

OLD SAYBROOK PLANNING COMMISSION
PUBLIC HEARING

"THE PRESERVE"

FEBRUARY 16, 2011

OLD SAYBROOK MIDDLE SCHOOL
60 SHEFFIELD STREET
OLD SAYBROOK, CONNECTICUT 06475

CHAIRMAN ROBERT McINTYRE: Okay, I call the meeting to order, the regularly scheduled meeting of the Planning Commission. It's Wednesday, February 16, 2010 -- or excuse me, 2011, at 7:30 p.m., at the Old Saybrook Middle School Auditorium at 60 Sheffield Street. Normally we have plaques in front of us, so I'll introduce everyone tonight starting at the right side of the room.

Robert Missel, who is a regular member. Then we have Cathryn Flanagan, and she is an alternate. Then there's Don Ranaudo, he's a regular member. Then Janis Esty, Vice Chair, Sal Aresco, Secretary, myself Bob McIntyre, Chairman, and Joanne Rynecki, she's our clerk. Jeff Jacobson is our Town Engineer, Mark Branse, Commission Counsel. And up front, Bruce is sitting at the end of the table, Bruce Hillson our traffic engineer. And then Christine Nelson sitting out in front keeping an eye on us.

Okay, the voting members will be the five regular members tonight. First order of business is a public hearing, the Preserve modification to approve special exception for preliminary open space subdivision plan for the 226 total dwelling units on 925.82 total acres, and open space of 556.83 total acres, Ingham Hill and Bokum Roads, map 53/L3, Map 56/L6, Map 61/L15, 17 and 18, is a Residence Conservation C District Aquifer Protection area. And this is a public hearing.

As I stated at the last meeting for those of you who were not here, last week we went pretty long so we've decided to let the public speak first tonight. Hopefully we can wrap everything up with the public and try to give like hour increments because we have the public to speak, then we'll have the interveners and the Commission will be asking questions, and then the applicant will then speak and we'll be asking questions of the applicant. So there's going to be a lot of stuff to do tonight so as we've asked in previous nights for when the public portion of the public hearing is open, that everyone stay on point. And basically what we're looking to do here is to discuss what the applicant has presented to us as the modifications to this application.

Basically what we can do is connect the dots and link what we're thinking to what they're doing, what activity they're proposing for this special exception and how it is going to affect either that area or in the immediate area of the proposed development. And I think as long as everyone stays on those points we can get through this pretty quick because I want to get as many people from the public to speak tonight.

Okay, and at this time I'm opening up the public portion of the public hearing. Just remember everybody who has cell phones, make sure your cell phones are off when you come up to the microphone to speak. Please state your name and address. Okay, who would like to speak first? Yes sir, you need to come up to the microphone please. If you are planning to speak if you want -- if you can kind of shuffle down towards the microphone rather than sitting way up there and having to come around, that would be great too.

MR. PETER LYNCH: Yeah, my name is Peter Lynch, L-Y-N-C-H, I live 37 Riverside --

CHAIRMAN McINTYRE: Peter, you have to stand a little closer to the mike.

MR. LYNCH: Can't hear you, say it again.

CHAIRMAN McINTYRE: Closer to the mike.

MR. LYNCH: My name is Peter Lynch -- can you hear me?

CHAIRMAN McINTYRE: Yeah, you've got to get right on top of it, it's not that sensitive. It's on.

MR. LYNCH: My name is Peter Lynch, I live at 37 Riverside Avenue, it's L-Y-N-C-H. I just come to ask two questions here. First of all with our economy the way it is and all the property for sale, how do we expect 224 houses are going to be sold any time soon? And the second thing is that I really am interested in, how is this thing crafted so that if it is done the taxpayers are not saddled with a lot of extra utility, school, road, septic and all that kind of thing?

I'd just like to see if we can get some answers to that. I mean, we pay enough taxes here we don't need to pay more for some development. Those are the two questions I have.

CHAIRMAN McINTYRE: Thank you. Anyone else wishes to speak?

MS. BARBARA MAYNARD: My name is Barbara Maynard, I live on Ingham Hill Road. And thank you Commissioners for this opportunity and thank you public for attending. This is the book called The Plan of Conservation and Open Space. It was developed in 1969 by many interested and qualified people. In April of 2004, it was sent to every single Old Saybrook homeowner. Some of the people that wrote that book are on our Boards and Commissions and serve in our Land Use offices at this time.

The opening paragraph, which I'm going to take just a minute to read to you because it's very, very important, it's like the preamble. It says both the certainties and the uncertainties of our environmental knowledge -- then bespeak care, caution and restraint. The overwhelming conviction of the Conservation Commission is that all the areas to be proposed as permanent open space assuring marsh and watershed protection are vital to Old Saybrook. These open areas have a great deal to do with the life of the Town, both the literal survival of the animal and plant life we so often take for granted, and the quality of the lives of the people who reside, work and play here.

It was signed by the Conservation Commission, Open Space Plan for Old Saybrook, November 3, 1969.

On page 5, the first site that is identified is called the northwest uplands and Oyster River. And this won't take too long to read. It's located in the northwest area of town defined by open spaces bordering the Town of Essex to the north, bordering the residential developments off School House Road to the west, bordering the residential developments off Bokum Road to the east, and to the south following the main stem of Oyster River to its confluence. The most rugged area of our Town, the northwest uplands, contains our highest elevations, rocky summits, many with vernal pools enters first between.

Pequot Swamp is a vegetative marsh surrounded by ledge and upland. This area of town contains red maple and cedar swamps. The northwest uplands also includes the headwaters of the Oyster River connecting cold springs, intermittent streams and narrow winding brooks to Long Island Sound. This watershed is home to migratory fish species, including alewife and blue back herring that travel thousands of miles from their life at sea to spawn in the upper reaches of the Oyster River. The Oyster River contains a complete suite of healthy tidal marshes from salt to freshwater that support a great diversity of wildlife including birds, fish and shellfish.

I'm here to urge you to deny this application for modification based on the following testimony and others you will hear tonight and have heard before. Over the past many public hearings, you have heard factual statements from many knowledgeable people, scientists, environmentalists, engineers, all citing excellent reasons for not approving this most recent proposal from Levine Brothers, River Sound Developers. One of the most important statements was made by Selectman Bill Case. Because of his experience, Bill was able to project for us the future cost to Old Saybrook taxpayers if this application was approved and development occurred.

These huge costs would be on the backs of our future generations forever as all the roads, bridges, drainage systems, fencing, plowing, paving, tree trimming, even the traffic signs, would be in Old Saybrook's annual budgets forever and not offset by taxes. The existing roads that allow access to the 1,000 acres preserved are all narrow, secondary roads, some scenic, with no shoulders or sidewalks. They are 25 mile an hour roads and they are inadequate for today's traffic and certainly would not withstand many years of heavy construction equipment plus the additional hundreds of cars, delivery vehicles, school buses and hundreds of -- that hundreds of homes would generate.

You have been made aware of the problems on Ingham Hill Road. It is the largest, the longest dead end road in the area. Good Town planning would never let that situation happen again. The first record I could find in 1639, tells us Ingham Hill Road was a woods road that gradually was extended to provide early settlers with access to their wood lots granted to the early settlers by the King of England. In our early days School House Road and Ingham Hill Road also had knolls on their waterways increasing their use. Many traffic stopping incidents have occurred over the past 52 years that George and I have lived just north of the Chalker Mill Pond, wilderness it was then.

Ice storms, hurricanes, trees down, and I think the most severe problems occurred, when 13 inches of rain fell in eight to 12 hours in the lower valley in 1982. Brooks flooded, bridges and culverts washed out, the dam holding back the Mill Pond breached and then fully washed out flooding Ingham Hill Road and Melrock Road. The area just south of Dwayne Road where the brook flows through to the Fair Banks Pond was flooded. Temporary Bridges had to be put in place until new construction could begin. The Mill Pond was actually a meadow with a brook running though it until the Town could repair the entire dam, and that was for about two or three years.

Vehicles trying to get to areas north of the Mill Pond had very difficult times. Fortunately many of the areas off of Ingham Hill Road were not developed at that time. Access to Colony Drive was by way of 154, over a gravel road and unprotected railroad crossing. The northwest portion of Old Saybrook was without power for many miserable days after one of our hurricanes. As you know, electrical power lines crisscross the area and repairs are difficult. The modification plan before you will require that the proposed homes will require drilled wells and septic tanks.

Wells in the area close to the Preserve are through solid rock, some 200 plus deep. It is very possible that blasting will have to be done for road construction. Barley Hill, formerly known as Willard Hill on the early maps, elevation almost 300, had to be blasted for the roadway and some of the driveways. Our home was approximately 500 feet from the closest blasting. We experienced cracked cement floors, it cracked through our brick fireplace hearth, and our drilled well showed muddy sediment for several days. The application before you would allow a hopscotching approach that could become groups of houses on a higher land connected by roads and bridges -- not good.

Please review your Town's plan of conservation and open space. It's as important to us as our Old Saybrook Charter. It is our guide for good land use and has been since 1969. It is the responsibility of your Commission to implement it for the Town of Old Saybrook, and you can do it. This application presents so many immediate and long lasting problems for your Town, I strongly urge you to vote to deny this application for modification. Thank you for the opportunity to speak to you.

MR. WALLY HIRSH: Good evening, thanks for the opportunity to speak here this evening. My name is Wally Hirsch. I live on Leada Woods Road in Old Saybrook. Our home is probably as close to the Preserve as this new area we're talking about today as you can possibly get. I live in a development, or a pod if you'll excuse the expression, called Colter Woods and it was built 25 years ago. And if you look at the map it sort of looks like a piece that was just cut out of the Preserve at the southern boundary.

And to show this I made a bunch of copies of the plot, I think there's 10 copies there. This plot was developed in 1984 by Angus McDonald for Colter Woods and it was approved by the Old Saybrook Planning Commission. And if you look at it specifically you will see it's completely surrounded by land owned by the Lyon family which later became the Preserve. If you look at the lower left hand side to the west and to the north, you'll see much of the Preserve property, and Ingham Hill Road winds its way off to the left and that's where the proposed application is at the present time. Just about all of our lots are classified as triple A, and it specifies on this plan that it's a minimum of 60,000 square feet per lot or approximately an acre and a half.

One of the interesting things is there's approximately 65 acres in the development but none of the lots are very small. They average anywhere from two to five acres. And you want to know why that is? The reason is because of all the wetlands and the rock that we have in our area. When my house was built in 1986, the builder said to me he had to make a provision for blasting. I asked him why, and he said you can't build a house around here with a foundation unless we're allowed to blast. And he did and my house sits on solid rock. I have a well that's over 200 feet deep drilled through solid rock. And I have -- approximately half of my lot is wetlands with a stream running through it and I pay taxes on every square foot of that property.

I know a lot about the Preserve having lived up in that area for so many years. I've walked with my dog up through the Preserve from Ingham Hill Road north past Pequot Swamp and its broken dam, which is at a lower level. And then there's another trail through all the cart paths that crisscross through the Preserve and there's a trail that goes further to the east and looks down on Pequot Swamp. The land is extremely rugged. At the northern end stretching from west to east are a series of power lines that then turn and follow the Valley Railroad all the way down to Melrock Road west and across 95 into town.

I think that we've experienced a number of problems; our development was very complex being built. There was roads with many culverts, a lot of fill and a lot of blasting. I think I paid an awful lot for my lot and I think today, 25 years later, anybody who buys a lot up at that area in the north end of town will also have to spend a lot of money because developing that area is extremely expensive. Now I don't know what the Colter family paid for their property, but I do know that by the time I got there they were no longer involved. How they ended up with that large tract of land, I don't know. But I don't think it was a very successful, financially, development.

Further down on Ingham Hill Road a few years ago a couple of businessmen built Barley Hill. They managed to put a road at a considerable expense but were unable to sell their lots and they filed for bankruptcy. Then Mr. Taylor came along and purchased the Lyon property and eventually he filed for bankruptcy. Now, he did a number of things. He did pursue the development. He logged several acres of land up off of Ingham Hill Road, which really did a lot of damage to Ingham Hill Road. Those logging trucks really -- Ingham Hill Road was not prepared for that. It's a very narrow road, it does not make regular standards, but it's preserved as a scenic road never to be changed from its current path or design.

It is a beautiful road but there are times like this past snowstorm when there were places where only one car could get by at a time. Also, it doesn't surprise me that there'd be a development up at the upper end of Ingham Hill Road. Mr. Taylor started to try some development up there. He did some clearing and even did some perk testing. And that was before he eventually filed for bankruptcy. Now eventually, the Lehman Brothers took over when he filed for bankruptcy and we now have the current owners of the Preserve. Lehman Brothers, when they took over I said wow, big corporation. I looked up their website, they've got offices all over the world. They said in their website that they service large corporations, countries and individuals with significant assets.

And I said wow, they can spend all kinds of money on that but they too would file for bankruptcy for a lot of risky developments. Now, I don't think the Preserve was the reason for that but it certainly was a contributor. So the history of Ingham Hill Road as far as development is not very good. At the same time my house was being built there were a lot of houses built along School House Road, but the development that I'm in took a good five years before the last house was built in that area. And today we're starting to see some signs of sinkholes and various problems with the development. In my particular section behind us is an area called Orchard Spring. And one of the streets that's right behind me, there's a big hill and all the water just dumped right into the back of my property and my neighbor's property.

And I worry about this new development in Ingham Hill, what about the drainage there? There's property at a lower elevation than where they are. Is some of their drainage when they build all those houses and roads going to end up flowing down into other properties? The other thing I noticed is when our development was built a pond was built. As you go out Ingham Hill Road and get to our area, Deer Run, you'll find there's a pond on the right. And there's ponds all the way down. The creek going through my yard travels all the way down towards Oyster River with a number of different ponds. But when you get up into the area we're discussing now there aren't any.

Now, maybe the developer doesn't worry about that. That's a problem between the homeowner and his insurance company, but it's also a problem for our Fire Department. They have to deal with this problem when there is no water to fight fires and I think that needs to be a consideration as well. And I think that overall, the other issue that bothers me is there was mention of an area for recreation. Well personally, open space I think is great when you're talking a large tract of land but a little piece here and a little piece there as far as I'm concerned is just a way to avoid paying taxes. I think that every development should be divided up amongst all of the lots and they all should be

taxed. The Town depends on property taxes to help us survive and operate.

And for one thing, that area that's called recreational purposes is non-taxable land probably given to the Town, and the Town doesn't have any money to do anything with it. Just recently, within the past couple of years, there was another section of our Town where there was an effort made to try to make a ball field and a lot of town's people complained about it. So I think unless the developer is willing to do whatever is necessary to make a recreation out of it, the Town ought to reject it.

Honestly, I think this overall development is a big mistake. I think the Lehman Brothers had a lot of trouble, they made a mistake when they got involved with it, and if I were an investor in the Lehman Brothers I would say let's get on with it. Let's get the letter --- take some money for selling the land to the Town and take a tax break and get out of it.

Whatever it costs the Town -- that property, it's going to cost more for the Town and I think the Planning Commission should do everything it can to make sure that doesn't happen. Thank you.

CHAIRMAN McINTYRE: Thank you Wally.

MR. JOHN OGREN: My name is John Ogren. I live at Firewood Drive. I am a member of the Connecticut -

COURT REPORTER: Can you say your last name again?

MR. OGREN: Ogren, O-G-R-E-N. I am a member of the Connecticut Ornithological Association, better known as the COA. A fellow member and past President of the COA, Dave Proventure, was the expert brought in for the original bird survey of the property which he thinks was done approximately seven or eight years ago. It was over a span of two days in June and this was "a point survey for the breeding populations".

It is his opinion that this data is outdated and no longer relevant and that new surveys need to be done. It is also his opinion that since this is such an important coastal migratory stopover, that several surveys should be done over the course of a year. "It is a coastal forest in the Connecticut River Valley and as such a significant habitat since the valley is a migration corridor for neotropical migrants." He recommends one survey in mid-May for spring migration, one survey in mid-June to get an accurate count on the breeding population, and a survey in late September or early October for a fall migration count. Another COA member and noted Ornithologist, Dr. Noble Proctor who is a longtime friend of Roger Tory Peterson and who has helped edit his birding guides, is in total agreement and has volunteered to assist in these new bird surveys.

My question to River Sound is, would they either authorize these surveys or allow access to the property so that these surveys can be done? Thank you.

CHAIRMAN McINTYRE: Thank you John.

MR. JOHN VAN ECK: I'm a little taller, so. Okay hi folks, I'm John Van Eck. I'm one of your school bus drivers so I'm just going to speak momentarily from a somewhat different perspective because, you know, you have the famous law of unintended consequences. And I suspect that looking at it from the point of view of the school bus driver, it's probably something that hasn't occurred to most of you folks.

If they're going to bring in, and I think the number was 350 additional children, those children are going to need a ride to school. And that area where that development is going to -- is proposed is not something that can be hooked into an additional line run and it's going to require new equipment and new drivers. Now the industry itself speaking aggregatively in Connecticut, faces an ongoing recruitment problem. Those recruitment problems stem from difficulties in getting drivers certified through the DMV, through the training process, through the fingerprinting process, and then subsequently through a secondary approval process through DCF. As a result, you have a multi-month's delay in bringing a new school bus driver on deck. That delay may be as much as four to six months.

So just to think that you're going to be able to start the next school year and suddenly be able to bring on another 10 or 20 drivers, it doesn't work that way. The industry is already quite stressed in Connecticut and I don't see any change in that coming anytime soon. Now, I don't want the community to get into the situation that our neighbors up in Killingworth got into. Their school bus situation became so acute due to the lack of drivers that on a routine basis they would send out a telephone tree alert to the parents advising them that the morning pickup would run one hour late because the number of drivers that they had relative to the number of runs, they would require the drivers to do double runs and triple runs.

So you get into a situation whereby children are left standing for considerable periods of time because the buses are delayed because there aren't enough personnel. Now that's a factor that you want to kind of keep into your mind when you're going to do a quantum improvement -- or quantum increase in the number of housing units and the number of children coming in to the community. The other aspects of it, I can't speak to. I don't have any expertise in that. I do have expertise in this issue, it's something that I suspect you folks haven't thought about, and that's why I wanted to raise it because I don't want to see the community get into the situation that Killingworth got in.

You get burned very badly, thank you.

CHAIRMAN McINTYRE: Thank you John. Just to remind the public, all the information we've heard tonight from the public is nice information but very little of it is what we can base any of our decision on. I had said we need to stay focused if you're going to talk about it. What we want to hear from the public is how this development is going -- a change in this development is going to impact differently in that area.

So, let's try to stay on point so we can get as many people in as possible. Thank you. (Public speaking in background.) Okay, hang on a second. For those who haven't been here, I was afraid something like this would happen but I will try to explain as best as possible. The development that's being presented to us is an approved subdivision and they're making modifications to that subdivision. The activity that we are making our decision on is that activity that is in the areas where the building is going to be and basically the adjacent areas.

