

FINAL

MOTION ON THE APPLICATION OF RIVER SOUND, LLC
THE PRESERVE APPLICATION FOR SPECIAL EXCEPTION

MODIFICATIONS APPROVED IN 2011

INTRODUCTION

The Commission gave careful consideration to the application for Special Exception for Open Space Subdivision in accordance with Section 56 of the Old Saybrook Zoning Regulations (the "Application") as filed by River Sound Development, LLC (the "Applicant") and approved by the Commission on March 23, 2005. The Commission members heard exhaustive testimony-expert, anecdotal, and otherwise-during many hours of testimony. They have received numerous plans, reports, staff memoranda, and other documents. In reaching the decision, the Commission members have relied exclusively on the evidence and testimony in the record and, where appropriate, their own knowledge of the Town of Old Saybrook and topics within their individual or collective expertise. The findings, and the conditions and modifications, stated below were integral to the Commission's decision on the Application and, but for these findings, conditions, and modifications, the Commission would have denied the Application as either incomplete or not in compliance with its Regulations.

This Motion has been modified following the Applicant's Application of October 12, 2010 for certain modifications (the "Modification Application") to the approved 2005 Special Exception ("the 2005 Special Exception.") These modifications have, in turn, required additional findings, conditions, and modifications. As with the original approval, the findings, and the conditions and modifications, stated below are integral to the Commission's decision on the Modification Application and, but for these findings, conditions, and modifications, the Commission would have denied the Modified Application as either incomplete or not in compliance with its Regulations.

FINDINGS

I. **Suitability as Open Space Subdivision.**

A. **Completeness of Application.**

1. **Alternate Road Standards.** The Commission had not received evidence that the Board of Selectmen had approved, or were reasonably likely to approve, the Alternative Road Standards proposed by the Applicant as of the close of the public hearing on the 2005 Special Exception. Therefore, the Commission considered the Application under the then-current road standards required by the Zoning and Subdivision

Regulations. After the close of the Public Hearing, the Commission received the decision of the Board of Selectmen relative to Alternative Road Standards, but the plans before the Commission do not illustrate the effect that such standards will have on road locations, alignment, grading, or other aspects of design that may be affected by the road specifications as approved. The Commission's Traffic Engineering consultant had cautioned the Commission that, depending on the extent and type of Alternative Road Standards that were approved there would be some degree of alteration of road grades, alignment, or public/private status. The Applicant has contended that, because of the preliminary nature of the road pattern set forth in this Special Exception application, there was no need for the Alternative Road Specifications to be finalized in this proceeding, and that is the reason why the Applicant did not seek the decision of the Board of Selectmen prior to filing the 2005 Special Exception Application. Since the 2005 Special Exception, the Planning Commission has adopted new "Regulations for Public Improvements" that replace the former Board of Selectmen's "Design and Construction Standards," so the Commission will be in the position to review road specifications in the context of future subdivision and/or PRD applications. Staff have reviewed the Modification Application under both the 2005 Alternative Road Specifications and the current "Regulations for Public Improvements."

The approval of this Special Exception shall not include any approval of road specifications or any approval of road grading, alignment, or other engineering elements, all aspects of which, including environmental impacts thereof, shall be reviewed de novo during the final subdivision application.

2. **Standing to Apply, Access to Bokum Road Over the State Valley Railroad Corridor.** The Commission finds that the State of Connecticut, acting by and through its Department of Environmental Protection, is not prepared to approve an at grade crossing of the railroad tracks located on State-owned property between The Preserve property and Bokum Road. However, the Applicant is not proposing an at grade crossing, but rather is proposing a fly-over crossing. The Applicant has represented to the Commission that it is capable of obtaining the approval required to cross the State property; that it has had discussion with the State to that effect; and that it is willing to assume the risk that it is unable to obtain such approval. The Applicant has also argued that because this is a preliminary design, authorizing nothing to be constructed, it need not have the State's consent at this stage any more than it has the approval of other State and local agencies that would be required in a final subdivision application. The Commission is aware (Exhibit 107) that since the 2005 Special Exception, the State of Connecticut, acting by and through its Department of Environmental Protection, has denied one request for access, but the Applicant has

maintained that this is not a final decision and may be revisited in the future.

The Commission accepts the Applicant's argument, and finds that at this preliminary stage of review, where only a preliminary, conceptual plan is being approved, final State approval is not required in order to evaluate the suitability of the plan before it.

