

**NEW YORK STATE OFFICE OF
RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION**

**In re the Matter of
Application of FORT EDWARD SOLAR, LLC for a
Major Renewable Energy Facility Siting Permit
Pursuant to Article VIII of the New York State Public
Service Law to Develop, Design, Construct, Operate,
Maintain, and Decommission a 100-Megawatt (MW)
Solar Energy Facility Located in the Town of
FORT EDWARD, WASHINGTON COUNTY.**

Matter No. 23-03023

**AMERICAN LAND RESCUE FUND, INC. PETITION FOR FULL PARTY STATUS
AND
STATEMENT OF ISSUES FOR ADJUDICATION**

Dated: November 6, 2025
Schuylerville, New York

Alexandra Fasulo, President
American Land Rescue Fund, Inc.
188 Coveville Road
Schuylerville, NY 12871
Tel.: (518) 428-7519

INTRODUCTION

American Land Rescue Fund, Inc. (“ALRF”) is a New York nonprofit dedicated to protecting farmland, endangered species habitat, and rural communities. ALRF supports renewable energy generally, but opposes the Fort Edward Solar siting in its entirety because the record shows (1) occupied habitat of NY-listed threatened and endangered species at/adjacent to the facility site; (2) complete public concealment of those species and habitat details via pervasive redactions; and (3) inability, as a matter of law, for ORES to make the findings required by PSL §§ 136 & 138.

ALRF seeks Full Party Status in this proceeding pursuant to 19 NYCRR § 900-8.4.

ALRF therefore petitions for Full Party Status. ALRF seeks primary relief that ORES deny the siting permit. In the alternative, ALRF seeks rescission of the Draft Permit and a lawful restart with unredacted disclosure sufficient for public review and adjudication.

I. PROPOSED PARTY & REPRESENTATIVE (19 NYCRR §1100-8.4(c)(1)(i))

American Land Rescue Fund, Inc. (ALRF)

188 Coveville Road, Schuylerville, NY 12871

Representative: Alexandra Fasulo, President & Founder

Email: contact@americanlandrescuefund.com

Phone: 518-428-7519

II. INTEREST IN THE PROCEEDING (§1100-8.4(c)(1)(ii))

ALRF represents local residents and land-stewardship interests concerned with:

- Protection of endangered & threatened species and their occupied habitat
- Preservation of productive farmland and the Washington County Grasslands WMA
- Transparent, lawful public participation and access to environmental records

ALRF has actively pursued the underlying environmental information via FOIL and in-person records inspection; instead, the public was provided a “For Public Use” application **entirely blacked out** in the species sections (Exhibits **A, F, G**), and FOIL acknowledgments confirming **unredacted** records are being withheld (Exhibits **B, C**). DEC signage on-site flags “**ENDANGERED SPECIES CRITICAL AREA**,” corroborating presence of listed species (Exhibits **D, E**).

III. RELATED STATUTORY INTERESTS (§1100-8.4(c)(1)(iii))

- **PSL § 136:** ORES must protect the environment and consider all pertinent social, economic, and environmental factors when deciding whether to permit projects.

- **PSL § 138(1)(c)**: ORES must identify **site-specific** adverse impacts **not** addressed by USCs and craft **site-specific permit terms** to avoid/minimize/mitigate **and** must achieve a **net conservation benefit** for T&E species. Without public disclosure of species/occupied habitat, these findings cannot be made.
- **FOIL (Public Officers Law §§ 84–90)**: mandates access to records; any redactions must be narrowly tailored with cited exemptions. Wholesale concealment of species/occupied habitat blocks due process.
- **New York Constitution, Art. I § 19 (Green Amendment)**: right to a healthful environment; suppressing essential environmental facts undermines that right.
- **SAPA due process** and CLCPA community-protection principles.

IV. STATUS REQUESTED (§1100-8.4(c)(1)(iv))

ALRF seeks Full Party Status to conduct disclosure, present evidence, cross-examine witnesses, submit motions/briefs, participate in any settlement discussions, and pursue appeals. In the alternative, ALRF seeks amicus status.