You know, how is it going to impact the environment? How is that going to, you know, impact safety, public safety? All those kinds of things and that's what we're here to hear about, is how that development is going to be -- or effect that area. (Public speaking in background.) Okay, alright, obviously --

MR. MARK BRANSE: Mr. Chairman, stop. If anyone speaks without being recognized I will call the police and I will ask you to be removed. This man is the Chairman. This is the Chairman, he is conducting the meeting.

What he is trying to explain to you is that the application before the Commission is to change the 2005 approval and if you want to be effective, if you want to influence the outcome, you need to address how these changes are desirable or undesirable. Some speakers have touched on that but that is the point of this hearing. The point of this hearing is not whether the Preserve should be approved or not. That happened in 2005. The issue tonight is whether the changes that the developer is proposing are desirable or not and whether they comply with the regulations. And for the record, I'm Mark Branse, counsel for the Commission.

CHAIRMAN McINTYRE: Thank you Mark.

MALE VOICE: Can you identify yourself?

MR. BRANSE: I did, I said for the record I'm Mark Branse, I'm legal counsel to the Commission, B-R-A-N-S-E.

CHAIRMAN McINTYRE: Okay, thank you Mark. Okay sir, you can continue.

MR. DANIEL WALDEN: Thank you. Good evening Commissioners. My name is Daniel J. Walden, my wife and I reside at 40 Pepperidge Trail where the residence we own is directly abutting the so-called Preserve parcel proposed for development.

First, I'd like to point out that the very word Preserve is a contradiction. It's an outsized development, its transparent intent is to outpace our Town's cherished history and heritage to accommodate a discredited organization, the bankruptcy of which nearly plunged the entire financial world into chaos a few years ago. And Lehman was the start of that. Eight years ago I commented about our experience in our previous hometown, Fairfield. What happened there was that we had a parcel of 200 plus acres. It was the largest undeveloped tract of land in our area of the Town.

It had been owned by a family for hundreds of years from a land grant from the English King.

When the last woman in that family's line died, she left a Last Will and Testament that said I am giving this land to eight different non-profits including one of the most prominent educational institutions in the country, including the Fairfield Historical Society, not exactly people who were disinterested. Even though that seemed ironclad and all of us who were neighbors were overjoyed that that had taken place, we had developers in Town, real estate interests, financiers and so forth, who saw that they could perhaps attack that Codicil and break it and they did. What they did was they came in with a proposal for this 200 plus acres that at first would set aside common ground that is deeded to their Town as is proposed here, a buffer as is proposed here, and what seemed like a relatively minor development of a dozen or so homes.

The entire Town other than the interested involved opposed this, but it was a proposal like we're hearing now that seemed very modest. But the camel got its nose in the door. Eight or 10 houses were built and then another series of houses were built and then the argument became, the neighborhood is in near ruin anyway we might as well complete the job. If this sounds like it echoes what's happening here, you're absolutely right. We don't -- our Town does not need to subsidize the remnants of Lehman. The CEO of that organization from 19 -- let me get the numbers right, from 1993 to 2007, took home in pay one-half billion dollars, billion with a B.

I don't think that of course was the high end, but we're talking about people who are not lacking a meal. If you doubt my number as Casey Stengel said, you can look it up. We are faced with a situation where there can be no doubt that eventually this parcel -- people will -- or developers will attempt to develop the whole parcel. I think that we've seen that elsewhere, we'll see it again. What happened in Fairfield was that once the permits came in schools had to be either replaced or enlarged, the Town tax rate went through the roof. Our friends were telling us that their tax bill was increasing by \$3,000 each year. That's higher than most of the individual houses in this Town.

The impacts of this development are huge, the benefits are minimal. We don't need it here. We don't need to subsidize far away interests. We need to keep our heritage whole and I ask you to do it, thank you.

MS. KATHY POULIN: My name is Kathy Poulin, I live on 88 Book Hill Road in Essex, Connecticut.

COURT REPORTER: And your last name again please?

MS. POULIN: P-O-U-L-I-N. I have very few notes but I'm hoping that they're pretty poignant.

MALE VOICE: Can hear you Ma'am.

MS. POULIN: I'm hoping that they're meaningful. The gentleman before me started his speech off with the words, why is it called a Preserve? We're all smart people here. That word was given to the land for a reason and we're not listening to it. You're all smart business people. Obviously you've made it big for a reason. You've come into communities and you've done what you need to do but for some reason you haven't thought about what the

risk is.

And it's amazing to me because these are the times where we're looking at our world under a microscope. We're looking at it in a different light. We're looking at it for our future for our children but for some reason here tonight we're not looking at it that way. We're looking at the almighty dollar and you know what, I'm a business woman, I work in corporate America, and the almighty dollar is (end of tape) but you need to find the right place and this is not there. What is the risk of ruining our environment?

Have we not looked at the news recently? Have we not looked at the Gulf Coast? Have we not looked at what's happening to our world? Hey, I love building houses. I love having a great economic structure to our government, to our world. But you know what, if we don't have a planet you don't have that. And I'm not saying that your ideas are inept and not good, it's just not the right place. There's a lot of land out there and there's a lot of different places for you to pursue. This just does not happen to be one of them. And it's amazing for me to see that you're kind of oblivious to what the world is trying to achieve as a united structure at this time.

At this time the world is trying to save our planet, our wetlands and our environment. I have two children and you know what, I'd like them to see what this world has to offer. And yeah, I'm focusing on a small specific place in Old Saybrook and Essex but you know what, it happens everywhere. You guys can find a place that is better suited. Obviously there's people here tonight for a reason. If it was a thumbs up issue you'd have people going and standing ovation to you and what you're trying to bring forth to us, but it's not obviously happening. Some of us didn't even make it tonight because we couldn't. I know of many that just couldn't be here tonight because we're working and we're parents and we have kids and we have obligations.

But you have a force bigger than you can imagine that feels the same way that we all do here. And I just have to say this with a bit of anger to you folks because I have to get back to my two children and a babysitter. And I will reiterate it, the end is not always the almighty dollar. It's the rule of what is almighty right. Take a moment to find a place that suits what economical growth you can do in a positive manner, the manner of making our world a better place. And yes, we've gone through some tough times in the United States with our economic structure and we need folks like you.

But find a place that's suitable. The place is just not here, thank you.

CHAIRMAN McINTYRE: Thank you. Give it to the clerk please. Tonight, whatever you have in your hand just hand them to the clerk and then she'll pass them out to us. Thank you.

MS. SUE ELLEN KOZEY-McCUIN: My name is Sue Ellen Kozey-McCuin, I'm at 24 Ingham Hill Road, Essex.

MALE VOICE: Can't hear you.

MS. KOZY-McCUIN: My name is Sue Ellen Kozey-McCuin, I'm at 24 Ingham Hill Road in Essex. I am a representative -- I'm tonight here representing the Alliance for Sound Area Planning. We're a coalition of Saybrook, Essex and Westbrook members, a broad-based group, and actually beyond our three Town's borders. There's members from all over Connecticut and all of our elected officials have been onboard including Senator Blumenthal and the now Attorney General George Jepson.

So I am here to say for one thing, I applaud the Commission for your time and your hours and thank you for extending the hearing for the public. And also to the public for taking the time to come out. So I have four specific points that would give you total allowance to deny this application before you and they are -- one would be since the special exception was approved in 2005, there has been -- one of the conditions was the railroad crossing. And I've submitted a letter from Tiffin and Mccuin, attorneys from the Town of Glastonbury and this area. And also behind me is Attorney Janet Brooks and she's going to speak to this issue.

In 2006 -- part of the special exceptions approval was based on them getting that approval and the special exception was approved in 2005. In 2006 that condition was denied by the DEP, acting as a landowner not as a regulatory agent. So there's question whether or not they even have standing before the Commission. The next point I'd like to raise is since the special exception was approved in 2005 they've now come back with two new areas, the cul-de-sac Bokum Road and the cul-de-sac on the top of Ingham Hill. They are two new areas that they were not proposing development in last time and there's been experts that have been brought in from Connecticut Fund for the Environment, and even the developer's expert witnesses have acknowledged and the Town staff, there's definitely holes in the information that's been gathered.

They've gathered information at non-critical times. They did not gather vernal pool information when vernal pools are thriving in April and May. And so anyhow I feel as part of your charge being the Planning Commission, there's critical information you should ask the applicant to go back and get and bring the information back before you when they have info so that you can make an informed decision. The third are public safety issues that have not been considered and many believe that can never be fixed with, you know, Ingham Hill being what it is and even Bokum Road being what it is. There's serious traffic and public safety issues but the residents who live there now, that's who has to be considered.

The applicant is constantly looking for leniency and really the residents who have been living here and paying taxes and being part of this community, we are all in this together, the Commission members and the public. And we kind of owe it to each other to make sure all these things are ironed out before anything goes forward. A

fourth and final was the infrastructure system that is an unfunded mandate to the Town of Saybrook, you know, costing -- actually I'm sorry, I have a typo in my testimony, but upwards of \$150 million in the next 30 to 50 years for the Town of Old Saybrook. And I don't think the Town of Old Saybrook should have to pay to -- you know, for the developer's benefit so that they can make whatever money they are.

I'm not against development, I've never actually spoken against a development except this one. And so that's my next point. For the past 12 years we've been here, you guys have been here, the Town of Essex has been here, Westbrook, the volunteer Commissioners in those Towns, the Selectmen, our Legislators, Town staff. The amount of money that has been put up already by the Towns and then for litigation, the developers constantly since day one, and nothing -- this is -- there's no names ever involved. It's just black and white text and the black and white of this is, they've never had enough information. It's a monster project. They are trying to get their camels under the tent at this point. They are going for 221 homes and an 18 hole golf course.

They're just trying to make it look like -- you know, at one point they say it's not a phase it's just three cul-de-sacs, but then they don't want to be treated as separate applications. They want to go in with exception. And anyhow, I just want to point out my mother -- and I know this a personal story but this not a court of law. I just want to -- these stories do help the Commission just when considering, you know, if you're on the fence about something. My mother had a friend, a 75 year old friend, who wanted to extend her deck by 10 feet. And I know it wasn't this Commission but she was denied by the, I guess Wetlands or Zoning, I'm not sure who, because she was encroaching within the 50 foot wetland right-of-way. This development as we all know is going to cut into the wetlands, cut down canopies in the wetlands. You know, there's encroachments all over.

So again, this developer constantly, because of just empty -- or deep pockets, just keeps coming back. And I'm just saying after 12 years, I think enough is enough. I think it's time they be just -- you know, just come back when you have all the information and these hearings don't have to keep asking for more and more information and go on and on forever. So anyhow, if they come back with all the information up front, give you plenty of time to review before the hearing starts or as the hearing starts so we don't have to just keep going along like this, then maybe it's a different story. But up until now it's always been this for 12 years and probably eight out of 10 times they get denied.

But they just keep coming back because they can.

Thank you for your time and actually, now I'm just going to quickly introduce Janet Brooks to speak on the DEP issue.

MS. JANET BROOKS: Good evening Mr. Chairman and members of the Commission. Can you hear me?

VOICES: No.

CHAIRMAN McINTYRE: Get close to the microphone.

MS. BROOKS: Okay, I'm Attorney Janet Brooks. I'm in solo practice in East Berlin, Connecticut and I'm here tonight representing the Alliance for Sound Area Planning. I'm here to present the position that the change in facts from the underlying original application actually are now a basis for the Commission to reexamine and reverse its previous approval. And I want to lay out the legal basis and I've you with a letter with the legal citations for it.

Ordinarily an administrative agency can't change its prior decision unless, and this is a quote from our Supreme Court, "there has been a change of conditions or other considerations have intervened with materially affect the merits of the matter decided". And the Courts have further said that when such conditions have changed or intervening considerations have presented themselves, that it's proper for an agency to change its position. So the facts that have changed from the underlying application for the special exception are the access over the DEP property to Bokum Road. At the time of the original application for the special exception it was presented by the applicant that that access over the DEP property was probable.

Since that time, the DEP has put in writing that it is unwilling to grant the easement over that property and has put this in a letter to the applicant's attorney, Dwight Merriam, in February of 2006, and it's attached to my letter and I ask that it be introduced into the record. And the reasons were twofold but it really -- in some ways it doesn't matter because the landowner has spoken and when the landowner speaks that's -- you know, whether there's access. It was then Commissioner Gina McCarthy, based it both on localized condition and the DEP's policy and practice not to allow easements over the Valley Railroad State Park.

In making that decision, the Commissioner was acting as a landowner. It wasn't a regulatory proceeding, it wasn't subject to an appeal process, it was the landowner speaking about land rights. The Planning Commission's attorney, Attorney Mark Branse, acknowledges this change in fact which he mentioned in one of the letters to you earlier. I believe it was the one in the fall, perhaps it was the one in January, and recognized that change in fact but believed there was an Appellate Court case in November that was controlling and set the law in a certain way. And that was the CMB Capital Appreciation case, the Appellate Court case in 2010.

That Appellate Court case is pertinent when considering conditions that are dependent on another administrative agency acting under its regulatory authority. The entire discussion there has to do with conditional approvals, unconditional and conditional laying out what the law is there, but there is no regulatory action that is waiting approval regarding access over the DEP property. The DEP Commissioner as landowner has spoken on this issue, and there's no regulatory permit that is outstanding that needs to be received in order for access to occur. The change in facts is the access over Bokum Road has gone from probable to non-existent.

And even if Attorney Branse is correct on the CMB case being an important and dispositive case for what you're dealing with, which I've already said I believe is not the case here, the Supreme Court has taken certification and so it's going to be subject to further review and further mulling about. The fact of the matter is here the applicant has no property interest in the access to Bokum Road. There's no interest served by acting and continuing to approve the underlying application, which is at best academic. The applicant comes before the Planning Commission for a modification that the special exception was predicated on facts that no longer exist.

At such time that the applicant has such access and can then come back and ask for modifications as it wishes, at that time is the appropriate time for the Planning Commission to act on the modifications. But at this point there is no -- the change in facts warrant the Commission reexamining and reversing its current position and denying at this time. Thank you.

CHAIRMAN McINTYRE: Thank you.

MR. BRANSE: For the record, Mark Branse. Attorney Brooks, I just have a question. You and I are both familiar with the law as far as those cases of reversal and change in circumstance, but all of these that I'm aware of involve a circumstance where they were serial applications, multiple applications where a Commission voted one way in one application and in a subsequent case the question was could they reverse, approval or denial, either way.

Are you aware of a case where an approval was granted, in this case appeal, the appeal was dismissed, where the Commission basically simply revoked a prior approval where there was no application pending for a re-approval of that underlying permit?

MS. BROOKS: No, but I'm not asking the Commission to revoke the underlying special exception. But it seems to me that it's not quite -- I don't want to load this word too much, it's a little bit disingenuous when the applicant comes and says here are the whatever, two, three, four modifications we wish the Planning Commission to have when it doesn't disclose the entire change in circumstance which is, it doesn't have that probable access any longer.

In fact, it truly needed to acknowledge it doesn't have the access anymore and if that were placed before this Commission, then the Commission could say based on the fact that there is non-existent access, that's really what should be had here. A question to the applicant -- isn't this true, there's a DEP letter from February '06 which says you no longer have any hope of access? DEP has said definitively no. And based on that there's --

MR. BRANSE: Well you're correct, it's not a permit application.

MS. BROOKS: Correct.

MR. BRANSE: DEP is operating as a property owner.

MS. BROOKS: As a landowner, and so we could have a good reason, a bad reason or no reason at all and has expressed two reasons, one localized and one policy-wise for that State Park.

MR. BRANSE: So if I understand correctly I think -- correct me if I'm wrong. You're not saying the Commission can revoke the 2005 special exception but you're saying that if this modification is premised on this being the first phase or first step of this total plan, that the Commission should recognize that that total plan, as you did, isn't viable. Is that a fair statement?

MS. BROOKS: Right, or that the other modification they really need to be seeking at this point is a modification to be able to have this underlying special exception without access.

MR. BRANSE: Thank you.

CHAIRMAN McINTYRE: Thank you, anyone else wishing to speak from the public?

MS. DIANE MORTALI: Yes, I would. My name is Diane Mortali, I live at the end of Dwayne Road, which is the old back highway. I'm late to the issue and I know that you're looking for -- it's been approved largely. What I would like to say is these 350 children won't be going to our overcrowded beaches, they won't be walking the non-existent sidewalks that are there, they won't be working in the one monopolized grocery store that we have. It just sounds like it's a gated community with Old Saybrook attached.

So if we have tax issues let's open the sandbar and sell hotdogs, but let's not give away the last cherry of Old Saybrook. Let's make it really worth something. Let's -- if something has already been approved, then let's make it so discouraging that that blasting through 200 feet of rock is nothing compared to what it takes to get into. But it seems like they're very easily sliding in and we're a community that could very easily protect ourselves. And if you move too many rocks on Ingham Hill someone calls the cops. If you move leaf piles over too far you create floods in someone else's basement. So at the very least, they need to set up some sort of a provision to protect us that are here right now living on these difficult conditions. It's not that easy back there.

So all their work is going to undermine us completely. It not only will flood us, it will shake us, it will break us down, it will overwhelm us. Dwayne Road is not plowed well as is. We're just -- we're giving it away too easy, that's all. I'm late onto it, but I'm saying that the impact is we don't have the room now. We don't use our space well. Stop & Shop is able to keep out other grocery stores and we can't protect ourselves. We need your help. We need you to work hard to protect us. Thank you.

CHAIRMAN McINTYRE: Thank you Diane.

MR. DANNY REDAK: Danny Redak, 15 Waterbury Avenue, Old Saybrook. This is the last untouched pristine land between New York and Boston. Nothing has changed, they're the same people, don't allow it to happen. Thank you very much.

CHAIRMAN McINTYRE: Thank you Danny.

MS. SUZANNE HOWARD: Hi.

CHAIRMAN McINTYRE: Go ahead.

MS. HOWARD: I'm Suzanne Howard, I was in Connecticut, I just want to submit a letter to the Commission. Can I do that? Alright who do I give it to, you?

CHAIRMAN McINTYRE: Is there anyone else who wishes to speak? I think I see someone right down there.

MS. PATRICIA O'DONNELL: My name is Patricia O'Donnell and my mother currently resides at 4 Pheasant Hill Lane. We moved here in 1970 and I just want to say that I remember when they created those developments after Pheasant Hill Lane and they had to blast, it shook everybody's home in the neighborhood.

And I still walk out on the trails, I can get myself to Bokum Road, I can get myself to Essex, I can get myself to Crystal Lake and I know how much rock is out there. And I'm sure it goes very, very deep and I hope the development does not go through but that your geologists are paying attention.

CHAIRMAN McINTYRE: Thank you Patricia. Chris.

COURT REPORTER: State your name and spell your last name.

MR. CHRIS CRYDER: My name is Chris Cryder, C-R-Y-D-E-R, 70 Chalker Beach Road in Old Saybrook, and I'm a member of the Alliance for Sound Area Planning. First I want to thank the Commission for your work and long hours and your long hours to come. I have a few points here.

First, I'd like to encourage the Commission to really read and absorb the reports and documents from past Planning Commission hearings and Inland Wetlands hearings, as this information is crucial to fully understand the natural resources of the 1,000 acre coastal forest and wetlands complex. And also for those who have not taken a site walk of the three pods, it's in my opinion that you really should do so. Maps, reports and oral testimony can only provide so much information and I think it's necessary to personally observe these parcels to make a complete and informed decision.