These findings shall not be construed as imposing on the State any obligation to approve the use of its property by this or any other Applicant, nor any expectation that the same will occur. The Applicant has indicated, repeatedly, that it assumes full responsibility for obtaining such approval in advance of any final subdivision or PRD approval, and the Commission will allow the Applicant to shoulder that burden. This Motion shall not be used as the basis for any claim by the Applicant that the denial of access rights to State property deprives it of the benefit of this Special Exception or the modification thereto of 2011. Such benefit does not exist unless and until the State grants the approval that the Applicant has claimed it can obtain. Any approval of the Application or the Modification Application will (as set forth below) be subject to the Applicant's ability to establish the rights that it claims to have.

3. **Access to Route 153, Westbrook.** The Applicant has represented to the Commission that it is capable of obtaining the approval required to reach Route 153; and that it is willing to assume the risk that it is unable to obtain such approval. The Applicant has also argued that because this is a preliminary design, authorizing nothing to be constructed, it need not have the Town's consent at this stage any more than it has the approval of other State and local agencies that would be required in a final subdivision application.

The Commission accepts the Applicant's argument, and finds that at this preliminary stage of review, where only a preliminary, conceptual plan is being approved, final approval by the Town of Westbrook is not required in order to evaluate the suitability of the plan before it.

These findings shall not be construed as imposing on the Town of Westbrook any obligation to approve the extension of its public road system, nor any expectation that the same will occur. The Applicant has indicated, repeatedly, that it assumes full responsibility for obtaining such approval in advance of any final subdivision or PRD approval, and the Commission will allow the Applicant to shoulder that burden. This Motion shall not be used as the basis for any claim by the Applicant that the denial of public highway status in Westbrook deprives it of the benefit of this Special Exception or the modification thereto of 2011. Such benefit does not exist unless and until the Town of Westbrook grants the approval that the Applicant has claimed it can obtain. Any approval of the

Application and the Modified Application will (as set forth below) be subject to the Applicant's ability to establish the rights that it claims to have.

4. **Inland Wetlands and Watercourses Commission Action.** This Commission does not have the authority to determine the jurisdiction of the Old Saybrook Inland Wetlands and Watercourses Commission. That Commission submitted a report on the 2005 Special Exception, and concluded that no permit applications were required in connection with that Special Exception application. The Commission concluded that the Inland Wetlands and Watercourses Commission had exercised its jurisdiction to the extent that it deemed appropriate. The same is true for the Modification Application, where the Commission has received a report from the Inland Wetlands and Watercourses Commission (Exhibit 24).

5. The Commission finds that the change from community effluent disposal to individual septic systems on the West PRD, the Pianta Parcel, and the proposed lots off of Ingham Hill Road, and the use of individual wells in the latter two areas, appears to be feasible at this stage of review, which requires only a finding as to the unit yield of the property and the conceptual soundness of the Preliminary Plan. Detailed septic system designs, well locations, and other public health compliance issues will be addressed at the more detailed level of review that must accompany any application for subdivision or PRD.

B. **Compliance with Standards.** Based on the information received in the record of the 2005 Special Exception, the Commission found that The Preserve property should be developed as an Open Space Subdivision. This finding might be different in some future proceeding at which different evidence and/or plans are submitted. In support of this finding, the Commission further finds that the Open Space Subdivision Plan, as modified in this Motion and in the Modification Application, will not be detrimental to the public health, safety and property values. Further, the Modifications to the said Plan, as modified in this Motion, accomplishes the purposes specified in Paragraph 56.2 and that the standards of Paragraph 56.6 will be met, as follows:

Section 56.2:

56.2.1: The approved 2005 Special Exception Open Space Subdivision Plan, as modified and conditioned in the 2005 Special Exception approval, can provide public playgrounds and active recreation sites, and was modified to do so, and is further modified in the Modification Application per Condition E below. The Plan already provides for outdoor recreation in the form of golf and tennis (among other activities) for club Members; trails for other residents and the general public; and passive enjoyment of nature in the undisturbed forest areas. The Plan also already provides for

Public Parks in the form of the deeded open space land. The 2005 Special Exception plan did not provide expressly for preservation of the Ingham Homestead, but was modified to do so, per Condition G. The plan did not expressly provide for the preservation of the Old Ingham Hill Road corridor, but was modified to do so to the extent practical as determined by the Commission upon application for subdivision, per Condition G below.

56.2.2: The Open Space Subdivision Plan provides protection for natural streams, ponds, and water supplies. This Plan does not protect each and every fragile natural resource on the site, but the Commission does not interpret Section 56.2.2 as requiring that. The Commission also finds that additional natural resource protection is possible and is provided by the modifications and conditions set forth in this Motion.

