

# **APPENDIX E Agency Correspondence**

#### **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Environmental Permits, Region 9 270 Michigan Avenue, Buffalo, NY 14203-2915 P: (716) 851-7165 | F: (716) 851-7168 www.dec.ny.gov

January 18, 2019

Ms. Rachel Maloney Niagara Frontier Transportation Authority 181 Ellicott Street Buffalo. New York 14203

Dear Ms. Maloney:

SEQR Lead Agency Designation
Metro Rail Expansion Project
City of Buffalo and Towns of Tonawanda and Amherst

This Department is in receipt of your notice, dated December 21, 2018, which requested State Environmental Quality Review (SEQR) Act Lead Agency status for the above-referenced project for Niagara Frontier Transit Metro Systems, Inc. (NFT Metro Systems, Inc.). This office has reviewed the letter and enclosed Environmental Assessment Form (EAF) and supporting information. The Department concurs that the NFT Metro Systems, Inc. should act as SEQR Lead Agency. However, please be advised of the following:

1. Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-15-002, as well as the NOI form, is available on the Department's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the Department's website at www.dec.ny.gov/chemical/8468.html.

The City of Buffalo and the Towns of Tonawanda and Amherst are designated MS4 communities. The project sponsor, owner or operator of a construction activity that is subject to the requirements of a regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 communities. The "MS4 SWPPP Acceptance" form must be signed by the principle executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the NOI, to the Department at NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway, 4th Floor, Albany, New York 12233-3505, telephone: 518/402-8111 to receive Department approval before construction commences.



Ms. Rachel Maloney January 18, 2019 Page 2 of 3

- 2. Based on the EAF and maps provided, the proposed light rail transit line terminates north of the Interstate 990 and an overnight storage and light maintenance facility is proposed for this area at the end of the line. This portion of the project site may include activities near New York State regulated Freshwater Wetlands TE-34 and TE-22 and/or their regulated adjacent areas. Consequently, depending on the project footprint in this area and the project's relation to currently permitted development in this area, the project may require a Freshwater Wetlands permit pursuant to Article 24 of the New York State Environmental Conservation Law. The project sponsor should schedule a meeting with this Department prior to developing this aspect of the proposal.
- 3. We have reviewed the available information in the New York State Natural Heritage Program databases on known occurrences of rare or state-listed animals and plants, of significant natural communities, and other significant habitats. The only occurrence identified was the Spiny Softshell (*Apalone spinifera*), last identified in 2018 near the north end of the project site, as identified on the EAF and on the maps submitted with your letter. For most sites, comprehensive field surveys have not been conducted. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.
- 4. Portions of the proposed project appear to be in archaeologically sensitive areas based on information obtained through the Cultural Resource Information System (CRIS) on the New York State Office of Parks, Recreation and Historic Preservation's (OPRHP) website at <a href="https://cris.parks.ny.gov/">https://cris.parks.ny.gov/</a>. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the project site areas have been significantly disturbed in a way that would destroy potential artifacts. Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (telephone: 518/237-8643).
- 5. According to the United States Fish and Wildlife Service (USFWS) National Wetlands Inventory, federally regulated wetlands may exist along the project corridor. Note that the United States Department of the Army, Corps of Engineers (USACE) has authority under federal law to regulate wetlands in New York State. The project sponsor should contact the USACE Buffalo District office (1776 Niagara Street, Buffalo, New York 14207, telephone: 716/879-4330) to discuss permitting for the proposed project.
- 6. The proposed light rail line alignment indicates that the project would cross Ellicott Creek, which has a water classification and standard of B, pursuant to 6 NYCRR Part 837, Item 25. Any physical alteration (i.e. land clearing, filling, drainage pipe/ditch installation, etc.) to the bed or banks (within 50 feet of the stream) will require an Article 15, Title 5, Protection of Waters Permit from this Department.
- 7. The proposed light rail line alignment crosses areas burdened by New York State Flood Control Easements, specifically the federally constructed Ellicott Creek Flood Protection Project and Ellicott Creek Clearing & Snagging Projects. An Article 16 Flood Control Land Use Permit would be required from the Department for any use of these easements. This Department serves as the non-federal sponsor to the USACE for these federally-

Ms. Rachel Maloney January 18, 2019 Page 3 of 3

constructed projects. The standards for issuing an Article 16 Flood Control Land Use Permit are that the proposed project cannot impair the integrity of the flood control system or impede access to the flood protection project, including access for its operation and maintenance. Excerpts from New York State Environmental Conservation Law Article 16 and 6 NYCRR Part 501 (Rules and Regulations for Use of Flood Control Project Lands), Article 16 permit application materials, flood control project "as-built" drawings, and real estate maps can be provided upon request.