My next point that I'd like to make is, I think the results of the Inland Wetlands Commission's denial of the preliminary plan application should inform your decision. And I'm going to talk about some rather complex things but it should be interesting to Dr. Klemens, who's back, and we also have Mr. Klein. In 2006, the Inland Wetlands Commission denied the preliminary plan application and in so doing provided 11 strong reasons for its denial. And their reasons included the three pods. I'm going to talk about the interconnection between the pods and the core.

Two of these reasons had to do with a plan resulting in the non-conservation of certain vernal pools using the methodology, Dr. Michael Klemens' methodology, which is the defacto methodology as Mr. Klein mentioned. So with the plan resulting in non-conservation of certain vernal pools, there were 20 that would not be conserved by the current plan, including the three pods. There would therefore be the loss of productivity which means the reduction of egg masses as you've learned, due to the expected mortality of adult amphibians in their 752-foot home range in the upland area beyond what is usually discussed about the 100-foot range.

This Commission and the Inland Wetlands Commission can look outside that 100-foot range and can look at the upland areas for its impacts within the 100-foot range.

The Inland Wetlands Commission used testimony of Richard Snarski, the Town's consultant, and Michael Klemens, Dr. Klemens, the applicant's consultant, and they determined there would be a loss of over 25 percent of total vernal pool productivity due to the development including the three pods and that this loss would further result in adverse physical impacts to the non-conserved vernal pools. I have to stop here a second and give you something because I don't think you have your notebooks there with the maps.

CHAIRMAN McINTYRE: Just give them to the clerk and she'll pass them out.

MR. CRYDER: Okay, I think I have enough. You have in your possession already this map, which is called the Ecological Connectivity Vernal Pool Stepping Stones into Upland Habitat, Distribution Map 28, which I believe is the final vernal pool inventory map that's on record. So I'm going to refer to that in a minute.

So I left off with saying that the non-conserved vernal pools would result in adverse physical impacts to the water chemistry of those vernal pools itself including the vernal pools that are in the Bokum pod and Ingham Hill pod.

And so I'm going to just talk a little bit about what is non-conservation and I'm going to talk about wood frogs for a second. Wood frog eggs and tadpoles number in the millions in the 38 vernal pool complex in the Preserve and they provide a critical environmental service essentially cleaning the vernal pool water as they feed on detritus and algae. With a loss of wood frogs in the non-conserved vernal pools comes the loss of that cleaning service, thus damaging the natural and balanced water chemistry of the vernal pools.

Dr. Michael Klemens refers to the wood frog as a keystone species in the Preserve. As we know, RSD, River Sound, appealed this particular point in court but the court upheld the reasoning and determination by the Inland Wetlands Commission and found that there was enough scientific evidence presented to support the adverse physical impact determination. All 11 determinations made by the Inland Wetlands Commission, all 11 reasons, were found by the courts to hold true and thus the 2005 preliminary plan, which is still in front of you, was and is found to be not acceptable. It's not acceptable. So I will get to the interconnection of the three pods here further.

Now in 2010, just a few months ago, RSD throws the Planning Commission and the public a big curve ball

by requesting a modification of the preliminary plan seeking permission to develop the three pods around the perimeter while reserving the right to develop the core later, in essence a two-phased or more development. I think we've all determined that it's a phasing and it could be more than two phases. At a previous Planning Commission meeting, Charles Rothenberger of Connecticut Fund for the Environment, charged the Commission to look at the whole development plan in making your decision and not just the three pods and he gave you reasons for doing so.

He added that locking in the three pods now leaves restricted and limited options for the development of the core to address previously identified environmental concerns. I would like to support and underscore Rothenberger's statement. So really quickly looking at the map here, I just want to explain it a little bit because I know the key is very hard to see and you may not fully understand that map. But there are 38 vernal pools in the Preserve including the Bokum pod. And you see the large circles on that map surrounding the vernal pools? That's the 750 foot home range, average home range, of the amphibians.

When you look and find diamonds on that map, if you look at the key closely, you're going to have to really look at the key, the diamonds represent breeding pools. So the breeding pools without the 750 foot circle are those that are non-conserved and there are 20 out of the 38 pools that were determined to be non-conserved using Klemens' methodology that was accepted. Now, I added my own writing there. Let's look at -- now I'm going to use an example here. Within the proposed three pod land areas are wetlands as well as four of the 20 non-conserved vernal pools identified in the final preliminary plan inventory.

For illustration let me focus on two of these vernal pools, number 16 and 31. Those are the ones I've circled on that map and you'll see they do not include a circle around them. If you go back to the testimony of the last meeting, Mr. Klemens made a comment that these pools had been conserved --

MALE VOICE: You mean Mr. Klein?

MR. CRYDER: -- I'm sorry, Mr. Klein, that they had been conserved but in the final inventory here they're not conserved even though there's no development in the original preliminary plan around those pools. Why are they non-conserved? Going back to previous testimony by Dr. Klemens, he said that he could not consider these vernal pools to be conserved because of the roads. That the road traffic now with 1,000 cars maybe having 11 trips per day, that the road traffic on Ingham Hill and the new road into the core and this development would cause such mortality of amphibians and wood frogs that he could not say that these pools would be conserved.

They would be non-conserved and ultimately in the long run non-functioning vernal pools, non-functioning vernal pools with adverse physical impacts. And I'll just make another note here, both vernal pool 16 and 31 located in Ingham Hill pod, they've been identified as highly productive vernal pools and classified as exceptional tier one pools. These two pods -- these two pools, sorry, represent a significant portion of the 25 percent loss in productivity of the 20 non-conserved pools. Does that make sense?

MALE VOICE: Say it again.

MR. REDAK: I'm going to say it again. These two pools, 16 and 31, are very productive and they represent a significant portion of the 25 percent loss of productivity of the 20 non-conserved pools. Additionally, pool 31 contains all three vernal pool species, wood frog, marbled salamanders and spotted salamanders and is home to an eastern box turtle, a species of concern. This is a pool that requires extra special care and attention. I'll move on.

As mentioned earlier the Inland Wetlands Commission found the preliminary plan insufficient to protect the entire vernal pool complex including these three pods, including vernal pool 16 and 31. Both pools 31 and 16 are categorized as non-conserved. Okay, hold on a second. Alright, in order to maximize the protection of vernal pools 31 and 16 and the creatures dependent on these pools, Klemens recommended that a 750 foot envelope, the average home range of amphibians around the pools, at a minimum be conserved as open space. So in that preliminary plan there's open space there.

So presently the request to modify the preliminary plan by adding development now, we're adding development in these three pods, and I'm focusing on the Ingham Hill pod which will be 13 homes, driveways, lawns, pets, cars, septic systems, fertilizers, pesticides, to the Ingham Hill pod only increases and accelerates the vernal pool degradation of pools 31 and 16 and decreases protection to the eastern box turtle living in and around vernal pool 31.

So this plan has many more adverse impacts environmentally than what the preliminary plan says. If the Planning Commission were to approve the Ingham Hill pod, thereby allowing excessive development and road traffic within the 750 amphibian home range, the decision would be counter to the Inland Wetlands findings and determination regarding the protection of vernal pools.

Does the Planning Commission wish to allow additional vernal pool degradation in the Ingham Hill pod beyond that already predicted in the preliminary plan which has been found by the Inland Wetlands Commission to be unacceptable? If the Planning Commission allows the Ingham Hill pod to be developed leaving vernal pools 31 and 16 non-conserved, the standing Inland Wetlands decision would then reasonably dictate that the loss in productivity in these pools be made up elsewhere in the core. Does the Planning Commission want the Ingham Hill pod to be built now without knowing whether the plans for the future core will result in less overall amphibian mortality and improve conservation of the total vernal pool complex?

I said a lot there and I know it was complex, and this two phased development is very complex as Mr. Branse has pointed out in many of his memos to you. And this is a key issue, I believe. The above problematic

example underscores the point made by Charles Rothenberger of CFE. Unfortunately, the Ingham Hill pod example that I used is only one example. There are several other examples of environmental concerns associated with the pod plans, which I will not go on tonight because I don't want to take up too much more time. The two phased pod plan has been called uninspired by the Land Use office and disingenuous, and I will have to add the word unfair.

I believe it is unfair for the Planning Commission and the Inland Wetlands Commission to have to sift through the numerous complexities and problems that a two phased or more development of the Preserve brings. In Attorney Branse's memos to the Commission he outlines a host of problematic conundrums that were caused by a multi-phased approach. In my opinion this simply is an unfair burden for the Commission and it is not in keeping with the intent or spirit of the special exception.

I request that the Planning Commission deny the plan modification as proposed because I believe it is only fair that the Commission and the Old Saybrook community see an entire revised whole plan that addresses the severe environmental shortcomings of the original plan. Thanks.

CHAIRMAN McINTYRE: Thank you Dan. We need a copy of that. Okay, is there anyone else wishing to speak? Seeing that no one else is wishing to speak at this time, I will close the public portion of the public hearing --

MR. CRYDER: Sir -- Bob.

CHAIRMAN McINTYRE: Yes.

MR. CRYDER: Will the public be able to write letters and submit any testimony after tonight?

CHAIRMAN McINTYRE: That will have to be seen, how far we get tonight.

MR. CRYDER: Okay.

CHAIRMAN McINTYRE: If we close the public hearing, no.

MR. CRYDER: Okay, because I have a lot more but I stopped.

MR. BRANSE: Anything can be submitted tonight until the gavel comes down.

CHAIRMAN McINTYRE: Right.

MR. BRANSE: So if you have other material you can submit that and the Commission -- the Commission is not going to vote tonight obviously.

CHAIRMAN McINTYRE: Chris, did you catch that? That you should -- anything you have submit tonight because that way if we do close the public hearing, that way we can review it.

MR. CRYDER: Okay.

CHAIRMAN McINTYRE: How -- the only reason I want -- we've been doing that awhile, how much time do you need?

MR. KERMIT HUA: Probably five minutes, four minutes.

CHAIRMAN McINTYRE: Five minutes, okay.

MR. HUA: Yeah.

CHAIRMAN McINTYRE: I think everybody can handle that.

MR. HUA: My name is Kermit Hua, traffic consultant for --

CHAIRMAN McINTYRE: Hang on a second. Mark, I had just closed the public hearing portion of the meeting. How do we handle this?

MR. BRANSE: Well, as I understood it you were only closing it -- you said initially you'd do an hour and sort of switch back and forth --

CHAIRMAN McINTYRE: Yes.

MR. BRANSE: -- so I assume you're halting public comment now and then you'll allow interveners or applicant or other parties, and then as time -- depending on the time you may be able to hear additional public testimony depending on how late the Commission wants to go.

CHAIRMAN McINTYRE: Okay.

MR. BRANSE: So you can go back and forth, you're not required to take everybody first or everybody second.

CHAIRMAN McINTYRE: Okay, why don't we go ahead and take a break and then as soon as we come back you can speak. We'll take a 10 minute break, thank you.

(off the record)

CHAIRMAN McINTYRE: Okay, I want to call the meeting back to order again, back on the record. Mr. -- Commissioner Aresco is going to be leaving us at this time because he had some other items that he needs to take care of.

MR. DAVID ROYSTON: Pardon me Mr. Chairman, Attorney David Royston representing the applicant. And I would not break your rules, I'm only asking to bend them slightly because Mr. Aresco had asked for a particular map. And even though it is in a bunch of the other documents in different fashions I think what he was looking at, one piece of paper, in which he could determine what was the 750 foot upland habitat for each one of the vernal pools within the areas involved in the modification.

And we have provided that map. I have one copy, I just made it today. I would just like to submit it for the record.

MR. SAL ARESKO: And adjacent to the vernal pool that overlaps the 750 -- adjacent to the modifications

that overlap. Thank you very much.

CHAIRMAN McINTYRE: Okay, we'll get back on course here again. You're up next.

MR. HUA: My name is Kermit Hua, traffic consultant for Alliance for Sound Area Planning. I'll be really quick with three quick points. Let me distribute this memorandum first.

The first point I want to make is I just want to reiterate the evaluation basis of the traffic impact. I know Attorney Branse touched on what really we are looking at as far as this application. This is an amendment of the previous application, so we need to look at the whole project in its totality as far as the traffic impact and related offset of all the improvements not only looking at the three residential pods. And I think related to that for the Town's benefit, probably it's a good idea we want to make sure all those improvements are in place before any part of the Preserve project is occupied.

The second point is in response to Commission traffic consultant Mr. Hillson's question at the last hearing regarding the extent of the traffic impact from the three residential points, how they compare to the existing roadway traffic on Ingham Hill Road and Bokum Road. We did some research after the last hearing. Actually the applicant's traffic engineer, they do have some 2010 volume figures for Bokum Road. The increase of the traffic from those pods represent 1.5 to 2 percent increase to Bokum Road. As for the Ingham Hill Road, the previous study didn't cover it so we went out and did a count ourself during a weekday and peak -- and weekday P.M. peak. The residential pods will increased traffic on Ingham Hill Road by about 11 to 14 percent during peak hours, so that's point number two.

Point number three, actually in the previous hearing I did describe the existing traffic operations at seven intersections around the Preserve site that are currently experiencing level of service ERF as described by the applicant's traffic consultant in their 2004 study. I think for the Commission's benefit probably it's helpful if you look at the last page of this memo at the colored figure just to show you where those intersections are. Just -- we essentially have showed seven --

CHAIRMAN McINTYRE: Sorry about that.

MR. HUA: -- that's alright. Essentially it's a color figure showing seven intersections that currently are operating at a deficient traffic level of service even without any traffic from the Preserve site. So as you can imagine with the additional traffic from the Preserve site, those traffic conditions will significantly worsen as a result.

I guess that begs the question, you know, what are we going to do about that? In our opinion this is the applicant's responsibility as far as improvements to these intersections that are currently operating at unacceptable congested conditions even without their traffic. Obviously it will get much worse. If the -- if we look at the applicant's application at this point, there's no mention of any improvements to these seven intersections. In this financial environment, obviously the Town is not in a position to do improvements at these locations and Old Saybrook probably is not, Westbrook probably is not, Essex probably is not, I don't think the State of Connecticut is in any financial position to do these improvements.

So our recommendation to the Commission is make sure the applicant is held responsible for improvements to these intersections. Now, as far a ballpark figure we are talking about at least hundreds of thousands of dollars of potential improvements if not millions of dollars. So I think I want to emphasize the Commission should hold the applicant responsible to improve these intersections, make sure the public safety and the reasonable level of service for the traveling public is ensured. That's it.

CHAIRMAN McINTYRE: Okay, thank you Mr. Hua. Okay, we'll put those maps into the record and then we'll have the intervener. I just want to get this clear, we're going to be here a little bit tonight there's no schedule. We have the report from the applicant and Attorney Rothenberger. How did you want to proceed, did you want to have the applicant speak?

MR. CHARLES ROTHENBERGER: For the record, Charles Rothenberger with Connecticut Fund for the Environment. Yeah, I think it probably makes more sense for at a minimum the applicant present the most recent changes to the maps and the plans because we'll really be responding to that and that way the Commission will be familiar with the latest iteration of the plans. And we'll follow that --

CHAIRMAN McINTYRE: Okay, right.

MR. ROTHENBERGER: -- and if the applicant wants the last word following that, it's certainly entitled to it.

CHAIRMAN McINTYRE: Fine. So at this time the applicant is going to have the floor and will be handing out material and --

MR. ROYSTON: Mr. Chairman, David Royston, attorney for the applicant. Even before I pass this out I would like to inform the Commission that the Planning & Zoning section of the Connecticut Bar Association is sponsoring a seminar, all day seminar for the Connecticut Association of Zoning Enforcement Officials on Saturday, March 12th at Wesleyan University.

It is a well intended seminar and I would ask if you have an interest in attending you may easily contact your Counsel, who is one of the persons most responsible for running and organizing that particular seminar. It's extremely valuable. Having put in that plug for our Association, I will submit for the record certain documents which were filed in the Land Use office on Monday. They were not able to be included within your packages by reason of the time at which we filed them.

And in fact, they were just pretty much finished on Monday afternoon, filed, but we did immediately

simultaneously electronically transmit the documents to Attorney Rothenberger. So not that we really wanted it that way, but I think the -- our opponent the intervener probably has had a look at these before you have, but at least we wanted to make sure that they did have that copy.

CHAIRMAN McINTYRE: Thank you. Attorney Royston, all these documents are part of the record already?

MR. ROYSTON: Yes.

CHAIRMAN McINTYRE: Okay.

MR. ROYSTON: Now that you've received them, I will identify them. They consist of RS-1 through RS-6, which is the basic plan set you've been operating on and that plan set has been revised through February 11, 2011.

So if you would look in the upper right hand corner, you'll see that revision date.

The -- and I will simply mention with respect to those plans, the revisions that have been made essentially are to address the comments that were received particularly from your consulting engineer regarding details with respect to the preliminary plans and details with respect to RS-5, which is the Bokum Road yield plan. Bob Doane will, as part of his presentation tonight, will go through those changes. Also provided is a report and there are four reports that have been provided to you. Those reports are from Dr. Michael W. Klemens, LLC, dated February 12, 2011.

Dr. Klemens had his name bandied about a number of times and there has been considerable testimony and observations relating to his findings. And it was felt that it was appropriate that he be here to be able to address those comments particularly in light of the statements made by the intervener and their consults. There is also a letter dated February 14, 2011 from Environmental Planning Services, that is the company of Michael Klein. And again, this particular letter has attached to it detailed responses particularly to statements made by the interveners. Also attached to it is his letter of January 18, 2011.

That's the last part of his package and that's because that was a letter which I was unable to identify as being on your exhibit list and I think it simply may not have been put into the record of the hearing on the 19th. So it is attached to his letter of February 14th. It's part of that, it's stapled to it and it is part of that. You also have a letter from Doane-Collins, and this first letter dated February 14, 2011 is signed by Darcey R. Collins, PE, who is a member of that firm Doane-Collins Engineering. And that particular letter is specifically addressed to the intervener's statements with respect to adverse nutrient impacts.

The final document is a memorandum, which is the -- also from Doane-Collins Engineering. This is particularly from Robert Doane who is here to testify and Bob also summarizes his responses to the engineering report from Jacobson Engineering. So again, these are documents which were placed in the -- or filed with the Land Use office, electronically transmitted to CFE, and we apologize that we were not able to get them to the Commission so that they would have some time to review. We do understand as was stated, it is unlikely that a decision is going to be made tonight.

So I am hopeful that through the explanation of the -- particularly the plan changes themselves, that you will be able to -- with the plan in front of you to follow what the applicant has done and we appreciate that very much. Still in the area of housekeeping I have certain documents which I'm going to file with you tonight. And I will -- these documents are certain things that have been just recently requested such as the map that we provided at the request of Mr. Aresco. The maps that the clerk has are actually an ecological connectivity map, which was filed in that particular map which we gave to you as this exhibit is an addition to that map. It has additions to it.