56.2.3: The Open Space Subdivision Plan provides for the protection of soils and wetlands. There are no tidal marshes or beaches on the property. As with the previous finding, the Commission finds that this Plan does not protect each and every fragile natural resource on the site, but the Commission does not interpret Section 56.2.3 as requiring that. The Commission also finds that additional conservation of soils and wetlands is possible and is provided by the modifications and conditions set forth in this Motion.

56.2.4: The Plan is preliminary but, at this level of detail, appears capable of including best management practices for storm water management and low impact design (LID) in the siting of individual dwelling units, whether in the PRD or on individual lots, and those measures can be refined in the final subdivision and PRD applications.

56.2.5: The Open Space Subdivision Plan protects sites and areas of scenic beauty and historic interest, other than the Ingham Homestead, which can and should be protected.

56.2.6: The Open Space Subdivision Plan provides for conservation for forest, wildlife and other natural resources to the extent consistent with development of the property. As with other findings, this Plan does not protect each and every fragile natural resource on the site, but the Commission does not interpret Section 56.2.6 as requiring that. The Commission also finds that additional natural resource protection is possible and is provided by the modifications and conditions set forth in this Motion. There are no agricultural resources on the site.

Section 56.6:

56.6.1. Acreage: The parcel is over 25 acres.

56.6.2. Number of Lots: The Plan, as modified by this Motion, is in accordance with the finding below as to the lot yield made in accordance with Section 56.5.

56.6.3. Lot Area, Shape, and Frontage: The bulk requirements of this Section appear to be met based on these preliminary plans, subject to more detailed plans at the Final Subdivision stage.

56.6.4. Open Space Land: The Open Space Subdivision Plan complies with, or is capable of complying with, the standards of this Section. Because this development will have residents of all ages, additional active recreation opportunities are needed, including expansion of the bike path system. The Commission recognizes that the details of open space disposition, management, documentation, and use will be addressed in the Final Subdivision Application.

56.6.7. Permitted Uses: The Plan indicates uses that are consistent with those permitted.

56.6.8. Sections: The Applicant has provided a preliminary plan for the Pianta Parcel but did not include it in the 2005 Special Exception application. This was in compliance with Section 56.6.8. The Modification Application includes a different preliminary plan from the one submitted in the 2005 Special Exception application, and the Pianta Parcel is included in this application (Revised Plan Sheet RS-2). That plan depicts nine (9) lots on the Pianta Parcel. The approval of the Preliminary Open Space Plan, Revised Plan Sheet RS-6 revised through February 11, 2011 for 9 single family lots, is based upon the finding and resolution of the Commission pursuant to Section 56.4 of the Zoning Regulations that 9 lots shown on Revised Plan Sheet RS-5 revised through February 11, 2011 represents the maximum number of lots of a "reasonable subdivision of the land" under a conventional subdivision plan.

Section 56.6.9. Conflicting Provisions: No conflicts have been identified. The Commission finds that the Application is complete, subject to the conditions of this Motion.

C. **Withdrawal of "Phased" Development.** The Commission accepts, and predicates its decision on the Modification Application, on the statement of the Applicant to **withdraw** the request in its proposed Statement of Use, dated October 8, 2010, that the Applicant "...be permitted to apply for final subdivision approval of the three areas (West PRD, Ingham Hill Road and the Pianta Parcel) either as one application, or as separate applications, and in such sequence as chosen by the Applicant."

II. Yield Plan, Total Lots.

A. **Golf Course:** In the 2005 Special Exception, the Commission construed its Regulations as not allowing the Applicant to "double count" land in the underlying conventional design (the "yield plan") for both residential density and a private country club/golf course. As indicated in staff reports, the country club/golf course includes parking lots, buildings, tennis courts, fairways, greens, etc. that constitute "a separate use of land." The Open Space Subdivision Plan is supposed to allocate land between two (2) uses: residential lots/development and open space. The Applicant has inserted a third use, a country club/golf course, which use occupies land which would otherwise be available for either residential uses or open space. The desirability of such a use is not relevant. The issue is one of density. The only evidence that the Commission had before it in 2005 from which it could determine the yield of a conventional subdivision plan with a golf course was the plan submitted by the Applicant and entitled, "Conceptual Standard Plan With Golf Course, Sheet No. OS-A" and dated 09/01/04 (the "Yield Plan with Golf Course.") . Despite repeated requests for such a plan and its apparent existence ' since September 2004, it was only provided to the Commission for its public hearing of January 12, 2004. This precluded the Commission from considering whether the 15 lots eliminated from this Plan might have been eliminated for other reasons in previous staff reviews. The Commission therefore finds that the starting point of its yield analysis shall be the 278 lots depicted on the Yield Plan with Golf Course; rather than the 293 In the initial conventional subdivision submission plan.

