



September 8, 2026

Via Email: wmclaugh@hodgsonruss.com

William McLaughlin, Esq.
Hodgson Russ LLP
677 Broadway,
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Albany, NY 12207

RE: RAO Determination 26-10

Matter No. 26-00550 – Application of WPD USA Inc. for a Permit, Pursuant to Article VIII of the New York State Public Service Law, to Construct the Lewis Wind Project, a Major Renewable Energy Generation Facility, Located in the Towns of Lewis, Leyden, and West Turin, Lewis County, and Towns of Annsville and Ava, Oneida County.

Dear Counsellor McLaughlin:

This is a determination of the New York State Department of Public Service (Department) Records Access Officer (RAO) under New York State Public Officers Law (POL) § 89(5)(b)(3) made in response to a Freedom of Information (FOIL) request received from Amy Lavine, Esq., on behalf of Liberty Street Legal PLLC, seeking in relevant part portions of four records filed by WPD USA Inc. (WPD) in Matter No. 26-00550, and to WPD's Statement of Necessity (SON), submitted on August 27, 2026.

As discussed further below, as RAO, based on the unique and specific facts here and the particular representations contained in WPD's SON submission, I have determined a portion of the records identified as confidential by WPD is entitled to continued exception from disclosure under FOIL because it would identify locations of habitats of species that are exempt from disclosure under New York State Environmental Conservation Law (ECL) § 3-0301(2)(r). However, I have also determined that exception from disclosure should be terminated for certain other portions of the records that would not identify locations of habitats of species protected from disclosure under ECL § 3-0301(2)(r).

BACKGROUND

Article VIII of the New York State Public Service Law (PSL) requires any major renewable energy facility to obtain a major renewable energy facility siting permit (siting permit) issued by the Office of Renewable Energy Siting and Transmission (ORES) prior to commencing preparation or beginning construction of such a facility in the State.¹ A major

¹ See PSL § 140(1).

renewable energy facility is any renewable energy system with a nameplate capacity of 25 megawatts or more and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission system.²

Prior to filing an application for a siting permit, an applicant must meet certain pre-application requirements.³ As relevant here, the applicant must provide certain reports; hold meetings with ORES and the New York State Department of Environmental Conservation (DEC); and, as needed depending on the unique facts of an application, satisfy additional requirements related to New York State threatened and endangered species.⁴

In compliance with 16 NYCRR § 1101-1.1(b), WPD filed in Matter Number 26-00550 a Wildlife Site Characterization (WSC) with Appendices A through C to the WSC; a Breeding Bird Survey Work Plan (BBS Work Plan); and a Marsh Bird Survey Work Plan (MBS Work Plan, and collectively, the Records) on March 20, 2026; March 27, 2026; and June 4, 2026, respectively.

Along with each of these filings, WPD submitted requests for nondisclosure, requesting that portions of the Records be kept confidential and exempt from public disclosure. Specifically, WPD's requests for nondisclosure asserted that portions of the Records should be withheld from public disclosure because they identify locations of habitats of species designated as endangered pursuant to ECL Section 11-0535.⁵

On June 17, 2026, the agency received a FOIL request from Ms. Lavine, seeking the following in relevant part:

Pursuant to the New York Freedom of Information Law ("FOIL"), we hereby request unredacted copies of the documents listed below, which are filed in DPS Matter Master No. 26-00550, Application of WPD USA Inc. for a permit pursuant to Article VIII of the New York State Public Service Law to construct the Lewis Wind Project. Each document identified below has been redacted in part or in whole based on asserted exemptions related to the confidentiality of endangered, threatened, or listed species information. The purported exemptions are not legally applicable, however, and the redactions severely prejudice members of the public who may wish to comment on the impacts of this project to wildlife and biodiversity.

² See PSL § 137(4).

³ See 16 NYCRR § 1101-1.1.

⁴ See 16 NYCRR § 1101-1.1(b)(1); *see also* 6 NYCRR § 182.5 (listing endangered species, threatened species, and species of special concern).

⁵ *See also*, POL § 89(5); 16 NYCRR § 6-1.3.