So it looks exactly the same but in fact it is a separate map and there is only one of that, I apologize for that. But I think if you take a look at the map it simply identifies the 750 foot upland habitat areas around each of the vernal pools which are affected by this application. It's probably going to be easier for me to give them to you and then explain what they are.

CHAIRMAN McINTYRE: Sure. And the clerk already has copies of this? No -- give the first copy to the clerk please -- first copy to the clerk. And you're going to get Sal his copies.

MR. ROYSTON: Mr. Chairman, while the clerk is performing the necessary function of numbering these exhibits, let me explain what the additional exhibits are. The first document is a -- or let me just step back. I produced for the record the resume of Doane-Collins Engineering just so you have it for the record. They have not appeared before you under River Sound matters. Both Michael Klein and Michael Klemens have appeared before you before, so we have not submitted a full resume curriculum vitae for them.

Another item which has been placed in the record, one copy, is Dr. Klemens' 2005 supplemental report concerning the Preserve. Portions of that report were referenced in REMA's intervention. They referred to it. Also, tonight MR. Cryder also referred to it as well as provided you one of the pages I believe from that report, page No. 28. So we have provided you with a full copy of Dr. Klemens' 2005 report regarding the Preserve. We have also provided to you a document which is entitled, River Sound Development Modification to Special Exception Application, Third Supplement, to Response to Review Comments. Fortunately the Third Supplement, I think, is of less pages than the second and first, and I will attempt to keep it short when we go over those responses.

Finally, we have provided to you amended proposed conditions of the applicant dated February 16, 2011, and I think that particular -- the significance of that particular document will become apparent when we go through our presentation with respect to the plans that have been submitted to you. I think there may be one further document

that we have submitted. There was a letter to the Commission from Ralph Gometz and there was also -- which had attached to it some information from Dr. Harvey Luce and -- but there's also a separate letter from Dr. Harvey Luce dated February 14, 2011, that's a separate letter. I don't know whether that was already in your package but if you have two, I apologize, but you will at least have that particular letter.

Having said that, I will try to be brief. I will admit that I probably will not be able to maintain that pledge to you. However, one thing which I have to admit a failure in in this application not only being brief, but also I think a failure to be able to clearly state at least for the public the intent of this application, what the applicant is applying for, what the essence of the application is. And I just want to go back to the Exhibit No. 31, which was the statement by Robert Levine on December 1st.

And in his statement one of the things he said was, however I again emphasize that the purpose and intent of this application is to maintain all potential options with respect to the central forest core from full development to no development. And the significance of that is as we went through the public portion of this comment, what I attempted to do was to make notes with respect to those items which are relevant to this application. And before I do that I think I need to explain the first matter which I covered in our document, Third Supplement to Response. And the first thing which I state in there is phasing interpretation.

There is no doubt that when this application was first submitted the applicant requested, specifically requested, that it be able to develop the three separate pods as standalone development and that the applicant be able to proceed with those separate developments independently, successively, in any order prior to any further development activity under its permit to the forest core. That particular request is set forth in our Statement of Use filed with the application. It's set forth in notes on the map.

Specifically if you would look at or if you were to look at the previous revision of the map there are notes which says roadway development to be deferred, roadway improvements to be deferred until the development of the interior. That was our request you received in your reports from the Land Use Department and from your attorney, an interpretation of Section 56.6.8 of your Regulations, and the interpretation was that the word phase -- the word phase in that regulation, apply to this development. And that meant -- that meant that all the open space in the entire plan would have to be conveyed at the time of the development of the first phase.

As I indicated in my response on January 19th, we disagreed with that interpretation but we were not going to contest it further and that we would proceed with the balance. And I said of our responses, on the assumption that this Commission would concur with the opinion of its counsel and staff. That apparently was not clear certainly, I think, to given the public comment and for that I will take blame. But I'm going to make it clearer and as clear as I can because if you will take a look at our -- particularly our third response right in the beginning, what we have done is we are hereby withdrawing -- withdrawing any request as stated in our Statement of Use for the independent standalone development of the three area pods.

We're withdrawing that request and since we're withdrawing that request we're also withdrawing the request for any -- with deferral of the improvement shown on the plan. If you will take a look at -- when you get a chance at our amended conditions of the applicant, the very first primary and significant amendment to that which I think is important for your consideration of this application and all the materials you received previously and what you're receiving now, what that says is -- and what we attempted to do in this document, in Amended Proposed Conditions of Applicant, February 16, 2011, what we have attempted to do as we did before is to take the original approved special exception and show what remains and what we are changing.

And as a result of our withdrawal of that request, what we are changing becomes extremely limited.

Extremely limited, because right in the beginning if you'll take a look at it the applicant acknowledges that the Commission staff and Commission counsel considered the original request and 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 a second application and in such sequence as chosen by the applicants", that's what we requested. And what they, staff and counsel says, that constitutes a phased development under Section 56.6.8 of the zoning regulations.

So we have acknowledged that and then we have said, in view of that interpretation the applicant hereby withdraws that request including any request for deferral of construction of certain roadway improvements. Notes to that effect regarding roadway improvements have been removed from the plans RS-1 through RS-6 as revised through February 11, 2011. The applicant further acknowledges and agrees that the Commission relies upon that interpretation. If you rely upon that and say look, if we approve anything here it's because you have acknowledged that you are simply modifying the entire previously approved application, that you have not been given any permission, consent to proceed with any independent development of any part of that plan.

And we have acknowledged that that is intragual to that decision. And that's kind of one of these technical legal terms that it is significant in that it means that someone couldn't say well, let's accept Royston's interpretation, just cut it out, you can't do that because it's intragual to your decision. We acknowledge that -- and we acknowledge that. So having said that, I now would like to go into simply a very quick going down of the information that has been provided to you tonight to the extent -- to the extent that that information impacts the modification that we're doing because now what happens is our modification is actually reducing further the number of lots that were originally

approved for 221.

It was down to 217, with the two revisions -- or with the revisions we've made recently we've knocked out two more lots on Ingham Hill and based upon the recommendation of a number of people including two of our own consultants, so that's now down to 215. We have sought and we are seeking what in your previous application was referred to as a potential multi-family development on Bokum Road. And think about that. What did your 2005 approval mean when it said that? It said okay, you have said that you, River Sound, are going to seek in the future potentially to make that multi-family. The only way you can make it multi-family under the special exception is to have it as a PRD with water and sewer.

And how is that to be accomplished? Well, when River Sound went to the Wetlands Commission in 2005, early decision 2006, they had a sewage disposal system, an onsite tertiary system. That system was designed to be able to accommodate not just the 221 approval dwelling units on the plan but also to add the capacity to handle Bokum Road. So it is significant that this yield plan now limits on Bokum Road to nine individual single family lots, one of which is already there. The lot on the corner, there's a house there already. So it's really eight in addition to that as opposed to a potential PRD on that property. So that is actually a significant divination in the extent of the approved application.

So you take a look at the matters that were brought up, and I put an asterisk next to Walter Hirsch, I don't know whether he left, but Walter Hirsch --

CHAIRMAN McINTYRE: He left, he did leave.

MR. ROYSTON: -- he did leave. Well somebody, if they could please express to him that he did make a -- I think a valid point with respect to if you're going to develop on Ingham Hill Road what about fire protection. And if you will take a look at what we agreed to as part of our proposed conditions is that when there is development, that there will be 30,000 gallon cisterns placed in the development area.

We changed the language a little bit, we aren't saying subdivision anymore because we aren't going to have a separate one, but when the plan comes in for those single family lots they will have to put in 30,000 gallon cisterns.

You have -- if you accept our proposed conditions you will have made that a condition. I think that's appropriate. Same thing on Bokum Road, it's appropriate. If they're developed as part of the whole under any circumstances then as single family lots, water and sewer, they should have cisterns in there. It wasn't in the original approval, it's in there now by agreement of the applicant. We have put that in there including the ability for them to serve areas outside our particular property.

I'm going to go down to -- and I do have to mention that Sue Ellen Kozey did start out with what I think was a -- she said four reasons and I do think that she started one of them, which was the conditions regarding the railroad crossing, and that is significant. It has been raised by the attorney for ASAP, Janet Brooks, and I will address that. But Sue Ellen mentioned that. I do have to say that Sue Ellen also then mentioned -- and I understand some -- you may want to overstate things but she says constantly litigation that River Sound has lost eight out of 10. And I just have to say, you know, if you're keeping score -- you're keeping score, final decision where they go all the way up the score is two to one in favor of River Sound.

There's only one decision that went to the Supreme Court that was adverse to decision. The special exception, your special exception was contested and it was upheld. It was contested not by River Sound but by the opponents. Also a modification to the wetlands permit was contested to the Superior Court by CFE, and it was found in favor of River Sound. So if you're keeping score to the extent it matters I'd just like to put that in. And I also have to put in issues about what River Sound is -- has been costing the Town over these last 12 years. And the process of delay of this application has been a financial benefit to the Town over the past 12 years.

If you consider all the real property taxes that have been paid by River Sound on this property -- on this property, which is assessed at approximately \$4 or \$5 million. I'm not sure of the exact figure but figure it out. They've been paying taxes on this property during that period of time without causing one single school child, bus, infrastructure cost to the Town. Maybe a little bit of police services because people tend sometimes to trespass onto the property and sometimes they are not -- and I'll give him credit, not like Mr. Cryder because I know Mr. Cryder has gone on the property and really, nobody has raised any objection to that. He wasn't given permission but he's gone on. No one has raised any objection to that.

There has been some stuff and Mr. Cryder, you've probably seen it, some trucks that have dumped there and we know that that's not -- I know it's not you and you know it's not River Sound. So when we talk about that, probably some little bit of police services. And -- and in terms of the consultants who have reviewed these applications over the years, a lot of stuff, alright, who has paid for your consultants? River Sound, and maybe that's one of the reasons Lehman did go bankrupt. I don't know, but they paid, they paid, and the sum is -- I haven't kept track but it is in excess of \$600,000. That's been paid by them to assist you in evaluating these applications.

One last and I'll get back on point. It does seem to me as a citizen of this community that some of the funds that my esteemed opponents are paying might better be put -- energy, not just money but mainly energy, into providing the purchase of this property which everybody seems to want -- everybody seems to want, I think it might be better spent. I'm sorry for getting off track but I'll get back on because we now get down to I think a matter which does impact this application and that is the opinion expressed by Attorney Janet Brooks with respect to the Valley Railroad,

Number one, as Janet Brooks has indicated she is not claiming this provide a grounds for the revocation of the entire application but it does provide a grounds for your denial of this modification. And the premise for her denial is that that since you approved this in 2005 there came a letter from the DEP, Commissioner Gina McCarthy at that time acting as a landowner -- as they said not as a -- not as someone granting a permit but as a landowner, of saying no, we are not going to allow that to happen. Now CFE, when it appealed your special exception, made the argument that wait a minute, they don't have standing. River Sound doesn't have standing. They don't have the right to even apply because they don't have permission from the DEP to go over that railroad. That argument was not upheld.

More importantly though and I don't -- I took offense that -- I didn't take offense of his characterization of me but I don't want to give Attorney Branse a big head but, Attorney Branse considers it his function to protect the Commission from some of the things that may occur, adverse implication. And I think it's very important that you read exactly what the finding was in your original approval. What you're finding and what your condition was regarding the access to Bokum Road over the State Valley Railroad corridor standing to apply, access. This is from your original approval, March 23, 2005. The Commission finds that the State of Connecticut, acting by and through the Department of Environmental Protection, is not prepared to approve 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 flyover crossing that's a bridge. 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, anymore than it has the approval of other State and local agencies that would be required for final subdivision application. And this is the important part, this is what you said. This is what you, the Commission, put in your finding and your condition.

The Commission accepts the applicant's argument and finds that at this preliminary stage of review where only a preliminary consensual plan is being approved, final State approval is not required in order to evaluate the suitability of the plan before it. And he puts in protective language to the Commission as follows. 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 it assumes full responsibility to obtaining such approval in advance of any final subdivision or PRD approval and the Commission will allow the applicant to shoulder the burden.

This motion shall not be used as the basis for any claim by the applicant that the denial of access right to State property deprives it of the benefit of this special exception. 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 will, as set forth below, be subject to the applicant's ability to establish the rights it claims to have. So nowhere, nowhere, has there been any statement other than the fact that this applicant bares the full responsibility for getting a bridge over the Valley Railroad. And I would just mention that as time has gone by, we have a new Commissioner, we have a new Attorney General, we have new players. We have -- the DEP was acting as a property owner.

So I'm not saying it's likely to happen but that's not the criteria. It is our obligation to do it at this level. We still -- there's discussions going on, there's so much going on that what's going to happen is not a foreclosed issue including what has been disclosed to you by Mr. Levine that there ongoing discussions about purchasing the interior of that property. That purchase would render any need for a bridge as remote unless the DEP decided that's how they wanted to have -- or whoever bought it, have access to that property. And I think that is critical with respect to Attorney Brooks' statement because I think it is predicated on the, I think, erroneous assumption that your special exception expressed a probability that that was going to occur and that somehow because a private landowner has at one point in time denied it this somehow should affect this application.

And it doesn't, it doesn't affect it particularly since right at this point we are limited only -- only to modifying it to the extent to change the mix. Change the mix from 28 single family lots over on the west side to 11 PRD units, a reduction in the number and a reduction in the area. Trade off is 11 single family units, now 11 not 13 on Ingham Hill Road, that's the difference. They come out basically of the total on the interior. It's a change in the mix and what is important and what we have concentrated on. We concentrated on saying, you know, saying they'll work independently and they'll work as part of the whole. You can forget about them working independently, you don't need to consider that. Obviously if they work independently fine, but more importantly they work as part of the whole and we have evidence that will demonstrate that.

I will -- that's all I think I'm going to say. There are other items that I have covered in the -- in our responses and in the proposed conditions and I'd like to when the -- kind of when the dust clears and you have a chance to look at these things I'd ask you to look at what the applicant now has put in the proposed conditions. Because what the applicant has done, I believe, has improved what you approve then by adding matters which made sense to the conditions for the development of the whole.

So I conclude what I'm going to say, I'm going to turn it over -- I'm going to start off -- I think I'm going to start off with Michael Klein and then Bob Doane and then I would ask Dr. Klemens to speak. Thank you.

CHAIRMAN McINTYRE: Okay, thank you.

MR. MICHAEL KLEIN: I don't have a lector today. Mr. Chairman, members of the Commission, my name is Michael Klein. I'm a biologist and soil scientist, my office is in West Hartford. I am going to go over several points in my February 14, 2011 letter which has been already entered into the record and was, I believe, submitted to the Town offices on Monday the 14th, which is the date of the letter.

And this letter summarizes my responses to the environmental documents submitted by the intervener, particularly REMA Ecological Services letter of January 19th, the CFE intervention petition and CFE's letters of the 5th and the 19th. The attachments go into it in more detail and I'll find it necessary to address a few of those detailed items, but I will try and move ahead as quickly as I can. I don't have any professional opinion as to the procedural and legal issues that CFE raised, so I'm going to concentrate on the technical environmental issues although I will note and I think you've mentioned this before, it's important for the Commission to realize that neither the existing approval, the preliminary open space subdivision plan, nor the proposed modifications allow for any construction.

There's no environmental impact in and of itself associated with this action. Neither plan allows construction nor the final approval, either by your Commission or any other Town Commission, inevitably follow if these modifications are approved. These modifications are fully compatible with the approved plan, they do not foreclose any options for the development of the core of the property. That -- it's hard for me to understand why that continues to be a subject of discussion. The three access points remain fixed. There's no change proposed in the road alignments. All of the options that are showed on the approved plan remain viable if this plan is approved and these modifications don't change the status of the open space or natural resource conservation matters, which I and Dr. Klemens will talk about in a little more detail.

These -- besides the fact that the access points remain fixed and identical to the south, to the east and to the west, these three pods are really just a small part of the property and they comprise a little over 114 acres. The density proposed comes out to one unit per 3.7 acres, in others words just under one unit per four acres. To put this in perspective in terms of the overall potential for adverse impacts on water quality and pollution, the Connecticut DEP has produce several planning documents in the '90s and more recently than that, in the beginning part of this century, looking at the impact of residential development on water quality and public drinking water supply watersheds.

And they found that a general density guideline would be one unit per two acres for houses served by septic systems would be still properly designed and constructed and still be protective of water quality and public drinking water supply watersheds. And while this site is not a public drinking supply watershed, we are talking about a density here that's basically half of that. So it is a low density. The proposed modifications do not require filling, clearing, draining or otherwise altering any wetlands or watercourses. The plans show that there's an adequate area for construction of a home, driveway and septic system on each of the lots.

And perhaps equally as important there's still a significant separating distances shown to wetlands, watercourses, vernal pools and other significant environmental features. The detailed and intensive biological surveys conducted by my office and by Dr. Klemens over a seven year period from 2003 to 2010, have demonstrated that there are no threatened or endangered species at the property. This work which -- as Dr. Klemens will also attest, is really unprecedented in his experience and in my experience in doing this work for over 30 years in Connecticut.

The intensity of the survey work, the prep and depth, is unprecedented in my experience. It has uncovered populations of five Connecticut species of special concern and they've documented, located and sent to the DEP.

They were protected under the original approval and the proposed modifications will not adversely affect the protection. It's been a cornerstone of the plan and in fact not just the protection of the listed species, but protection of overall biodiversity has been cornerstoned in the plan from day one. I'll hold it up -- Chris Cryder entered into the record earlier a reduced copy of a very similar drawing. This is the ecological connectivity vernal pool stepping stones into upland habitat. It was one of the exhibits in the -- thank you Bob.

CHAIRMAN McINTYRE: Does it have a drawing number down the bottom there?

MR. KLEIN: Sure, it's drawing number D-1 now, 1 equals 400, dated February 2, 2011.

CHAIRMAN McINTYRE: Any revisions on that version?

MR. KLEIN: I'm sorry?

CHAIRMAN McINTYRE: Revisions, up at the top left --

MR. KLEIN: No.

CHAIRMAN McINTYRE: Okay.

MR. KLEIN: Nope. And we've modified this slightly from that which was created in 2004 and 2005. This version -- and there's another version that I'm going to show you in a minute, this version shows the -- what you've approved in terms of development, the access road from Bokum, the village area, the other higher density area to the east, the single family-type lots along the ridgeline, the single family lots in the area that's now the west PRD, it has outlined for reference purposes in green the areas that are proposed for modification.

And I'm pointing them out but we all know where they are. It highlights the locations of the species of special concern that are on the property so that the Commission can see that they were preserved in the past and they continue to be preserved in the future. And it shows the ecological connectivity and the upland habitat associated with the conserved vernal pools. Again, that's from your approval. It differs slightly from the first version

that the Commission saw because the pools that there's been a lot of discussion about along Ingham Hill Road at the northern terminus were not conserved as a result of understanding all the conditions of approval of the application -- of the preliminary subdivision.

The next drawing I'm going to refer to is sheet D-2, modified preliminary open space plan, ecological connectivity vernal pool stepping stones into upland habitat. So, this is the same information with the proposed modifications on it. So at the top of the drawing adjacent to Bokum Hill Road you see the lots that we're proposing and the areas that are proposed to be either open space or conservation easements are shown in green. Again, the dotted green outline. Same thing is true for the west PRD and the Ingham Hill Road pod. The species of special concern are all shown, they remain all conserved under this proposal.