B. **Other factors:** In 2004-2005, the Commission received reports from its traffic engineering consultant; its biology consultant; its soils scientist; its Town Engineer; its Traffic Engineer; its Town Planner; the Connecticut River Estuary Regional Planning Agency; the Zoning Enforcement Officer; its Environmental Planner (in the Modification Application); and numerous witnesses for intervenors and the Applicant. Commission members have individually and collectively reviewed these reports and have given the weight to each report and all the testimony as may be appropriate in their individual and collective discretion. While all Commission members may not have assigned the same weight to the same reports, the collective finding 'of the Commission, after exhaustive review, is that 57 lots should be eliminated from the yield plan based on the reports and testimony received. When deducted from the 278 lots of the Yield Plan with Golf Course, the resulting total is **221**.

C. **The Modification Application.** The Commission has reviewed the proposed conventional subdivision plan for the Pianta Parcel, depicting nine (9) lots and finds such number to be a reasonable yield for that portion of the property. Overall, the Commission finds that the Modification Application depicts a feasible total yield of **224** units with the Pianta Parcel, as compared to the original 221 units without the Pianta Parcel of the 2005 Special Exception.

III. **The Preliminary Open Space Plan; Compliance with Standards.**

In 2005, the Commission found that the following aspects of the Preliminary Open Space Subdivision Plan did or did not conform with the standards and criteria of its Regulations, as follows:

A. **The Golf Course As An Element of the Plan.** The Commission finds that a "golf course" is a recreational use that could be included in the final plan if properly designed. The Commission is not persuaded that a golf course must or inevitably will produce adverse impacts on groundwater, wildlife habitat, or other natural resources. The fact that some golf courses may have produced adverse impacts does not necessarily mean that any golf course will have such impacts. In any event, the Commission finds that a golf course would generally have less impact than conventional subdivision lots in the same area, and that the golf course does create some new wildlife habitat for certain species.

B. **The Golf Course Design Considered in Light of the Goals of an Open Space Subdivision.** Despite the general desirability of a golf course as an element of this open space plan, the Commission finds that there are serious deficiencies in the design as submitted. In particular, the Commission concludes that:

1. There is inadequate buffering for the Pequot Swamp, especially along the East side;
2. The recommended 100-foot non-disturbance buffers are not maintained for vernal pools, and particularly for vernal pool #18, and the area of intact wooded uplands between this pool and the large Red Maple Swamp to the west.
3. The current plan involves excessive fragmentation of habitat areas. While some-fragmentation may be unavoidable in any form of development, this design can and should be modified to reduce-that fragmentation, especially in areas of known ecological importance. The design of the golf course must be driven by the goals of Section 56 and not the other way around; it requires fairways to cross significant wetlands areas, including Pequot Swamp. This involves clearing of vegetation, establishment of cart paths, and having golf balls flying over, and inevitably into, fragile wetlands and watercourses (e.g., Hole #11). Golfers will naturally seek out errant golf balls in the wetland "rough" areas, creating foot traffic and disturbance of those sensitive areas.
4. The golf course plan does not adequately address the safety of adjoining dwellings, public roadways, and infrastructure or the wildlife that exists along the fringes of this golf course.

