which incidental take would not be prohibited under the 4(d) rule. For reporting purposes, please use the "streamlined consultation form," linked to in the "general project design guidelines" for the species.</li> </ul> No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Threatened

## Critical habitats

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

This location overlaps the critical habitat for the following species:

NAME	TYPE
Indiana Bat <i>Myotis sodalis</i> <a href="https://ecos.fws.gov/ecp/species/5949#crithab">https://ecos.fws.gov/ecp/species/5949#crithab</a>	Final

## 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](#).

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:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

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 (IF A  
BREEDING SEASON IS INDICATED  
FOR A BIRD ON YOUR LIST, THE  
BIRD MAY BREED IN YOUR  
PROJECT AREA SOMETIME WITHIN  
THE TIMEFRAME SPECIFIED,  
WHICH IS A VERY LIBERAL  
ESTIMATE OF THE DATES INSIDE  
WHICH THE BIRD BREEDS ACROSS  
ITS ENTIRE RANGE. "BREEDS  
ELSEWHERE" INDICATES THAT  
THE BIRD DOES NOT LIKELY  
BREED IN YOUR PROJECT AREA.)

Bobolink *Dolichonyx oryzivorus*

Breeds May 20 to Jul 31

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Cerulean Warbler <i>Dendroica cerulea</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/2974">https://ecos.fws.gov/ecp/species/2974</a>	Breeds Apr 27 to Jul 20
Henslow's Sparrow <i>Ammodramus henslowii</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/3941">https://ecos.fws.gov/ecp/species/3941</a>	Breeds May 1 to Aug 31
Prairie Warbler <i>Dendroica discolor</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Jul 31
Wood Thrush <i>Hylocichla mustelina</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Aug 31

## 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.

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.

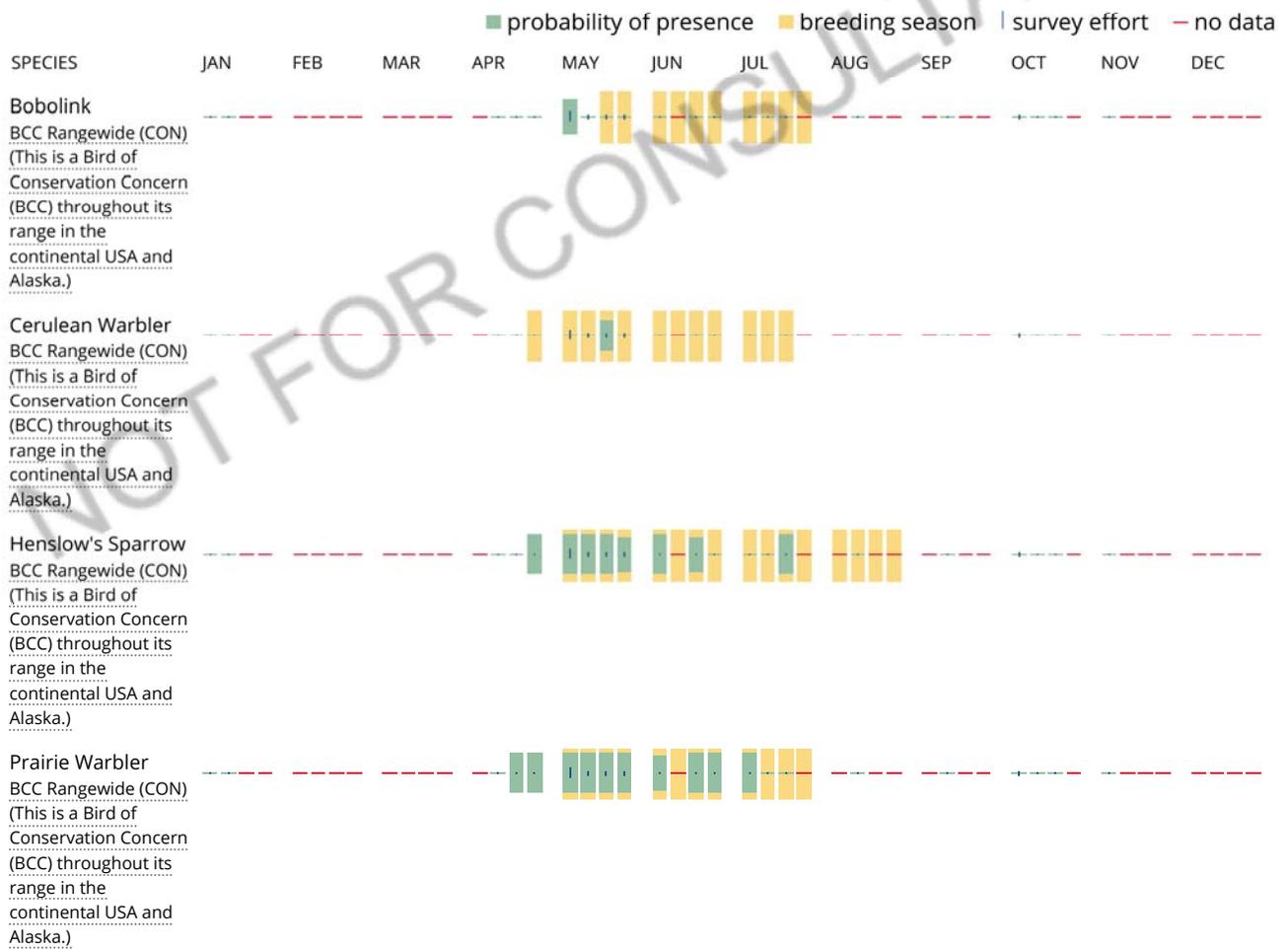
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