And the critical terrestrial habitats of the vernal pools -- conserved vernal pools and therefore the corridors, wildlife corridors, open space movement corridors, ecological connectivity remains exactly the same. We've analyzed this carefully. Dr. Klemens is going to talk about it in a little more detail, but there's a reason why we've been saying that these modifications don't have any reasonable likelihood to cause unreasonable impairment or destruction of natural resources in the waters of the state and it's because these modifications don't change those basic ecological relationships and principles that were used to design the original plan. The -- I think that's an important point and it was worth spending the time to go over it. I'll move through the rest of it much more quickly.

I've reviewed the objections raised by CFE in their intervention petition and in their letters. I've reviewed the objections and comments of REMA Ecological Services, there's detailed responses. In summary, I find that their comments are for the most part inaccurate, unsupported by the record or unsupported by the documentation that they provided. There's no reasonable likelihood that the modifications -- that the proposed modifications will result in any pollution or impairment of the air, water or natural resources of the state much less unreasonable pollution or impairment. I'm just going to hit a few of the highlights of the rest of the document.

CFE, in their intervention petition, spent a lot of time talking about the requirements of the open space subdivision regulation Section 56, and they reiterated the facets that you're supposed to be considering. It's a great regulation. This plan preserves and protects all the floodplains and wetlands on the site. The only steep slopes that are impinged on as a result of the modifications are those that are necessary for access and they're really a very small portion of the area.

It -- the plan maintains and protects upland buffers adjacent to wetlands and watercourses. The minimum buffer provided is 100 feet and in most cases the proposed lot lines or the limits of conservation easements are more than 125 feet from the nearest wetland or watercourse. So the nearest that any development could occur in most cases is 120 feet and is at least -- 125 feet and is at least 100 feet. The plan maintains the large areas of contiguous forest. The open space areas are not just that which was left over or around the edges of the property. The open space areas were designed by two ecologists and were designed to protect biodiversity and wildlife habitat.

We do agree with CFE when they said that the modifications do not change the majority of the plan. We're in perfect agreement with that, I think that's to a large extent the essence of our argument. These are very minor changes and therefore, they will not result in any unreasonable pollution. There were specific concerns that CFE raised about lots 11 and 12 and the impacts to the vernal pools in that area, the vernal pools 16 and 31. Dr. Klemens is going to talk about that in more detail. I'll just reiterate what Dave told you before, lot 12 has been eliminated from the plan adjacent to lot 2, and also lot 13 has been eliminated from the plan.

Lot 3 there was a lot of concern about. That lot has been revised to include a conservation easement to protect the area of steep slopes. The developable portion of that lot is actually about the flattest or one of the flattest on the entire property. It's all about two or three percent sloped. There's a stonewall that bounds it. That stonewall forms the boundaries of the conservation easement and I think that's a terrific lot. Many of REMA's objections take the form of the data is too old or there's not enough data. In a state where we don't have a systematic statewide inventory of natural resources and it's basically serendipitous and incumbent upon applicants to do that, the quality of the data, the currency of the data, how recent it is, how relevant it is, on this site is extraordinary.

But in addition absent any large scale change in circumstance there would be no reason to believe that any of it would change in this relatively short period of time, five to seven years. When we'd look at natural diversity databases, some of those records go back 100 years or more and yet they're still considered valid for us to go out and check and see. If we go out and see well now there's a super highway there, that's a change in circumstance and we don't believe that the old survey data would be relevant. But in this case that hasn't occurred. It's clear from inspection by anyone that hasn't occurred. But we also -- the first thing I said when Mr. Levine hired me last year was we have to go out and make sure that nothing has changed.

Even though it appears obvious, we're going to go out and make sure nothings changed. We've re-surveyed all the vernal pools and there is no significant change. The ones that were productive in the past remain productive, the ones that were not productive are still not productive. And that survey work was done during the biologically appropriate time of the year last spring. There has been a fair amount of discussion about the access road that goes through the Bokum Road pod and its relationship to vernal pool 37. Dr. Klemens will talk about that, I just will point out that the alignment up to the point where you get past that vernal pool is essentially identical to what you approved in the past.

The alignment after that point does require earth work but it will not result in the loss of any wetlands, it won't change the conservation status of any vernal pools, it won't result in the result of any unique or unusual wildlife habitat or state listed species. There's a theme in some of the -- a lot of the information that the changes proposed at Ingham Hill Road will substantially change the ecological integrity of that area. All you have to do is look at the existing conditions maps to see that the area at the end of Ingham Hill Road has a number of same family residences, both that front on Ingham Hill Road and on small side roads or pods that are very similar to what's proposed.

This really is for the most part infield development proposed in that area and it's clearly not a significant change in the ecological integrity of that area. There was a fair amount of discussion about some things that are alleged to be rare plant communities that might be present at the site. Suffice it to say that the biological survey work we did and which has been part of the record all along and which REMA's had access to for all these years shows that that's not the case.

There was some discussion about use of a bio-assessment protocol, which is primarily designed to look at fish and aquatic habitat. There isn't any fish habitat in this area, all the streams are intermittent at best. REMA also refers you to some study that was done in the Croton Watershed in New York State to suggest that nitrate concentrations will adversely affect the wetlands. I'll just point out to you two things. One, the study areas are not comparable. The densities in the Croton Watershed that we're talking about here are about five to eight times more dense.

There's a specific reference here to a specific basin within the Croton Watershed that they identified as being characteristic of that Watershed and the density in that area is about 1.6 units per acre. The densities that are proposed in these three pods vary from about a third of a unit per acre down to a fifth of a unit per acre. So much -- not a comparable study area but perhaps more importantly, the document looks at nitrogen concentrations in flowing streams and that somehow is represented as dispositive on the issue of how nitrogen concentration might change into wetlands and they're not the same thing. They haven't presented any data to show that that will occur.

The one interesting thing from that report that I'll also mention to you is that the document does conclude that even the narrow buffers provide significant reductions in nitrogen concentration downstream of those buffers. And of course as I've told you, the minimum buffers here are 100 feet, in most cases they're substantially larger than that. And I think I'll leave it at that other than to say that those kinds of issues, the adverse impact -- potential of adverse impacts on nearby wetlands from septic systems and things like that, they can't really be analyzed in any detail until detailed plans are prepared.

That's the province of the Wetlands Commission. It was a subject of much discussion. If this Commission approves the modifications I'm sure it will be the subject of much discussion again, but that's the environment in which that discussion should occur because that's the first time that there will be detailed plans that will allow for the accurate assessment of that issue. I'll remain here for your questions if you have any.

MR. ROBERT DOANE: Good evening, Bob Doane, professional engineer and land surveyor here on behalf of River Sound. And we have submitted -- Attorney Royston submitted revised plans that are revised, RS-1 through RS-6, and what I'll do is go through the revisions briefly. And then I will go through the reports that both Darcey Collins, my partner, and I have prepared to address issues that have been raised by the intervener and by your engineer, Mr. Jacobson.

On the RS-1, it is -- the base map has not changed but the green line has been revised slightly to reflect the changes in the outline of the pods particularly the open space. For example, there's a slight change in the open space on the 153 access because we were requested to modify the trailhead parking and also include that in open space. So what I did was wrap the open space around that pod and took a little bit away on that side. The same is true for the Ingham Hill Road open space. We included that trailhead, which had been modified in its shape as far as accommodating the parking and put that trailhead parking in open space also.

And we also reflected the elimination of the proposed construction of the roadway, which originally served 12 and 13, but I'll go through that in detail. So those are essentially the changes that occurred on RS-1. RS-2, similar changes to what I just mentioned with the green outline for each of the pods. And we have I think darkened up the line that represented the aquifer protection area because there was a question as to showing up on the lot -- excuse me, on this plan. And those are the changes on RS-2.

RS-3 is the Ingham Hill Road pod and two significant changes here, as we are showing an alternative arrangement for our roadway and its intersection with Ingham Hill Road. At the last meeting I mentioned that we were looking at a T intersection and we have expanded on that investigation to actually show the T intersection. We think it works very nicely with a controlled intersection. There would be three stop signs, and to support that I have done a plan profile of Ingham Hill Road coming up towards the corner and then going into our cul-de-sac and also the intersection that, again, T intersection going from our proposed roadway and then up Ingham Hill Road. And I have those planned profiles here which I'd like to submit. There are 10 copies here.

We have eliminated lots 12 and 13 on the Ingham Hill Road pod and thus, the proposed extension. We had a short cul-de-sac here that was providing access to lots 13 and 12. And we have eliminated both that proposed construction and those two lots. We have, however, maintained the alignment or the edge of our open space to allow that roadway as originally proposed in 2005 and approved in 2005, to be constructed. That is still viable. Again, I put

open space around the trailhead parking and on the lots 1 and 2, I have moved the lots to the west and provided the access to Ingham Hill Road for potential house and sanitary system and well development.

And as we go into the property I have moved the -- there was a concern by Jeff Jacobson about the detention basin being downgradient of the lots and in close proximity to the wetlands and we have put that on the other side of the roadway, which fits very nicely with the profile that I just handed you. And then we continue into the property and to the cul-de-sac. There was a concern about the provision of your new regulations and making a spot for snow storage, which obviously never happens in this climate. But we have met the regulations with the snow storage area and also accommodating the driveways to lots 8, 7 and 6. The one additional concern by Mr. Jacobson was the potential grading of the athletic fields in the active open space.

And I'd like to -- I prepared an exhibit which is entitled Grading Exhibit, Active Open Space Area and I have 10 copies of that. And what that exhibit shows is, I did 10 foot contours just to show in general how the grading would work for the recreational ball fields and it works, I think, quite nicely. We have the access coming in between lots 5 and 6, and we have an upper parking area that would accommodate 40 cars. It would be at about elevation 150, and then we would have a nice gentle four to one grass slope going down towards the soccer field. That grass slope could be used to -- you could sit on the slope and watch the games. The athletic fields are about elevation 140 -- excuse me, the soccer field is about elevation 140, and that includes the basketball court also.

On the grading exhibit I show that the lower parking lot, which accommodates 27 parking spaces, is at about elevation 140. And again, we have an area that can be sloped at four to one, grass slope. Again, an area that can be utilized for observing the baseball games. There was a concern in Mr. Jacobson's letter about access to the lower fields for not only maintenance activities but also if you have elderly or handicapped people that want to go down and watch the games, how would that be possible. And I've demonstrated a driveway and some lower parking on the grading plan. We have a 10 percent roadway going down. I did a little turnoff into the ball field, the baseball field, so that that could be accessed at grade by vehicles or emergency vehicles or whatever. And so all five playing areas are accessible by not only -- conveniently accessible to spectators but also accessible by vehicular traffic. I think that covers all the changes on RS-3.

On RS-4, which is the Route 153 PRD, I have again modified the cul-de-sac to accommodate the snow storage area and modified the location of our driveway going -- that serves the 11 units. This goes by the trailhead parking that I mentioned before, we modified that so that you can pull off the roadway and park and turn around and go back onto the roadway. And that area is in open space. The driveway where it takes a left hand turn up towards the units is at the same grade as the originally proposed thru road. So the thru road can be constructed and not be adversely affected by the construction that needs to take place for the driveway. There was a concern that we were jeopardizing the economies of the thru road and I think with this plan we demonstrate that we are not. And the driveway is at 10 percent grade going up to units 4 through 11, and it's somewhat less than that going to units 1, 2 and 3.

On RS-5, we had similar comments regarding the snow storage area and the cul-de-sac has been revised back to a symmetrical cul-de-sac to accommodate the snow storage area and the driveways for 3 and 4. I've modified the back property line of lot 3 to allow the driveway for lot 4 to essentially follow the contours and we've eliminated the steeper cut that we had for the lot 4 driveway. There was a concern in Mr. Jacobson's letter regarding the modification of the roadway beyond the cul-de-sac where I pulled the roadway to the south to accommodate lots 3 and 4. And the concern was that we again were jeopardizing the economics associated with the construction of the thru road.

And with the proposed roadway in the location where we show it, we do have -- we are cutting more rock out of the hillside and this material will actually benefit the economy of the extension of the roadway because for the crossing over the railroad there was roughly 35,000 cubic yards of material in the fill required in the approach to the bridge abutment. So we're generating more material and quite frankly the original -- and I mentioned this in my memo to the Commission, on the original grading of the roadway there was a proposed grade to the 140 contour on the top of the hillside. And we are also grading to that 140 contour with the proposed relocation of the roadway.

Pursuant to the new road construction regulations with the grading that we would do for the roadway in the location that I show, we would take advantage of the four to one slope available when you have a rock cut. So by doing that we've eliminated the horizontal location of the edge of the cut to essentially that which was shown on the original plan in the southwest corner of lot 4. The location of the grading can occur essentially 10 feet or so away from the line that would show as a 502 foot dimension. I think that covers the changes that took place on RS-5.

On RS-6 we had -- again on the cul-de-sac, we've accommodated the snow storage area. Because we are putting the regulated area in the conversation easement lot 3 has to be slightly southeast of the -- further southeast than the RS-5 location, so I have extended the cul-de-sac slightly. I kept the asymmetrical or the offset cul-de-sac in this preliminary plan and I have accommodated, again, the driveway for lot 3 and the driveway for lot 4. It fits into the grading, it goes essentially from elevation 102 at the cul-de-sac to about elevation 110 about 100 feet into the driveway, and then elevation 120. The actual house elevation on lot 4 in the preliminary would be at about elevation 120, a roadway in the modified location that we show would be at about 114 in front of the house on lot 4.

And there would be some grading on lot 4, but it can be accomplished without adversely affecting the

house placement on lot 4. And obviously when we get into the final subdivision plans we would show the detailed grading not only for the driveway but for the house, sanitary system, well and all associated grading. And I think that covers essentially the changes on lot 6.

Oops, I'm going to back up onto RS-5. I forgot to mention that one of the concerns in Mr. Jacobson's letter was the limited usable space on the lots and I'm pointing to lot 9 on RS-5. And he was concerned about the backyard of the lot being restricted by the regulated wetland area to the north and he suggested we turn the house 90 degrees. And we did, and we took a good portion of lot 8 and added it to the back of lot 9 to increase the usable area of the lot. And keeping that thought as we get into lot 2 also, there was another comment that lot 2 has restricted usable area particularly because of the conservation easement that we have placed on the lot.

The usable area on lot 2 is roughly 36,000 square feet and 36,000 square feet is larger than the open space lot requirements in the majority of the subdivision regulations. Because we're in the conservation zone the lot has to be 60,000 square feet but we do have, again, roughly 36,000 square feet of usable area for the lot. I think that one of the issues is that when you look at an open space subdivision in this zone and we take up a lot of a lot in a conservation easement, it looks like the lot is severely restricted. However, the usable area actually exceeds the minimum lot requirement sizes in the majority of the zones in the Town of Old Saybrook.

Okay, I think that I've covered all of my comments in my four page memo to the Commission and -- yes, I think I've covered those with the changes that I referred to in the plans.

MR. BRANSE: Mr. Chairman --

CHAIRMAN McINTYRE: Yes.

MR. BRANSE: -- just one quick question. For the record Mark Branse. Mr. Doane, I remember seeing in one of the memos that there was an open pavilion, a nature center pavilion was on the -- approved with us and part of the plan but it's not on this one. Considering all the major things you've done was that an oversight? I mean, was that intended to be removed?

MR. DOANE: Yes, it was.

MR. BRANSE: Okay, I just saw Mr. Royston shake his head no.

MR. DOANE: Oh, I stand corrected.

MR. ROYSTON: David Royston, I think you misinterpreted my head. Yes, it was intentionally omitted. One of the things that is confusing is that the pavilion -- what is called as the pavilion was originally discussed with the Park and Recreation Commission with a ball field at that location. There was then a second iteration before the Wetlands Commission which deleted that and that area was not proposed for a pavilion.

We felt that it was appropriate that there be a trailhead and a kiosk at that location similar to the other end. So yes, this is a modification to that extent but I think if you actually look at the Planning Commission final map and the approval, I'm not sure that you will find it on that map. I think it was afterwards on the Wetland's application. That's similar to the ball fields on the original plan off Ingham Hill Road, those were not on the special exception plan before the Planning Commission. The Planning Commission simply stated that the applicant needed to provide the 10 acres for recreational use.

So there's been some confusion even in my own looking at plans and the dates of them with respect to that pavilion. So suffice it to say at this point we are proposing that there be a trailhead and a kiosk at that particular location as part of this plan.

MR. BRANSE: And when you say that location --

MR. ROYSTON: The location at the PRD west.

MR. BRANSE: Thank you.

MR. DOANE: Okay, I have one more item I'd like to just touch on briefly and that's the February 14th letter prepared by my partner, Darcey Collins, and it refers to the comments by REMA regarding adverse nutrient impacts. And essentially what -- I'll paraphrase it and let you read the letter but what we are stating is that we can design sanitary systems on all of these lots that meet the nitrogen criteria specified by DEP.

Now these systems do not require DEP approval, they're small sanitary systems for individual houses. Typically DEP applies to systems that are 5,000 gallons and above. And in working with the health code they have little criteria as far as nitrogen analysis and renovation requirements. Several years ago they attempted to approach modifications to the health code to accommodate that, but they do not at this time. However, having said that we looked at the sanitary systems and the one particular area of concern on the Ingham Hill Road pod and the proximity to wetland 9 and the nitrogen loading from the sanitary system pursuant to the new -- the 2006 I think it is, DEP regulations.

The concentration is somewhere between six and seven milligrams per liter, which exceeds the 10 milligrams per liter requirement for DEP and drinking water standards. However, we also know that there are certain situations where it is desirable to have less nitrogen concentration even from a small household system and we have several options. One that comes to mind immediately would be applying a soil/air system to the sanitary system and that reduces nitrogen another 20 percent. We would do groundwater recharge from the roof and driveways and impervious surfaces to improve the infiltration of the, typically we figure about .13 inches of rain every day based on dividing the 45 inches per year that our area gets and reduce nitrogen by dilution from the storm water.

However, on these preliminary plans we do not have the sufficient detail and we haven't designed the systems, we haven't picked out leaching field components and we haven't identified any pretreatment. All of that will occur when the final plans are done, when we get to the 40 scale subdivision plans and the subsequent one inch equals 20 feet site development plans that we need to do for the Health District. But the nitrogen is not a problem, we will not have an adverse affect on wetlands because of nitrogen introduced from the sanitary system.

MR. ROYSTON: Just before having Dr. Klemens conclude this part of our presentation I want to just make two points, that in the plan for RS-3 you will see that there is an alternative T intersection as on that sheet. And Bob may have said it and I may have missed it, but for the record I want to indicate that we have provided that and put that on the plan as an alternative and we would simply ask you to have your own consultants determine whether you wish to allow that as an alternative for the final plan or not. We think it ought to be allowed as a potential alternative for that intersection in the final plan and that we would ask that you do that.

