



**A History & Timeline of the 1,000-Acre Forest
in Old Saybrook, Essex, and Westbrook
*by the Alliance for Sound area Planning (ASaP)***



Alliance for Sound area Planning (ASaP)
History/White Paper
Last 1,000-acre Coastal Forest along Connecticut's Coast
Background 1998 – 2011

Overview of the Property

The 1,000 acres of land that make-up “The Preserve” is the last and largest coastal forest and wetland complex (within such close proximity to Long Island Sound) remaining in Connecticut. See picture on bottom half of the cover page by Robert Lorenz of Old Saybrook.

This 1,000-acre forest is truly a unique and unusual coastal gem that, if protected, would be a tremendous value to the region and State.

The property lies within a 2500 acre block of **intact coastal forest that is highly unusual and unique to the State. It is unusual and unique due to the size, maturity, health and diversity of the biological system that is overall part of a complex, integrated landscape, and is home to Grade A waters and headwaters of the Oyster River that flows into Long Island Sound as well as numerous tributaries that feed the Mud and Trout Brook rivers that flow into the Connecticut River and LIS respectively.**

This piece of land sits atop of Old Saybrook, Westbrook and Essex. There are approx 38 vernal pools within the forest system, one of which is THE most productive vernal pool ever seen by Lehman's hired consultant, renowned herpetologist, Michael Klemens. Numerous freshwater seeps have been identified, which are home to several amphibian species, including the northern dusky salamander that is in decline, as well as spotted and box turtles. Bobcats and fisher cats have also been seen on the property. The dense canopy of forest and the Pequot Swamp act as a refueling stop for many migratory birds according to, among others, the CT Audubon and Audubon Society. This forest has been categorized as the largest coastal forest of this size remaining from New York to Boston. The DEP completed a biodiversity inventory of the 1000-acre forest in the late 1990's and ranked it above a 95% rating.

In short, the 1,000-acre coastal forest is an enormous local, regional, and statewide resource.

This site is ecologically important to the State as noted on pages 46-47 of the Environmental Review Team Report on the property in 2001, “As suburban sprawl continues to fragment Connecticut's forests, significantly large properties (500-1000 acres) like the Preserve, which are vital to preserve diverse and abundant wildlife populations, are becoming scarce. A diverse assemblage of wildlife is expected to occupy the property . . . that requires large tracts of continuous forest . . . (e.g. fisher and bobcat) . . . the property contains a diverse, high quality system of wetlands and watercourses. Some of the amphibians identified during the survey, such as the spotted salamander, marbled salamander and wood frog . . . generally only persist in unfragmented habitats.”

The need to protect this state resource has been professed by an unprecedented group of local and state leaders. Protection of this property is now supported by (among others) US Senator Blumenthal and Congressman Courtney, the state Attorney General's office, the State Department of Energy and Environmental Protection, selectmen from Old Saybrook, Essex and Westbrook, state legislative leaders, Connecticut Fund for the Environment, Trust for Public Land, The Nature Conservancy, Rivers Alliance, The Sierra Club and National and Connecticut Audubon.

Timeline of proposals/offers etc.

August 1998 – October 1998

The first attempt at developing the 1,000-acre forest came from a resident from North Carolina, Tim Taylor. Mr. Taylor originally had an option to buy and then bought the land for \$6.6 million from the Lyon Family, then owners of what was at the time approx 960-acres. The majority of the mortgage was held by Lehman Brothers, with the Lyon family still holding a small part. A meeting was held between DEP and The Nature Conservancy and a couple local residents in an attempt to connect with Mr. Taylor to discuss a purchase to protect the forest. There was no interest on Mr. Taylor's part.

1999 – May 2001

Mr. Taylor began presenting applications simultaneously in Old Saybrook, Westbrook and Essex for a 308 unit residential and golf course development (dubbed the “Preserve”); the proposal was met with immense opposition in all three towns.

Residents from the towns mobilized and worked with contracted experts to fight the development. Essex denied 2 out of 2 of Tim Taylor’s Wetland applications and 1 out of 2 Planning applications; Westbrook Inland Wetland’s denied the only application that came before the town relative to the Preserve. Old Saybrook Inland Wetlands and Watercourses Commission approved Mr. Taylor’s phase 1 application with approximately 40 contingencies, and a demand of a \$300,000 bond for potential harm and/or contamination to neighboring wells or groundwater supply that could result from the development.

February 2001

The DEP contacted Mr. Taylor to discuss a possible purchase. After Mr. Taylor indicated he would consider the possibility of a sale, the Nature Conservancy commissioned an appraisal of the property.

May 2001

DEP made Mr. Taylor an offer to purchase the property. The offer was based upon the appraisal and by this time Mr. Taylor owed more to his financial backers and hired contractors than the independent appraisal indicated as the property’s market value.

July 2001

TNC and DEP asked Lehman for a meeting between their parties and Mr. Taylor (and offered to travel to New York for the meeting). This was another attempt to reach a settlement agreement. Lehman Brothers responded to this offer on August 2001, stating “we are pursuing our rights and remedies under the loan documents. At this time we are not involved in settlement discussions with the borrower”; thus they were an unwilling seller.

February 2002

In February 2002, Lehman Brothers Holdings, Inc. filed a Certificate of Foreclosure in the Superior Court. Per the foreclosure record Lehman Bros. foreclosed two loans to Taylor totaling \$7,850,000 (Hard Cost).

April 3, 2002

An appraisal prepared for Lehman Brothers Holdings, Inc. estimated the market value of the property at \$6,000,000 with considerations for raw unimproved land with no permits and questionable access. The DEP made an offer to Lehman Brothers, Inc. to purchase the property for \$6,000,000.