**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.



Wood Thrush  
BCC Rangewide (CON)  
(This is a Bird of  
Conservation Concern  
(BCC) throughout its  
range in the  
continental USA and  
Alaska.)



### 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](#) and/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 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

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 POND

[PUBHx](#)

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

### 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.

NOT FOR CONSULTATION

## MEMORANDUM

**To:** Project Files of the East Park Infrastructure and Development AML Pilot Project

**From:** Edwin A. Boone, Jr., Environmental Scientist IV, Design Branch, Staff Biologist

...



**Through:** Keith Coleman, Branch Manager, Program Development Branch

**Re:** Results of Kentucky Nature Preserves (KNP) database search

**Date:** February 1, 2019

On Wednesday, January 30, 2019, I conducted searches of the KSNPC database in order to determine if any species that are monitored by the KSNPC are known to occur within the near vicinity (a 1 mile radius) of any of the site to be disturbed by this project, and if any federally listed threatened and endangered species are known to occur within the general area (a 10 mile radius) of these sites. These searches revealed one species of state concern monitored by the KSNPC occurring within one mile, and that no federally listed threatened and endangered species are known to exist within ten miles of the project site. The species noted in the search are:

- gray treefrog (*Hyla versicolor* – KSNPC Special Concern)

The searches conducted also indicated that French-grass (*Orbexilium onobrychis* – KSNPC – No Conservation Status) is known to occur within one mile of project-related disturbances. However, as this species has not been assigned a conservation status, and as the latest attempt to find it at the occurrence location failed to find any French grass, this species will not be discussed in this memo.

This project consists of earthmoving for the purpose of creating a “surcharge” upon the site in advance of construction of an industrial building, which will occur after the soils have been compacted through the surcharging process. The project site is located within an industrial park that was formerly a coal mine site, which is vegetated in coarse grasses, weeds, lespedeza, and other hardy species commonly utilized in reclamation of mined areas. This project is to not disturb any caves or cave-like structures,

