

**RIVER SOUND DEVELOPMENT, LLC
MODIFICATION TO SPECIAL EXCEPTION APPLICATION
RESPONSE TO REVIEW COMMENTS**

PLANNING
COMMISSION
EXHIBIT **43**

To: Old Saybrook Planning Commission
From: River Sound Development, LLC (“River Sound” or “Applicant” herein)
Date: December 29, 2010

In accordance with the “ground rules” established at the December 1, 2010 session of the Public Hearing on this application, River Sound is hereby responding to comments in written form and by plan changes prior to the next Public Hearing session of January 5, 2011.

This Response will first address the Report from the Land Use Department staff dated November 24, 2010, the letter from Attorney Mark Branse dated November 23, 2010 and the Memorandum from Bruce Hillson of Traffic Engineering Solutions, P.C. dated November 22, 2010, to the extent their comments overlap as to “phasing” and “street layout”. The comments in these two categories are therefore being addressed together.

River Sound will then address the other comments of these three reviewers and the comments of agencies and officials to whom this Modification Application has been referred.

1. Overlapping Land Use Department, Branse and Hillson Comments

“Phasing”

The first common issue raised by Land Use Staff and Attorney Branse is whether the requested modification constitutes a proposal for development of the entire Open Space Subdivision Plan in “phases” under Section 56.6.6.8 of the Zoning Regulations. This is not the purpose and intention of the requested Modification.

Rather it is a request to allow the “stand alone” development of each of the three separate areas identified in the Application (herein referred to as “pods”) as an Open Space subdivision, provided each pod complies independently with the Open Space Subdivision requirements of Section 56 of the Zoning Regulations, the Old Saybrook Subdivision Regulations, while remaining consistent with the March 23, 2005 Special Exception approved Preliminary Open Space Plan (herein referred to as “full development”).

In other words, if there were not to be full development in the future, for whatever reason, if any or all of the three separate pods were built, each would meet all the requirements of an Open Space Subdivision (e.g. a 25 acre minimum subdivision area, 50% open space in the subdivided parcel, compliance with subdivision and zoning regulations regarding MABL, lot configuration, streets, open space dedication).

On the other hand, if there were to be final subdivision plans submitted for full development prior to the expiration of the Special Exception, any prior development of one or more of the three pods, none of such development would preclude or be inconsistent with full development (e.g., streets would be extended where applicable, open space would be connected, etc.). The allowable dwelling unit number and locations, and the more than 50% open space and other conditions of the March 23, 2005 approval would remain in effect and be adhered to except as modified under the approval of this Application.

Similarly, partial development (e.g., residential development only, without a golf course or with a reduced golf course, as has been suggested) could occur if authorized by the approval of a subsequent Modification request.

It is the Applicant's position that this requested Modification is not a proposal for a phased development as contemplated under Section 56.6.6.8, but rather is a request for separate, stand-alone development.

Even if Section 56.6.6.8 were deemed applicable to this Modification, the question remains as to how the open space requirement of that Section is to be interpreted and applied in the event of an application for final subdivision approval of one or more of the pods. It is the Applicant's position that Section 56.6.6.8 would not require conveyance of all the open space in the entire property (556.53 acres) at the time of development of an individual pod. (See the Applicant's Modified Preliminary Open Space Plan revised through December 29, 2010, Sheet RS-2. Hereafter, the revised plans consisting of six (6) sheets shall be referred to as the Revised Plans with reference to the Sheet number). The basis for the Applicant's position is set forth below.

The Applicant recognizes that Section 56 is a zoning regulation and its provisions cannot be waived by the Planning Commission. However, Section 56.1 recognizes that the review of the final subdivision plan will be under the Subdivision Regulations, when a final subdivision application is made. Any pod development will require a subdivision application. The Applicant will be required to meet all the requirements of the Subdivision Regulations, including the numerous requirements for open space. Section 5.8 of the Subdivision Regulations governs the character of the open space. Section 6.13 of the Subdivision Regulations sets forth requirements "In addition to the requirements of Section 5.8...". Section 4.3.7 governs the proposed development of the applicant's "contiguous land holdings" and provides a provision for the "phased" development of property.