1. DMM Item No. 01: “2026-03-09 Lewis Wind WSC Part 1 REDACTED,” at:
 - a. page 1, redacting the boundary of the Facility Study Area.
 - b. page 2, redacting the EAF Mapper query boundary of the Facility Study Area.
 - c. page 5, redacting eBird hotspot information.
 - d. page 6, redacting the location of the nearest Christmas Bird Count circle, point count survey information, and Breeding Bird Atlas III atlas block information.
 - e. page 7, redacting information regarding state-listed bird species recorded within survey blocks within one mile of the Facility Study Area, and the Wildlife Species List referenced in Appendix C.
 - f. page 13, redacting information regarding the northern long-eared bat.
 - g. page 14, redacting the location of the only least bittern record in the vicinity of the Facility Study Area.
 - h. page 16, redacting information concerning potential bald eagle breeding habitat.
 - i. page 17, redacting the locations of pied-billed grebe and sharp-shinned hawk observations recorded in the Breeding Bird Atlas III.
 - j. page 19, redacting the locations of American bittern and red-shouldered hawk observations.
 - k. page 20, redacting the location of a common loon observation.
 - l. pages 20 and 21, redacting osprey observation information.
 - m. Figures 2, 3, 4, 5, 6, 7, 8, and 9, redacted in their entirety.
2. DMM Item No. 01: “2026-03-09 Lewis Wind WSC Part 2 REDACTED,” at pages 2 through 51, 56 through 59, and 77, redacted in their entirety.
3. DMM Item No. 02: “26-00550 Lewis Wind - 2026-03-17 Lewis Wind BBS Work Plan REDACTED,” at pages 16 through 28, redacting figures in their entirety

...

8. DMM Item No. 05: “2026-05-29 Lewis Wind MBS Work Plan REDACTED,” at pages 17 through 28, redacting figures in their entirety.⁶

On August 13, 2026, I informed WPD by letter that the Department would determine the status of the information initially identified by WPD as confidential in the Records in accordance with POL § 89(5). In the same letter, I notified WPD of its opportunity to submit a written SON to support continued exception from public disclosure.

On August 27, 2026, WPD timely submitted its SON, claiming that exception from public disclosure should be continued for the information identified as confidential in the Records.

STATEMENT OF APPLICABLE LAW

FOIL is based on a presumption of access. Each agency shall make available for public inspection and copying all records, except for records or portions thereof that may be withheld based on a statutory exception.⁷

Pursuant to POL § 89(5)(b)(3), upon the initiative of the agency or upon the request of any person for a record excepted from disclosure, the RAO is required to issue a written determination granting, continuing, or terminating an exception from disclosure and stating the reasons therefor.⁸

Here, WPD contends that information it identified as confidential in the Records should continue to be withheld from disclosure because it constitutes information “directly related to the presence of, location, and activities of endangered, threatened, or listed species, such that its release might cause such species to be harmed, or their activities to be interrupted.”⁹ WPD asserts that this information should, therefore, be protected from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a), which allows an agency to deny access to records or portions thereof that are specifically exempted from disclosure by statute.¹⁰

These issues, and whether WPD has sustained its request for continued exception from disclosure, will be determined herein.

⁶ Subparts 4, 5, 6, and 7 of Ms. Lavine’s FOIL request sought records filed by ORES and are not relevant here.

⁷ POL § 87(2).

⁸ POL § 89(5)(b)(3).

⁹ SON at 1.

¹⁰ POL § 87(2)(a).

Records Specifically Exempted from Disclosure by Statute

Under POL § 87(2)(a), an agency may withhold records or portions thereof that “are specifically exempted from disclosure by state or federal statute[.]” As relevant here, and “[n]otwithstanding the provisions of article six of the public officers law,” ECL § 3-0301(2)(r) directs agencies to:

deny access to inspection of records which identify locations of habitats of species designated endangered pursuant to section 11-0535 of this chapter, protected pursuant to section 9-1503 of this chapter or any other species or unique combination of species of flora or fauna where the destruction of such habitat or the removal of such species therefrom would impair their ability to survive provided, however, that the commissioner may, in his discretion permit access to such inspection to persons engaged in legitimate scientific and academic research.

This provision establishes three categories of information that may be withheld from disclosure.

First, the agency may deny access to locations of habitats of species designated endangered under ECL § 11-0535.¹¹ Endangered species “shall mean those species of fish, shellfish, crustacea and wildlife designated by [DEC], by regulation filed with the Secretary of State, as seriously threatened with extinction[.]”¹² The current list of endangered species that DEC has determined merit designation as endangered are available under 6 NYCRR § 182.5(a).¹³ The taking, importation, transportation, possession, or sale of any endangered or threatened species, “or hides or other parts thereof, or the sale or possession with intent to sell any article made . . . from the skin, hide or other parts of any endangered or threatened species . . . is prohibited, except under license or permit from [DEC].”¹⁴

Second, the agency may deny access to locations of habitats of plant species protected under ECL § 9-1503.¹⁵ Here, the term “plants” includes “species of native shrubs, trees, herbs, ferns, fern-allies and wild flowers.”¹⁶

¹¹ ECL § 3-0301(2)(r).

