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**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

January 11, 2005

**PLANNING  
COMMISSION  
EXHIBIT #177**

Mr. Robert McIntyre, Chair  
And Members  
Planning and Zoning Commission  
Town of Old Saybrook  
302 Main Street  
Old Saybrook, CT 06475

Re: River Sound Development, LLC; The Preserve: Application

Dear Mr. McIntyre:

Attached please find a copy of a letter dated December 30, 2004 from the Connecticut Department of Environmental Protection (DEP) to Attorney Dwight H. Merriam who represents River Sound Development in its application before the Old Saybrook Planning and Zoning Commission.

On December 20, 2004, Mr. Merriam left a voice message with the Division of Land Acquisition and Management at the DEP regarding the "Preserve Project" and inquiring about the "process for obtaining a flyover". The call was returned and Mr. Merriam was informed that requests for easements should be directed to the DEP in writing and that the Property Management Review Team reviews the requests.

Mr. Merriam subsequently submitted a request for information under The Freedom of Information Act (FOIA), received via facsimile on December 27, 2004. A copy of this request is attached. Under the FOIA act, Mr. Merriam specifically requested information regarding the number of "requests for overpasses over railroad rights-of-way owned by the State of Connecticut since 1980 by name of the requesting entity and whether the permission requested was granted or denied and if denied, the basis for the denial."

In response, the DEP reviewed all proposals made to our Property Management Review Team and determined that it has received no requests to overpass over the railroad right-of way owned by the State of Connecticut since 1980. Furthermore, the state has never granted an at grade crossing over the railroad known as the Valley Railroad State Park.

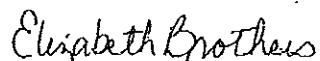
The DEP Land Acquisition and Management Division has reviewed the issue of railroad crossings and would like to direct the Commission's attention to Connecticut General Statute Sec. 13b-292, as it pertains to railroad crossings. This statute states that "on or after June 20, 1961 no private crossing shall be established, except that the Commissioner of Transportation may authorize the establishment of

01/12/2005 WED 12:02 FAX

003/007

a private crossing if it is deemed necessary for the economic welfare of a community....." It is our understanding that this statute by itself would preclude development of a crossing over the Valley Railroad State Park property for the purposes of a private development. A copy of the statute is attached for your convenience. If you have any questions, please don't hesitate to contact me at (860) 424-3016.

Sincerely,



Elizabeth A. Brothers  
Assistant Director  
Land Acquisition & Management

EAB:CMK:ck  
Enclosures

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Title 13b

ity" for "public utilities commission" and "authority"  
A. 78-303 substituted "commissioner of transportation"  
hority", effective January 1, 1979; in 1981 Sec. 16-113

railroad company's charter.

**Change of highway; petition by rail-**  
**October 1, 2002.**

.. 587, 610; P.A. 78-303, S. 85, 136; P.A. 02-89, S. 90.)

**and may be taken for changed location**  
Transportation orders a change in the  
section 13b-285 and the parties ordered  
in the necessary land by agreement, the  
to do the work, may take the land neces-  
sioner.

1, 610; P.A. 00-148, S. 39; P.A. 01-105, S. 18; P.A. 02-

ority" for "public utilities commission" and "authority"  
A. 77-614 substituted "commissioner of transportation"  
uthority" where appearing, effective January 1, 1979; in  
A. 00-148 repealed Secs. 13b-247, 13b-255 to 13b-259,  
quired the Revisors to delete references to said repealed  
i section; the Revisors were unable to delete a reference  
substantive changes to the statute; P.A. 01-105 made a  
which section was repealed by the same public act.

**Statutes made part of charters.** The pro-  
0, 13b-253, 13b-263, 13b-265, 13b-285  
charter of every company authorized to  
this state, and all powers and privileges  
ed upon such companies by said sections  
ies in the same manner and to the same  
parts of the charters of such companies.

A. 00-148 repealed Secs. 13b-247, 13b-256, 13b-258, 13b-  
ion of references to said repealed sections in this section;  
fecting the repeal of said sections by the same public act.  
es as addition to and amendment of all railroad companies

**Easements and private crossings may**  
ossing at grade of the tracks of a railroad  
ent or privilege in land used by a company  
whose land is encumbered by any such  
the Commissioner of Transportation for  
it public safety requires the elimination of  
l thereupon appoint a time and place for  
ice thereof as he judges reasonable to the  
the owners of land adjoining the highway  
e crossing, as hereinafter provided, if any  
aring of such petition, if public safety so  
e company to condemn such private rights,  
condemn the same in the manner provided  
anies. Upon the hearing of such petition, if

Ch. 245a

RAILROAD CONSTRUCTION AND LOCATION

1125

the commissioner is of the opinion that public convenience and necessity require a highway on account of the elimination of such private rights in the land of the railroad company, he may lay out a highway sufficient to satisfy public convenience; but such highway shall not be laid out if the land of a private owner, with which the encumbrance is associated, is already connected with a public highway. If the commissioner orders a new highway, he shall assess the expense of making the same, including the damages to any person whose land is taken, proportionately, upon the person and parties especially benefited thereby, but at least one-half of such expense shall be paid by the company. The commissioner may order the elimination of any private crossing at grade by the substitution of an overhead or underneath crossing, in which case the expense of making such change, including land damages, shall be paid by the company.

