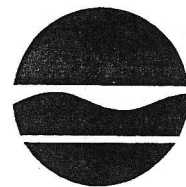


**New York State Department of Environmental Conservation
Division of Environmental Permits, Region 4**

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Alexander B. Grannis
Commissioner

August 13, 2008



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

Re: -- Supplemental Draft Environmental Impact Statement (SDEIS)
Tharaldson Development Company
Proposed Residence Inn project
City of Albany, Albany County

Dear Mr. Nicholson:

Department of Environmental Conservation (DEC) staff reviewed the SDEIS for this project which was accepted by the SEQR Lead Agency on June 16, 2008 and we have the following comments pertaining to that document.

1. Section D. Page 7 - Amphibian and Reptile Species

Eastern Hognose Snake - On two separate occasions, a DEC staff biologist found a hognose snake at the Butterfly Management Area which is immediately adjacent to the proposed project site. One of these individuals was found under the power line, and the second individual was found in the woods, south of the power line and north of Karner Blue Hill. The habitat on the proposed project site is not substantially different from that found within the Butterfly Management Area. The statement that "*there are a lack of wetlands in proximity*" is erroneous. Therefore the conclusion that there are limited possible food resources is not supported. On August 7, 2008 the biologist observed and photographed an American toad on the Butterfly Management Area, under the power line. He also observed and photographed an American toad on the proposed Residence Inn site. Since hognose snakes have been found in close proximity to the project site, and since food resources are available on and immediately adjacent to the project site, it is staff's conclusion that suitable habitat for this species does in fact exist "*on-site or in the vicinity*" for this species.

It is staff's professional opinion that the issue of potential impacts to this Species of Special Concern has not been adequately evaluated in the SDEIS, and that this should be done prior to final acceptance of the SDEIS.

2. **Worm Snake** - On August 7, 2008 the DEC biologist visited the Butterfly Management Area just to the south of the project site. After observing an American toad under the power line, the biologist visited the project site and found another toad after turning over one of the numerous wooden pallets on the site. The biologist turned over a second pallet and found a small snake curled up in the moist sand. The biologist captured and photographed this snake, and identified as an Eastern Worm Snake. This identification has been confirmed by several other DEC biologists. This represents the first Worm Snake found in Albany County since one was found at/on Karner Blue Hill in 1986 or 1987 by DEC's Endangered Species Biologist Alan Hicks. It also represents the only worm snake found north of Orange & Putnam County since the New York State Reptile and Amphibian Atlas was initiated in 1990.

The statement that "*the closest waters are eastward, 600 plus feet across Washington Avenue Extension*" is erroneous. There are two small ponded areas located within 500 feet to the west of this property. These ponded areas are the likely source of the toads that were observed on 8/7/08.

Based on this discovery, it is clear that the statement that "*little to no suitable habitat exists on-site or in the vicinity for the worm snake*" is not accurate. It is likely that this species has existed in this area for the last 21 or 22 years, and probably far longer. Accordingly, we conclude that suitable habitat does in fact exist "*on-site or in the vicinity*" for this species. It is the opinion of staff that the issue of potential impacts to this Species of Special Concern has not been adequately evaluated in the SDEIS and that this should be done prior to final acceptance of the SDEIS.

3. **Eastern Spadefoot Toad** - The SDEIS states that spadefoot toads feed on "*toads and frogs*." No citation is given for this statement. This statement appears to be erroneous, or perhaps misplaced from its proper place under the discussion of hognose snake. Spadefoot toads feed on beetles, flies, crickets, caterpillars, moths, spiders, centipedes, millipedes, earthworms and snails (see Whitaker et al. (1977) cited in Gibbs et al. (2007) *The Reptiles and Amphibians of New York State*. See also: *Connecticut Department of Environmental Protection Fact Sheet on Eastern Spadefoot Toad*, listed as Endangered in that state). These prey species do not exist only in proximity to wetlands and do not depend on wetlands for breeding. In regard to habitat for spadefoot toads themselves, the wooded portion of the site contains several depressional areas that are characterized by the presence of royal fern (an obligate wetland plant), and mature red maples with substantial buttressing of the roots, which can be a field indicator of wetland hydrology. Based on these features, which are not described or evaluated in the SDEIS, it is possible that these depressional areas periodically become ponded for brief periods of time. Regardless, even if this is not the case, there are two permanently ponded areas within 500 feet to the west of the project site. These do not appear to provide prime breeding sites for spadefoot toads, which typically utilize vernal pools for breeding. However, one of the primary benefits of vernal pools is that they do not support fish populations that would prey upon toads and tadpoles. It is not known whether the nearby ponds have fish. While there has been no confirmation of spadefoot toads in this specific area, their fossorial nature makes them extremely difficult to detect except when breeding. Staff concludes that suitable habitat **may** exist "*on-site or in the vicinity*" for this species and that the issue of potential impacts to this Species of Special Concern has not been adequately evaluated in the SDEIS and this should be done prior to final acceptance of the SDEIS.

4. **Section E. Pages 8 and 9 - Avian Species**

Sharp-shinned hawk and Cooper's hawk - The SDEIS states that "the project site does not provide *"adequate or suitable habitat"* for either of these species. Both sharp-shinned hawk and Cooper's hawk are common around suburban areas, where they often prey on birds at feeders. The Atlas of Breeding Birds in New York State specifies that Cooper's hawk *"may nest in a patch of woods near a smaller city, relying on birds of the city for prey."* The consultant for this project states much the same for sharp-shinned hawk on page 8 of the SDEIS. Accordingly, we conclude that suitable habitat for these two species does exist on the project site. However, it appears that the consultant has done an adequate job of documenting that there is no evidence of the use of the project site for breeding by either of these species. We agree that there are no likely impacts to these species as a result of this project. These hawks, unlike the reptiles and amphibians discussed above, are highly mobile and have a substantial ability to avoid small-scale habitat impacts, provided such do not occur at an active nest site. However, should the project receive final approvals, site disturbance work should occur outside of the primary breeding season for birds to avoid impacts.

5. **Section F. Page 10 Invertebrate Species**

Karner blue butterfly and frosted elfin - In a recent letter to the project sponsor (dated August 4, 2008), a copy of which is enclosed, this Department agreed that as long as the applicant carries out specific measures, as detailed in the SDEIS, the project will not require a permit under ECL Article 11 for take of these species. This settles the substantive issues related to these species under the proposed development. However, statements within the SDEIS such as those found on pages 14 through 21, at the very least, represent misstatements of biological and ecological principals, and do not properly reflect the view of this Department as to the habitat value or usage or importance of the site for these species.

Attached for your reference are photographs taken during the biologist's site visit on August 7, 2008. Thank you for providing us with a copy of the SDEIS for review and for the opportunity to provide you with our comments. Please feel free to contact me should you have any questions or comments pertaining to this letter.

Sincerely,



Angelo A. Marcuccio

Environmental Analyst

Encl.: DEC August 4, 2008-letter, site photographs

cc: Karl Parker, Bureau of Wildlife, Region 4
Peter Innes, Supervisor, Natural Resources, Region 4