Additionally, a USACE Section 408 approval must be obtained by the project sponsor. The USACE Section 408 approval process runs parallel to the New York State Article 16 Flood Control Land Use Permit. Section 408 approval is required for the modification or alteration of a federal flood protection project. The program contact at the USACE Buffalo District office is Robert W. Remmers, P.E., Levee Safety Program Manager (phone: 716/879-4227).

Please keep this office informed of future SEQR scoping efforts. If you have any questions, please feel free to contact Ms. Michelle Woznick or me at 716/851-7165.

Respectfully,

David S. Denk

Regional Permit Administrator

#### MRW

ecc:

Mr. Charles Rosenburg, NYSDEC Division of Fish & Wildlife

Ms. Anne Rothrock, NYSDEC Division of Fish & Wildlife

Mr. Theodore Myers, NYSDEC Division of Water



95 Perry Street Buffalo, New York 14203 p: 716.206.5100 f: 716.206.5199 w: www.watts-ae.com l environmental

architecture | engineering

Transmitted Via Email: DEP.R9@dec.ny.gov

March 5, 2019

New York State Department of Environmental Conservation 270 Michigan Avenue Buffalo, NY 14203

Re: Environmental Assessment

Niagara Frontier Transportation Authority: Amherst – Buffalo Light Rail Extension Project

Municipalities of Buffalo, Tonawanda, and Amherst, Erie County

Watts Job # 18180

To Whom It May Concern:

Watts Architecture & Engineering (Watts) is a sub-consultant to WSP USA, Inc. (WSP), and is contacting you regarding the proposed construction of a double track light rail transit line extension and associated stations/portals through the municipalities of Buffalo, Tonawanda, and Amherst in Erie County. We are in the preliminary stages of identifying existing environmental conditions and assessing potential environmental impacts associated with the project location.

This project is proposed by the Niagara Frontier Transportation Authority (NFTA) and consists of approximately seven (7) miles of a new double track Light Rail Transit (LRT) line running from University Station at UB South Campus to the area near Audubon Parkway and I-990, through the municipalities of Buffalo, Tonawanda, and Amherst, in Erie County, NY.

As part of our initial information-gathering effort, we are requesting information from the Regional office of the NYSDEC about the potential presence of environmental resources in the project area, or restrictions that may apply including permits and approvals that may be required. In particular, we are looking for local concerns or knowledge of fisheries and stream restriction dates in the project area that might affect the project construction.

We have enclosed a site location map of the project on the USGS 7.5-minute quadrangle. We have also contacted the NYSDEC Natural Heritage Program for information on endangered and threatened species and significant habitats. Your time, effort and expediency in this matter are greatly appreciated. Should you have any questions please contact me at (716) 206-5134 or aheminway@watts-ae.com.


Sincerely,

Watts Architecture & Engineering

Aaron W. Heminway

Sr. Environmental Scientist

Com hothers







95 Perry Street Buffalo, New York 14203 p: 716.206.5100 f: 716.206.5199 w: www.watts-ae.com

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architecture | engineering

Transmitted Via Email: NaturalHeritage@dec.ny.gov

March 5, 2019

NYSDEC Natural Heritage Program 625 Broadway, 5th Floor Albany, New York 12233-4757

Re: Endangered, Threatened or Rare Species and Significant Habitats
Niagara Frontier Transportation Authority: Amherst – Buffalo Light Rail Extension Project

Municipalities of Buffalo, Tonawanda, and Amherst, Erie County

Watts Job # 18180

To Whom It May Concern:

Watts Architecture & Engineering (Watts) is a sub-consultant to WSP USA, Inc. (WSP), and is contacting you regarding the proposed construction of a double track light rail transit line extension and associated stations/portals through the municipalities of Buffalo, Tonawanda, and Amherst in Erie County. We are in the preliminary stages of identifying existing environmental conditions and assessing potential environmental impacts associated with the project location.