V. GROUNDS FOR OPPOSITION (§1100-8.4(c)(1)(v))

ALRF opposes issuance of a siting permit. The Draft Permit is procedurally unlawful and substantively deficient:

1. Transparency failure: ORES and/or the Applicant provided public application binders and digital media in which Exhibit 12 (NYS T&E Species) and related survey findings are effectively entirely redacted (Exhibits A, F, G). The public cannot test agency conclusions or propose informed conditions.
2. Occupied habitat acknowledged but hidden: DEC field signage at/near the project area marks ENDANGERED SPECIES CRITICAL AREA with seasonal access restrictions (Exhibits D, E), which is irreconcilable with a finding of no significant adverse impacts or with minimal mitigation.
3. Failure of PSL §138(1)(c) findings: ORES cannot identify site-specific impacts or craft site-specific conditions that achieve a net conservation benefit if the underlying species/habitat data are suppressed.
4. Improper reliance on generic USCs: Generic ratios and off-site concepts cannot cure destruction/fragmentation of occupied habitat in the Washington County Grasslands complex/WMA.
5. Public participation obstructed: FOIL acknowledgments (Exhibits B, C) show ALRF actively sought unredacted records; the agency has withheld them, frustrating the statutory scheme and due process.

As context: another party's petition in this docket seeks enhanced mitigation while acknowledging the site's exceptional ecological value and the insufficiency of generic ratios; ALRF adopts the factual significance of

the area but does not concede mitigation is adequate or appropriate here—ALRF seeks permit denial because impacts are unavoidable and unmitigable at this location.

VI. STATEMENT OF ISSUES & OFFER OF PROOF (§§1100-8.3, -8.4(c)(2))

Issue 1 (Substantive & Significant): Procedurally unlawful concealment of species/occupied habitat defeats PSL §§ 136 & 138 findings and due process.

Offer of Proof:

- Photographic evidence of fully redacted Exhibit 12 pages and binders given to the public (Exhibits **A, F, G**).
- FOIL requests and agency acknowledgements confirming withholdings of unredacted environmental records essential to evaluating species impacts (Exhibits **B, C**).
Why adjudicable: A reasonable person would require further inquiry where agency conclusions depend on data the public is not permitted to see; without disclosure, ORES cannot lawfully certify avoidance/minimization/mitigation or net conservation benefit.

Issue 2 (Substantive & Significant): Unavoidable “take” and fragmentation of occupied habitat in/adjacent to the Washington County Grasslands WMA and associated conservation designations.

Offer of Proof:

- DEC “Endangered Species Critical Area” signage at/near the site (Exhibits **D, E**).
- The facility footprint and array placement would surround/about WMA grasslands and convert open-grass habitat to industrial infrastructure, causing displacement, barrier effects, and collision risk inconsistent with net conservation benefit.
Why adjudicable: Where **occupied** habitat is implicated, **no generic ratio** can restore ecological function on-site; **avoidance** is the only lawful pathway. Denial is therefore the only remedy consistent with PSL §138(1)(c).

Issue 3 (Substantive & Significant): The Draft Permit’s reliance on generic USCs and post-hoc planning cannot satisfy the statutory requirement to ensure a net conservation benefit for T&E species in this setting.

Offer of Proof:

- The project lies within the core of New York’s premier grassland complex; the agency’s own public-facing materials (signage and WMA designation) confirm exceptional sensitivity (Exhibits **D, E**).
- With species and habitat data concealed, there is no record competent to demonstrate that any site-specific mitigation could exceed losses.

Why adjudicable: Absent a transparent, species-specific plan with publicly reviewable record support, the statutory “net conservation benefit” cannot be met.

VII. REQUESTED RELIEF

1. **Deny** the Siting Permit because ORES cannot lawfully make the findings required by PSL §138(1)(c) on the present record.
2. **Alternatively, rescind** the Draft Permit and restart the Part 900 process with:
 - Unredacted disclosure of species, occupied habitat, and survey methods/locations to the maximum extent permissible by law;
 - A transparent, adjudicable record capable of supporting (or disproving) the statutory findings; and
 - A meaningful opportunity for cross-examination and site-specific conditions—if, and only if, the Applicant can demonstrate full avoidance of occupied habitat (otherwise, denial remains required).

VIII. EXHIBIT LIST (ALRF)

Exhibit A: Redacted excerpts of Exhibit 12 (NYS T&E Species) provided to the public on ORES website.

