

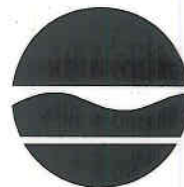
New York State Department of Environmental Conservation

Division of Environmental Permits, Region 4

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Alexander B. Grannis
Commissioner

December 15, 2008

Richard Nicholson, Planner
City of Albany
Dept. of Economic Development & Neighborhood Planning
21 Lodge Street
Albany, NY 12207

Re: Tharaldson Development Company
Eastern Worm Snake at proposed Residence Inn site
City of Albany, Albany County

Dear Mr. Nicholson:

On December 9, 2008, staff from the Department of Environmental Conservation (DEC) Region 4 Bureau of Wildlife met with representatives of Tharaldson Development Company to discuss issues related to the presence of Eastern Worm Snakes at this project site, and appropriate mitigation measures for this Species of Special Concern.

Background

In 1986 or 1987, a DEC Endangered Species Unit biologist found a worm snake under a stump at the powerline which now is incorporated into the Butterfly Management Area. That record formed the basis for DEC's comments to the City of Albany during the SEQOR Scoping Session which suggested that site investigations should include this species.

On August 7, 2008, after the project consultant concluded there was no suitable habitat for worm snake at the project site, a DEC staff biologist located a worm snake under a wooden pallet. At the time, it was thought that the location was actually on the Tharaldson project site, but we acknowledge that the discovery site is a few feet south of the southeastern corner of the property, on property owned by Pyramid Crossgates Company, situated in the cleared parking lot north of the Butterfly Management Area.

On September 4, 2008 a biologist from DEC's Endangered Species Unit located a worm snake under some trash situated on the Tharaldson project site. Based on differences in tail length of these two snakes, staff believe that these represent two different individuals, rather than two sightings of the same snake at two different locations.

On September 9, 2008, a consultant for Tharaldson revisited the site and located a worm snake immediately south of the Tharaldson project site. The "*Site Map with Herptile Occurrence*" prepared by Hershberg & Hershberg shows the August 7, 2008 and the September 9, 2008 recovery sites, but does not depict the location of the September 4, 2008 recovery on the project site.

Significance of Findings

DEC staff's discovery of a worm snake at this location in August 2008 represented the first observation of a worm snake in Albany County in more than 21 years. It also represented the first observation of a worm snake north of Orange and Putnam County since the Reptile and Amphibian Atlas project was initiated in 1990. The fact that this observation occurred in very close proximity to the last known sighting 21+ years ago, and that other individuals were also found in this immediate vicinity indicates that this immediate area has provided and continues to provide suitable habitat for this rare species.

As detailed in the B. Laing report dated October 7, 2008, worm snakes have very specific habitat needs. In short, they prefer loose, sandy soils with a high moisture content. In examining the general area of the project site, there is a depressional area at elevation 276' and 277' that occurs partially on the project site, and partially on lands owned by Pyramid Crossgates, outside of the existing Butterfly Management Area. This site also happens to be in very close proximity to the three recent recoveries of this snake. The majority of this depressional area also occurs within the existing woods. We know little about habitat use of this snake in this area, but based on what is known, it is likely that this depressional area is a key habitat feature for worm snakes in this area, as it would be the area they could most reliably find moist soils during periods when the soils in more upland areas have dried out. We do not mean to imply that worm snakes would be confined only to this area - the recoveries of a snake under debris on the Tharaldson site to the north, under a wood pallet to the east and under a stump at the powerline to the southwest indicate that worm snakes do in fact use a much broader area as conditions are suitable.

Mitigation Measures

In the October 7, 2008 B. Laing report, three mitigation measures were proposed to address the habitat needs of worm snakes, and project impacts associated with development of the Residence Inn, as follows:

- 1. A 0.25 acre area previously committed for Karner blue butterfly mitigation, and a 0.07 acre area at the southwest corner (near the dumpster pad) of the site.**

DEC agrees that these areas fall within the expected habitats currently used by worm snakes, so maintaining these in an undeveloped condition will be beneficial.

- 2. Conduct surveys prior to site clearing.**

DEC agrees that this is an appropriate measure to reduce direct impacts to snakes on the project site. However, as discussed at our recent meeting, the timing of site development is critical.

The earliest sighting records for worm snakes in New York are from mid-April, and these are for locations well south of Albany. Any site disturbance which occurs before snakes become active do run the risk of impacting snakes during the period when they are hibernating. Therefore, for surveys to have any reasonable chance of locating snakes prior to development, they must occur after snakes become active. For this reason, we strongly recommend that site development should not occur prior to May 1.

3. Extend the stockade fence underground.

DEC does not endorse this proposed mitigation measure, for a number of reasons. Post-development, there will be virtually no suitable habitat on the Tharaldson site beyond the stockade fence. Secondly, the scientific literature reports that worm snakes are rarely seen crossing pavement, which will be on the north side of the fence. We believe that this proposed measure will provide few benefits and we would rather have the time and effort spent on other measures that are likely to be more beneficial.

Additional Mitigation Measures for Worm Snakes

During the December 9 meeting, DEC staff and project representatives discussed and agreed to several additional measures to reduce impacts and to partially mitigate other impacts. These are as follows:

1. An area of clearing and fill proposed for the 0.25 acre area will not occur. This will maintain more of the depressional area in its current state. However, impacts to this area were never previously identified or agreed to by DEC or USFWS regarding mitigation measures for the Karner blue butterfly.
2. Within the 0.25 area and the adjoining 0.07 acre area, habitat cover features consisting of split logs and/or coverboards, will be placed at the direction of the consultant biologist in consultation with DEC staff. The use of the pallets and other debris by worm snakes for hiding places suggests that there is a lack of suitable cover which provides safety, protection from desiccation, and perhaps even sources of food.
3. Within the 277 foot and 278 foot contours, and perhaps elsewhere as deemed appropriate, micro habitat features will be created within the 0.25 acre mitigation area at the direction of the consultant biologist in consultation with DEC staff. We hope this will provide additional sources of reliable moisture for worm snakes and other species.
4. A drift fence with pitfall traps will be established prior to site clearing. This will be regularly monitored for captures for a period of a month.

We are pleased that Tharaldson has proposed mitigation measures and has agreed to additional suggestions of DEC staff to better protect worm snakes at this location. While these measures are intended to reduce impacts to worm snakes, they do not and cannot address the overall issue of habitat loss in this area. Portions of the 276' and 277' depressional area will be filled, and areas of existing woods will be cleared, graded and converted to building and parking areas. Given the level of proposed development of the project site, these impacts to these habitats cannot be fully addressed by the above referenced measures.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Angelo A. Marcuccio".

Angelo A. Marcuccio
Environmental Analyst

cc: Karl Parker, Bureau of Wildlife, Region 4
Peter Innes, Supervisor, Natural Resources, Region 4
Daniel R. Hershberg, PE, Hershberg & Hershberg Consulting Engineers