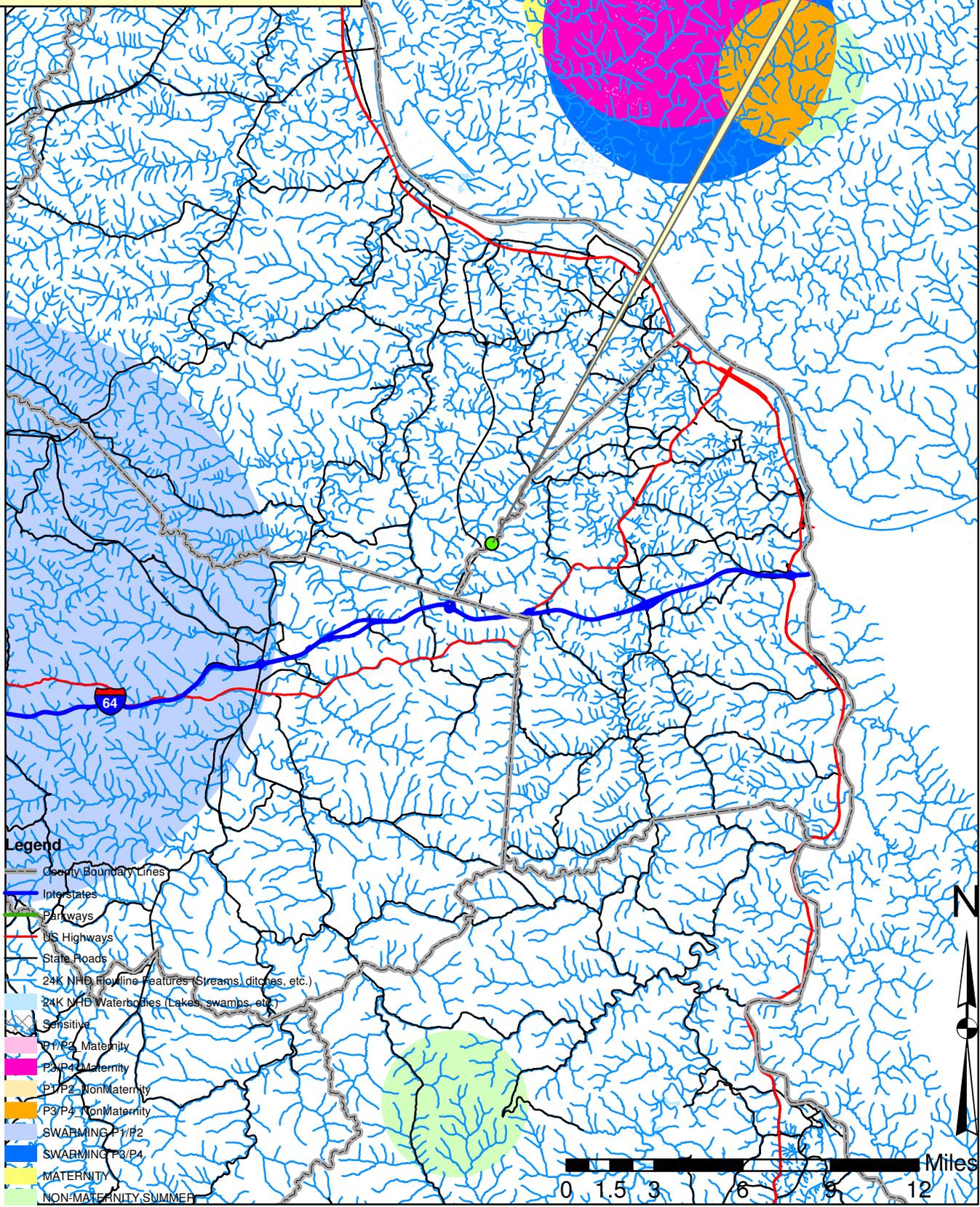
trees or area streams. All disturbed areas will be subjected to stringent erosion and sediment controls as specified under existing KDAML Best Management Practices (BMPs).

The gray treefrog is a small frog that prefers ponds (permanent or temporary/ephemeral) in semi-open habitats. While the project area is somewhat poorly drained due to very flat topography, the area is totally open and subject to periodic mowing and maintenance. Such conditions are not conducive to the presence of the gray treefrog. Due to the absence of habitat for this species at the site, project construction will not cause a negative impact to this species.