Date: screenshotted 29, 2025

12.0 EXHIBIT 12 - NYS THREATENED OR ENDANGERED SPECIES

SUMMARY OF EXHIBIT

Fort Edward Solar, LLC (the Applicant) assessed potential impacts to New York State-Listed Threatened and Endangered Species (NYS-Listed T&E) associated with the construction and operation of the Facility. The Applicant submitted the following required reports to the Office of Renewable Energy Siting (ORES): a Wildlife Site Characterization (WSC) report prepared pursuant to 19 New York Codes, Rules, and Regulations (NYCRR) § 900-1.3(g)(1) on May 14, 2021 (see Appendix 12-A); a Wintering Grassland Raptor (WGR) survey report pursuant to 19 NYCRR § 900-1.3(g)(5) on June 8, 2021 (see Appendix 12-B); a Breeding Bird Survey (BBS) report pursuant to 19 NYCRR § 900-1.3(g)(5) on September 7, 2021 (see Appendix 12-C), and a supplemental BBS report on September 8, 2022 (see Appendix 12-C).

In June 2021, ORES issued its Initial Findings of Occupied Habitat (see Appendix 12-D), stating that the Facility Site:

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[REDACTED] No other state-

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listed species were identified.

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[REDACTED]

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On August 4, 2022, the Applicant submitted an estimate of occupied habitat and the required shapefiles to ORES. ORES then issued its preliminary determination of occupied habitat on October 20, 2022. On November 22, 2022, WSP submitted comments to the ORES preliminary determination of occupied habitat. A pre-application meeting was conducted on November 28, 2022, where ORES addressed WSP's comments on the preliminary determination from

12.1 WILDLIFE SITE CHARACTERIZATION REPORT (19 NYCRR § 900-2.13(A))

Appendix 12-A provides the WSC report, which includes an evaluation of current habitat suitability for listed species identified as potentially occurring in the Facility Site. WSP USA Inc. (WSP) used a variety of public data sources to assess the potential occurrence of NYS-Listed T&E species in the Facility Site for the WSC report. The desktop review included New York's Environmental Assessment Form Mapper, U.S. Fish and Wildlife Service Information for Planning and Consultation, Environmental Conservation Online System Database, Nature Explorer, eBird, Audubon Christmas Bird Counts, U.S. Geological Survey BBS, New York State Breeding Bird Atlas III, The Kingbird, and other publicly available data sources. Where possible, data were examined within the Facility Site boundary, although some data were sourced from surveys conducted up to several miles from the Facility Site.

WSP submitted a New York Natural Heritage Program (NYNHP) request on April 1, 2021. The New York NYNHP response letter dated May 14, 2021,

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Based on the results of U.S. Fish and Wildlife Service Information for Planning and Consultation query for the Project,

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The Applicant submitted the WSC report to ORES on May 15, 2021. A Pre-application WSC Consultation letter was sent by ORES in June 2021, detailing their draft initial findings regarding the presence of occupied habitat at the Facility Site and recommended habitat assessments and/or field surveys, pursuant to 19 NYCRR § 900-1.3(g)(2).

available records. Notable findings from public data review of endangered or threatened species within the Facility Site or the vicinity in the past five years (2017 through 2021) include:

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- [REDACTED]

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Exhibit B: FOIL Request (DEC/Region 5) seeking unredacted species/occupied habitat records, filed November 4, 2025

Reference No: W155943-110425

Contact E-Mail: alexandrafasulo@gmail.com

Dear Alexandra:

Thank you for your Freedom of Information Law (FOIL) request. Your request has been received and is being processed. Your request was received in this office on 11/4/2025 and given the reference number FOIL **#W155943-110425** for tracking purposes. You may expect the Department's response to your request no later than **12/4/2025**.

Record Requested: **I am requesting full unredacted environmental site assessment records, including threatened and endangered species surveys, habitat impact studies, field survey results, and related environmental review documents submitted by or on behalf of Fort Edward Solar, LLC during the ORES permitting process. This includes any avian, grassland bird, bat, and other wildlife assessments that have been redacted on the public ORES website. If specific redactions are claimed to be exempt, please cite the applicable exemption for each withheld portion. This is for: ORES Matter Number: [23-03023](#) and Exhibit 12. The date range: January 1, 2023 to the present, November 4, 2025.**

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the FOIL

Exhibit C: FOIL Request (PSC/Records Access) seeking unredacted wildlife studies and surveys, filed November 5, 2025



**Department of Public Service
FOIL Records Access Center**

≡ MENU

Reference No: R001458-110525
Logged in as: alexandrafasulo@gmail.com

This message acknowledges receipt of your request for records under the Freedom of Information Law received by the Public Service Commission/Department of Public Service on 11/5/2025 and given the reference number R001458-110525 for tracking purposes.