Secondly, also on the issue of nitrogen nitrates, as one's education continues I would ask you to also take a look at Dr. Luce's letter of February 14th, which is part of the record. And I ask you to do that even though Dr. Luce does not represent River Sound. His letter was not solicited or requested by us it was requested by Ralph Gometz, who is an abutting property owner. And I'll just add that Mr. Gometz, who obtained a copy of the plan from me, is a person who appealed an application on environmental grounds for a client of mine and that's his place. So I mention that only so that I think if you talk about an amicus curie brief, I think this is a amicus commission statement by Dr. Luce, who is an expert in this particular field.

I'll ask Dr. Klemens to conclude our presentation other than for our hopefully very brief summary Mr. Chairman, thank you.

CHAIRMAN McINTYRE: Thank you.

MR. MICHAEL KLEMENS: Good evening, my name is Michael Klemens, K-L-E-M-E-N-S. I did not bring a CV tonight, some changes are that I have retired from the Wildlife Conservation Society since I was here last, which seems so long ago. And I was surprised I was asked to come back frankly because I know that some of the testimony that I gave in front of the Wetlands Commission was upheld in court putting a landmark decision that actually established the changes in water chemistry and quality by amphibians, which professionally I was very heartened by that because it was the first time it had actually been upheld by a court.

Anyway, I'm here to talk to you again about these vernal pools. And I guess sitting here tonight I've come to sort of -- I was think about how to really talk to you and I realized actually that people that study wildlife and scientists like myself, we already think about things very, very differently than lawyers do and also very, very differently than the way engineers do. And I think this may be in part some of the confusion over this whole vernal pool, the conserve or non-conserved issues, which I'm going to get into in a minute and try to add some clarity because I think it may be a more professional way that we look at percentages and what that means. It varies between professions and what the results are.

Now, my involvement with the Preserve began in 2002 when I did the initial visits to the site and looked at some of the many vernal pools on the site and began to really understand the rich diversity of vernal pool dependent amphibians that were there. And as we mentioned before, I worked on the Preserve basically for several years off and on and easily catalogued with my colleagues over 600 hours on the site. That's a huge amount of work on any site in Connecticut and there's only a few other sites that I've worked in where I believe even approaches comparability in coverage and that's some of the work I've done on Markley Capture (phonetic), Aspher Toads and Blue Spotted Salamanders in northeastern Connecticut. So this is a very, very well studied site.

Now one of the things I'd like to put to rest or put my spin on or my discussion on is this whole issue of the age of the data. Mole Salamanders and Vestamids have a life generation time anywhere from 10 to 20 years. Certainly I would not anticipate large changes to occur over time in those populations unless there's been a severe change in conditions, which there has not been. The Preserve remains intact as it has when I visited it. Wood Frogs do have a shorter generation time, that's measured in two to three years, and Wood Frogs have more of what I call a metapopulation function. They will appear abundantly in some wetlands, pull back and reappear in others, and that's sort of consistent with Wood Frogs. Overall I would not anticipate that the metapopulation function of Wood Frogs on the Preserve has changed.

Though certainly in some small things such as vernal pool 37, very small pools, one can expect dramatic changes in the few amphibians, and that was actually documented in vernal pool 37 when Environmental Planning Services went back and looked at it again. But in the main vernal pools as it all hangs together, I don't see a reason to think, to anticipate, that there would be major changes in the fauna there. When we get to things such as Box Turtles and having worked on recovery plans for turtles for the U.S. Fish and Wildlife Service, we don't even think about -- decades are inconsequential. We measure recovery on many of these long life species or changes in half centuries to centuries.

So I think it's important to understand that the data I would consider to be robust and comprehensive enough to continue to make decisions on particularly as some of the key pools in the Pianta parcel, which I only looked at for one season when we sampled in the spring. Now, there's been a huge amount of discussion about the assessment methodology and also I want to backtrack and talk also, there were two sets of studies. There was a 2004 study on

amphibians and reptiles and vernal pools, which was submitted to this Commission. We then did additional work and there was the 2005 study, which was submitted as part of our wetlands application.

One of the big differences apart from the fact that the 2005 study contained a lot of supplemental information on the vernal pools, information on chemistry, dimensions, productivity, one of the big changes was in the back of -- there is a table I should say. And pools were assigned as being conserved or non-conserved. There was a change in the 2004 and 2005 table of conserved versus non-conserved pools rendered largely by the decision of this Commission that -- for various reasons. And as a Chair of my own Planning Commission I can understand issues of access, egress, public safety, chose to make Ingham Hill Road a major access point. I had advocated before you in 2004 that this should just be an emergency exit.

Anyway, so we have two sets of tables with the conserved versus non-conserved pools. And this has led me to think really what that actually means. Those who have actually read the manual that Ron Calhoun and I wrote in 2002 with a whole groups of other biologists -- we met with about 15 vernal pool specialists from across the New England region to compile and create that manual, which has become I believe a standard for decision-making. I think if you look at it you will see that there is what to some people would seem conflicting standards.

When the -- in the assessment tool we asked the question, is 25 to 50 percent of the critical upland habitat zone, that's that 750 foot circle, intact? And yet when we talk about best development practices we talk about no more than 25 percent development. Now that may seem a conflict, but in fact it's very logical. There are many vernal pools in Connecticut that have upland habitat disturbance between 25 to 50 percent and they survive. So when we assess them to a value we're not going to throw those pools out because 30 or 40 percent of their upland habitat is lost.

However, when you're putting de novo development on the site we took the most extreme precautionary principle. If we had a range of 25 percent to 50 percent required to sustain a vernal pool, for de novo development we took the very cautious end and said for new development 25 percent is the standard. Now, why I'm saying this is because I think there's been some magic attribution to that area of above 25 percent, and that may come from engineers who have strict standards that you have this after so many percentage the whole thing collapses. That's not the case with these vernal pools.

Optimally 25 percent in new development will keep the vernal pool intact and functioning as a vernal pool. If you move to -- I'm not saying if you move to 27 or 28 percent the vernal pool is going to collapse and be nothing, or even 30 or 40 percent. What happens is you move in that continuum between 25 and 50 percent, you have less and less -- you have more stress on the pool. It doesn't mean that the pool is filled, it doesn't mean that the pool will not have some function. It certainly will have over time some reduced productivity. And I think that is one of the biggest confusions, is this concept of conserved and non-conserved.

And I suggested in my letter to you to consider those pools that we considered conserved in our 2005 report to really be optimally conserved. They're conserved to the highest level of precautionary principle, no more than 25 percent development. That isn't to mean that the other pools that we're talking about that have 30 percent development, 28 percent development are going to disappear. They will certainly continue as vernal pools, there may be some reduction in their productivity, maybe none. I think what's happened with this concept of conserved and non-conserved is people have looked upon it as absolutes, that once you move to a non-conserved pool you may as well have taken a bulldozer and filled it in. That's not the case at all.

So I need to make that distinction that within the Preserve there were pools that were certainly optimally conserved to the highest precautionary standard in the development application, there were many pools that fell in that second tier which you can call conserved. And there were some pools such as vernal pool 37, which is basically a low productivity pool, possibly even a sink, didn't even rev enough biotic integrity to actually rank it as a tier one pool because of the low number of eggs, that pool because of the amount of development around it probably will not continue to function as a vernal pool.

We made decisions on the landscape based in that manner, where were the best pools, where were the pools that were most -- will get the most protection, where could development be shifted to near pools that had less integrity. So I think that's just an important point I'd like to make, that non-conserved and conserved is not the same as losing it. It's a continuum, as you get toward 50 percent you will have less survivorship and I'm going to get into that in a minute also.

So I approached this problem from two ways because -- well, now this is all about the underlying approval but I had difficulty doing that as a scientist. Yes, I wanted to look at these pools and see is the current arrangement that you saw tonight on the various drawings that were submitted, is that actually going to push any of those pools into different categories from your 2005 approval, those list of pools. And I will tell you they're not, that all the pools that were "considered to be conserved or I guess we would call optimally conserved" in the 2005 are still going to be conserved. And those pools that were not or called non-conserved are still going to be non-conserved, though I would like again with the caveat that that does not mean that those pools will cease to function.

Many of them have 30 percent development, 28 percent, these are small figures over that. It doesn't mean that those pools will disappear. Now let me also get to some of the questions that Mr. Cryder, who has given a lot of very interesting testimony and I think a little bit of confusion. And he certainly is a person that loves vernal pool creatures as do I, and is fascinated by them and so many people are. I think first, the 750 feet is not the average

home range. The 750 feet around the vernal pools is what's been calculated and through various studies, to contain 95 percent of the population really within that pool. It's substantially different than the average home range. It is 95 percent of the animals breeding in any vernal pool will reside in that first 750 foot ring around the pool. That's a lot of habitat.

The second thing, there's a little bit of again -- I'm going to try to explain this as best I can. The whole idea of the roads, when the road traffic reaches a certain intensity, that is the road mortality that actually limits -- effective of the pool. Road mortality is part of the question but if you could think about a vernal pool such as pool number 16 where Ingham Hill Road sort of skirts around it, and it's in the center of the disk, I don't know if we can even show it. Do you have anything that could show that or any -- because I think it's important to understand what the road does. The road -- yes, it has some mortality but what a road like that actually does -- I don't know if you can see it, yeah -- what the road like this does right here --

CHAIRMAN McINTYRE: Excuse me, state what map you're using.

MR. KLEMENS: -- oh, I'm looking at RS-3.

CHAIRMAN McINTYRE: Any revisions?

MR. KLEMENS: Any revisions?

CHAIRMAN McINTYRE: Up top.

MALE VOICE: Revised 2/11.

MR. KLEMENS: Thank you, revised 2/11. Here you see pool number 16. It lies in the curve of Ingham Hill Road here and if you could imagine drawing a 750 foot disk around it, it goes all on this side of Ingham Hill Road. Now right now because of the low intensity of traffic, a lot of this habitat is available to these creatures.

What will happen when this road becomes heavily traveled is there will be mortality of course, but eventually what will really happen is through selection this area will no longer be available. So you'll lose a large chunk of the habitat not by building on it, by having it actually cutoff by the road. And we attempted to remedy this on a lot of the other -- in the ecological connectivity map if we could find that -- is that it? Yeah, that's it. This is D-2, and when was it revised -- February 2, 2011. We attempted to remedy this in many areas.

Here you see these arrows where we actually could put underpasses to reconnect within. Unfortunately the topography of that road if you're familiar with it, it goes straight up. There is the hillside there and you just cannot create those kind of underpasses in that area. So there was no way to mitigate the approval that basically turned Ingham Hill Road into a high intensity road. So yes, there's some road mortality but after awhile the amphibians -- I would say where do you select against, that group of amphibians that's crossing the road by killing off some of them.

They don't go there anymore and that entire chunk of habitat is not available.

So it's a little bit different than just road mortality, you're actually severing off a chunk of the habitat which is reflected in some percentage. I also did -- because I did want to see for my own interest was, if I was advocating that this would not have any change over your underlying approval I wanted my own understanding to be sure that if nothing else ever happened on this site that would this be altering the vernal pools in any way in terms of conservation zones. Ran the figures and all the pools that are here are going to fall at or -- one is going to be at 28 percent, 31, but the rest of them are going to be well under the threshold of 25 percent development in the upland habitat.

So if nothing ever happens, if nothing ever happens -- and I know I'm not supposed to say this, but if nothing else ever happens but these three pods are developed, the road isn't intensified, the bridge isn't built, those vernal pools are all going to be conserved, optimally conserved vernal pools. Because the development that's being proposed in those pods is as if they were just development by themselves, it's not enough to push them over that 25 percent development threshold. And I had to do that for myself because I wanted to know what I was advocating because clearly I think many people hope that something wonderful might happen here in the core and we may only had a bit of development. And I know we're not supposed to discuss it quite like that, but I'm doing it anyway. I'm sorry David because I just can't -- I just had to do that to satisfy myself.

Okay, let's continue. So we've gotten -- and let's also now talk -- so the other problem I had is with CFE and REMA, and I don't want to get into a lot of they said, I said. There's a lot of jumping back and forth into 2004 and 2005 reports. Sometimes they're citing pool 16 and 31 in the context of being conserved, which was 2004 and the non-conserved, and it's confusing. It's confusing to me sometimes just trying to reconstruct it and go back through all of these things.

Pool number 37, I absolutely agree that it is basically an extremely low value pool and if you're going to make a decision about where to place development beyond your parcel, put it right near that pool as far enough away from pools 29 and 30 which are really productive pools. Okay, moving right along to the Box Turtles. There's no doubt that there are Box Turtles on the Preserve. And back again to -- this is No. RS-3, same one I spoke to before, here is vernal pool 31 -- nope, vernal pool 31 is -- I'm totally turned around here. Right over there -- nope, that's not -- yeah, right there. It's the new pod in here. I think it's -- yeah, right there.

MALE VOICE: Sorry, it's upside down, I totally turned around it's right --

MR. KLEMENS: No, that's in the curve of Ingham Hill Road. That's 16 -- okay that's 16, right, that's 31. That's 16 and this is 31.

MALE VOIE: That's correct.

MR. KLEMAS: There are high ledges. The Boxes Turtle -- there's a dot on your map that showed the Box Turtle was found here, then that's saying Box Turtle was found over here. It was recaptured twice. What I want to -- and George Logan makes the statement yes, that there are substantially more Box Turtles in these pods. And I don't doubt that there may be some more Box Turtles in the pods but not substantially more. And I'll say this just in my own work with these turtles.

We spent two years on the Preserve, a huge amount of person hours. We found five individual Box Turtles that were all marked. Two of them were in Westbrook, two of them were in Essex and one here. This one was recaptured once and I want you to put that into context with two sites that I worked on this year, one where we found on average five turtles a day and found in six days of work plus 20 Box Turtles. Another site in three days of work, we found 22 turtles. They are Box Turtles but the population is not huge here, and I can say that with certainty. Are there more turtles? There's undoubtedly a few more Box Turtles scattered around. Are there a huge amount of Box Turtles here? No.

And why, I really can't answer but if you look at my 1993 book, which was submitted in the earlier proceedings, there is a very strange thing happens once you get below Haddam and get to this part of Connecticut all the way over to the Rhode Island line. Box Turtles are really scarce in this part of the state. Just handfuls, very few individuals that have found them in a handful of records. Why? I don't know, but the Preserve was consistent with that pattern with very few turtles and widely scattered. So I just think we need to put that -- if you think that we're going to stumble over hundreds of turtles or even 20 or 30 more Box Turtles on any of these pods, it's not the case.

We are going to follow -- the DEP has -- and I know George is very familiar with that because he's used that on his own projects, the DEP does have a whole series of protocols with Box Turtles in construction areas which includes cordoning off the habitat, removing the turtles before construction, educating the contractors as to Box Turtles and the protocol for removing them, and certainly those kind of standard construction practices would be implemented. As far as the Ribbon Snake, I think Michael Klein -- who is a State-listed species, has also said none of the areas of Ribbon Snakes that were documented will be impacted by these pods.

And although REMA also mentioned the Hog Nose Snake, and again I will say, in all those exhausted snake studies on the Preserve, we never found a Hog Nose Snake. Not to say that it's potential that someone might, but I would think that after all that time I think we have the snake fauna pretty well documented on the Preserve. And it's rich but no Hog Nose Snakes that we can find. And I think, again, that's important. One of the most difficult things as a biologist I face is it's very, very easy to prove a presence. At what point is it reasonable to prove an absence, and that's one of the big questions. I would think that with the amount of work that has been done on the Preserve, I think we can say with confidence that the Box Turtle population is very small and the Hog Nose Snake population, even if it exists, it's probably tiny or non-existent.

And I think it's important to say there are many species that are rich and diverse on the Preserve. We found large numbers of Ribbon Snakes, as we know large numbers of vernal pool amphibians, but the other things that just were not abundant. So I think that concludes what I have to say, I'm sort of rambling. I know you're tired. I hope that at least I've been able to address some of the questions that you have and I'm here if you want to ask any more. Thank you.

CHAIRMAN McINTYRE: Thank you. Attorney Royston?

MR. ROYSTON: That concludes our formal presentation. We would simply ask that we be provided no more than 10 minutes to summarize.

CHAIRMAN McINTYRE: Okay.

MR. ROYSTON: You can even cut that down if you want Mr. Chairman and I'm sure you will, thank you.

CHAIRMAN McINTYRE: Okay. We're going to take a five minute recess real quick.
(off the record)

CHAIRMAN McINTYRE: Back on the record. At this time the Connecticut Fund for the Environment will have the floor. And then there are a few people from the public that are going to want to speak after that briefly, I've been promised.

MR. ROTHENBERGER: Thank you Chairman McIntyre. For the record, Charles Rothenberger with Connecticut Fund for the Environment. Considering the hour, I will be brief and encourage the other folks that will be speaking for Connecticut Fund for the Environment, from REMA Ecological Services, to hopefully be brief so that we can get out of here maybe before Thursday. I see my reputation for oratory precedes me as I look into the audience and the empty seats but be that as it may, there are a couple of things that have been said here tonight which I think need to be addressed.

First of all, Attorney Royston mentioned that folks who were trying to present information to the Commission to really allow you to do your jobs, fulfill your function, and to provide as much breadth of material that you can rely on as possible should really just be trying to facilitate a conservation purchase of this property. And in fact, there have been many efforts over the last several years to do exactly that. You know, as Mr. Levine has mentioned there are, as I understand it, current conversations going on and I think that's to a large extent to the new representation here tonight, Mr. Levine and his company. There were many attempts to reach out over the years which were met simply

by stonewalling and by any -- a complete lack of any interest in negotiating a conservation sale of that property. So I think that situation has changed for the better, but I just think that needed to be said that in fact there had been efforts and it was not for lack of effort that they failed.

A few things that Mr. Klein has mentioned both in his oral testimony and also in some of his written responses, a lot of which seems to revolve around the fact that -- you know, everything is okay because a lot of what you see here hasn't changed. And he seems to present that as a good thing as though all of the assertions, that the best planning practices to preserve the ecological integrity of the site have been brought to bare and continues to this day, means that there will be no adverse impacts. And in fact in light of the evidence that you have in the record regarding the Wetlands Commission's findings, their determination which has been upheld through several levels of Appellate review, you know, those assertions certainly don't give me a lot of comfort because in fact those assertions were proven false the first time they were presented to you back in 2004.

And, you know, it's clearly up to you to waive the credibility of the witnesses. Our role here is really just to provide you with the evidence that you can weigh and make your best judgment as to what seems most plausible.

With regard to Dr. Klemens' testimony, whom I have a great deal of respect for, he did sort of emphasize this distinction between not conserved and conserved and emphasized that not conserved does not mean complete and utter destruction of that resource. It simply means some impairment. And in fact that's exactly the standard that you are charged with enforcing. An adverse impact is not complete destruction. Clearly moving from conserved to non-conserved would be an adverse impact. Moving from one level of not conserved to a different level of not conserved, might also be an adverse impact.

You know, we'd just repeat our caution that the approach that's outlined here -- and I thought I heard maybe that the approach has changed. I got some of these documents just this evening. I think I understand now that it's the applicant's contention that they do not plan to proceed with a phased development?