C. **Road Pattern; Traffic and Off-Site Improvements.**

1. Road A should be a public road, as proposed by the Applicant.
2. Road H should be depicted on the final Modification plans as originally approved, should also be public (the application materials are unclear as to the Applicant's proposed status for this road), and designed to public road specifications.
3. Road G is not viable as a cul de sac design. Turning radii for fire apparatus and other large vehicles is not adequate.
4. The Commission finds that there was not intended to be, and requires that there not be, access to land of others via the corridor at the end of Road B (depicted as wetlands on the plans).
5. There should be full access to Ingham Hill Road via road H, also referenced on some plans as Road A, (not just an emergency access), as recommended by the Commission's traffic engineering consultant (Memo of December 1, 2004) and the Town Planner (Memo of November 17, 2004). This not only provides improved access for residents of The Preserve, but also provides a second means of egress for existing residents on Ingham Hill Road in the event of emergency (such as the flooding observed near the Ice house in 1982). Unless a "T" intersection is utilized (per IV.A below), the existing Ingham Hill Road shall be realigned at the north end across Lots 74 and 79 as shown on the original Conventional Subdivision Plan to eliminate the sharp curve on Ingham Hill road, also as recommended by Mr. Hillson. The Applicant should also address improvements to Ingham Hill Road to accommodate any additional traffic produced by this connection, including improved pedestrian movement. The final plans shall be revised to depict Ingham Lane (Road H, also referenced on some plans as Road A) as extending into the forest core per the 2005 Special Exception,
6. Off-site improvements to Bokum Road must be investigated by a traffic study and feasibility analysis for necessary improvements that are required to accommodate the additional traffic that will be generated by this development. The Commission's counsel requested this information from the earliest reviews and the applicant has failed to respond. There is a clear nexus between the traffic generated by this development and the need for improvements on Ingham Hill Road and Bokum Road, and the safety of these future residents requires that both vehicular and pedestrian traffic passage to and from this development be safe, convenient, and inviting.

D. **Clustering in the "Estate Lots" Area.** The Commission finds that the "Estate Lots" are contrary to the fundamental design philosophy that underpins the Conservation Zone and Section 54 of the Regulations. Additional clustering

in this area would allow for more open space, less disturbance of the natural topography, less infrastructure and impervious surface area, and flexibility in the design of the golf course, the village multi-family units, and the road pattern. This finding does not mean that the houses in the Estate Lots need to be smaller, but only that the building envelopes needs to be smaller, for those lots abutting proposed public open space or undisturbed areas such as areas adjacent to railroad tracks or utility easements, Building Envelopes shall be limited to one (1) acre, with the remainder of the lot to be preserved by perpetual conservation easements, located on the side of each lot where it abuts proposed public open space or other undisturbed areas.

E. **Design of the Village Areas.** At this time, the Commission has no major objections to the way the village areas are set up. The design of the village areas is deemed appropriate.

F. **Active Recreation Facilities for the Public.** The Applicant has not proposed that The Preserve be an age-restricted community and the Commission has no desire to impose such a requirement. The Applicant expects that many units will be purchased by "empty nesters," but had presented no evidence to support this claim. Even if most purchasers do not have children, the fact remains that the development design has provided no recreational opportunities of any kind for any age group, other than the restricted membership, for fee country club/golf course facility. Even a community of middle-aged residents has requirements for active recreation such as soccer fields, basketball courts, softball fields, bicycle paths, jogging-trails, and the like.

G. **Location of Maintenance Facility.** The maintenance facility has been placed directly upgradient from vernal pool #24. The maintenance facility will, of necessity, involve the storage of chemicals for the golf course and the storage, maintenance, and possible fueling of service vehicles. This facility should be located in a less sensitive location.

H. **Preservation of Ingham Homestead.** In addition to the lack of active recreational opportunities in the Preserve, there is a failure to address how the historic Ingham Homestead and its setting will be protected and preserved.

I. **Conn. Gen. Stats. § 22a-19 Intervention.** The open space subdivision is preferable to the conventional subdivision plan as proposed. The preliminary approval will not be reasonably likely to unreasonably impair, pollute or destroy the public trust in the air, water or other natural resources of the State of Connecticut. For the Modification Application, the Commission has considered the conflicting expert testimony and finds that the proposed modification plans, as revised during the course of the public hearings, are not reasonably likely to unreasonably impair, pollute or destroy the public trust in the air, water or other natural resources of the State of Connecticut. In addition, the Commission has modified the application, as set forth below, to include specific requirements for protection of the Box Turtles identified on the site at the time of subdivision or PRD application. The plan was modified during the course of the application to protect the habitat for the Prickly Pear.

IV. The Preliminary Open Space Plan: Modifications and Conditions.

As in 2005, the Commission recognizes that it has the option of modifying or conditioning the Application in order to address the deficiencies above, and the Commission concludes that they can be remedied by conditions and modifications based on the information and arguments now contained in the record, and that such conditions and modifications do not substantively alter the Application to the extent that any parties are deprived of their rights to be heard. These conditions and modifications are drawn directly from the testimony and evidence received during the public hearing and are intended to be responsive to them. The following conditions and modifications are integral to this approval and not severable from it. But for these conditions and modifications, the Commission would have denied the Application without prejudice so that an acceptable plan could be designed and submitted.