Records Requested: Freedom of Information Law Request – Fort Edward Solar – Matter No. [23-03023](#) Dear Records Access Officer: Pursuant to the New York Freedom of Information Law (“FOIL”), Public Officers Law §§ 84–90, I request access to the following records relating to the proposed Fort Edward Solar Project (Matter No. [23-03023](#)): 1. Unredacted and partially redacted versions, to the maximum extent permissible by law, of all studies and surveys concerning threatened and endangered species conducted for the project area, including but not limited to: • Wildlife Site Characterization Reports • Avian Risk Assessments •



Exhibit D, Photograph: “RESTRICTED AREA — ENDANGERED SPECIES CRITICAL AREA” DEC signage at/near facility area.

Location: Washington County Grasslands WMA

Date: October 14, 2025



Exhibit E, Photograph: Washington County Grasslands WMA signage and surrounding habitat.

Location: Washington County Grasslands WMA

Date: October 14, 2025



Exhibit F, Photograph: “For Public Use” application binder with fully blacked pages.

Location: Fort Edward Free Library

Date: November 4, 2025



Exhibit G, Photograph: On-site public review materials (USB/binder) showing pervasive redactions.

Location: Fort Edward Town Zoning Office

Date: November 3, 2025

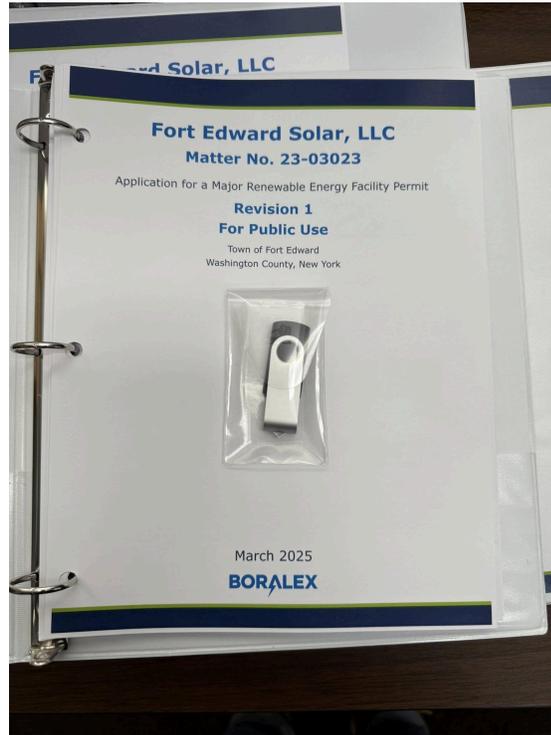
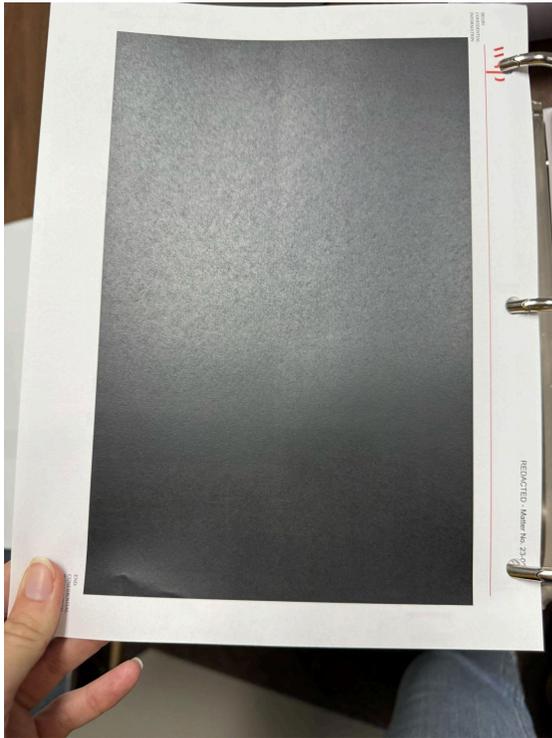


Exhibit H, Photograph/Screen: ALRF on premises attempting to review records.

