

**Migratory Bird Treaty Act (MBTA) Plan
Grayson Mill Operating, LLC
Missouri River Crossing Pipeline Reinstatement Project
December 2024**

Background:

Grayson Mill Operating, LLC (“Grayson Mill”) is proposing to return to service 14.72 miles of existing Hazardous Liquid Pipeline (HLP) and its associated facilities. The existing pipeline is located in Williams and McKenzie County, North Dakota.

Carlson McCain (CM) conducted a natural resources survey of the Project’s Survey Corridor in June, 2023. This effort included a one-half mile line-of-sight survey from the Project’s Survey Corridor to determine the presence/absence of nesting raptors. There were no raptor nests identified during the field survey. This survey was conducted for compliance purposes for the Project with respect to the following federal acts and state legislation (among others):

- Migratory Bird Treaty Act of 1918 (MBTA)
- Bald and Golden Eagle Protection Act of 1940 (BGEPA)
- Endangered Species Act of 1973 (ESA)

The management of Migratory Bird Treaty Act (MBTA) concerns correspond with the regional timing associated with annual phenology of migratory species. In North Dakota, species protected under the MBTA are present throughout the year. However, it is acknowledged that most protected species seasonally present in North Dakota nest from February 1st through July 15th annually. During this nesting period, birds are more vulnerable to human activities. The proposed Project construction is scheduled to commence the third quarter of 2025 and take approximately four months to reach completion. Due to the Project schedule and phenology of resident birds, MBTA mitigation is not expected. Should mitigation be required, Grayson Mill would continue to consult with agencies as necessary and would develop a mitigation plan as appropriate.

The Bald and Golden Eagle Act (BGEA) prohibits anyone without a permit from taking a bald or golden eagle including their parts, nests, or eggs. The BGEA defines “take” as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb. The BGEA also addresses impacts resulting from human-induced alterations occurring around previously used nesting sites. No bald or golden eagles or nests were identified during the field survey.

Potentially Affected Resources:

Based upon the Survey, the Project is located near potentially suitable habitat to support the following listed species and protected resources (with federal/seasonal timing considerations):

- Nesting Birds
- Raptors
- Bald eagles (*Haliaeetus leucocephalus*)
- Golden Eagle (*Aquila chrysaetos*)

Mitigation Recommendations:

Migratory birds

The preferred window to engage in clearing activities occurs between August 1st and April 14th annually. If clearing occurs during the general nesting season (April 15th – July 31st), it is recommended that a qualified biologist conduct a MBTA survey in advance of clearing activities. Clearing activities should be initiated within 10 days of a completed MBTA survey in areas that were found to be free of breeding bird activity. If active nests are found, follow the recommendations of a qualified biologist with respect to establishing an exclusion zone, monitoring the status of nest, and providing clearance to resume project activities. Please note that whenever active nesting (e.g., nest with eggs or chicks) is encountered by project personnel, it is recommended a “stop work” action be implemented and provide **immediate** notification to Grayson Mill Environmental with location information to evaluate any additional actions to be taken.

Bald Eagles and Raptors

The preferred window to engage in clearing activities occurs between September 1st and November 30th annually. Suitable habitat within the Project area includes woodlots with large trees for nesting intermixed with large waterbodies and open grassland areas for foraging. If clearing would occur during the active breeding season (December 1st through August 31st), then prior to clearing, project personnel should visually inspect the area to be cleared for nest structures in the canopy. Eagle nests are typically large and conspicuous structures comprised of large sticks located in the uppermost canopy of forested areas or woodlots; raptor nests are similar in composition, but smaller in scale and typically found lower in the canopy. When engaged in clearing activities, project personnel should be advised that clearing of trees with visible woody nest structures is prohibited. If a suspected eagle or raptor nest, or a tree with a large stick structure is encountered, it is recommended a “stop work” action be implemented; project personnel should also notify Grayson Mill Environmental **immediately** with location information. Grayson Mill Environmental would then evaluate any additional actions to be taken. Provided the Project occurs during the preferred window, no further restrictions would apply.

Other Wildlife

If any wildlife is encountered at the project site, the animal(s) should be allowed to naturally pass through the area. If a nest is found on site, work should stop immediately and Grayson Mill Environmental should be contacted for guidance. Never interact with wildlife if you feel it would put you at risk. Never handle wildlife without gloves or protective gear. Report all wildlife encounters that result in death or injury to animals. If you find dead or injured wildlife on your job site, please contact Grayson Mill Environmental for additional support. If listed species are observed, contact Grayson Mill Environmental **immediately** for guidance.

Listed Species and Protected Resource Profiles

The following species profiles have been prepared to provide project personnel with basic descriptions of the habitat requirements of the listed species and protected resources that may be encountered. A species specific identification has also been included for reference purposes when conducting clearing activities.



Migratory birds

Most birds found in the United States are protected under the MBTA act and utilize a variety of habitats and substrate to nest. Most species initiate nesting between April and July, but nesting phenology varies greatly between and among species. Nest sizes can range from 4 inches in diameter (lesser yellowlegs) to almost 10 feet in diameter (bald eagle). Therefore, nest detection varies depending on species and habitat type. Purposeful take of protected bird species due to construction or operating activities is illegal under the MBTA, regardless of seasonal timing stipulations or circumstances.

Eagles and Raptors

Bald eagles are protected not only by the MBTA, but also by the BGEPA. Eagles and raptor species typically nest between December 1st and August 31st. Large nests consisting of heavy stick structure located in high tree canopies or along cliffs are common among most eagle and raptor species. Eagles will consume carrion while both eagles and raptors prey on small mammals or fish, and actively hunt ground adjacent to their nesting area. Purposeful take of these species is prohibited by the MBTA and BGEPA regardless of seasonal timing stipulations or circumstances.

Affected Resources Guidance

Common Name	Federal Status	Photo	Habitat	Guidance
Migratory Birds	M		Various habitats including grasslands, forests, and riparian ecosystems. Diverse group which can nest in many different habitats. Nesting period varies between species but is typically between April and September.	If a potentially active bird nest (stick nest, cavity nest, ground nest) is identified, contact Grayson Mill Environmental immediately .
Bald Eagles/ Raptors	B M		Can be found in large stick structure nests in older tree stands and cliffs. Hunts open areas near wetlands and waterways. Active breeding typically occurs between December 1 st and August 31 th .	Clearing of trees with large stick structures in canopies is prohibited. If a large nest is identified, contact Grayson Mill Environmental immediately .

T = Threatened; E = Endangered; N = Not Listed; M = MBTA protected; B = BGEPA protected