Neither the Zoning Regulations nor the Subdivision Regulations define "phased development". However, the provisions of the Zoning and Subdivision Regulations should be read together and reconciled as a coherent whole. Using that criteria, the applicant submits that the regulation requires that if the specific land involved within a specific subdivision application is "phased", then the open space for that particular subdivision must be provided in the "first phase"; the first phase of that particular subdivision. For example, if the subdivision application for the 13 lot Ingham Hill Road

pod proposed to develop the lots on one side of Ingham Hill Road only as a first "phase" in that particular pod subdivision, the applicant would be required to dedicate all the open space for that particular subdivision at the time it developed the first phase of that subdivision.

River Sound submits that the above stated position is a more reasonable interpretation of the regulations as applied to this Modification Application, and is fully consistent with the phasing regulations...to assure that if only a portion of the entire property is being granted subdivision approval for development, the appropriate open space is dedicated for all of that subdivision at the outset.

Even if the Planning Commission is inclined to disagree with the Applicant's interpretation of Section 56.6.6.8 as applied to this Modification Application, River Sound respectfully submits that this is not a determination the Planning Commission needs to reach at this time. Rather, the Planning Commission may state in its approval that the Modification does not address the applicability of Section 56.6.6.8 at this time, but that the Planning Commission reserves the right to make a contrary interpretation, if and when a subdivision application is made for any one of the three pod areas.

"Street Layout"

The next area of overlapping comments regards the street layouts under the proposed Modification. The March, 12, 2005 Planning Commission Special Exception approval was granted "...subject to ...conditions and modifications" set forth as letters A through H in its decision (see Schedule B to the Applicant's Statement of Use-October 18, 2010 starting at page 10). The letters A and B relate to required modifications to the street layout in the Applicant's original submitted Preliminary Open Space Plan. Those required changes have been incorporated into the Revised Plan, Sheet RS-1. The final, approved, full development street layout plan was reviewed by the Planning Commission and its staff and consultants in 2005.

The Applicant concurs with the comment of Attorney Branse that "It is critical that the Revised Preliminary Plan now before the Commission be in conformance with the approved Special Exception approval except in the ways expressly identified in the current application because if/when the revised Preliminary Plan is approved, it will control the subsequent subdivision and PRD applications filed pursuant to that Preliminary Plan. See Section 54.5." (November 23, 2010 letter, page 2).

The requested Modification maintains the exact same street layout as modified and approved in 2005, except for the modifications River Sound is specifically requesting. These modifications are shown on the Revised Plan, Sheet RS-2. First, that each of the three access roadways be permitted to end in a temporary cul-de-sac in compliance with the applicable Subdivision Regulations governing future street connections (see Section 5.3.3 of the Subdivision Regulations). Second, that the sightline improvements for the curve southwesterly of proposed Lot 10 on Ingham Hill Road and the realignment of Ingham Hill Road northerly of the Landrey property (see Sheet RS-3 of the Revised Plan)

be deferred until Ingham Hill Road is extended to the interior of the overall property, but that the land of River Sound adjacent to Ingham Hill Road be conveyed to the Town as part of the final subdivision plan for the Ingham Hill Road Lots (RS-3 of the Revised Plan). This should be clearly documented on the plans, in the final Statement of Use and in any Motion for approval.

Each of the three review documents ask River Sound to more clearly explain the interrelationship of the Modification street layout (ending in cul-de-sacs, with provision for future road extensions). The following will seek to do so, and where indicated, clarifications will be shown on the final Modified Preliminary Open Space Plan and Statement of Use.

First and foremost, and as stated previously, three potential future road extensions remain in the Revised Plans. Section 5.5.3 of the Subdivision Regulations specifically provides that "When a *subdivision* adjoins undeveloped land, its *streets* shall be laid out to provide suitable future *street* connection with the adjoining land where it appears probable that the latter could be subdivided. Proposed *streets*, which may be projected into adjoining properties, shall be carried to the boundary line. No reserve strips will be permitted. Future *street* rights-of-way shall have a minimum width of fifty feet (50'), and shall be conveyed by warranty deed to the *Town*." In order to comply with this provision, in any final subdivision plans for any pod development, River Sound will be required to show a roadway extension to contiguous undeveloped property and to convey to the Town the land required for such public highway purposes. There are several instances of subdivision approvals where this has occurred. The obligation for constructing the public highway improvements within the Town highway right of way, as well as the bonding for such improvements would be River Sound's, or any other applicant for full or partial development of the 816 acres of the interior of the property.