¹² ECL § 11-0535(1).

¹³ *See also* 6 NYCRR § 182.3 (providing the criteria for listing whether a species should be listed as endangered in New York).

¹⁴ ECL § 11-0535(2).

¹⁵ ECL § 3-0301(2)(r).

¹⁶ ECL § 9-1503(1).

Under ECL § 9-1503(1), protected plant species fall under the following categories:

“endangered species” shall mean those species of plants in danger of extinction throughout all or a significant portion of their ranges within the state, and requiring remedial action to prevent such extinction; “threatened species” shall mean those species of plants that are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges within the state; “rare species” shall mean those species of plants that have small populations within their ranges in the state, and “exploitably vulnerable species” shall mean those species of plants that are likely to become threatened in the near future throughout all or a significant portion of their ranges within the state if causal factors continue unchecked.

Protected plant species that DEC has determined merit listing are available under 6 NYCRR §§ 193.2 through 193.3. No person shall knowingly “knowingly pick, pluck, sever, remove, damage by the application of herbicides or defoliants or carry away, without the consent of the owner thereof, any protected plant. An offense under this section shall be a violation, punishable by a fine of not to exceed twenty-five dollars.”¹⁷

Third, the agency may deny access to “any other species or unique combination of species of flora or fauna where the destruction of such habitat or the removal of such species therefrom would impair their ability to survive[.]”¹⁸

COMPANY’S STATEMENT OF NECESSITY

On August 27, 2026, WPD timely submitted its SON, asserting that the information identified as confidential in the Records should continue to be excepted from disclosure because the Records consist of locational information of endangered, threatened, or other listed species, which are statutorily protected from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).

With respect to the Wildlife Site Characterization (WSC), WPD asserts that exception from disclosure should be continued for all portions of this record (which I note was prepared for the pre-application stage) because the information “relate[s] to, and would make more likely the identification of, the specific and discernable location of areas being studied and characterized for the express purpose of documenting the presence or absence of protected species, including the nature and quality of observed habitats and behaviors.”¹⁹ WPD notes that the WSC contains

¹⁷ ECL § 9-1503(3).

¹⁸ ECL § 3-0301(2)(r).

¹⁹ SON at 2–3.

the boundaries of the Facility Study Area and WPD's queries in EAF Mapper,²⁰ which provides observations and locational habitat information of protected species within the boundaries of the Facility Study Area, including osprey, the common loon, American Bittern, red-shouldered hawks, bald eagles, and northern long-eared bats.²¹

With respect to Appendices A through C to the WSC, WPD asserts that exemption from disclosure should be continued for all portions of this record "because it contains information regarding the locations of rare species."²²

With respect to the Breeding Bird Survey (BBS) Work Plan, WPD asserts that exemption from disclosure should be continued for all portions of this record because it "would reveal information about the location of habitats of protected species."²³

With respect to the March Bird Survey (MBS) Work Plan, WPD asserts that exemption from disclosure should be continued for all portions of this record because it "would reveal information about the location and habitats of protected species."²⁴

For the reasons stated above, WPD claims that all portions of the Records identified as confidential should continue to be withheld from disclosure under ECL § 3-0301(2)(r) and POL § 87(2)(a) "to prevent the deliberate or inadvertent death or injury by hunters, or the disturbance of critical habitats by visitors or observers."²⁵

DISCUSSION

FOIL requires state and municipal agencies to make available for public inspection and copying all records, "subject to certain exemptions."²⁶ POL § 89(5)(b)(2) provides that the agency shall "permit the person who requested the exception, within ten business days of receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception." Pursuant to the POL, "[t]he person requesting an exception from disclosure pursuant to [POL § 89(5)] shall in all proceedings have the burden of proving entitlement to the exception."²⁷ Further, caselaw makes clear that "the entity claiming an

²⁰ EAF Mapper is an online mapping tool provided by DEC. *See* How to Use the EAF Workbooks, <https://dec.ny.gov/regulatory/permits-licenses/seqr/eaf-workbooks/how-to-use> (last visited September 3, 2026).

²¹ SON at 3.