Therefore, the Special Exception is granted based on Plans RS-1 through RS-6, revised through February 11, 2011, subject to the following conditions and modifications:

A. Access, Ingham Hill Road. As noted above, the access from Road H (also depicted on some plans as Road A) to Ingham Hill Road shall be a full public roadway. The existing Ingham Hill Road shall be realigned at the north end across Lots 74 and 79 as shown on the original Conventional Subdivision Plan to eliminate the sharp curve on Ingham Hill Road, also as recommended by Mr. Hillson. A minimum of three (3) public access points are required for this development in the locations shown on the Preliminary Plan, except as modified in this Motion: Ingham Hill Road, Bokum Road, and Route 153 in Westbrook. The proposed "T" intersection proposed in the Modification Application in the area of Ingham Hill Road and the new proposed cul de sac between lots #2 and #9 is approved in concept, subject to the provision of detailed plans at the subdivision application stage. Furthermore, the Preliminary Plan will be modified to depict a less severe curve on Ingham Hill Road in the area northnorthwest of C.L. & P. Pole #2280. See Condition I.

B. Village Layout. The Commission finds the Modified Preliminary Open Space Plan, RS 2 revised through February 11, 2011 should be modified to specifically note that Road H (depicted on some plans as Road A) should become a public road and the bike path should be extended from Road A, along Road H (or A) to Ingham Hill Road. Otherwise the village layout shall remain the same.

C. Golf Course Design. In 2005, the Commission declined to dictate particular changes that are to be made in the golf course design, and instead to focus on performance standards and requirements that a revised design must meet. These included the following, which are or shall be shown or noted, as appropriate, on the Plans required to be provided under Condition I below:

1. No golf hole(s) shall be allowed to cross any portion of Pequot

Swamp, and all of Pequot Swamp and a 100-foot horizontal natural, undisturbed buffer surrounding the entire swamp shall be included in the publicly-owned open space.

2. In order to allow for amphibian passage and connectivity of resources between the red maple swamp shown as wetland #18 and vernal pool #18, an undisturbed buffer of at least 180 feet in width will connect vernal pool #18 to the red maple swamp to the west. As depicted on The Preserve Preliminary Open Space Subdivision Plan Graphic Plate #2 dated January 26, 2005, the 180 feet will start at the end of the southerly-most tee-box as depicted on the drawing and traverse at least 180 feet to the southwest to the beginning of the fairway, which will provide a 180' x 400' corridor from vernal pool #18 to the red maple swamp.

3. Alternatively, the applicant may relocate hole #7 to address these concerns.

4. Signs shall be installed between the golf course and all sensitive adjacent natural areas alerting golfers that they are prohibited from entering these areas to retrieve errant golf balls.

5. No clearing in, over or within fifty feet of identified vernal pools shall be allowed in order to construct the golf course, e.g. vernal pools 3, 9, 12, 21, and 27.

6. Regarding golf course safety: The golf course design shall be modified so as to conform to the plain text of the Urban Land Institute standards submitted by the Applicant. That plain text does not provide for measurements from the center line of greens or fairways, but from the "landing areas" and "greens."

7. Emergency Vehicle Access will be provided throughout the golf course to the extent feasible and an emergency access map, specifying the type of vehicles for which access is available, shall be provided to the Fire Department.

D. **Clustering of Estate Lots.** For those lots abutting proposed public open space or undisturbed areas such as areas adjacent to railroad tracks or utility easements, Building Envelopes shall be limited to one (1) acre, with the remainder of the lot to be preserved by perpetual conservation easements, located on the side of each lot where it abuts proposed public open space or other undisturbed areas.

E. **Active Recreation.** A level area for active recreation at least ten (10) acres in area shall be dedicated and improved for use by all residents of the

Town of Old Saybrook. The location for the active recreation area depicted in the Modification Application, Sheet RS-3 revised through February 11, 2011, and shall be subject to Note #5 on said Sheet RS-3 providing for prior review by the Parks and Recreation Commission of the engineering plans for the fields specifically including the changes in the elevations of the fields and access to them. See also Condition I.

F. **Location of Maintenance Facility.** The maintenance facility shall be relocated to a less environmentally sensitive location that is not immediately up-gradient of vernal pools or wetlands. The Applicant will also be subject to Condition I as regards to this site prior to final approval. The Applicant is encouraged to work with the Commission's environmental consultants and the Town's Public Safety Officials to Identify a suitable site.

G. **Preservation of Ingham Homestead.** The Applicant shall present a design for the preservation of the area around the Ingham Homestead, which design shall protect and preserve the historic character of the site and provide for interpretive aides for the visitor.

