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COMMISSION
EXHIBIT #73A
FILE COPY

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VIA FAX ONLY 275-8299

November 24, 2004

Dwight Merriam, Esq.
Robinson & Cole LLP
280 Trumbull Street
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**RE: Old Saybrook Planning Commission - The Preserve RS Open Space
Subdivision Special Exception Application - Site Walk of December
10, 2004**

FILE NO: 3029/04-207

Dear Dwight:

Thank you for your letter of November 22, 2004, concerning the site walk now scheduled for December 10, 2004, at 10 am at the site. Attorney Matthew J. Willis of this office will be present to assist the Commission.

To confirm my statement to you following the November 17 public hearing, I acknowledge your client's right to announce that any entry onto its property is at the risk of those in attendance, and I already told Atty. Willis that you will be making such an announcement. I can think of no reason why such a statement would in any way impair the legal validity of the site walk.

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I also concur with you that the public must stay *with the Commission at all times* and that the Commission members themselves must move *as a group*. As I stated at the end of the public hearing, this is because (1) the Commissioners all need to observe the same things, so that they will be working from a common body of information; and, (2) absent the authority of the public hearing and your client's consent, the public has no legal right to enter onto the premises. Their rights of access are therefore limited to where the Commission goes and when the Commission goes there. I have already discussed this with Atty. Willis and with the Commission's Chairman. One of the reasons why I raised the site walk issue during the public hearing is that I was not comfortable with Mr. Kreider's unilateral "invitation" to the general public and the Commission to walk the site, at a time and date designated by him, with him as the guide, and with no indication of consent from River Sound Development. As you know, such site walks are typically led by an engineer or other professional who can knowledgeable—but objectively—orient the group and correlate the site observations with the plans on file.

I do not concur, however, with your reading of the *Grimes* case: If a public agency continues a public hearing until a site walk, the public must be permitted to join the agency. It is a "meeting" as defined by the Freedom of Information Act and must be open to the public. Besides, your client has nothing to hide and is, I am sure, happy to have the public in attendance so that they can better understand the nature of your application.

Lastly, I have indicated to both Atty. Willis and Chairman McIntyre that the *exclusive* statements to be made at the site walk will be in the nature of orientation or questions concerning the same. Without the ability to record the site walk, questions, answers or testimony of any kind cannot be transcribed for the benefit of absent Commission members or a reviewing court. Therefore, there must be *none*. Please be sure that your representatives understand that requirement, and Atty. Willis will do his best with the public and the Commission. By copy of this letter, I am also requesting Atty. Rothenberger's cooperation in educating the Intervenor's about the "ground rules" for this (or any other) site walk.

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Dwight, please recall that the Connecticut Fund for the Environment has filed a notice of Intervention which confers party status upon them. Therefore, CFE should be copied, through their counsel, on all correspondence concerning this application.

Very truly yours,



Mark K. Branse

MKB:ta

cc Matthew J. Willis, Esq. (659-9368)
David Royston, Esq. (860-395-6349)
Charles Rothenberger, Esq. (203-787-0246)
Robert McIntyre, Chairman, Old Saybrook Planning Commission (860-395-1216)
Christine Nelson, Town Planner (860-395-1216)
Geoffrey L. Jacobson, P.E., Town Engineer (860-526-5416)