The entirety of the Commonwealth of Kentucky has been determined, by the United States Fish and Wildlife Service, to be the potential habitat of the Indiana bat (*Myotis sodalis* – USESA Listed Endangered). The Indiana bat establishes summer day roosts and brood colonies in trees with exfoliating bark and/or splits in limbs. In winter, it is known to utilize caves, and occasionally underground mine voids, as hibernacula. Other than an undated county-wide listing of this species for Greenup County (which is not considered as an occurrence for the purpose of this memo), the database search showed no records of this species within 10 miles of the project location. The known occurrence nearest to the project site is approximately 17.5 miles W of that site. This occurrence is noted as a hibernaculum in the KNP database. While it is not the central locus of the area, it is well within an area of Known Habitat of the Indiana bat (Priority 1 and 2 Swarming Habitat), as designated by the USFWS. No area to be impacted by this project is within this or any other area designated by the USFWS as the “Known Habitat” of the Indiana bat. As noted above, there will be no disturbance of cave-like habitat or of trees suitable for usage as summer day-roost and/or maternity colony habitat for this species. As a result, this project will not negatively impact the Indiana bat.

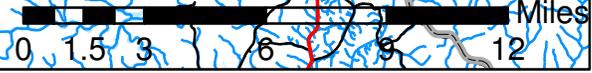
**USFWS**  
**"Known Habitat Areas"**  
**of *Myotis sodalis***

East Park AML  
 Pilot  
 Project Location



**Legend**

- County Boundary Lines
- Interstates
- Parkways
- US Highways
- State Roads
- 24K NHD Flowline Features (Streams, ditches, etc.)
- 24K NHD Waterbodies (Lakes, swamps, etc.)
- Sensitive
- P1/P2 Maternity
- P3/P4 Maternity
- P1/P2 NonMaternity
- P3/P4 NonMaternity
- SWARMING P1/P2
- SWARMING P3/P4
- MATERNITY
- NON-MATERNITY SUMMER



## Overman, Charles W (EEC)

---

**From:** Boone, Edwin (EEC)  
**Sent:** Wednesday, February 13, 2019 11:04 AM  
**To:** Overman, Charles W (EEC)  
**Cc:** Howell, Ryan (EEC)  
**Subject:** RE: Solicitation for KDFWR comments regarding our EastPark Infrastructure and Development AML Pilot Project

In its comments regarding this project, KDFWR stated that several species not noted in the KNP database searches conducted regarding this project are known to exist near the project site. These species and the potential project-related impacts upon them are:

Spotted sandpiper (*Actitis macularius*): This shorebird typically establishes its nest in thick vegetation at the edge of an area of exposed sand or gravel near a body of water, but are also known to nest in shallow depressions in dry fields and pastures. While the reclaimed mine site where this project is proposed may superficially resemble a field or pasture, the periodic mowing, maintenance, and periodic industrial traffic, along with the reclamation species growing upon the site, make this area far less than optimal for this species. Construction of the proposed project should not have any negative impact upon the spotted sandpiper.

Savannah sparrow (*Passerculus sandwichensis*): This species of bird is a ground-nesting species, and establishes its nest in grasslands, hayfields, and pastures, within depressions that are well hidden by overhanging plants. Periodic mowing of the proposed project area renders it unsuitable for this species. Therefore, construction of the proposed project will not cause any negative impact to the savannah sparrow.

Henslow's sparrow (*Ammodramus henslowii*): This bird prefers to nest in areas of dense, grassy vegetation, such as prairies and other areas of unmowed dense grassy vegetation. As the proposed project site is periodically mowed and is not very densely covered in grasses (lespedeza being highly prevalent), this site is not suitable habitat for Henslow's sparrow. Therefore, development of this project will not cause a negative impact to this species.