H. **Off-Site Improvements.** The Applicant shall submit plans for improvements to Ingham Hill Road and Bokum Road that acknowledge and address the increased traffic burdens that The Preserve will create for these roads. Such improvements shall include both vehicular safety improvements and pedestrian and/or bicycle travel

I. **Plans and Statement of Use.** Upon approval of the Modification Application, the Applicant shall provide 100' scale Preliminary Plans and an amended Statement of Use for review and approval of the Commission staff as having incorporated all the conditions and modifications of the 2005 Special Exception as modified by the approval of this Modification Application. Upon such review and approval, the plans will be so endorsed and filed in the Land Use Department and the Town Clerk's Office. No final subdivision approval or Special Exception condition compliance application shall be made prior to compliance with this condition.

J. **Additional Final Application Requirements.** The entire 925.82 acres of the River Sound property in Old Saybrook shall be tested by Motorola or the Fire Department for coverage under the new Municipal Public Safety and Communications System. The test results will be provided to the Fire Department and to the Police Department. In the event enhanced equipment is required to serve any proposed housing development area, the Applicant agrees that the enhanced communications infrastructure will be provided as part of the roadway system serving the residential units within the housing development area and deemed public improvement subdivision work.

1. An AUTOTURN analysis shall be provide for any roadway in the final subdivision plans.

2. In any housing development area which does not have a public water connection, the Applicant agrees that the final subdivision plans will provide for fire protection cisterns of a 30,000 gallon capacity to be installed in an appropriate location in or adjacent to the housing development area, which location will be reviewed and approved by the Fire Department and Fire Marshal, and which location may be outside and serve properties outside the Applicant's property, provided such location does not reduce the number of approved lots or substantially increase cistern installation costs.

3. Final subdivision plans will take into account required Fire Department access to residential buildings, including single family dwellings, will avoid duplication of street names and will require installation of clearly marked address numbers. The Applicant shall provide the Fire Department and Fire Marshal with a set of proposed final subdivision plans and an opportunity to meet with the Applicant prior to filing such plans.

4. In the event of approval of any subdivision plan involving a trail system, such trails shall be clearly marked and location maps of the trail system shall be provided to the Commission.

5. The Applicant shall provide the Commission with an as-built plan for all completed infrastructure work in electronic format upon completion of construction.

6. At the time of submission of final subdivision plans for development of all or any part of the Villages shown on the Revised Plan revised to February 11, 2011 Sheet RS-2, said plan shall take into account the test results for the Municipal Public Safety and Communications System required above. If more extensive communication enhancements are required for development of these interior areas, provision for such enhancement will be included within final subdivision or PRD plans for such areas. River Sound will also consider NFPA compliant sprinklers, particularly with respect to recreation, commercial, utility and multi-family residential structures. Installation, however, shall not be a condition of the Special Exception. Fire hydrant locations will be reviewed with the Fire Chief and Fire Marshal prior to final plans.

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L. Road Widths. The widths for all roads shall be consistent with the classification of the roadways as originally approved by the Commission on the 2005 Special Exception plans, i.e., not reduced in width per the Modification Application plans.

M. **Box Turtle Protection Measures.** The Applicant's consultant referenced accepted protocols for the protection of Box Turtles during construction activities. These protocols shall be incorporated into the future subdivision and/or PRD applications.

N. Since the applicant has withdrawn the initial request to develop individual stand alone development "pods," and will proceed with development of the parcel in its entirety as originally proposed, there is no longer a need for a turnaround at the end of roadwayroads A (also designated at times as Road H) or B, and as such, this element should be eliminated from the Modified Preliminary Open Space Subdivision Plan. In the Ingham Hill Road area, this requires that the extension of Ingham Hill Road into Road H (also depicted on some plans as Road A) be depicted as shown on the original Preliminary Open Space Subdivision Plan (Sheet RS-1) and the Modified Preliminary Open Space Subdivision Plan (Sheet RS-2) to the east of Lot #10 and to the north and west of vernal pool #31, including the reservation of sloping rights. All detailed plans shall be modified to conform to the 2005 Special Exception plan for interconnected roads, with such grades, sloping rights, or other measures as may be required to conform to the 2005 Special Exception plan, and the open space calculations shall be modified to reflect this change.

O. Lots #3 and #4 on the Pianta Parcel shall be reconfigured with a common lot line that is perpendicular to the road right-of-way, and a more direct access provided to lot #4.