²² SON at 3.

²³ SON at 3.

²⁴ SON at 3.

²⁵ SON at 3.

²⁶ *Matter of Verizon N.Y., Inc. v. Mills*, 60 A.D.3d 958, 959 (2d Dept. 2009), *quoting* POL § 87(2); *see Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007).

²⁷ POL § 89(5)(e).

exemption must show that the requested material ‘falls squarely within the ambit of one of the statutory exemptions,’²⁸ by “articulat[ing] a particularized and specific justification for denying access.”²⁹ The entity claiming an exemption must provide specific, persuasive evidence, and cannot rely on vague, conclusory, or speculative assertions.³⁰

As an initial matter, and for the record, this determination relates specifically to the information identified as confidential in the WSC, Appendices A through C to the WSC, the BBS Work Plan, and the MBS Work Plan. The portions of the FOIL request seeking records filed by ORES in Matter 26-00550 will be addressed separately.

WSC

With respect to WPD’s assertion that the information identified as confidential in the WSC should continue to be withheld from public disclosure under ECL § 3-0301(2)(r) and POL § 87(2)(a) “to prevent the deliberate or inadvertent death or injury by hunters, or the disturbance of critical habitats by visitors or observers[]”, this assertion is conclusory and vague. I am not convinced that WPD met its burden to provide a particularized and specific justification for withholding all identified portions of the WSC from disclosure.³¹

Regardless, under ECL § 3-0301(2)(r) and POL § 87(2)(a), the Department may continue to withhold from disclosure information that would make public the locations of habitats of protected species. Please see the following itemized review of the WSC:

- **Page 1:** Exception from disclosure should be terminated. The boundary of the Facility Study Area, on its own, does not provide locations of habitats of species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 2:** Exception from disclosure should be terminated. The boundary of the EAF Mapper area, on its own, does not provide locations of habitats of species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).

²⁸ *Matter of Verizon N.Y., Inc. v. Bradbury*, 40 A.D.3d 1113, 1114 (2d Dept. 2007).

²⁹ *Id.* at 1114, citing *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562 (1986); see *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267 (1996); *Matter of Washington Post Co. v. New York State Ins. Dept.*, 61 N.Y.2d 557 (1984); *Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567 (1979); *Matter of Madera v. Elmont Pub. Lib.*, 101 A.D.3d 726 (2d Dept. 2012); *Matter of Porco v. Fleischer*, 100 A.D.3d 639 (2d Dept. 2012); *Matter of Dilworth v. Westchester County Dept. of Correction*, 93 A.D.3d 722 (2d Dept. 2012); *Matter of Bahnken v. New York City Fire Dept.*, 17 A.D.3d 228 (1st Dept. 2005); *Visiting Nurse Service of New York Home Care v. NYS Department of Health*, 2012 N.Y. Misc. LEXIS 5701, 2012 N.Y. Slip. Op. 32975(U) (Sup. Ct., Albany County 2012).

³⁰ *Matter of Markowitz v. Serio*, 11 N.Y.3d 43, 51 (2008); *Matter of Newsday, LLC v. Nassau County Police Dept.*, 136 A.D.3d 828 (2d Dept. 2016); *Matter of Rose v. Albany County Dist. Attorney’s Off.*, 111 A.D.3d 1123, 1126 (3d Dept. 2013).

³¹ *Verizon N.Y., Inc.*, 40 A.D.3d at 1113–14.

- **Page 5:** Exception from disclosure should be terminated. The boundaries of eBird hotspots, on their own, do not provide specific locations of habitats of species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 6:** Exception from disclosure should be terminated. The Christmas Bird Count, United States Geological Survey Breeding Bird Survey, and the New York Breeding Bird Atlas (BBA) survey boundaries, on their own, do not provide specific locations of habitats of species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 7:** Exception from disclosure should be terminated. The list of BBA III survey blocks is publicly available information. This information does not provide specific locations of habitats of species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 13:** Exception from disclosure should be continued. The information here could be used to specifically identify the location of a northern long-eared bat hibernaculum. The northern long-eared bat is listed as endangered.³² Therefore, this information is exempt from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 14:** Exception from disclosure should be terminated. The information here contains locational information related to a least bittern sighting. However, the least bittern is a threatened species,³³ not an endangered species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). Additionally, the locational information here is derived from publicly available resources.
- **Page 16:** Exception from disclosure should be terminated. The information here contains locational information related to bald eagle sightings. However, the bald eagle is a threatened species,³⁴ not an endangered species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). Additionally, the locational information here is derived from publicly available resources.
- **Page 17:** Exception from disclosure should be terminated. The information here contains locational information related to pied-billed grebe sightings. However, the pied-billed grebe is a threatened species,³⁵ not an endangered species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). Additionally, the locational information here is derived from publicly available resources.
- **Page 19:** Exception from disclosure should be terminated. The information here contains locational information related to red-shouldered hawk sightings. However, the red-shouldered hawk is a species of special concern,³⁶ not an endangered species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). Additionally, the locational information here is derived from publicly available resources.