MR. ROYSTON: I'll answer that --

MR. ROTHENBERGER: Okay, well I'll throw it out there and perhaps that can be addressed during the summation -- which we think might be a better option and might meet at least some of our concerns, although clearly not all of them. I'd also just like to remind you as you weigh the evidence that you've gotten up to this point and that you will get following me that your charge is much broader than a Wetlands Commission.

I know there's been some talk that most of the boundaries of these lots are more than 100 feet away from the wetlands. That's kind of immaterial. I don't think anybody has suggested that most of the lots present any difficulty. We focused on specific lots that propose some difficulty that represent the likelihood of adverse impacts. And whether they're within the upland review area of 100 feet or beyond that, the possibility of them contributing to adverse impacts remains. There's nothing magic about 100 feet and even if there were that is a regulatory -- really an administrative convenience for Wetlands Commission review. You are not bound by that. You could look at impacts 3,000 feet away if indeed you thought that that was supported by the evidence.

And just also highlight that you do have several options. You know, it doesn't need to be an all or nothing proposition that you face. You could certainly, I think, deny the application for modification outright based upon the fact that the applicant really has not provided a holistic overview of what these changes will mean for the entire site. But you can also look at specific impacts that have been brought to your attention and condition any approval by trying to reduce those impacts. For instance, I think most of the testimony of adverse impacts has really focused on the Ingham Hill pod.

I don't think anybody has really suggested there are many problems with the Westbrook pod and just a few perhaps with the Bokum Road area. So it would certainly be within your purview to grant the application to some pods, deny it to others. So you shouldn't feel as though you're somehow in a box where it's all or nothing. You have a lot of discretion here and a lot of flexibility. And with that, I think I will turn it over to George Logan and Sigrun Gadwa, Sigrun Gadwa first.

And I think both of their presentations should take no more than 15 minutes, so I appreciate your patience.

CHAIRMAN McINTYRE: Thank you.

MS. SIGRUN GADWA: Good evening. I shall --

COURT REPORTER: I need for you -- you just have to be a little closer to the microphone and if you can please state and spell your name for the record.

MS. GADWA: Okay. Sigrun Gadwa, S-I-G-R-U-N, G-A-D-W-A, with REMA Ecological Services. Responding to the document -- the February 14th document by Environmental Planning Services is going to be my main focus rebutting specific points in that. First to the section on vegetation, we had stated that there was a distinctive type of vegetation associated with the bedrock outcrops and we -- he stated flatly that this community was not present.

I actually went to the 2004 report, which had the very extensive, excellent inventory by James Cohen from Skias (phonetic) and read his -- went through his descriptions and he says bedrock knolls are scattered over the sight and constitute a variant of the mixed hardwood forest community vegetated with plants tolerant of shallow droughty soils and vegetation is characterized by a series including especially lowbush blueberry. Lowbush blueberry is the characteristic indicator species that Ken Metzler mentioned in his classification and if you go through the list, the long

list for the forest -- hardwood forest habitat there was the danthermia, sweet fern, large pod pinweed, were just a number of species of that community that he just -- he wrapped it in with the hardwood forest but it's a variant, a component of that.

Now moving to impacts on -- it's a little hard here not having a lectern. First, we only got the set of e-mail files with the various documents this afternoon and so we didn't have time to write out a full scale rebuttal. But we do stand by our statement that adverse impacts for nutrient enrichment to aquatic communities in-pool, in-stream and downstream are likely. And this is not to the vegetated wetland portion. We agree with Harvey Luce that the type of wetland vegetation is not especially sensitive to nutrients and they probably won't be harmed by septic nutrients, but it's the streams that come out of these wetlands that move down.

And we note that the reviewers -- none of the reviewers disagreed with our statement that only 40 to 60 percent of septic leachates treated in a code compliant system and nor did anybody challenge our statement that in a landscape setting where you have shallow bedrock, slopes and shallow bedrock, the proportion of leachate that's discharged as shallow groundwater into wetlands is a lot higher than where you have very deep soils and a lot of is discharged down into the regional water table. No reviewer challenged our statements that the threshold impairment criterion for streams and rivers is approximately tenfold lower than the 10 milligrams per liter standard for the health code. And the background information I gave on the work that DEP is right in the middle of doing on developing a stream standard or a nutrient standard, nobody denied that that was going on either. That's from an earlier report.

It was pointed out that denitrification and uptake by plants and riparian buffers can remove substantial nitrogen. That's very important, we agree. However, it does not happen outside the growing season and neither does denitrification. And streams are impaired by nitrate that reaches them in the fall and winter and early spring. The -- Dr. -- the article that I cited from the Croten River Watershed was stated as having -- actually there were a variety of lot sizes analyzed but it was overall denser than this area here. The point of that reference was just to show the clear difference between unsewered and sewerred areas in terms of nitrate concentrations in groundwater fed streams.

And also, the clear difference between winter levels and summer levels. They're much lower in the summer when the denitrification uptake was going on. And I do encourage you to -- I didn't include it in my paper but I encourage you to download that paper from the internet. It's very good.

MR. BRANSE: Excuse me, no, they can't. Once the hearing closed they won't be able to read it, sorry.

MS. GADWA: Well, for their future education after this is all over with.

MR. BRANSE: Okay, after they vote.

MS. GADWA: Yeah. So what -- it's very hard to tell, the distances are not such -- you know, 20 or 30 feet away between the leach field and the wetlands, it's not clear cut in this situation here. But there is a methodology using the 2006 DEP dilution analysis, which does take soils into account and actual watershed areas. You can use that. If you've got water and the data on the concentrations of nitrate in the actual streams below it's possible to get a handle on what the impacts will be.

And at this stage of the game, one wouldn't need to do that -- be expected to do that for every single lot but at least for a couple to get a handle, a couple of the ones that look as if there's the highest possible risk. And now I'm -- oh by the way, I guess I've been looking at the 2004 vegetation report and so I used the wrong date when I wrote a sentence about the -- that also referenced the Klemens study. We looked at the 2005 vernal pool data not the 2004.

And we actually didn't -- we just considered the actual impacts to the pools themselves, we didn't even talk about conserved versus non-conserved status.

But George is going to continue on that note. Thank you very much.

CHAIRMAN McINTYRE: Thank you.

MR. GEORGE LOGAN: Good evening, George Logan for the record. I'm just going to go as fast as I can possibly can. Hello GAN. Starting with Mr. Klein's testimony, one of the things that I found out earlier tonight and I did ask him, there was a reference to some vernal pool studies were done this spring, 2010. I understood they were done in April and May of 2010.

Unfortunately that data does not appear in your record. It's not listed in your exhibits. I guess it was verbally given I understand, so I didn't get any specifics whatsoever. I thought there would be a document somewhere but there wasn't. The reason for that, it would have been a little better for me to see some of the data, understand it, and be able to comment on vernal pool 37 in particular. Mr. Klein made a statement that he considered that the additional lots on Ingham Hill Road, which were not there before in the 2005 approval, are in-fill development. I would respectfully disagree.

This is not in-fill development this is out-fill development. This entire area is connected with valuable and pristine habitat, so it's not like you're putting a lot between two lots. That's what I call in-fill development. Regarding the nutrient impacts, I think Sigrun explained most of that. We're sort of in a predicament where it's just the nature of the beast I guess. We don't have specific data, the engineer has not provided specific data and possibly he's not required to provide specific data on some of these things that we've said. On the other hand, we're not putting in specific data because we don't have the ability based on the data that exists for us to make those measurements if you will.

So it's one of those things where unfortunately it's based on our professional experience, we believe there will

be a reasonable impact from nutrient impacts from septic systems. Some of these headwater wetlands on the other hand --

MR. BRANSE: Excuse me Mr. Logan, would you say that sentence again?

MR. LOGAN: At this hour it would be interesting if I could say that sentence again. That we don't have -- because we don't have the data we cannot provide our own analysis as to what the specific impacts would be from nutrient impacts from septic systems, some of these headwater wetlands. And the same occurs unfortunately on the other side. So we can't meet together, but it is our professional opinion that there will be a reasonable likelihood for impacts.

Going on to Mr. Klemens and I'll return to Mr. Klein in a bit, there was some question on the age of data. I mean, I don't have a tremendous problem with what he says meaning the data is the data. And we know there has not been substantial differences, nothing has really happened on the site in the intervening years. But I'm a data hound. As a scientist I like new data. I want data that's current and I know that's important particularly when you come to vernal pools because things do change from year to year. I've had vernal pool species in vernal pools in for instance South Windsor, just thinking earlier, where for four or five years not much was going on in a particular vernal pool and suddenly oops, there was a lot more happening with Wood Frogs and that was kind of mentioned. So you never know what's going to happen in the population dynamics of Wood Frogs for some of these vernal pools.

Even vernal pool 37 is important because it's part of a cluster. This cluster of four or five vernal pools in that particular area are not associated with any of the other vernal pools in the rest of the Preserve property. So you have to look at the dynamics within that cluster. And I don't necessarily buy that if you're going to do development you just put everything near vernal pool number 37. That potentially is an important vernal pool for the rest of the vernal pools that are there.

Regarding the Box Turtles, I suppose we don't have any disagreement. I don't think this will be a large population here. The kind of protocol that he mentioned, he's right. This is the kind of protocol that we use, care has to be taken. We looked at -- with the elimination of some of the lots that happened now in that specific area because lot number 11, even though I don't think the habitat is particularly conducive for Box Turtles, if it is to the likelihood that it is, that's a good thing. We mentioned the issue where the -- we were looking at the 2005 data not the 2004. That was a mistake on our part.

And so what it comes down to in a sense as far as vernal pool 16, this is the one that's giving me most of the headache right here. And I think Dr. Klemens will probably agree with what I'm about to say. We really don't know for sure to what extent the habitat -- a suitable habitat to the north --

CHAIRMAN McINTYRE: George, if you're going to reference that can you just tell us what you're referencing, the document?

MR. LOGAN: I'm referencing RS-3, revision date 2/11/11.

CHAIRMAN McINTYRE: Thank you.

MR. LOGAN: Again, I don't think we can say for sure how much of the potential habitat, terrestrial habitat within the 750 feet of vernal pool 16 to the north of Ingham Hill Road is actually used by, particularly Ambystomatid Salamanders. We don't know that for sure. It might be that they have already acclimated to the fact that the road is here and the road, even though there's not a lot of traffic, does tend to concentrate and become a killing zone. And so I'm wondering this.

If we can postulate that actually the areas within lots 1 and 2 are disproportionately more important for critical habitat of the terrestrial phase of these species, then putting the lots 1 and 2 in these areas is more of an impact than what was improved previously conceptually by this Commission and then finally the Wetlands Commission later on. So this area might be a lot more important, lots 1 and 2, than we know. But unfortunately we don't know. I'm just looking at the habitat, looking at south facing slopes, looking at the impact of Ingham Hill Road knowing that this is a very productive vernal pool, 233 salamander egg masses. That's a goodly number, it was ranked seven or ninth of all the vernal pools in the entire Preserve.

So again, because of that it is my opinion that there is the likelihood of unreasonable impairment to these populations because of lots 1 and 2. And we had recommended elimination of those lots. I think that more or less covers that part, Mr. Klemens' part. I did want to make a comment on Mr. Harvey Luce's one page letter that was February 14th, it was part of Mr. Gometz and his submission. I know Mr. Gometz personally, I've done work for him before.

You know, reading the letter it doesn't really make sense to me. I think there's illogic fallacies in here. He says for instance, the only reason given for the assertion of low dilution capacity of the adjacent wetlands and watercourses is that they are headwater wetlands. I do not agree that all headwater wetlands have low dilution capacities. So you go from the general to the specific, you can't really do that. So we believe that some wetlands do have low dilution capacities and then these ones, like wetlands 6 and 9 and 4, do have low dilution capacities particularly the upper portions of them. And there are streams that emanate from them, so that was the whole issue with the nitrates continuing down and impacting aquatic fauna.

Even in intermittent watercourses, what we call semi-perennial watercourses that usually emanate from these kinds of wetlands, you find aquatic biota. Finally, I'm going to read something that Mr. Klein said and then I'm

going to make my statement. He says, in my professional opinion there is no reasonable likelihood that the proposed modifications will result in any, and I underline that, pollution impairment of the air, water or natural resources of the state much less unreasonable pollution or impairment.

To me any is akin to none. That's not scientifically plausible even, so my statement is in my professional opinion there is reasonable likelihood the proposed modifications will result in some adverse pollution or impairment of the air, water and natural resources of the state, period. And with that, I thank you very much.

CHAIRMAN McINTYRE: Thank you George.

MR. ROTHENBERGER: Again for the record, Charles Rothenberger with Connecticut Fund for the Environment. Just a couple of housekeeping matters that I forgot to take care of the first time I was up here.

First of all, I do have a copy of a statement that I did not bother to read but just sort of skipped over some of the major points that I'll submit for the record. I should point out that was composed before I got some of the documents from this evening, so some of the facts that I referenced may have changed. And I'm sure Attorney Royston will point those out during his summation, but I think the broad charge and direction to the Commission remains valid.

And also, I was sent some documents from the record which purported to include my letter from January 19, 2011, but which in fact did not include that. I'm sure it's part of the record because Mr. Klein apparently has a copy of it, but I'm just going to submit another copy to make sure that it's here so there's no confusion, thank you. It probably doesn't need another exhibit number if you already have it.

CHAIRMAN McINTYRE: Does that conclude your presentation Attorney Rothenberger? Attorney Rothenberger, is that your -- the end of your presentation? You're all done?

MR. ROTHENBERGER: Yes, that concludes our portion thank you.

CHAIRMAN McINTYRE: Thank you. Susan, you want to come up and speak for a minute? Well I better make this statement, at this time I'm reopening the public portion of the public hearing.

MS. KOZEY-MCCUIN: Hi, I'm Sue Ellen McCuin, 24 Ingham Hill Road, Essex, and I'm submitting a petition from area residents and Connecticut residents calling for denial of this application and protection of the property.

And also, I just wanted to say two things. I am not a paid speaker here, I am a volunteer with my time. So I didn't mean to get anything inaccurate Dave when I said eight out of 10. I was looking more for a percentage. In applications that have been going on for the past 12 years, three out of four in Essex in '98/99/2000 were denied, so that was part of my numbers. Okay, we'll have that talk somewhere else.

So another thing, I don't know if you're aware of this or not and now that it's history I'm going to say it because I'm tired of hearing -- you know, and we don't talk about it so much but I've seen it in the paper. I used to see it from Sam Stern and from others just saying, if they want it protected they should make an offer. I just want to point out -- and again, because it's history and there's no reporters here, in 2006 after the Inland Wetlands Commission denial we, the Alliance for Sound Area Planning, hired a mediator.

We got the Attorney General, the DEP Commissioner, the Governor's staff, Ted Roosevelt from Lehman Brothers, and I'm trying to think who -- partners, just Nature Conservancy. There was a whole coalition of us who met for a year. The final meeting was in May of that next year. Senator Dodd, then Chairman of the Banking Commission down in D.C., asked Lehman Brothers if you think your property is worth \$33 million come back to me in two weeks justifying because it appraises out at \$9 million. And as a state and as -- you know, public money we cannot go over \$9 million. If you can justify \$33 million, show us.

Nothing. He never even got a response. The Senate -- so I don't feel so bad. The Senate Chairman of Banking, Senator Dodd, did not even get a response. So I just want to make it clear, so when that effort was going on it obviously had to be very quiet and you can never get into things like that in the paper or in public. But that is something that went on in one particular year of these last 12 years.

And another thing that went on was four days before I got married 13 years ago, we were also sitting at a table with, you know, Tim Taylor at that time, trying to get it bought before he went forward. So those were just two different things and there's been lots more. So, I just don't like that thrown in our face. There's always good faith efforts by a huge coalition trying to get this protected. So anyhow, again, I thank you for your time and that's it.

Thank you.

CHAIRMAN McINTYRE: Thank you Sue. Sir.

COURT REPORTER: Your name and spell it for the record.

MR. CHARLES McSORLEY: Yes, my name is Charles McSorley, M-C-S-O-R-L-E-Y. I live at 9 Fox Hill Road, which is in Old Saybrook and borders many of the properties in this development. My concerns are those of a homeowner. I'm not a biologist, not a ecologist, and I have four concerns that have not been brought up yet.

Number one is that in our area we have an overpopulation of deer. Every acre that this site is populated by human population will just force that deer population further and further out into the neighborhoods. Right now it's a minor problem but again, as I said as more acreage is developed it's going to be a bigger problem for the homeowners and the loss of vegetation and everything else.

The second issue is -- and I'm surprised these haven't been brought up but there is a coyote population growing in our area. And again, as more land is developed those coyote are going to be forced into the

neighborhoods. A coyote bite is a lot more severe than a Salamander bite. A coyote attack on a child or a pet is a lot more severe than a Box Turtle. So please consider that.

The other issues are concern with my specific instance of having had well problems when the blasting occurred on Barley Hill. All of -- myself and all of our neighbors have wells and this area, this site, is probably the source of our groundwater. It's an aquifer that we all draw on. And what assurances -- if this development and proposal is passed, what assurances will we as local homeowners have that if we have problems with our wells due to blasting, due to pollution, that we will be reimbursed by the developer of this development for our expenses that we incur?

So please consider those things when you're making your decision about the development. Thank you.

CHAIRMAN McINTYRE: Yes sir.

MR. ROBERT HERNANDEZ: I trust I'm the last one. I'm Rob Hernandez, 46 Deep River Road, Centerbrook. Just I want to make two quick comments. I grew up here, I've just returned here after 35 years away. I spent my early career in this area not only growing up but being deeply involved in the early environmental movement, particular the early studies on Ospreys and DDT, and worked very closely with Roger Tory Peterson and others in this regard.

One of the reasons that I came back here was that the Connecticut River Valley, the southern Connecticut River Valley, Connecticut, Essex, Centerbrook, Westbrook, Saybrook, Old Lyme, Lyme, are still exquisite places, places that have changed relatively little over the last 40 years. And I know that as a Planning Commission there are a lot of extremely detailed, legal, biological, ecological, economic resources issues that you have to contend with. And in fact since I'm a newcomer to these hearings and to this issue, I've been very impressed tonight to hear all of the comments and the thought and deliberations that have taken place clearly over the years on this issue alone.

But I think one of the things I would implore you from a biological basis, from my biological background which I was involved with over the last 35 years as well as a career, is that there is going to be an impact. These impacts can be measured by one vernal pool or another vernal pool that could certainly be mitigated. There's going to be nitrogen, there's going to be abilities, technological abilities to mitigate the nitrogen outflows from sewer systems, all of that. But the fact is that you have a prize in the middle of your Town and this prize will not be here forever.

And it's one of the things that draws us all to Old Saybrook and Essex and Westbrook and it's going to be gone. It's going to be parceled out. It's going to be gone in bits and pieces. It's going to be gone in pod one, in pod two and pod three. It will maybe be phased later. And what about 50 years from now when there's more pressure from the developers who want to do in-fills between the pods? The reality is we all have a treasure here and it's up to you as a Planning Commission to understand the longer term implications not just of the law and of the environment and of the science that goes behind it, but what do we leave for ourselves and for the Towns that attract us.