Secondly, the Applicant concurs with the observation, stated by the reviewers in different ways, that this Application needs to be considered not only for the effect of the limited development proposed; but also for the effect of that limited development upon future full development, partial development or no development at all of the interior forest core. These effects will be addressed in response to more specific comments of reviewers, not only as to road layout issues, but as to other matters.

2. Land Use Department Report.

The Land Use Department Report preamble characterizes the Modification Application as uninspired at best and as underachieving "the Town's intent of clustering development in a low impact design." The Applicant respectfully disagrees. As the undersigned counsel for the Applicant stated at the first session of the Public Hearing on December 1, 2010, times have significantly changed since the approval of this Special Exception in early 2005. As the Applicant has repeatedly stated, it is seeking approval of a Modification that would allow limited development of three pods on the property perimeter, while leaving the manner of development of the interior 816 acres of the

property to another day. The Applicant would prefer to characterize its request simply as "limited".

Similarly, the Applicant disagrees with the statement regarding underachievement. The Applicant is not abandoning the full development plan which approved 115 clustered units in the property interior. Rather it is seeking in this Modification Application to reduce the "mix" of 36 one-half to three-quarter acre individual building lots within the central core to thirteen (13) 1.38 acre (60,000 square feet) lots along the developed Ingham Hill Road perimeter and eleven (11) clustered units in a PRD.

More importantly, the Report preamble identifies one of the reasons for the absence of a more clustered, low impact design. This is the absence of public water and sewer. The full development plan of 2005 had public water and a community sewerage system with a wastewater treatment facility. As the Applicant said then, and repeats now, public water and the community sewerage system could only be provided under the full development proposal. There is no public water reasonably available to the Applicant's property on Bokum Road or Ingham Hill Road. But that is not the only reason a more clustered, lower impact design is not now available. The foremost reason is that the provisions of Section 56 do not allow a reduction in the lot size below 60,000 square feet. Section 56 allows a reduction of minimum lot sizes in an Open Space Subdivision in the Residence AAA District, but does NOT allow a reduction in the Residence C District! The Applicant believes this anomaly should be corrected and further believes any Motion for approval should recommend lot size reductions in final subdivision plans if the Zoning Regulations are amended to so permit and such reductions advance the open space purposes of the Regulations.

The Applicant has addressed the substantive recommendations of the Land Use Department Report in the following ways:

- "Combine proposed easement areas"-The Revised Plans reduces all proposed lots to the minimum area allowed under current Section 56, and adds that area to the Open Space to be deeded to the Town, or such entity as the Planning Commission directs at the time of final subdivision approval.
- Provide 100' vernal pool upland protection, provide easement area "connectivity" and "physical access"- Provided in Revised Plans.
- Calculate ratios for wetlands, uplands and steep slopes - Provided in Revised Plans.
- Provide 10% aggregate recreational open space – The total area of the three development pods is 106.57 acres. The Revised Plans provide over 10.66 acres (10%) of recreational open space. See Revised Plan Sheet RS-3.

- “Provide open space to connect each of the 3 Phases” and “dedicate physical access” - Provided in Revised Plans. See also the Response to the Conservation Commission below which more fully addresses this recommendation.
- “Preserve extensive historic stone walls” - Provided in Notes of Revised Plans as a requirement of final subdivision plan.
- “Extend dead-end roads to proposed boundary” and “identify temporary easements” on cul-de-sacs - Provided in Revised Plans.

The next section of the Land Use Department Report addresses what it refers to as the “phases” proposed in the Application.

Bokum Road.

The Report comments on the reasonable lot yield of the Pianta Parcel and suggests a reduction in conventional lots from 10 to 6. This analysis is based upon elimination of Lot 1 by reason of setback and MABL non-conformity; and the elimination or modification of three other lots.