(1949 Rev., S. 5502; P.A. 75-486, S. 1, 69; P.A. 77-614, S. 571, 587, 610; P.A. 78-303, S. 85, 136.)

History: P.A. 75-486 substituted "public utilities control authority" for "public utilities commission" and "authority" for "commission" where appearing, effective December 1, 1975; P.A. 77-614 and P.A. 78-303 substituted "commissioner of transportation" for "public utilities control authority" and "commissioner" for "authority" where appearing, effective January 1, 1979; in 1981 Sec. 16-117 transferred to Sec. 13b-289.

See Sec. 13b-288 re inclusion of provisions of section as part of railroad company's charter.

Annotations to former section 16-117:

Suit by company for injunction against removal of fence closing farm crossing, a sufficient suit under former provisions.  
60 C. 200. Cited. 143 C. 109.

**Sec. 13b-290. (Formerly Sec. 16-118). Highway crossing discontinued.** When the use of a highway crossing over a railroad has been abandoned for fifteen years, such crossing shall be deemed discontinued.

(1949 Rev., S. 5503.)

History: In 1981 Sec. 16-118 transferred to Sec. 13b-290.

**Sec. 13b-291. (Formerly Sec. 16-119). Private crossing to be restored.** When a private crossing has been removed by a railroad company without the consent of the owner or owners, the company from whose tracks such crossing has been removed shall restore the same in good order upon the written request of the owner or owners, and, for failure so to do, such company shall forfeit five dollars per day to the person or persons owning or having a right to use such crossing, such forfeiture to begin thirty days from the date of such notice.

(1949 Rev., S. 5504.)

History: In 1981 Sec. 16-119 transferred to Sec. 13b-291.

**Sec. 13b-292. (Formerly Sec. 16-119a). Private crossings; protection requirements.** (a) A private crossing is defined as any private way, private drive or any facility other than a public highway for use of pedestrians, motor vehicles or other types of conveyances, which crosses at grade any railroad track. On and after June 20, 1961, no private crossing shall be established, except that the Commissioner of Transportation may authorize the establishment of a private crossing if it is deemed necessary for the economic welfare of the community but only after imposing specific requirements for the protection of persons using the crossing. The cost of meeting such protection requirements shall be borne by the party requesting such private crossing or the town, city or borough in which such crossing is located may, in its discretion, assume all or part of such cost. This section shall not apply to a private crossing to be used by a railroad company in connection with its operation or for access to its facilities.

(b) Each town, city or borough shall erect and maintain traffic control devices within the limits of the railroad right-of-way at each private crossing, or each town, city or borough shall require the person, association or corporation that owns or has the right

01/12/2005 WED 12:03 FAX

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1126

TRANSPORTATION

Title 13b

to use such crossing to erect and maintain such traffic control devices at each private crossing. Such order shall specify the time within which such protective measures shall be installed. Upon failure of a person, association or corporation to comply with an order issued pursuant to this subsection, the required installation shall be made by the authority issuing such order and the expense thereof shall be a lien on premises owned by such person, association or corporation. If under the provisions of subsection (d) the Commissioner of Transportation and the State Traffic Commission order the erection of traffic control devices at a private crossing and the town, city or borough within which such crossing is located fails to erect or have erected such devices within one hundred and eighty days of such order, the Commissioner of Transportation and the State Traffic Commission shall order the railroad to erect such devices and the expense thereof shall be a lien on premises owned by the person, association or corporation that owns or has the right to use such crossing. If the Commissioner of Transportation and the State Traffic Commission prescribe traffic control measures in addition to traffic control devices, the town, city or borough shall invoke the provisions of this subsection for the purpose of complying with such order, and the cost thereof, if one thousand dollars or less, shall be borne one-half by the town, city or borough and one-half by the property owner and, if over one thousand dollars, shall be borne one-sixth by the town, city or borough, one-sixth by the state, one-third by the property owner, and one-third by the railroad.

(c) The town, city or borough within which any private way leads to a private crossing from a town, city or borough highway, and the Commissioner of Transportation, in the case of any private way which leads to a private crossing from a state highway, shall erect and maintain at the entrance to such private way a suitable sign warning of the railroad grade crossing.

(d) The State Traffic Commission and the Commissioner of Transportation shall prescribe the nature of traffic control devices and traffic control measures to be erected at each private crossing and at approaches thereto.

(e) The Commissioner of Transportation shall make all necessary orders for the closing of any private crossing if he finds that the necessity for such crossing has ceased or that such private crossing constitutes a hazard to public safety. The commissioner may order the consolidation into one crossing of two or more private crossings located in close proximity to each other.