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
Watts is requesting information about the potential presence of endangered, threatened, or rare species, as well as significant habitats that may exist in the project area. A preliminary desktop review of the area using NYSDEC's Environmental Resource Mapper indicates that rare species have been documented within 0.5 miles of the project. We have enclosed a site location map showing the project location on the USGS 7.5-minute quadrangle. Your time, effort and expediency in this matter are greatly appreciated. Should you have any questions please contact me at (716) 206-5134 or <a href="mailto:aheminway@watts-ae.com">aheminway@watts-ae.com</a>.

Sincerely,

Watts Architecture & Engineering

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Aaron W. Heminway Sr. Environmental Scientist





#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9 270 Michigan Avenue, Buffalo, NY 14203-2915 P: (716) 851-7165 | F: (716) 851-7168 www.dec.ny.gov

March 6, 2019

Ms. Rachel Maloney Niagara Frontier Transportation Authority 181 Ellicott Street Buffalo, New York 14203

Dear Ms. Maloney:

Draft Scoping Document

Metro Rail Expansion Project

City of Buffalo and Towns of Tonawanda and Amherst

This Department has received and reviewed your January 25, 2019 letter and the enclosed Positive Declaration and Draft Scoping Document prepared for the above-referenced project. In addition to the information previously provided by this Department regarding the proposed project in our January 18, 2019 letter, please consider the following during the preparation of the Draft Environmental Impact Statement (EIS):

- 1. As previously indicated, occurrences of the Spiny Softshell (*Apalone spinifera*), a New York State listed species of special concern, were identified along the project corridor. Potential impacts to this species from the proposed project should be evaluated and discussed in the EIS. Any portion of Ellicott Creek and its tributaries and any lake or pond connected to these waterbodies could include suitable habitat for this turtle species. The species prefers muddy or sandy areas in or adjacent to the water and the young especially will also seek refuge in more vegetated areas. The species does not typically travel far from the water but will bask and/or nest on sandbars and streambanks. If in-water and streambank disturbance is avoided or minimized to the greatest extent possible during project construction, there should be little to no impact to this species.
- As indicated in our January 18, 2019 response to NFT Metro Systems Inc.'s lead agency request, the proposed project would cross areas burdened by New York State Flood Control Easements and an Article 16 Flood Control Land Use Permit would be required from the Department for any use of these easements. The EIS prepared for this project should acknowledge and discuss potential impacts with regard to the flood control project.



Ms. Rachel Maloney March 6, 2019 Page 2

If you have any questions with regard to this letter, please feel free to contact Ms.

Michelle Woznick or me at 716/851-7165.

David S. Denk

Regional Permit Administrator

**MRW** 

ecc: Mr. Charles Rosenburg, NYSDEC Division of Fish & Wildlife

Ms. Anne Rothrock, NYSDEC Division of Fish & Wildlife

Mr. Theodore Myers, NYSDEC Division of Water

IPaC: Explore Location Page 1 of 13

IPaC Information for Planning and Consultation u.s. Fish & Wildlife Service

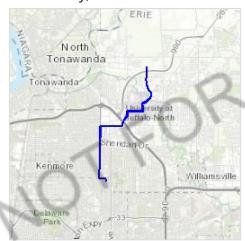
# IPaC resource list

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.

### Location

Erie County, New York



### Local office

New York Ecological Services Field Office

**(**607) 753-9334

**(607)** 753-9699

3817 Luker Road Cortland, NY 13045-9385

http://www.fws.gov/northeast/nyfo/es/section7.htm

IPaC: Explore Location Page 2 of 13

# Endangered species

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

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

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

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

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

#### Listed species

<sup>1</sup> and their critical habitats are managed by the <u>Ecological Services Program</u> 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 <u>NOAA Fisheries</u> for <u>species under their jurisdiction</u>.

- 1. Species listed under the <u>Endangered Species Act</u> are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the <u>listing status page</u> for more information.
- 2. <u>NOAA Fisheries</u>, 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:

IPaC: Explore Location Page 3 of 13

### **Mammals**

NAME STATUS

Northern Long-eared Bat Myotis septentrionalis No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/9045 **Threatened** 

LTATION

### Critical habitats

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

THERE ARE NO CRITICAL HABITATS AT THIS LOCATION.

# 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 <u>below</u>.

- 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 <a href="http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php">http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php</a>
- 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 <u>USFWS Birds of Conservation Concern</u> (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 <u>below</u>. 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 <u>E-bird data mapping tool</u> (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

IPaC: Explore Location

Page 4 of 13

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.)