The Revised Plans address Lot 1. The MABL has been provided and a Note added that the setback encroachment will be eliminated by removal of the house encroachment in the final subdivision plan.

The suggestion regarding the reasonable lot yield ignores the fact that the proposed road location is exactly the same as that approved in the 2005 Special Exception. The road location was deemed suitable then by reason of three factors. First, the closest vernal pool to the roadway (vernal pool #31) was determined to be of extremely low productivity in 2004 by Dr. Michael Klemens, which findings were updated and confirmed by Dr. Michael Klein in 2010. In fact, the vernal pool is the lowest in productivity in the entire parcel. Second, moving the roadway further west would involve more significant land disturbance. Finally, such moving of the roadway and land disturbance places it closer to the upland habitat of the highly productive vernal pool #29. Similarly the potential future roadway extension to the property boundary at the Valley Railroad reduces the potential impact to vernal pool #30, another highly productive pool.

In approving this road location, the Applicant and the Planning Commission did consider the environmental constraints. This same road location through the Pianta Parcel was part of the proposed final subdivision plan for which the Wetlands Commission denied a Permit in 2006. However, the location of this roadway was NOT cited or mentioned as a reason for the denial of the Permit. In fact, the Motion of the Wetlands Commission for denial cites eleven specific reasons for its denial, none of which mention the Pianta Parcel road layout. In fact the Motion for denial states “with regard to this proposal, the Commission finds that there is probably no feasible or prudent alternative to the proposed road layout which would reasonably accommodate said proposed development of the

property.”, except to note that a proposal without a golf course might provide a different roadway configuration for the interior of the property.

Clearly the above factors justify the road location and lot yield for the preliminary plan, Sheet RS-5. The final road location and number of lots should await the final subdivision application. Since the road location is within the 100' upland review area, a prior or simultaneous application to the Wetlands Commission will again be required for the regulated activities associated with this roadway, and a wetlands Permit will be required before this development may proceed.

In addition to the recommendation to “realign the road” addressed above, the Report further makes the following recommendations:

- “Re-route or alternately route the extension of the road to the adjacent vacant property.” - Although the Piontkowski property is “vacant” there is a conditionally approved subdivision map (“Saybrook Ridge” (Golinowski) Open Space Subdivision) approved 10/15/08, which conditionally approved map is on file in the Old Saybrook Town Clerk’s office. This map does not provide for any road connection to the Pianta parcel. However, the Revised Plans provide an extension in what the Applicant believes is the most appropriate location to connect to this property in the event the conditionally approved subdivision plan is voided.
- Combine proposed easements on Lot 2 and 3 - Provided for in Revised Plans
- Merge the areas of Lots 1, 5, 6, 7 and 8 - For the reasons stated above, the Applicant has not followed this recommendation. The Applicant respectfully suggests that any such recommendation should await the required future wetlands application and subdivision application since the recommendation only makes sense if the roadway layout is modified. Even if the road layout is modified, it is premature to attempt to determine what would be the resulting number of lots or their configuration. Again, it must be emphasized that this is a preliminary plan.
- Cluster the remaining 6 lots - The Applicant makes the same response to this recommendation as to the recommendation made above. It is premature to attempt to determine the configuration of lots if the road layout were to change.

Ingham Hill Road

- Replace active recreation within “the core” - The Report states that the lots proposed on the southwesterly side of Ingham Hill Road “negatively impact” the designated recreation area adjacent to Town owned land. This comment has been addressed in the Revised Plans. See the Response to the Park and Recreation Commission below.

