



HERSHBERG  
&  
HERSHBERG

Consulting  
Engineers

and Surveyors

and Planners

locust Street  
New York 12203  
(459) 459-3096  
(518) 459-5683  
Email Address:  
ershberg@aol.com

## Memorandum

Date: December 19, 2008

To: Members of the Common Council  
Richard Nicholson, Senior Planner  
Patrick Jordan, Esq., Assistant Corporation Council

Re: Findings Statement and Rezoning  
Residence Inn  
Washington Avenue Extension

From: Daniel R. Hershberg, P.E. & L.S.  
Hershberg & Hershberg  
Consulting Engineers

FOUNDER  
Ben B. Hershberg, P.E., L.S.  
(1901-2002)

PARTNERS  
Daniel R. Hershberg, P.E., L.S.  
Abraham F. Sofer, R.A.  
Francis G. McCloskey, L.S.

While final review of the project was taking place NYSDEC informed us that an Eastern Worm Snake had been discovered under some construction pallets on land adjoining the site. Subsequent to that, we asked our wildlife consultant to visit the site. At that time he discovered an Eastern Worm Snake under a 2 liter soda bottle and NYSDEC discovered an additional Eastern Worm Snake under a trash pile. Neither NYSDEC nor our wildlife consultant could identify with any certainty where "the natural habitat" for this species existed either on or near the site. I point out that the Eastern Worm Snake is a species of special concern and is not afforded protection required if this species was a threatened or endangered species. In any event, the Project Sponsor authorized me to accommodate requests by NYSDEC.

NYSDEC sent a letter dated November 25, 2008 to Richard Nicholson reiterating that it had found a species of special concern (worm snake), that it appreciated the measures proposed for its conservation but could not fully agree that the proposed measures were appropriate or fully sufficient for such species. The NYSDEC letter did not provide any measures it considered to be acceptable, but suggested that a meeting with me might be appropriate

On December 9, 2008, we met with NYSDEC to consider this species of special concern and the sufficiency of the conservation measures proposed. On December 15, 2008, NYSDEC sent a letter summarizing our meeting and recommending the following measures for the further conservation of species of special concern:

- Leave the 0.07 acre area on the western boundary undeveloped (in addition to the 0.25 acres area) and relocate the dumpster pad to provide greater connectivity between the 0.07 acre area and the 0.25 acre parcel. These are positive benefits.
- Survey the site for herptiles prior to site clearing which will not occur prior to May 1. Any species found will be replaced at an undisturbed location. This is another positive feature.
- Modify the perimeter fencing to eliminate the previously proposed imbedment into the ground. Maintain 8 foot fence height as recommended as a mitigation measure as proposed. NYSDEC believes that imbedding the fence would not provide the desired benefit.
- Limit re-grading of the southern depressional area. A retaining wall around this area will be provided which will allow this area to be maintained more in its original condition. This is another positive benefit.
- Within the 0.07 acre area and 0.25 acres area, the provision of habitat cover features will be placed in consultation with NYSDEC. These will consist of materials considered to be natural in this area and objects movable by hand, e.g. rocks, small stumps, small fallen trees, small, cut and split (once), portions of larger trees (white pine, Pinus strobus) to be removed for Karner Blue management corridor and equivalent materials found on site. Materials should be accessible and easily turned over by future herptile surveyors. This is another positive benefit.
- Within the 277 and 278 contours on the site plan in the 0.25 acre area, micro-habitat features will be created as shown on the site plan in consultation with NYSDEC. These will be dug out to a depth of 2 feet. Excess material will either be placed at locations selected in consultation with NYSDEC or will be removed from the expanded management area. This is another positive benefit.



- Drift fencing with pitfall traps will be established prior to Site clearing which will be monitored for one month or until NYSDEC advises that the monitoring cease. This is another positive benefit.

The NYSDEC comment letters of November 17, 2008, November 25, 2008 and December 15, 2008 focused their comments to discussion of conservation measures associated with the Eastern Worm Snake and no other identified species of special concern. Hershberg and Hershberg has revised the site plan to reflect, as appropriate, the changes requested by NYSDEC for the further conservation of the Eastern Worm Snake.

I believe that all the comments of NYSDEC have been adequately addressed to the maximum extent practicable, including but not limited to all the issues raised with regard to the Eastern Worm Snake. I have discussed other issues in previous communication with members of the Common Council. The Findings Statement being finalized by Patrick Jordan, Assistant Corporation Counsel will address these issues. I request that the Common Council accept this carefully prepared and complete Findings Statement and vote to rezone this property at its meeting on January 5, 2009.

If you have any questions, please feel free to contact me at your convenience.

Enclosure: Site Plan

cc: Karl E. Parker, NYSDEC, Region 4  
Andy Marcuccio, NYSDEC, Region 4