#### Bald Eagle Haliaeetus leucocephalus

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

https://ecos.fws.gov/ecp/species/1626

Breeds Dec 1 to Aug 31

#### Black-billed Cuckoo Coccyzus erythropthalmus

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

https://ecos.fws.gov/ecp/species/9399

Breeds May 15 to Oct 10

#### **Bobolink** Dolichonyx oryzivorus

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

Breeds May 20 to Jul 31

#### **Buff-breasted Sandpiper** Calidris subruficollis

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

https://ecos.fws.gov/ecp/species/9488

Breeds elsewhere

#### Canada Warbler Cardellina canadensis

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

Breeds May 20 to Aug 10

IPaC: Explore Location Page 5 of 13

Cerulean Warbler Dendroica cerulea

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

https://ecos.fws.gov/ecp/species/2974

Breeds Apr 20 to Jul 20

Dunlin Calidris alpina arcticola

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

Breeds elsewhere

Golden Eagle Aquila chrysaetos

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

https://ecos.fws.gov/ecp/species/1680

Breeds Jan 1 to Aug 31

Golden-winged Warbler Vermivora chrysoptera

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

https://ecos.fws.gov/ecp/species/8745

Breeds May 1 to Jul 20

Lesser Yellowlegs Tringa flavipes

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

https://ecos.fws.gov/ecp/species/9679

Breeds elsewhere

Long-eared Owl asio otus

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

https://ecos.fws.gov/ecp/species/3631

Breeds Mar 1 to Jul 15

Prairie Warbler Dendroica discolor

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

Breeds May 1 to Jul 31

Red-headed Woodpecker Melanerpes erythrocephalus

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

Breeds May 10 to Sep 10

Ruddy Turnstone Arenaria interpres morinella

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

Breeds elsewhere

Semipalmated Sandpiper Calidris pusilla

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

Breeds elsewhere

IPaC: Explore Location Page 6 of 13

Short-billed Dowitcher Limnodromus griseus

This is a Bird of Conservation Concern (BCC) throughout its range in the

https://ecos.fws.gov/ecp/species/9480

Snowy Owl Bubo scandiacus

continental USA and Alaska.

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

Breeds elsewhere

Breeds elsewhere

Wood Thrush Hylocichla mustelina

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 (I)

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.

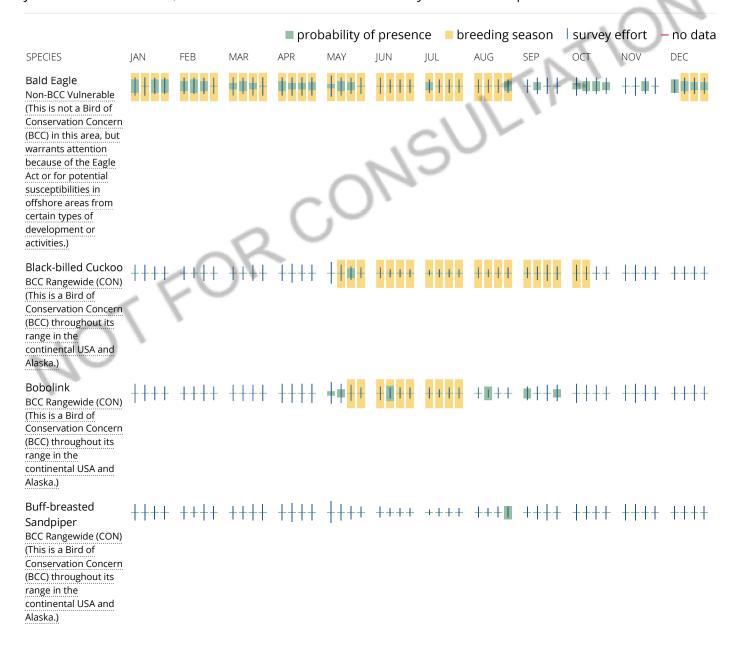
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