- Consolidate lots(sic) areas to reconfigure Lot 3 as a dedicated access point - The Revised Plans have reconfigured the lot areas in order to provide access to a recreation area adjacent to the Town owned property. Additionally, the revised Plans have provided an immediate connection to the historic portion of Ingham Hill Road extending to the Essex town line. See the Section below responding to the Conservation Commission letter.
- Connect easement areas and include in open space - The Applicant fully concurs with the recommendation that to the extent possible, open space should be deeded to the Town, or to a Town designated entity, rather than being included as a conservation restriction on private property. The revised plans do this to the extent allowed under current Zoning Regulations (Section 56.6.4). As noted elsewhere, since this is a zoning regulation, it cannot be waived by the Planning Commission. The Applicant would gladly support a change in the Zoning Regulations which would allow a reduction in minimum lot sizes in an Open Space Subdivision in the Residence C Conservation District.
- Provide a minimum of 50-100' conservation easements along local scenic Ingham Hill Road – The Applicant suggests that this is a recommendation appropriate for the final subdivision plans to the extent feasible
- Provide lot line adjustment for improving line-of-sight - The Applicant believes that this is provided for on Sheet RS-3. In order to make this requirement specific, a Note has been added to the Revised Plans. (See Sheet RS-3)
- Indicate on the plan the future extension of the northernmost dead-end - Provided for in the Revised Plans.
- Relocate the proposed trailhead to the northernmost dead-end - Provided for in the Revised Plans.
- Cluster the remaining lots - Provided for in the Revised Plans. The Lots have been reduced to the minimum 60,000 square feet. As noted above, the Applicant will gladly support and adhere to an amendment to Section 56.6.4 of the Zoning Regulations to provide additional desirable conservation land.

Essex Road (Route 153)

The Report asserts that “Clearly, the developer does not want to seek a waiver of the length of a dead-end road...”. To the contrary, the developer would gladly seek and welcome the granting of a waiver for the purpose of a better driveway layout as described in the Report. However, the Applicant clearly cannot assume that this or any other waiver would be granted. This dilemma can be resolved simply by including in any approval the recommendation that the Applicant seek a waiver at the time of final subdivision application.

- Provide recreational open space and access to trails - The Applicant believes that the open space in this area should be conveyed to the Town at the time of the development of the PRD which the Applicant seeks in this Modification Application. However, any approval of the Modification Application should provide that additional facilities beyond those shown on the Revised Plans may be required after consultation with the Parks and Recreation Commission as part of the final plans for full development of the entire property. On the Revised Plans the Applicant has provided for more limited parking and access to the portion of the trail system connecting to historic Ingham Hill Road similar to the parking and kiosk provided at the terminus of the proposed extension off the existing improved Ingham Hill Road (see Preliminary Plans RS-2, RS-3 and RS-4).
- Identify that this portion of the development is located within the Aquifer Protection Zone - Verification of compliance is provided in the Revised Plans (see Sheet RS-4).
- Address whether the series of individual septic systems meet the design flow standards of the Aquifer Protection Zone – The Applicant will be required to meet these standards or the number of units will have to be reduced.
- Extend the dead-end road - As noted above, the extension will require a waiver from the Planning Commission. The Applicant will seek such a waiver at the time final plans are submitted.
- Cluster or connect the dwelling units - The Applicant respectfully suggests that such a recommendation is appropriate at the time of the application for the PRD to the Zoning Commission. At the time of final approval of the subdivision, only the PRD lot will be approved. It should be noted that under Section 56.6.7D, the PRD must be approved under Section 55 by the Zoning Commission. Since a PRD is “a class of zone in addition to an overlapping a portion or portions” of the Residence C Conservation District, the Zoning Commission had considerable discretion in assuring that the PRD dwelling configurations are appropriate for the property being developed (See Section 55.1 and Section 55.5.3 of the Zoning Regulations).

3. Attorney Mark Branse November 23, 2010 Letter

In addition to the “phasing” and “street layout” comments addressed previously, Attorney Branse has also requested clarification of certain items in his letter. These are addressed as follows:

- Compliance with Outstanding Approval (top of page 2) – Attorney Branse has commented that “it is critical that the revised Preliminary Plan now before the Commission be in conformance with the approved Special Exception approval except in the ways expressly identified in the current Application because . . .it will control the subsequent subdivision and PRD applications filed pursuant to

that Preliminary Plan. See Section 54.5.” The Applicant concurs with this statement.

- Ingham Hill Road realignment (bottom of page 2) – As noted above, the Revised Plans, RS-3 not only depict the road realignment, and a Note requires that adequate property be conveyed to the Town. The Applicant suggests here that the substantial land disturbance required to improve this sight line is not justified at the time of the development of the Ingham Hill Road pod. Rather, as requested in the Applicant’s Statement of Use – October 8, 2010, Page 5, the Modification provides that these access improvements “will be required in the final subdivision plans for the future development beyond the 13 lots along Ingham Hill Road”. To the extent this request requires clarification, it is the request of the Applicant that the improvements be deferred until final subdivision approval for full development or partial development of the 816 acre “forest core” of the property at which time such improvements would be fully bonded.

The Applicant further recommends that the Modification Application approval take into account the “no development” potential option for the forest core. If the property were to be conveyed for “conservation purposes” such a conveyance would not come within the definition of a “subdivision” requiring Planning Commission approval. However, the Special Exception Modification could require bonding for such improvements at the time of the conveyance of all or a part of the “forest core”. Such a condition of approval for the Modification Application is appropriate.

- Compliance with the 2005 Special Exception approval in the Applicant’s plan (bottom of page 2 and page 3) – The Revised Plans show by revisions, or by Notes compliance with Condition B (public road, bike path extension), Condition C (golf course design), Condition D (Estate Lots 1 acre development area), Condition F (location of the “maintenance facility”), Condition G (preservation of the area around the Ingham Homestead).

Condition E with respect to a “level area for active recreation at least 10 acres in area” has been addressed in the preliminary Plans. See also the Applicant’s response to its communications with the Park and Recreation Commission below.

- Condition H (bottom of page 3, top of page 4) – Attorney Branse has noted that Condition H of the original approval required the Applicant to submit Plans for off-site improvements “that acknowledge and address the increased traffic burdens that The Preserve will create for these roads. Such improvement shall include both vehicular safety improvements and pedestrian and/or bicycle travel.” As Attorney Branse has observed in his letter, the Applicant is taking the position that the pod development for Bokum Road and the pod development for Ingham Hill Road do not require the off-site improvements that would be needed to address the “increased traffic burdens” of full development. The basis for not requiring such plans at this time is because (a) this is still a preliminary plan and

not the final plans for this subdivision; and (b) the limited number of lots are unlikely to require road improvements to accommodate the maximum number of lots which would be allowed under the Modification Application (9 on Bokum Road and 13 on Ingham Hill Road).

The Applicant acknowledges Attorney Branse' concern that off-site improvements beyond an applicant's road frontage would not be required under current subdivision law. Without questioning the correctness of Attorney Branse' opinion that off-site improvements beyond the road frontage can be required under a Special Exception, the Applicant agrees that Condition H still remains in effect. It is the Applicant's understanding that this agreement on its part would preclude it from contesting such a requirement in the future. It should be noted that the issue of what specific off-site road improvements are required to "address the increased traffic burdens that The Preserve will create for these roads" is not specified. The Special Exception does not attempt to identify the off-site improvements required, but only that the Applicant will acknowledge and address them in the final plans.

- Nature of the Application (page 4, page 5 and page 6) – Many of the matters requiring clarification have been addressed previously in the comments regarding "phasing" and "road layout". In particular, the Applicant believes it has addressed the questions concerning obligations for road construction and bonding of the roadway connections through the interior of the property, the 816 acre "forest core". Since the March 23, 2005 Special Exception remains in effect except as modified by an approval of this Modification Application, the requirement of the original approval with respect to obtaining the consent of the Town of Westbrook and the Connecticut Department of Environmental Protection to construct the roads depicted on the Preliminary Plan remain in effect.

The Applicant recognizes that the Planning Commission "granted the Special Exception predicated upon the vision represented by the Preliminary Plan, as modified in the final approval motion." As stated by the undersigned counsel for the Applicant the commencement of the Public Hearing session on December 1, 2010, times have significantly changed since the original Special Exception was approved nearly six years ago. Attorney Branse inquired as to what happens if the applicant proceeds with the perimeter pod development proposed and "abandons the Special Exception for the balance, and comes in with some less creative and more intrusive development pattern for the "interior"". The simple answer is that the remaining undeveloped property still remains in the Residence C Conservation District whose Purpose is "to cluster residential development at a density and in configuration suitable to preserve natural and cultural resources." (see Section 27.0 of the Zoning Regulations). Virtually every permitted use of the property would require a subdivision of the property except the conveyance of the balance of the property for "conservation purposes" as previously noted. Section 56.1 specifically provides that the Planning Commission may require an application for a Special Exception for an Open Space subdivision, and no

subdivision will be approved in the Residence C Conservation District other than an Open Space Subdivision. Any “less creative and more intrusive development pattern” for the “forest core” or “interior” land would be subjected to the same scrutiny and approval process as for the original Special Exception, in the event the land owner were to “surrender” an approved Special Exception, or in the event of termination of the Special Exception by lapse of time. Note that Section 56.5 as amended provides for a final outside expiration date of this Special Exception of March 23, 2015.