³² 6 NYCRR § 182.5(a).

³³ 6 NYCRR § 182.5(b).

³⁴ 6 NYCRR § 182.5(b).

³⁵ 6 NYCRR § 182.5(b).

³⁶ 6 NYCRR § 182.5(c).

- **Page 20:** Exception from disclosure should be terminated. The information here contains locational information related to common loon sightings. However, the common loon is a species of special concern,³⁷ not an endangered species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). Additionally, the locational information here is derived from publicly available resources.
- **Pages 20 through 21:** Exception from disclosure should be terminated. The information here contains locational information related to osprey sightings. However, the osprey is a species of special concern,³⁸ not an endangered species specifically exempted from disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). Additionally, the locational information here is derived from publicly available resources.
- **Figures 2, 3, 4, 5, 6, 7, 8, and 9:** Exception from disclosure should be terminated. The maps in the identified figures do not contain specific locational information of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).

Appendices A through C to the WSC

With respect to WPD's assertion that the information identified as confidential in Appendices A through C to the WSC should continue to be withheld from public disclosure under ECL § 3-0301(2)(r) and POL § 87(2)(a) "to prevent the deliberate or inadvertent death or injury by hunters, or the disturbance of critical habitats by visitors or observers[]," the assertion is conclusory and vague. I am not convinced that WPD met its burden to provide a particularized and specific justification for withholding all identified portions of Appendices A through C to the WSC from disclosure.³⁹

Regardless, under ECL § 3-0301(2)(r) and POL § 87(2)(a), the Department may continue to withhold from disclosure information that would make public the locations of habitats of protected species. Please see the following itemized reviews of Appendices A through C to the WSC:

- **Pages 2 through 9:** Exception from disclosure should be terminated. This information consists of EAF Mapper reports for the Facility Study Area. These reports do not contain specific locational information of species exempted from disclosure under ECL § 3-0301(2)(r). Additionally, EAF Mapper is a publicly available online mapping tool. Any individual with general knowledge of the project area could access the information in these records.
- **Page 10:** Exception from disclosure should be terminated. This information consists of map of the Facility Study Area from a DEC Environmental Resource Mapper report, which generally notes the locations of "Significant Natural Communities", "Natural Communities Near this Location", and "Rare Plants or Animals". These reports do not contain specific locational information of species exempted from disclosure under

³⁷ 6 NYCRR § 182.5(c).

³⁸ 6 NYCRR § 182.5(c).

³⁹ *Verizon N.Y., Inc.*, 40 A.D.3d at 1113–14.

ECL § 3-0301(2)(r). Additionally, this information was generated using a publicly available resource. Any individual with general knowledge of the project area could access the information in these records.

- **Pages 11 through 51:** Exception from disclosure should be terminated. This information consists of multiple reports from the DEC Environmental Resource Mapper related to portions of the Facility Study Area, which generally notes whether wetlands, waterbodies, streams, rare plants, and rare animals exist in the area. These reports do not contain specific locational information of species exempted from disclosure under ECL § 3-0301(2)(r). Additionally, this information was generated using a publicly available resource. Any individual with general knowledge of the project area could access the information in these records.
- **Pages 56 through 59:** Exception from disclosure should be terminated. This information consists of pages from a report by the United States Department of the Interior, Fish and Wildlife Service related the Facility Study Area. This report does not contain specific locational information of species exempted from disclosure under ECL § 3-0301(2)(r). Additionally, this information was created using ECOSphere, a publicly available resource. Any individual with general knowledge of the project area could access the information in these records.
- **Page 77:** Exception from disclosure should be terminated. This information consists of notes, conservation status codes, and publicly available resources that WPD relied on to create its WSC. This page does not contain specific locational information of species exempted from disclosure under ECL § 3-0301(2)(r).