P. The Modified Preliminary Open Space Subdivision Plan shall depict the relocation of the proposed detention basin that is adjacent to lot #9 on the Pianta Parcel by shifting it further to the southwest so as to preserve the 100-foot envelope associated with vernal pool #34 as well as the 100-foot inland wetland regulated area. The detention basin must continue to be located at an elevation that will allow surface runoff from the proposed roadway extending down to Bokum Road to be conveyed back to the detention basin. In addition, to the extent that it is feasible, low impact development techniques shall be utilized to minimize the impact associated with a point source discharge from the detention basin.

Q. In the Ingham Hill Road area, the layout of the proposed recreation areas, specifically including the location and number of parking spaces, shall be subject to the review of the Old Saybrook Parks & Recreation Commission at the time of subdivision application.

R. In the Ingham Hill Road area, the layout of the proposed trailhead parking area, specifically including the location and number of parking spaces, shall be subject to the review of the Old Saybrook Conservation Commission at the time of subdivision application.

S. In the Ingham Hill Road area, the Preliminary Plan will be modified to depict a less severe curve on Ingham Hill Road in the area northnorthwest of C.L. & P. Pole #2280. The proposed "T" intersection proposed in the Modification Application in the area of Ingham Hill Road and the new proposed cul de sac between lots #2 and #9 is approved in concept, subject to the provision of detailed plans at the subdivision application stage. RS-3 shall be modified to conform to the overall Preliminary Plan of the 2005 Special Exception and depict the connection to Road H from Ingham Hill Road.

T. In the PRD West area, the proposed nature center pavilion depicted on the approved 2005 Special Exception plan shall be retained at this time, subject to further review and input from the Conservation Commission or other applicable Commissions at the time of subdivision application. The Commission is reluctant to eliminate this amenity without having more detailed information about why, according to the Applicant, the Conservation Commission requested its removal.

U. In the Ingham Hill Road area, the final subdivision plan shall depict a stormwater management plan that intercepts as much of the runoff as possible from the vicinity of the west of Sta. No. 7 + 00 and piping it back to the proposed detention basin at Sta. 4 + 00 so as to limit the discharge to the western portion of lot #8. Provisions should be made for the discharge of the remaining portion of the roadways further to the west of lot #8 where existing slopes are not as steep and the potential for erosion is reduced. Low Impact Development practices should be utilized on lots #3, #4, and #5 to reduce runoff from this area, and their maintenance shall be assured by a Declaration and Covenant to be finalized at the time of subdivision application.

V. The detention pond located south of Lot #9 off of the cul de sac off of Ingham Hill Road shall be designed to provide renovation of stormwater quality, as well as volume detention, using best management practices as of the time of the subdivision application, to protect the wetland located to the south of Lot #2.

W. In the subdivision review, the Applicant shall examine the relocation of the access driveway to the recreation area from the area of Lots #5, #6, and #7 on the cul de sac off of Ingham Hill Road to the area of Lots #3 and #4, and the Commission reserves the right to require such relocation based on the more detailed plans of the subdivision review process. The Commission is concerned about the traffic impact of the recreation area on the dwellings along the proposed new cul de sac and the common driveway, and feels that access closer to Ingham Hill Road would reduce that impact. It is possible that such relocation will require the elimination or relocation of Lot #3, and the Commission may so require that at the time of subdivision review.

Decision

In 2005 the Commission, recognized that it had the option of modifying or conditioning the 2005 Special Exception in order to address the deficiencies noted in the March 23, 2005 Motion, and the Commission concluded that they could be remedied by conditions and modifications based on the information and arguments contained in the record, and that such conditions and modifications did not substantively alter the Application to the extent that any parties were deprived of their rights to be heard. The conditions and modifications were drawn directly from the testimony and evidence received during the Original Application public hearing and were intended to be responsive to them. Those conditions and modifications remain in full force and effect, except as specifically modified and conditioned in this Motion.

The Modification to the Special Exception is hereby granted subject to the findings, conditions, and modifications set forth above. The preceding conditions and modifications are essential to the success of The Preserve Open Space Subdivision. Failure to address these conditions in the final subdivision application shall be grounds for the denial of that application and/or the revocation of this Special Exception approval of the Preliminary Plan, as modified and conditioned by this Motion.

The time limit contained in Section 56.5 shall commence upon the publication of the legal notice of the 2005 decision, and shall not be extended by this decision on the Modification Application.

Dated at Old Saybrook, Connecticut, this 23rd day of March, 2005, and modified where indicated this 16th day of March, 2011.

Old Saybrook Planning Commission

By:

Its: