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**PLANNING  
COMMISSION  
EXHIBIT 106**

January 19, 2011

Robert McIntyre, Chairman  
Old Saybrook Planning Commission  
302 Main Street  
Old Saybrook, CT 06475

**RE: Old Saybrook Planning Commission- Preserve, Amendment to  
Special Exception-Additional Comments Following Public  
Hearing of December 1, 2010  
File No: 3029/10-141**

Dear Chairman McIntyre:

This firm represents The Alliance for Sound Area Planning in connection with its objection to the Applicant's Application.

On behalf of our client, we have reviewed various materials relative to the Application, including, but not limited to, Attorney Branse's letter to the Commission dated November 23, 2010, and offer this letter to further clarify an issue raised in Attorney Branse's letter with regard to the issue of "conditional approvals" and the CMB Capital Appreciation, LLC v. Planning and Zonings Commission of North Haven, 124 Conn. App.379, ("CMB Capital Appreciation") decision.

It is our opinion that a final decision on a certain access point requested by the Applicant has been in fact made and that this is not a situation of conditional approvals and/or future regulatory action. The record should note that the Applicant received a letter of denial to its right-of-way request from the State of Connecticut Department of Environmental Protection dated February 10, 2006. A copy of the State of Connecticut Department of Environmental Protection's letter of denial is attached hereto and made a part hereof as Exhibit A.

Evidencing that this is a final decision, the Department of Environmental Protection specifically noted in its letter: "As you may know, this position is consistent with DEP's practice of not granting new right-of-way crossings along the entire length of Valley Railroad State Park. State practice and policy is to protect its State Park System from such encroachments and to hold the State park lands it acquires for public use and enjoyment."

We believe that the Commission must consider the denial of access in its deliberations regarding this Application.

Tavano McCuin, LLC


By   
J. Scott McCuin  
Member

EXHIBIT A



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

79 ELM STREET HARTFORD, CT 06106-5127



Gina McCarthy  
Commissioner

PHONE: 860-424-3001  
February 10, 2006

Mr. Dwight H. Merriam, Esquire  
Robinson & Cole  
280 Trumbull Street  
Hartford, CT

RE: File A-05-154, Valley Railroad State Park

Dear Attorney Merriam:

The Connecticut Department of Environmental Protection (DEP) has completed its evaluation of River Sound Development, LLC's request for a right-of-way bridge crossing of Valley Railroad State Park. DEP's Property Review Team, comprised of representatives of DEP's various resources disciplines, reviewed the proposal.

The request proposed an overpass to be built over the existing train track at the centerpoint of the 100 foot wide path of the Valley Railroad State Park. It is unclear from the plans how wetlands, species at risk or local stormwater runoff would be affected by the proposed structure and associated roadway. It appears that a significant amount of fill will be required to meet the grading plan for the roadway as designed.

As a result of the uncertainties related to the physical impacts the overpass and roadway system would have on the Valley Railroad State Park, the resulting constriction of the park from its existing 100 foot wide path to a 20 foot wide passageway designed to pass a single train, the potential to further limit the use of this railway to trains of a certain width and height, and the overall negative aesthetic impact such an activity would have on this section of the State Park, the Connecticut DEP is unwilling to grant River Sound Development's request to construct an overpass over Valley Railroad State Park. As you may know, this position is consistent with DEP's practice of not granting new right-of-way crossings along the entire length of Valley Railroad State Park. State practice and policy is to protect its State Park system from such encroachments and to hold the State Park lands it acquires for public use and enjoyment.

If you have any questions regarding this matter, please feel free to contact Mr. Thomas Morrissey, Bureau Chief of Outdoor Recreation at (860) 424-3014 or Ms. Elizabeth Brothers, Assistant Director, Land Acquisition and Management Division at (860) 424-3016.

Yours truly,

Gina McCarthy  
Commissioner

GMM/mm;  
cc: Thomas Morrissey  
Elizabeth Brothers  
Town of Old Saybrook

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