- Access per the Approved Special Exception (bottom of page 6, page 7 and 8) – River Sound concurs with Attorney Branse’ analysis of current law regarding “conditional approvals”. The Applicant notes, however, that since the “three-access condition” remains in effect, the Commission may determine that road access is suitable for the three pod areas even if there were no interconnection in the future (the “no development” option for the 816 acre “forest core”). Since the “potential for interconnection remains in the Revised Plans, it is the Applicant’s position that no abandonment of the balance of the original Special Exception is required in order to approve the Modification Application. What is required is that the approval of the Modification Application specifically and clearly state what conditions are being modified, what conditions remain and what event will require compliance with those remaining conditions.
- Role of the Inland Wetlands and Watercourses Commission (page 8, 9 and 10) – River Sound has specifically followed the requirements of the Superior Court decision quoted in Attorney Branse’ letter. As noted, the Applicant filed this Modification Application with the Old Saybrook Inland Wetlands and Watercourses Commission on the same day that the Modification Application was filed with the Planning Commission. The Applicant has addressed the “role” of the Inland Wetlands and Watercourses Commission and its report in the Response below.

4. Traffic Engineering Solutions, PC November 22, 2010 Memorandum

Comments regarding the “Street Layout” in the above referenced Memorandum have been addressed in substance earlier in this Response. Other observations or questions in the Memorandum are addressed as follows:

- Basis of Review (bottom of page 1) – Mr. Hillson has reviewed the design of each of the roadway systems “within the three areas identified in the Application as stand-alone roadways . . . and as roadways that will ultimately be incorporated into the overall Open Space Subdivision”. This basis of review is substantially correct. The only clarification the Applicant would make is that the ultimate incorporation of three of the roadways into the overall Open Space Subdivision may ultimately occur rather than will occur. However, the Applicant does not believe that this distinction affects the review, which should be made on the basis that incorporation will occur.

- The “Driveway/Private Road” in the PRD (page 2, #3) – Mr. Hillson observes that “if these homes are considered rear lots” they exceed the maximum number of rear lots under the Subdivision Regulations. The proposal is for a single lot to be developed as a PRD which as noted above requires both Planning Commission approval for the lot and Zoning Commission approval for the PRD.
- Second Access to Ingham Hill Road (page 2, #4) – The Applicant recognizes that Ingham Hill Road is a dead end road of considerable length. The original Special Exception actually requires three access points in order to accommodate the full development plan.

The Applicant notes that there are already many homes in the upper reaches of Ingham Hill Road. The proposal for an additional 13 lots is in the same area as 5 existing homes. The addition of the 13 lots proposed does not extend the distance required for emergency responders to provide service. The number of dwellings served by the section of Ingham Hill Road northerly of Mill Rock Road would be increased by approximately 10 percent under this limited development proposal. As Mr. Hillson notes, the secondary access issue has lingered for many years. The Applicant respectfully suggests that access to the “Ingham Hill Road neighborhood” is only feasible through existing Town property (Great Cedars Conservations Areas, Memorial Park on Schoolhouse Road or by acquisition of property not owned by River Sound through conveyance of voluntary access rights, or through condemnation power which is only available to the Town. The Applicant does not consider it appropriate to impose the burden of such secondary access to Ingham Hill Road as a condition of this limited development proposal.