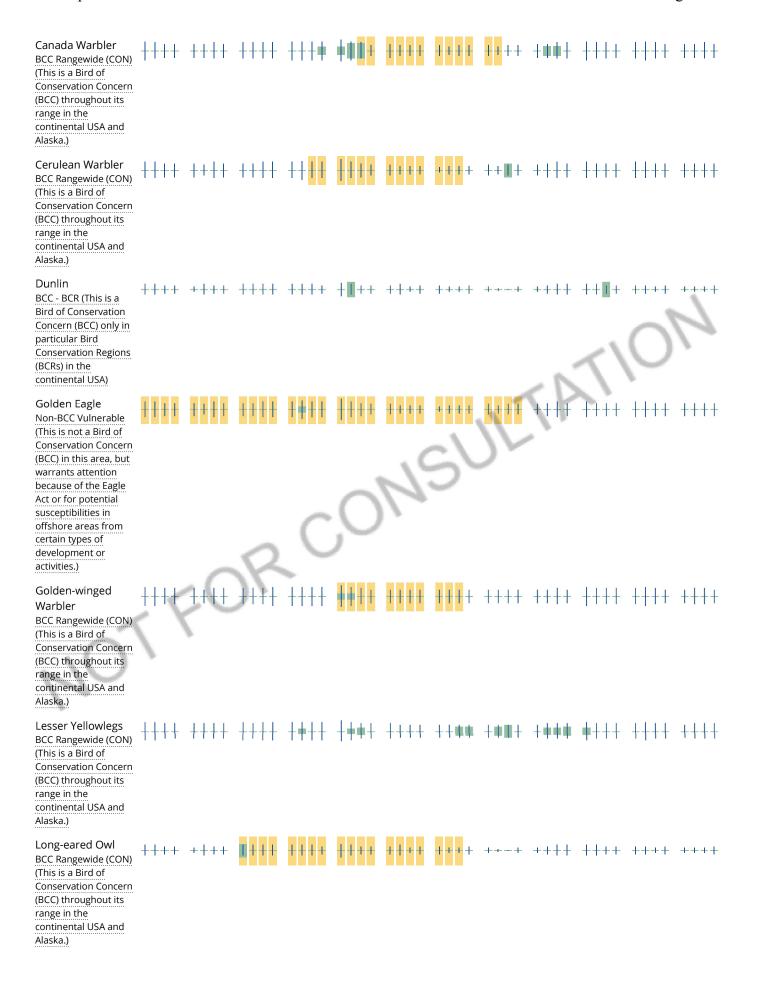
#### No Data (-)

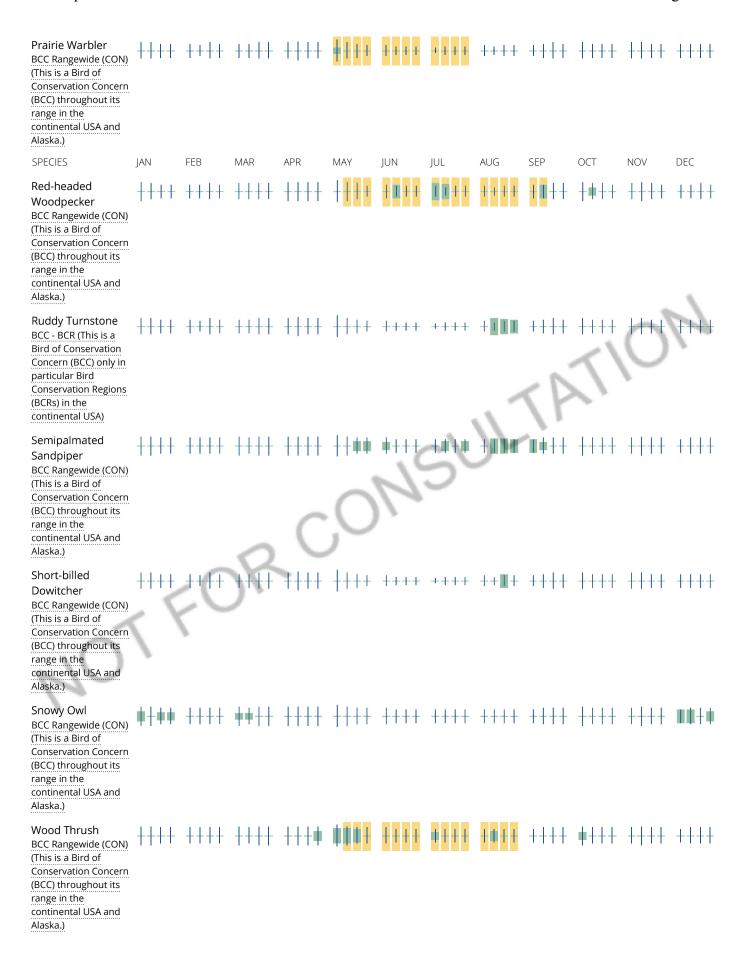
A week is marked as having no data if there were no survey events for that week.

