

Note: This is a letter from Jon Regosin, Ph.D., Senior Project Analyst, Natural Heritage & Endangered Species Program, Division of Fisheries and Wildlife to Bill Bennett of the Cozy Hearth Corporation sent on August 1, 2005.

Mr. Bennett,

We have received the habitat assessment prepared on your behalf (written by Wendy and Robert Culbert, 7/12/05) and your revised project plans. Your revised project plan avoids any "take" of six of the eight moth species identified. The remaining two moth species (Faded Gray Geometer & Pink Sallow Moth) utilize both oak woodland and scrub oak shrubland habitats, which we believe constitutes your entire site. Based upon information contained in our database about the distribution of these state-listed moths in the vicinity of your project site, as well as information about on-site habitat characteristics that you have provided, the NHESP has determined that this project, as currently proposed, will result in a "take" of the Faded Gray Geometer and Pink Sallow moth.

Under the Massachusetts Endangered Species Act (MESA), we can issue a Conservation and Management permit that would allow you to "take" these two state-listed moth species. Permitting application process aside, you have two options. You could opt to conduct surveys for the two moth species in question, following protocols approved by the NHESP. The surveys would need to be conducted during the flight season of each species (c. June & October). I note that it is the opinion of our Invertebrate Zoologist that it is extremely likely that this survey would detect these state-listed moths. Should these moth species be found you would then need to either avoid a "take" or apply for a Conservation & Management Permit. However, if the moths were not detected, we would terminate our review (assuming no other rare species issues that emerge),

Alternatively, we could work under the mutually agreed assumption that the entire property is rare moth habitat. Under this scenario, you would need to propose a project and associated mitigation that meets the performance standards for a Conservation and Management Permit (321 CMR 10.23). The burden is on the applicant to develop a plan to meet the permitting standards. However, as a guide, it is our opinion that we would be able to permit a project preserving 70% of the available state-listed moth habitat as an "insignificant impact," provided that the remaining habitat was permanently protected and managed appropriately.

As part of a Conservation and Management permit, we would want the open-space to be protected by a Conservation Restriction. The boundaries of the protected open space would need to be surveyed and marked permanently and with some visual barrier (eg, with iron bar in ground and a split-rail fence). The outline of the Conservation Restricted land should be in relatively straight segments, rather than rounded as shown in your present plans. We are concerned that that much of the open-space would be part of

individual lots, making enforcement difficult. If possible, we'd prefer to see the Conservation Restricted lands on a separate parcel.

Additionally, the application for a Conservation Permit would trigger a Massachusetts Environmental Policy Act (MEPA) filing of an Environmental Notification Form (ENF). You can find a link to the MEPA filing website at the end of this email.

Please contact Misty Ann Marold of our office (ext. 166) if you have any questions.

Conservation and Management Permit

<http://www.mass.gov/dfwele/dfw/nhesp/appguidelinescm.pdf>

Filing with MEPA

<http://www.mass.gov/envir/mepa/secondlevelpages/filingwithmepa.htm>

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