- Width of Road (page 2, #5) – It is the Applicant’s position that providing the required right of way for the three potential “access point” roadways is sufficient to accommodate the potential full development under the Special Exception. However, the Applicant has proposed the reduced paved widths to accommodate the limited proposed development. If these roadways were to be extended under full or partial development, the paved portion of the roadways would need to be widened as part of the final subdivision plans. The Applicant considers this an appropriate condition of any approval allowing the Applicant under this Modification to proceed with lesser paved road widths. If the Planning Commission is inclined to disagree, it may require the Applicant to pave the roadways to the full potential required widths. The Applicant, however, considers this to be contrary to the policy of reducing road widths, curbing requirements and associated drainage and infrastructure facilities requiring land disturbance and impervious surfaces.
- Reverse curve near the top of Ingham Hill Road (page 3, #6) – As noted elsewhere, the Applicant does not seek to eliminate this requirement, but rather to defer construction until if and when an extension of Ingham Hill Road to the 816

acre “forest core” is proposed. This deferral request is part of the Applicant’s Modification Application.

- Road Profiles Curve Data(page 3) – The Memorandum notes the absence of “road profiles to allow the grades and vertical curvature to be reviewed” and inadequate information to check sight distance at the intersections. The Applicant considers that providing such information is not required for the Preliminary Open Space Plan. Such profiles and other information are appropriate for the final subdivision application. Again, these plans are preliminary and only for the purpose of establishing a maximum number of lots. The Applicant for final subdivision approval will be required to meet the recently adopted Town of Old Saybrook Subdivision Regulations and Town of Old Saybrook Regulations for Public Improvements, and any amendments subsequently adopted. The burden of meeting those requirements is upon the Applicant.

5. Inland Wetlands and Watercourses Commission

In its November 20, 2010 report to the Planning Commission, the IWWC raises a concern regarding the road layout for the Bokum Road pod. Again, the Applicant notes that the roadway location was reviewed and approved in the original Special Exception Application and has not changed. Also, the roadway location was considered during the Wetlands application which was denied by the IWWC, but was not a reason cited for the denial.

The IWWC notes that it has jurisdiction over any activities within its review areas. The Applicant acknowledges this requirement. The Bokum Road area will be reviewed again by the IWWC at that time.

6. Parks and Recreation Commission

The Applicant has met with the Parks and Recreation Commission and reviewed its athletic fields location with the Commission. The Applicant has noted on the Revised Plan, Sheet RS-3 that engineering plans for the fields, specifically including the changes in the elevations of the fields and the access to them, will be provided to the Commission at the time of final subdivision application. This is as requested by the Commission in its letter to the Planning Commission.

7. Conservation Commission

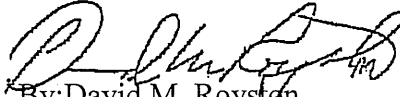
The Applicant met with members of the Conservation Commission on December 6, 2010. The Applicant has addressed the concerns of the Conservation Commission in its Revised Plans, specifically providing connection of its Open Space to historic Ingham Hill Road at trailheads, with parking at the terminus of the extension of Ingham Hill Road and in the PRD location. (See Sheet RS-3 and RS-4).

8. Public Safety (Fire, Police)

The Applicant met with the Police Commission on December 27, 2010. The Police Chief and the Fire Chief attended that meeting. The Applicant discussed the concerns of the Commission, the Police Chief and the Fire Chief at length, and how those concerns would be addressed. A specific written response will be submitted to and reviewed by the Police Chief and the Fire Chief. That written response, after their review, will be submitted at or prior to the Public Hearing session of January 5, 2011.

Respectfully submitted,

RIVER SOUND DEVELOPMENT, LLC

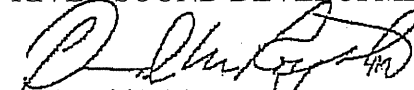
A handwritten signature in black ink, appearing to read "D. Royston", with a stylized flourish at the end.

By: David M. Royston
Its Attorney and Agent

This Response has been prepared in order to allow its distribution to the Commission Members, their consultants and the Intervenor on November 29, 2010. Accordingly, it does not address comments which may be received by the Commission subsequent to noon on November 29, 2010. Such comments will be addressed at the continued Public Hearing on January 5, 2011.

Respectfully submitted,

RIVER SOUND DEVELOPMENT, LLC

A handwritten signature in black ink, appearing to read "D. Royston", with a date "11/29" written at the end of the signature.

By: David M. Royston
Its Attorney and Agent