#### **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.







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

IPaC: Explore Location Page 10 of 13

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 <u>Birds of Conservation Concern (BCC)</u> 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 <u>Avian Knowledge Network (AKN)</u>. The AKN data is based on a growing collection of <u>survey</u>, <u>banding</u>, <u>and citizen science datasets</u> 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 (<u>Eagle Act</u> 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 <u>E-bird Explore Data Tool</u>.

# 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 <u>Avian Knowledge Network (AKN)</u>. This data is derived from a growing collection of <u>survey, banding, and citizen science datasets</u>.

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 <u>Birds of Conservation Concern</u> (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 <u>Eagle Act</u> 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).

IPaC: Explore Location Page 11 of 13

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 <u>Diving Bird Study</u> and the <u>nanotag studies</u> or contact <u>Caleb Spiegel</u> or <u>Pam Loring</u>.

#### What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to <u>obtain a permit</u> 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 <u>National Wildlife Refuge</u> system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

IPaC: Explore Location Page 12 of 13

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 <u>NWI wetlands</u> 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>U.S. Army Corps of Engineers</u> <u>District</u>.

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 FORESTED/SHRUB WETLAND

PFO1Bd

PSS1/EM1B

PSS1/EM1Bd

LAKE

L1UBHx

**RIVERINE** 

R2UBH

R2UBHx

R4SBCx

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 tuberficid 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.

#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program 625 Broadway, Fifth Floor, Albany, NY 12233-4757 P: (518) 402-8935 | F: (518) 402-8925 www.dec.ny.gov

March 27, 2019

Aaron W. Heminway Watts Architecture & Engineering 95 Perry St, Suite 300 Buffalo, NY 14203

Re: Niagara Frontier Transportation Authority: Amherst – Buffalo Light Rail Extension Project

(Watts Job # 18180)

County: Erie Town/City: Amherst, City Of Buffalo, Tonawanda

Dear Mr. Heminway:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the above project.

Enclosed is a report of rare or state-listed animals and plants, and significant natural communities that our database indicates occur in the vicinity of the project site.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our database. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

Our database is continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the NYS DEC Region 9 Office, Division of Environmental Permits at dep.r9@dec.ny.gov, (716) 851-7165.

Sincerely,

Heidi Krahling

Environmental Review Specialist New York Natural Heritage Program





# The following state-listed animals have been documented in the vicinity of the project site.

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed or are candidates for federal listing.

For information about any permit considerations for your project, please contact the Permits staff at the NYSDEC Region 9 Office at dep.r9@dec.ny.gov, (716) 851-7165.

The following species have been documented within 0.5 mile of the project site.

COMMON NAME SCIENTIFIC NAME NY STATE LISTING FEDERAL LISTING

Birds

Peregrine Falcon Falco peregrinus Endangered 13474

Breeding

Reptiles

Spiny Softshell Apalone spinifera Special Concern 15471

This report only includes records from the NY Natural Heritage database.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, and from NYSDEC at www.dec.ny.gov/animals/7494.html.

3/27/2019 Page 1 of 1

### The following rare animals have been documented in the vicinity of the project site.

We recommend that potential impacts of the proposed project on these species be addressed as part of any environmental assessment or review conducted as part of the planning, permitting and approval process, such as reviews conducted under SEQR. Field surveys of the project site may be necessary to determine the status of a species at the site, particularly for sites that are currently undeveloped and may still contain suitable habitat. Final requirements of the project to avoid, minimize, or mitigate potential impacts are determined by the lead permitting agency or the government body approving the project.

The following animals, while not listed by New York State as Endangered or Threatened, are rare in New York and are of conservation concern. They were documented on 2018-08-09 where the project site coincides with Ellicott Creek.

	COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	HERITAGE CONSERVATION STATU	S
Freshwater Mussels					
	Slippershell Mussel	Alasmidonta viridis	Unlisted	Critically Imperiled in NYS	15684
	Lilliput	Toxolasma parvum	Unlisted	Critically Imperiled in NYS	15702
	Pink Heelsplitter	Potamilus alatus	Unlisted	Imperiled in NYS	15696
	Paper Pondshell	Utterbackia imbecillis	Unlisted	Critically Imperiled in NYS	15706
	Rainbow	Villosa iris	Unlisted	Imperiled in NYS	15709

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the rare animals and plants in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, from NatureServe Explorer at www.natureserve.org/explorer, and from USDA's Plants Database at http://plants.usda.gov/index.html (for plants).

3/27/2019 Page 1 of 1