Red-breasted nuthatch (*Sitta Canadensis*): The red-breasted nuthatch is not a breeding bird within Kentucky. Instead, it is a transient resident of the Commonwealth, arriving to overwinter as early as late August and departing by the middle of May. In Kentucky it appears to prefer dry pine-oak forests. Due to this species being a non-breeding species within Kentucky, and due to the lack of any forest cover on the project site, this species will not be subject to any impact as a result of project-related actions.

Bobolink (*Dolichonyx oryzivorus*): This bird species prefers to nest in unmown hayfields and pastures. The periodic mowing of the site of this proposed project makes it unsuitable as habitat for this species. Therefore, construction of the proposed project will not cause any negative impact to this species.

Osprey (*Pandion haliaetus*): This species of raptor establishes its nests in dead snags and upon other structures in the immediate vicinity of large bodies of water, where it feeds upon fish that are taken by diving into the water. The proposed project is not in the immediate vicinity of a large body of water, and no suitable nesting structures exist upon the site. Therefore, the proposed project cannot cause any impacts to the osprey.

Northern long-eared bat (*Myotis septentrionalis*): This species of forest-dwelling bat establishes day-roosts and maternity colonies in trees of over 3" diameter at breast-height with exfoliating bark and/or split and broken limbs that create suitable crevices, and utilizes caves and cave-like habitats (including abandoned mine workings) as winter hibernacula. As this proposed project will not disturb any forested areas or caves/cave-like habitats, it will not result in any negative impact to this USESA-Listed Threatened species.

Edwin A. Boone, Jr. / Environmental Scientist IV  
Kentucky Energy and Environment Cabinet  
300 Sower Boulevard, Frankfort, KY 40601  
Office: 502-782-6559 [edwin.boone@ky.gov](mailto:edwin.boone@ky.gov)  
Mobile: 606-234-5040

---

**From:** Overman, Charles W (EEC)  
**Sent:** Monday, February 11, 2019 4:55 PM  
**To:** Boone, Edwin (EEC) <[Edwin.Boone@ky.gov](mailto:Edwin.Boone@ky.gov)>  
**Cc:** Howell, Ryan (EEC) <[Ryan.Howell@ky.gov](mailto:Ryan.Howell@ky.gov)>  
**Subject:** RE: Solicitation for KDFWR comments regarding our EastPark Infrastructure and Development AML Pilot Project

**\*\*CAUTION\*\* PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk [ServiceCorrespondence@ky.gov](mailto:ServiceCorrespondence@ky.gov) for any assistance.**

---

**From:** Howell, Ryan (EEC)  
**Sent:** Monday, January 14, 2019 1:23 PM  
**To:** Boone, Edwin (EEC) <[Edwin.Boone@ky.gov](mailto:Edwin.Boone@ky.gov)>  
**Subject:** FW: Solicitation for KDFWR comments regarding our EastPark Infrastructure and Development AML Pilot Project

**\*\*CAUTION\*\* PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk [ServiceCorrespondence@ky.gov](mailto:ServiceCorrespondence@ky.gov) for any assistance.**

---

**From:** Stoelb, Daniel (FW)  
**Sent:** Monday, January 14, 2019 1:12 PM

**To:** Saylor, Michael B (EEC) <[michael.saylor@ky.gov](mailto:michael.saylor@ky.gov)>

**Cc:** Howell, Ryan (EEC) <[Ryan.Howell@ky.gov](mailto:Ryan.Howell@ky.gov)>; Coleman, Keith B (EEC) <[KeithB.Coleman@ky.gov](mailto:KeithB.Coleman@ky.gov)>; Overman, Charles W (EEC) <[Bill.Overman@ky.gov](mailto:Bill.Overman@ky.gov)>

**Subject:** RE: Solicitation for KDFWR comments regarding our EastPark Infrastructure and Development AML Pilot Project

**\*\*CAUTION\*\* PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk [ServiceCorrespondence@ky.gov](mailto:ServiceCorrespondence@ky.gov) for any assistance.**

Attached, please find the KDFWR comment letter regarding the subject project. Thanks.