BBS Work Plan

With respect to WPD's assertion that the information identified as confidential in the BBS Work Plan should continue to be withheld from public disclosure under ECL § 3-0301(2)(r) and POL § 87(2)(a) "to prevent the deliberate or inadvertent death or injury by hunters, or the disturbance of critical habitats by visitors or observers[]," the assertion is conclusory and vague. I am not convinced that WPD met its burden to provide a particularized and specific justification for withholding all identified portions of the BBS Work Plan from disclosure.⁴⁰

Regardless, under ECL § 3-0301(2)(r) and POL § 87(2)(a), the Department may continue to withhold from disclosure information that would make public the locations of habitats of protected species. Please see the following itemized review of the BBS Work Plan:

- **Page 16:** Exception from disclosure should be terminated. The map does not contain specific, locational information of habitats of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 17:** Exception from disclosure should be terminated. The map does not contain specific, locational information of habitats of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).

⁴⁰ *Verizon N.Y., Inc.*, 40 A.D.3d at 1113–14.

- **Pages 18 through 28:** Exception from disclosure should be terminated. These maps do not contain specific, locational information of habitats of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).

MBS Work Plan

With respect to WPD's assertion that the information identified as confidential in the MBS Work Plan should continue to be withheld from public disclosure under ECL § 3-0301(2)(r) and POL § 87(2)(a) "to prevent the deliberate or inadvertent death or injury by hunters, or the disturbance of critical habitats by visitors or observers[]," the assertion is conclusory and vague. I am not convinced that WPD met its burden to provide a particularized and specific justification for withholding all identified portions of the MBS Work Plan from disclosure.⁴¹

Regardless, under ECL § 3-0301(2)(r) and POL § 87(2)(a), the Department may continue to withhold from disclosure information that would make public the locations of habitats of protected species. Please see the following itemized review of the MBS Work Plan:

- **Page 17:** Exception from disclosure should be terminated. The map does not contain specific, locational information of habitats of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Page 18:** Exception from disclosure should be terminated. The map does not contain specific, locational information of habitats of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).
- **Pages 19 through 28:** Exception from disclosure should be terminated. These maps do not contain specific, locational information of habitats of species protected under ECL § 3-0301(2)(r) through POL § 87(2)(a).

Altogether, based on the unique and specific facts presented here, I find that a portion of the Records are properly redacted to protect locations of habitats of species consistent with ECL § 3-0301(2)(r). However, the remaining portions of the Records do not include specific, locational information of habitats of species protected from public disclosure under ECL § 3-0301(2)(r) through POL § 87(2)(a). This information is derived from publicly available resources, and WPD has not asserted that the information is was created from non-public resources or is otherwise exempt from disclosure. Therefore, exception from disclosure for those portions should be terminated.

CONCLUSION

WPD argued for continued protection from disclosure for the portions of the Records identified as confidential on the grounds that the information is statutorily exempt from public disclosure under ECL § 3-0301(2)(r) and POL § 87(2)(a). For the foregoing reasons, and given the unique and specific facts before me and the particularized representations in WPD's SON

⁴¹ *Verizon N.Y., Inc.*, 40 A.D.3d at 1113–14.

submitted here, I have determined that exemption from disclosure should be continued for the above-identified portion of the Records that would make public locational information of habitats of species protected from disclosure under ECL § 3-0301(2)(r). However, exemption from disclosure should be terminated for the above-identified portions of the Records that do not contain this specific, locational information.

WPD is directed to file revised copies of the Records, consistent with this determination, on or before October 8, 2026. Any requests for an extension of time to file the revised copies of the records should be directed to the RAO.

Review of this Determination may be sought, pursuant to POL § 89(5)(c)(1), by filing a written appeal with Michelle L. Phillips, Secretary to the Commission, at the address given below, within seven business days of receipt of this Determination. Receipt of this determination will be presumed to have occurred on September 8, 2026; accordingly, the deadline for the receipt of any such written appeal by the Secretary is September 17, 2026. Any requests for an extension of time to file a written appeal of this Determination should be directed to Secretary Phillips.

Secretary@dps.ny.gov

Michelle L. Phillips
Secretary to the Public
Service Commission
Three Empire State Plaza
Albany, NY 12223

Sincerely,

/s/ Michelle Zaludek
Michelle Zaludek
Records Access Officer
New York State
Department of Public Service

cc: Committee on Open Government (by email – doscoog@dos.ny.gov)
Amy Lavine, Liberty Street Legal PLLC (by email -- lavine@libertystreetlegal.com)