(f) The provisions of section 13b-281 shall apply to private crossings.

(g) Representatives of towns, cities, boroughs, railroads and state agencies are authorized to enter private ways, drives or other facilities to the extent required to perform their duties pursuant to this section.

(h) Any person who fails to comply with traffic control measures installed pursuant to this section shall be fined not more than one hundred dollars.

(1961, P.A. 513; 1969, P.A. 768, S. 222; P.A. 75-486, S. 1, 69; P.A. 77-614, S. 571, 587, 610; P.A. 78-303, S. 85, 136.)

History: 1969 act substituted in Subsec. (c) "commissioner of transportation" for "state highway commissioner"; P.A. 75-486 substituted "public utilities control authority" for "public utilities commission" and "authority" for "commission" where appearing, effective December 1, 1975; P.A. 77-614 and P.A. 78-303 substituted "commissioner of transportation" for "public utilities control authority" where appearing and "commissioner" for "authority" in Subsec. (e), effective January 1, 1979; in 1981 Sec. 16-119a transferred to Sec. 13b-292.

Annotations to former section 16-119a:

Ch. 245a

RAILROAD COM

Test under this section is whether in fact at the time of its early history, the record supports the conclusion:  
Subsec. (b):  
Municipality not liable to individual for failure to  
Annotations to present section:  
Cited, 33 CA 775, 779.  
Subsec. (d):  
Cited, 33 CA 775, 779.

**Sec. 13b-293. (Formerly Sec. 1)**  
When the Commissioner of Transportation, has in such acceptance provided constructed until certain highways have been imposed upon any person or corporation which such highway may be located, and it shall maintain and repair such highway that such other person or corporation who such relocation or change. Any such existing bridge in the old highway; highway and shall provide suitable for the old highway until the new highway injuries resulting from its negligence in The selectmen of any such town may their judgment are not of public convenience.

(1949 Rev., S. 5505; P.A. 75-486, S. 1, 69; P.A. 77-614 substituted "public utilities control authority" for "public utilities commission" effective January 1, 1979; in 1981 Sec. 16-120 transferred to Sec. 13b-255 to 13b-259, inclusive, 13b-266 and 13b-306 and to said repealed sections in certain sections of the general code delete a reference to Sec. 13b-256 from this section with 01-105 deleted provision which had authorized the taking of such action.

Annotation to former section 16-120:  
When the jurisdiction of railroad commissioners as C. 222.

**Sec. 13b-294. (Formerly Sec. 16-1)**  
railroad is crossed by a highway at the same shall, at its own expense, so guard its road as to insure easy passage across its road. If the select warden of any borough represents in view that a company has failed to comply with any highway within such town, city or borough crossing and make such order as he deems section.

(1949 Rev., S. 5506; P.A. 75-486, S. 1, 69; P.A. 77-614 substituted "public utilities control authority" for "public utilities commission", effective December 1, 1975; P.A. 77-61 for "public utilities control authority" and "commissioner" transferred to Sec. 13b-294.

Annotation to former section 16-121:  
City has no power to repair crossing neglected by railroad.

**Sec. 13b-295. (Formerly Sec. 16-12)**  
railroad company shall, if required by the thereafter maintain suitable bridge guard

01/12/2005 WED 12:03 FAX

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STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Via Facsimile Only  
(860)275-8299

December 30, 2004

Mr. Dwight H. Merriam  
Robinson & Cole  
280 Trumbull Street  
Hartford, CT 06103-3597

Dear Dwight:

Thank you for your letter of December 27, 2004 concerning information on railroad overpasses.

In accordance with your inquiry, I have reviewed all proposals made to our Property Management Review Team. There have been no requests to overpass over railroad right-of-way owned by the State of Connecticut since 1980.

In addition, please note that the Department of Environmental Protection (DEP) has never granted an at grade crossing over a railroad right-of-way.

I am sorry that I cannot assist you in this matter.

Sincerely,

*Beth Brothers*

Elizabeth Brothers  
Assistant Director  
Land Acquisition & Management Division

01/12/2005 WED 12:03 FAX

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ROBINSON &amp; COLE LLP

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DWIGHT H. MERRIAM

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*Via Facsimile Only*  
*(860) 418-5906*

December 27, 2004

Elizabeth Brothers  
Assistant Director, Land Acquisition and Management Division  
State of Connecticut Department of Environmental Protection  
79 Elm Street  
Hartford CT 06106-5127

**Re: Freedom of Information Act Request**

Dear Beth:

I am following up on my telephone messages regarding the need for information on railroad overpasses.

I would like to know the number of requests for overpasses over railroad rights-of-way owned by the State of Connecticut since 1980 by name of the requesting entity and whether the permission requested was granted or denied and if denied, the basis for the denial.

Thank you for your assistance. If I can help you in the review of the files, please let me know and we will send over the necessary personnel to do that work with you. I need this information for a public hearing on January 5, 2005.



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Sincerely,

Dwight H. Merriam

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