## **Dan Stoelb**

Environmental Scientist

Fisheries Division - Environmental Section

KY Department of Fish and Wildlife Resources

#1 Sportsman's Lane

Frankfort, KY 40601

Phone: (502) 892-4453

Fax: (502) 564-4519

[www.fw.ky.gov](http://www.fw.ky.gov)

**[Buy Your Fishing or Hunting License Today](#)**

Confidentiality Notice: This e-mail message, including any attachment, is for the sole use of the intended recipient (s) and may contain confidential information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender, by e-mail, and destroy all copies of the original message.

**From:** Saylor, Michael B (EEC) <[michael.saylor@ky.gov](mailto:michael.saylor@ky.gov)>

**Sent:** Friday, January 11, 2019 4:22 PM

**To:** Stoelb, Daniel (FW) <[Daniel.Stoelb@ky.gov](mailto:Daniel.Stoelb@ky.gov)>

**Cc:** Dawson, Doug (FW) <[Doug.Dawson@ky.gov](mailto:Doug.Dawson@ky.gov)>; Howell, Ryan (EEC) <[Ryan.Howell@ky.gov](mailto:Ryan.Howell@ky.gov)>; Coleman, Keith B (EEC) <[KeithB.Coleman@ky.gov](mailto:KeithB.Coleman@ky.gov)>; Overman, Charles W (EEC) <[Bill.Overman@ky.gov](mailto:Bill.Overman@ky.gov)>

**Subject:** Solicitation for KDFWR comments regarding our EastPark Infrastructure and Development AML Pilot Project

**\*\*CAUTION\*\* PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk [ServiceCorrespondence@ky.gov](mailto:ServiceCorrespondence@ky.gov) for any assistance.**

Dear Daniel,

Please see the attached letter with project description and map(s). Respond accordingly via email or letter. Send email responses to: [Ryan.Howell@ky.gov](mailto:Ryan.Howell@ky.gov)  
or [Michael.Saylor@ky.gov](mailto:Michael.Saylor@ky.gov)

Thank you,

Michael Brandon Saylor

Administrative Specialist III

Division of Abandoned Mine Lands

300 Sower Blvd.  
Frankfort, KY 40601  
Office Phone: 502/782-6235



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Matthew G. Bevin**  
Governor

**Don Parkinson**  
Secretary

#1 Sportsman's Lane  
Frankfort, Kentucky 40601  
Phone (502) 564-3400  
1-800-858-1549  
Fax (502) 564-0506  
[fw.ky.gov](http://fw.ky.gov)

**Regina Stivers**  
Deputy Secretary

**Frank Jemley, III**  
Acting Commissioner

14 January 2019

Robert F. Scott, Director  
Division of Abandoned Mine Lands  
2521 Lawrenceburg Road  
Frankfort, KY 40601

RE: EastPark Infrastructure and Development AML Pilot Project (Boyd County)

Dear Mr. Scott:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has received your request for information pertaining to the subject project. The federally-listed Northern Long-eared bat (*Myotis septentrionalis*) is known to occur within 10 miles of the project site. The state-listed Gray Treefrog (*Hyla versicolor*), Spotted Sandpiper (*Actitis macularius*), Savannah Sparrow (*Passerculus sandwichensis*), Henslow's Sparrow (*Ammodramus henslowii*), Red-breasted Nuthatch (*Sitta canadensis*), Bobolink (*Dolichonyx oryzivorus*), and Osprey (*Pandion haliaetus*) are known to occur within one mile of the project site. Please be aware our database system is a dynamic one that only represents our current knowledge of various species distributions.

According to the project description, trees over 3" dbh are not scheduled for removal and no streams will be disturbed. Erosion control measures will need to be installed prior to construction and be inspected and repaired regularly as needed.

I hope this information is helpful to you, and if you have questions or require additional information, please call me at 502-892-4453.

Sincerely,

Dan Stoelb  
Environmental Scientist

Cc: Environmental Section File