And this is a Town and this is an area that we can take a stand and we can say, this is what makes the lower Connecticut River Valley special. And I hope in your deliberations you consider that larger picture, not the legal picture, not the environmental science picture, not the development technology picture, but what do we want for our region and what do we want for our environment. Thank you.

CHAIRMAN McINTYRE: Thank you. Okay, at this time I'm going to close the public portion of the public hearing and we're going to want to open up the questions to the applicant. So does anybody want -- why don't we start at the end of the table, Bob do you have anything or?

MR. BOB MISSEL: Not at this moment, no.

MS. CATHY FLANAGAN: I don't have anything at this moment.

MR. DON RANAUDO: Nothing at this moment, thank you.

MS. JANIS ESTY: Nothing.

CHAIRMAN McINTYRE: Okay well just remember, this is it. This is your last chance to say I'm going to ask some questions. So if anybody else comes up with something, you need to ask the questions.

My first question is for Mr. Klemens -- I mean, excuse me, Mr. Klein -- oh it is Klemens, I get you guys mixed up all the time.

MR. KLEIN: Everyone does, we look so much alike.

CHAIRMAN McINTYRE: Dr. Klemens, you don't have to get up you can stay down.

MR. KLEIN: Oh, it is Klemens.

MR. BRANSE: No, he needs to get to the mike.

CHAIRMAN McINTYRE: Okay, like I said it's late. Earlier you mentioned about the 28 percent, you know, where it could -- you know, the vernal pools how they -- you know, that's just a number and that sometimes they go this way or they'll go that way. You know, the population species, they may come and they go.

Is there ever a time that you've found when you've had a vernal pool and there's been activity around it, activity in the vernal pool has increased or is that not technically possible?

MR. KLEMENS: Activity meaning reproductive --

CHAIRMAN McINTYRE: Reproductive -- you know, the vernal pool became more productive than it previously was.

MR. KLEMENS: No, I don't -- can't specifically give you an instance of that. I think generally the accepted thought is that with increased loss of a forest the pool -- some pools remain stable, some are diminished. Certainly there may be some spikes in Wood Frog fluctuations but no one has studied -- has actually looked at that question.

But I think it's assumed that the less forest habitat -- and there's negative data. We have lots and lots of pool sets. We can go around Connecticut see what was there, see where it's been developed and see what's gone. So it's sort of you back into it. The question you asked -- there is a study that's being undertaken by a cause, which is the Professional Society of Wetland Biologists and Soil Scientists, which is actually trying to follow vernal pools after approvals.

But I would think that -- I don't think the development around vernal pools is good for vernal pools. I think development around vernal pools in the 750 foot area needs to be controlled. And part of this whole development, because if I was to sort of try to say what is other thresholds, the most precautionary threshold being 25 percent in the zone 100 to 750 feet, that if you go between 25 and 50 percent some pools appear to survive or go into a slow decline.

So that sort of -- I don't know if that answered your question or not, but.

CHAIRMAN McINTYRE: Yes, it did.

MR. KLEMENS: Yeah, okay.

CHAIRMAN McINTYRE: Yeah, thank you.

MR. KLEMENS: Sure.

CHAIRMAN McINTYRE: Attorney Rothenberger mentioned how the Wetlands denied certain things and there's been some -- I believe Attorney Branse, that once -- if this preliminary approval is given when the full application comes before our Commission the Wetlands Commission will again have to address a full scale project just as they did before?

MR. BRANSE: Absolutely, yes.

CHAIRMAN McINTYRE: Yes, so --

MR. BRANSE: However, Attorney Rothenberger is correct that their intervention allows them to raise a broad range of environmental issues that aren't limited to just the Wetlands' jurisdictional area. And that's the evidence that they've sought to produce, is that -- I mean, their contention is that aspects of this proposal are reasonably likely to unreasonably impact the air, water and natural resources of the state.

And they're not limited to just wetlands or just the Wetlands' jurisdiction in making that case. And I'm not saying they made it, but they're allowed to do that.

CHAIRMAN McINTYRE: Okay, thank you. Anybody come up with some other questions, or?

MS. CATHY FLANAGAN: I have a question, just clarification on the amended conditions. Is this thing that the --

CHAIRMAN McINTYRE: Who are you addressing your questions to?

MS. FLANAGAN: -- oh, to Attorney Royston.

CHAIRMAN McINTYRE: Okay.

MS. FLANAGAN: Is thing that the applicant is agreeing to, road improvements, providing for secondary access or egress to these homes?

MR. ROYSTON: No. I don't think you'll find that in the proposed amendments. I think you may want to take a look at our response in the document, the Third Supplement to Responses, where we have said that because this is considered to be a phased development as we had originally requested that we were withdrawing that request for any standalone development between any development.

Under the plan even as modified would require the three access points and our position is if that's the case, which it is, then the issue of providing a secondary access to Ingham Hill Road, an emergency access, is moot because it depended upon there being some development without there being the three access points.

MS. FLANAGAN: So the answer is no.

MR. ROYSTON: That is correct --

MS. FLANAGAN: Okay.

MR. ROYSTON: -- because it's moot.

MR. BRANSE: I'm sorry Mr. Chairman, I just -- I want to be sure that the questioner and the answerer are speaking the language. If the question involves an emergency access, alright, Mr. Royston is saying no, this doesn't include that because the original approval involved three full road access points and so will this proposal, right?

MS. FLANAGAN: Okay.

MR. BRANSE: Okay.

MR. ROYSTON: Thank you.

MR. BRANSE: Okay, and interconnections between.

MR. ROYSTON: Thank you, that is correct.

MS. FLANAGAN: Okay, thank you.

CHAIRMAN McINTYRE: Janis.

MS. JANIS ESTY: Now I'm confused only because it's late. There's going to be no emergency access because we are now going to have three thru roads?

MR. ROYSTON: We are not proposing as part of this application any emergency access. And if I can explain, that at the time the suggestion was made that the applicant consider and look at providing an emergency access to Ingham Hill Road, that was at the time that the applicant was still seeking an independent separate "phased" development which would have allowed Ingham Hill Road to be developed without developing the thru road off Ingham Hill Road.

And it was at that time, before we withdrew it, that the thought of this secondary emergency access came up. And it was in response to that inquiry on behalf of the applicant that I provided information to the Commission that there was available over Town property in Old Woods Road would provide an emergency access. Had I known that we would be at a point where we were going to withdraw those requests, I wouldn't have provided that information because it was moot.

So again, that was only in the context of a "phased" development of the property. See, they got me to say phased development.

CHAIRMAN McINTYRE: Anything else?

MS. ESTY: Yes, I have a couple.

CHAIRMAN McINTYRE: Fire away.

MS. ESTY: The ball fields, the athletic fields, whatever they are, I noticed there's such a big difference in the gradient. That's going to be a huge amount of fill that's going to be either put in or removed at some point to make that level. I can't see how that isn't going to affect or is it going to affect, let me phrase it a different way, all the vernal pools in the area with all that blasting and all that removal of earth.

MR. ROYSTON: Fair question, and I'm not going to answer it. I'm going to ask Bob Doane to answer it in terms of the grade and also what was done because of the question of proximity of that activity to wetlands.

MR. DOANE: If you look at -- Bob Doane for the record. If you look at RS-3 where we show the athletic fields we have the soccer field, the basketball field and the two baseball fields are in the same location. What we've done with the all purpose field is we have moved that outside of the 750 radius from, I don't know the pool number, but it shows up on the overall map -- oh, I might be able to see it here.

I don't have the numbers on the -- I'm sorry, yeah, vernal pool 10 and 11.

CHAIRMAN McINTYRE: And you're referencing what document?

MR. DOANE: I'm on D-2 now. You can see the outline of the all purpose field is more than 750 feet away from vernal pool 10 and 11. Now, there will be some blasting that occurs, some shallow blasting to accommodate the parking areas and the grading of the lots. And as that material is moved down to grade the all purpose field, there will be an embankment that will slope towards the wetland area but that embankment will be a two to one slope and will be stabilized with plantings, grass, trees and it will eventually be back to a wooded vegetated slope.

So I'm confident that the grading that I presented, even though there are -- you know, we're trying to flatten out a 300 by 100 foot area and as we do that we have to -- we try to balance the cuts and fills as we come down off the hillside terracing for the parking, for the fields and then putting our steeper slopes on the perimeter, which would be a two to one slope which are slopes that can be stabilized without sediment running off the site, etc.

The blasting that occurs is relatively shallow in the 10 or 15 foot range at the maximum depths and this should not affect the wetlands that are almost -- well, the vernal pools that are 750 feet away.

MR. KLEIN: I just wanted to address that question slightly. Michael Klein. My office provided the calculations for Dr. Klemens to look at so I wanted to explain that we did the calculations for vernal pools 10 and 11. They met the highest conservation criteria, the optimal conservation criteria, with the field located where it was last time before Bob slid it to the south.

We -- so that it met the criteria the way it was, but it still required some activity within the critical terrestrial habitat that could be avoided. And so I called Bob and I said can you move it? And he said I'll take a look at it and see if we can, and he did. So the upshot is that it does meet the criteria for preservation of the critical terrestrial habitat for those two vernal pools. It's outside of the habitat zone for all the other vernal pools and it in fact meets it by a very wide margin.

I would just point out also to the Commission that there was a -- the area to the south and west of Ingham Hill Road where it makes one of the right angle turns in this Ingham Hill Road pod that we're talking about had been earmarked for development of recreational fields for some time. So the changes are not as dramatic as they might seem because there was grading and parking for recreational fields proposed in this area.

MS. ESTY: Do you have any idea where all that earth is going to come from?

MR. KLEIN: I'm sorry?

MS. ESTY: Well not necessarily you, but where all the earth is going to come from to level those fields. That is a huge amount of -- that's just a huge area.

MR. DOANE: Well yes, and as --

MS. ESTY: It's going to come from the site itself or --

MR. DOANE: -- as Michael Klein stated we have the same amount of fields that were proposed before. And so it's the same area of disturbance. As far as the vertical amount of disturbance, I think that the material that will be required for the lower field if you will, will be coming in the cuts that we make into the embankment above the fields,

okay.

So there will be material pushed down the hill to form the field.

CHAIRMAN McINTYRE: Is there any offsite material going to be brought in?

MR. DOANE: There may have to -- you know, I'm working on a 100 scale with 10 foot contours and once we fine tune the grading I can take the fields up and down and try to make it as balanced as possible. But just the -- you know, we are rough grading -- we're committing to rough grading the field.

Now if it's rock that we're dealing with yes, we'll have to bring in materials to get some material grass can grow on or that can be stabilized with vegetation. So there may have to be some material brought in, yes, but the bulk of the material is on the site and will be graded out.

MS. ESTY: And I have one other conceptual -- not conceptual, it's just a -- Attorney Branse might want to stop me if I'm going down the wrong path.

CHAIRMAN McINTYRE: He will.

MS. ESTY: But when I look at this overall picture I have a little difficulty trying to figure out when a modification becomes so intrinsically different that it's really a new application? And with all the things that are not going to be done or put off or delayed or put off in the future, if the future happens, it's almost like it's a new application and not a modification.

And when I reread some of this material I was particularly concerned about the ticking clause that we may be folding ourselves in on something that is going to limit our ability in the future to monitor what happens.

MR. BRANSE: Let me just -- for the record Mark Branse. The -- we treated this at the outset as a new application holding a public hearing. But the law says that if a modification is significant you must hold a public hearing and treat it as -- procedurally as a new proposal and that's what we did and the applicant has never claimed otherwise.

So it's not a new application in the sense that you start from zero, but we procedurally, which means holding a public hearing and the reviews and so on, we've accorded it all the procedural safeguards that you would use for a new application.

MS. ESTY: Okay, I'm done.

MR. RANAUDO: I'm sorry Bob, just a quick question I guess through Attorney Royston. There was a lot of talk tonight by members concerning this ledge property and a lot of blasting. How would they go about protecting these people or how are these people protected in the neighborhood surrounding? Is there some kind of monitoring? I'm curious about that because their wells or their foundations.

MR. ROYSTON: It is my understanding that if there is going to be blasting, that there is a requirement that the blasting contractor, A, have insurance, and also that they basically have a survey of the area which has the potential impact on the blasting.

In other words -- and this is a rough understanding but that if the blasting is going to be of such a velocity that the impact potentially is within 200 feet, then they have to be prepared to review those homes, structures within that area and be insured for any damage that may occur.

MR. RANUADO: And that would also include their well if they were to lose -- tap into another line or --

MR. ROYSTON: Correct, damage related to that.

MR. RANAUDO: Okay.

MR. ROYSTON: One of the -- I think one of the significant aspects of the entire application is that the area of significant potential blasting potentially is on the upper limits of Ingham Hill Road, and we have proposed as an alternative something that would avoid certainly the blasting of that curve.

But once you get past that curve, you are basically not within the range of homes. And similarly to the issue with respect to the ball fields, as Bob said there may be blasting that would have to occur there. They would have to be insured and it's clear what residences would be within that range. So there would be recourse if that occurred.

MR. RANUADO: Thank you.

MR. BRANSE: Mr. Chairman, could I just add something? For the record Mark Branse. I've also dealt with blasting quite a bit and a couple of things you should know. Blasting involves what's called strict liability. What it means is that if there is damage the blaster is liable, there are no defenses. Blasting insurance is therefore very, very expensive. All blasters have to be licensed, all blasting is performed under the personal supervision of the Fire Marshal.

And the review that Mr. Royston referred to is called the pre-blast survey. And what they actually have to do is go to each house in the perimeter that the Fire Marshal specifies. The blaster doesn't get to pick, the Fire Marshal picks. And they actually do like a -- not survey, what's the word, they inspect these houses and they actually photograph and record any cracks in the foundation, existing cracks in the foundation or in the chimney or things like that.

And if after blasting those cracks are larger or there are more of them, they have strict liability for that. So it's a very heavily regulated line of work, more so than most people realize.

CHAIRMAN McINTYRE: Thank you. My question is for Jeff Jacobson. Jeff, has the applicant addressed all your concerns?

MR. JACOBSON: For the record, Jeff Jacobson. I'm in the process of reviewing those Bob, but what I found so far is yes, they have addressed the ones that I've looked at so far.

CHAIRMAN McINTYRE: And if during this period even after we close the public hearing adjustments still can be made based on your recommendations?

MR. JACOBSON: I'll have to -- yeah, I'll have to continue going through it but I can say, again, what I've looked at within the last day they've addressed a lot of my concerns. Whether it's all of them or not, you know, I'll have to finish going through it but they have addressed a lot.

CHAIRMAN McINTYRE: Thank you. And the same question for you Bruce, has the applicant addressed most of your concerns?

MR. BRUCE HILLSON: Withdrawal of the pods being separate developments, yes.

CHAIRMAN McINTYRE: Whatever concerns you had in your letters and everything, you feel they've addressed everything appropriately?

MR. HILLSON: Yes, they have.

CHAIRMAN McINTYRE: Thank you. I have no other questions. Does anybody have any other questions? Attorney Royston, you have the floor.

MR. ROYSTON: How much time you going to give me?

CHAIRMAN McINTYRE: As long as you need.

MR. ROYSTON: That's a bad opening. First of all just one final thing concerning Commissioner Esty's comment about with the changes and things being deferred. You mentioned things being deferred. Based upon our withdrawal of any request for "phase" development of this property, I think that concern should be allayed. I don't think that should be of concern.

The comment is appropriate though I think in looking at it, what does this modification do to the overall plan.

And what happens now really is one of the things is that where there were 28 single family lots in that entire area over on the west is being converted to 11 maximum, maximum of 11 dwellings on less land, a lot more open space. And that's all good. And the tradeoff in a sense, that reduction is that we're asking to do now 11 lots on Ingham Hill Road. Yes, that is land that was not to be developed under the previous plan but it was being developed for the athletic fields. That has been modified in a way which I think is to the good.

And that means okay, we do have 11 units in the overall plan, 11 units -- 11 dwellings, single-family dwellings on Ingham Hill Road. That's 11 out of the 221 that's approved. In other words it actually now is down to 215, but it's 11 of the total.

And I think if you take a look at that aspect of it that also is a -- personally, I think it is a good thing. And if you're looking at the overall plan, and there's a lot of opposition to the overall plan and I'm not saying there isn't. If you're looking at the overall plan to have 11 units on Ingham Hill Road as you go in, less units on the interior, they're on well and sewer. It reduces the impact of that tertiary sewage disposal system.

Take Bokum Road, and that's being added. It wasn't looked at before other than as multi-family. Again, it would have meant a lot more units, the system would be larger. So I think particularly now that we have withdrawn our application for phased development, and I won't put quotes around it this time, but phased development has been interpreted this is the modification to the single overall plan -- single overall plan and I think it looks to be looked in that way. And the changes in a way if you look at it as part of the overall plan are not significant in the total concept.

And also I think are certainly a benefit on Bokum Road and certainly a benefit on the area to the PRD west, which I think Connecticut Fund for the Environment, even though they might not agree with my characterization, I think if you take a look at their letter they seem to indicate that. So I'm going to really conclude our presentation and our summary very much on the note of take a look, I think, at Attorney Rothenberger's letter. And if you take a look at that I think as he asked me, are you saying that you are not pursuing a phased development? The answer yes, we are not pursuing a phased development.

I think that's clear, the definition of phased is in our latest materials, our supplement materials. So I think we have allayed their concern and now we're focused, I think, very much on Ingham Hill and I submit to you if you take a look at Ingham Hill based upon the testimony that has been provided to you, that this -- that the effect on Ingham Hill particularly on the environmental aspects of it is -- has been minimized so that it is no worse. And you say well, okay you're saying it's no worse.

I think Dr. Klemens expressed it well. He said I don't care what you say, I think it would be better if you didn't blast through Ingham Hill Road from his environmental perspective. And the answer is yes, but that's part of the plan.

Take a look at what we're doing even on Ingham Hill Road as part of the overall plan and I think the implications are minor. I think we have dotted every "I" and crossed every "T" when you ask about the ball fields and really think about it because that's a product of the environmental people taking a look whether moving a ball field, moving that ball field -- what affect would that have? That would have the effect of minimizing a potential, a potential affect upon vernal pools.

So the applicant has really done that, and I think the Commission should have a considerable comfort level in granting this application because it is better, it is overall better as a modifying special exception given what we've

agreed to put into the conditions. And so I would ask you to take a look at the materials that we have provided to you. And I know because once you get a good night's sleep you'll be in a lot better position to do that. I just ask that you do and I appreciate all that the Commission has done. Thank you.

CHAIRMAN McINTYRE: Okay, anyone else have any other questions after that? You're all set. Just one procedural thing, Commissioner Flanagan has only been seated for -- you and Sal, you're now a voting member.

You've been seated so you're now a voting member when Sal left.

Okay, what we need to do now is we need to get a motion to close the public hearing.

MR. RANAUDO: I'll make that motion.

MS. ESTY: Second.

CHAIRMAN McINTYRE: Motion's been made to close the public hearing and it's been seconded. Is there any discussion? Hearing none, all in favor?

VOICES: Aye.

CHAIRMAN McINTYRE: Opposed? All in favor, okay.
(Whereupon, the hearing was concluded at 1:00 a.m.)

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