Location: Fort Edward Town Zoning Office

Date: November 3, 2026

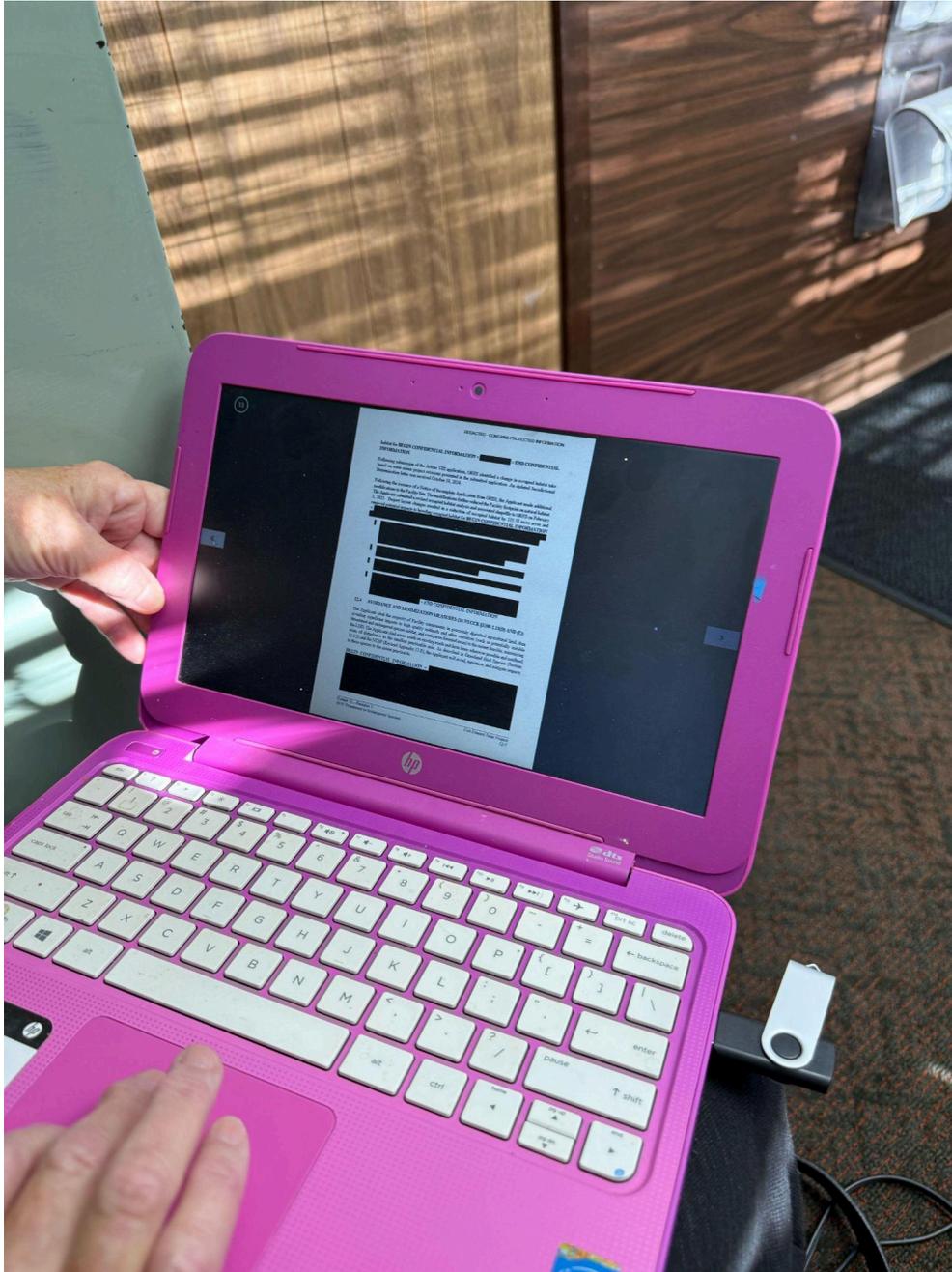


Exhibit I, Photograph: DEC welcome signage noting the purpose of the WMA.

Location: Washington County Grasslands WMA

Date: October 14, 2025

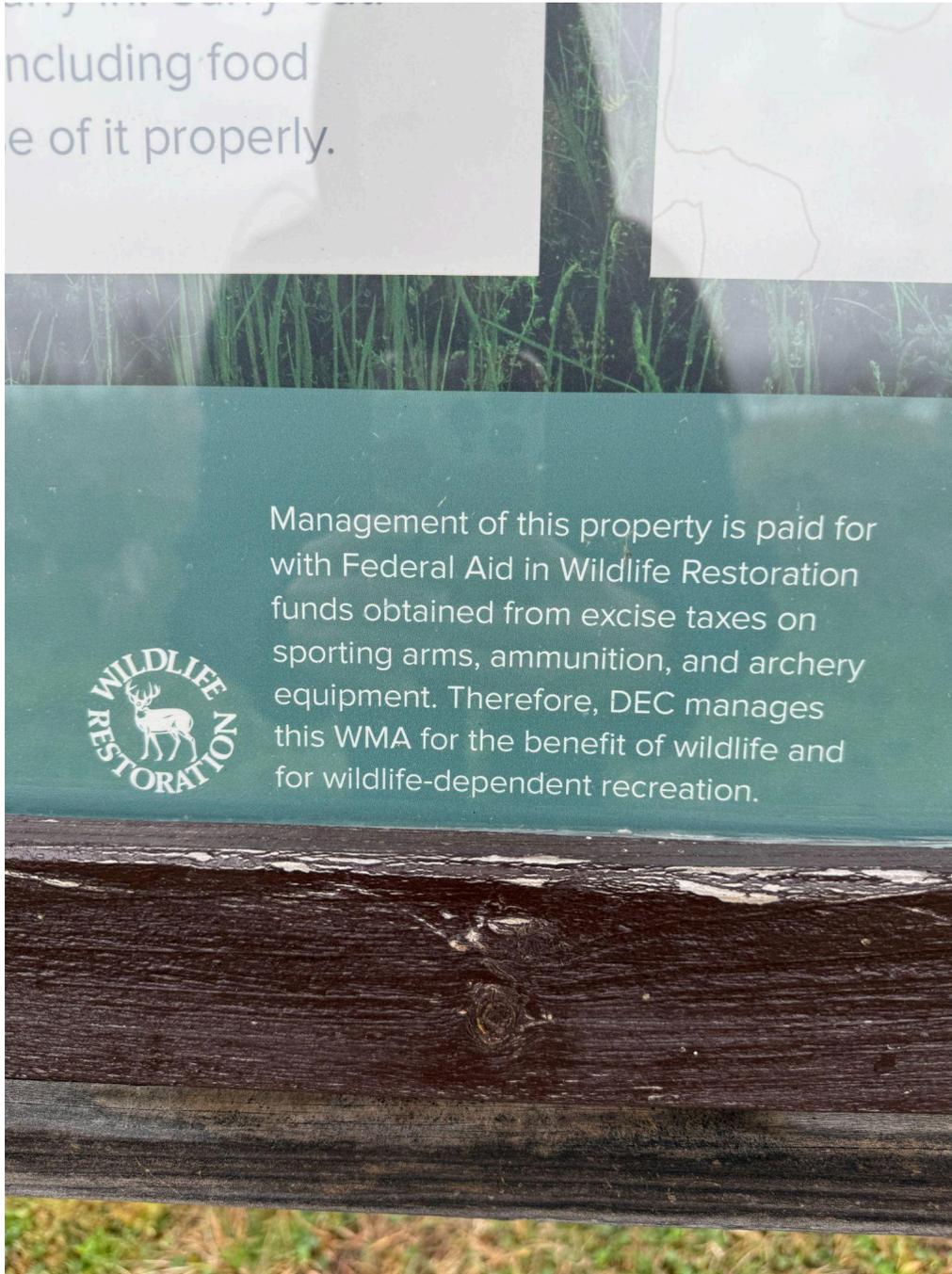


Exhibit J, Photograph: Audubon Important Bird Area signage at Washington County Grasslands WMA.

Location: Washington County Grasslands WMA

Date: October 14, 2025



Exhibit K, Photograph: Sensitive Habitat signage at Washington County Grasslands WMA.

Location: Washington County Grasslands WMA

Date: October 14, 2025



(ALRF reserves the right to supplement with additional exhibits and witness testimony upon disclosure.)

CONCLUSION

Because endangered/threatened species and occupied habitat are implicated and the supporting data are withheld from the public, ORES cannot lawfully find avoidance, minimization, mitigation, or net conservation benefit. The Draft Permit must be denied. At minimum, it must be rescinded and the process restarted with lawful transparency and adjudication.

Accordingly, ALRF formally requests that the Office grant American Land Rescue Fund, Inc. Full Party Status in this proceeding.

Respectfully submitted,

AMERICAN LAND RESCUE FUND, INC.

By: Alexandra Fasulo

President & Founder

188 Coveville Road

Schuylerville, NY 12871

contact@americanlandrescuefund.com

Date: November 6, 2025