May 2002

The DEP commissioned a second appraisal of the property by a national firm. This appraisal received by the DEP on May 15, 2002, estimated the market value of the property at \$4,350,000. On May 16, 2002 the DEP wrote to Lehman Brothers Holdings, Inc. and submitted a revised offer to purchase the property for \$4,350,000 (per the appraised value at the time). On May 28, 2002, Lehman Brothers Holdings, Inc. responded to the offer saying the property is not for sale.

Summer 2002 - March 2003

Lehman Brothers Holdings, Inc. through River Sound Development and Bob Landino, project engineer, began discussions with Old Saybrook town staff and Planning Commission on creating a “Conservation District” to allow for a zone change in NW Old Saybrook to allow for a Planned Residential Development that would allow clustering of homes and require an open space set-aside. Though the new proposal was presented to be a more environmentally conscious development, ultimately the new proposal allowed the developer to get the most number of units possible onto the site by clustering. Many experts agreed, using existing topography maps, at least (and possibly more than) 50% of the land was unsuitable for development due to the amount of steep slopes, rock outcrops, rocky ridgelines, streams and wetlands. Such natural resource features would not be able to handle the development or waste water.

March 2003

River Sound Development files request/petition for zone change to allow for Planned Residential Development in NW Old Saybrook.

April 2003 – August 2003

Old Saybrook Zoning Commission public hearing regarding the request for zone change extends through the summer.

A “loose” group of residents (that would organize in January 2004) from the three town area enlist the help of CT Fund for the Environment (CFE) to assist in presenting the complex environmental issues including fragmentation of the last forest and wetland complex of its size within such close proximity to Long Island Sound, and threats to the Class A water (the purest classification in the state) in both quality and quantity. Water quality and quantity were concerns for both private and public water users, as the majority of area wells are fed from the aquifers located on the Preserve property. A primary source and the primary source of their water (per the Water Company) is Holbrook well which is fed from Pequot Swamp, another invaluable water source on the Preserve’s property.

Every hearing is packed and all testimony is against the petition; no one but the applicant testifies in favor.

August 29, 2003

Attorney General Richard Blumenthal issue statements through a CFE Press Release: **"The state has an interest in this land because it is last large contiguous forest and wetland complex between the Connecticut River and New York City,"** Blumenthal said, adding that if the town approves the zoning change, his office would scrutinize any future applications for the several state permit applications that would be required for this project. **"I support the hundreds of Old Saybrook residents who have come out in support of preserving the character of their town, and this land that once it is lost, cannot be recovered," he said.**

September 15, 2003

Old Saybrook Zoning Commission approves petition and grants (River Sound Development) request for a zone change in NW Old Saybrook despite the opposition from residents.

January 2004

The Alliance for Sound area Planning (ASaP) forms/

ASaP is a broad-based, grassroots coalition that was created by concerned citizens from the towns of Old Saybrook, Westbrook and Essex and beyond in order to: (1) provide residents and land use decision makers with educational and informational resources; (2) and to promote fiscally, socially and environmentally sound land use decisions on the proposed development called “The Preserve”, with the ultimate goal of preservation of “The Preserve”.

The residents from the three towns joined together as a group to have one voice in the three communities and to the State.

February 18, 2004

ASaP and CFE hold a forum on “The Preserve”. Attorney General Richard Blumenthal and local State Senators and Representatives attend, speaking in favor of preserving the integrity of the forest land. Connecticut Audubon presents a slide show with maps that show the large 1,000 acre forest as it relates and connects to tracts that extend from South to North in Connecticut (noting “The Preserve” property is the last forest wetland complex of its size, so close to Long Island Sound, making it an imperative lifesaving stopover for birds who rely on dense forest).

February 20, 2004

Pursuant to New Haven Register article, DEP Land Acquisition Office publicly states they are presently getting new appraisals of the property in order to make an offer to Lehman Brothers.

May 2004

A decision on an appeal against the Old Saybrook Inland Wetlands May 2000 decision to approve the proposed golf course on “The Preserve” was heard in Middletown Superior Court in February. In May, the Court ruled against the

OS Inland Wetlands Commission because the Commission had a provision in their original approval of having the developer post a \$300,000 bond for any contamination of area neighborhood wells and/ or groundwater supplies. The Court ruled that the Commission was not legally allowed to ask for such a bond for future remediation that may be needed as a result of contamination from pesticides, herbicides, and other chemicals that would be used on the golf course. Wetlands Commissions are supposed to protect wetlands and watercourses from contamination or degradation, not gather money for anticipated remediation.

June 10, 2004

The OS abutter who won the appeal received notice that the developer River Sound Development and the OS Inland Wetlands Commission will be appealing the ruling.

Fall/Winter 2004/5

Planning Commission hearings begin and River Sound presents the proposal and seeks approval to submit an open space subdivision plan (rather than conventional plan) for 248-unit residential and private 18-hole golf course development. Sixty (60) to 120 residents turnout each night over several nights of hearings and all but 1 speak against proposal.

Fall/Winter 2004

Towns of Essex and Westbrook Board of Selectmen respectively meet to pass a resolution against the current Preserve proposal and forwarded resolution for the record of the OS Planning Commission public hearings.

March 2005

Lehman /River Sound received a heavily conditioned approval (their only approval to date) from OS Planning Commission to allow the developers to submit a proposal as an open space subdivision rather than conventional plan. This decision is seen by many as a very preliminary approval, only giving the developers a concept plan with which they would need to come back and present a detailed open space subdivision proposal. At this point, the developer can only come back to the Planning Commission if they receive an approval by OS Inland Wetlands.

October 2005

OS Inland Wetlands Commission Hearings begin on Lehman/ River Sound application. Hearings are met by heavy residential opposition with help from Connecticut Fund for the Environment who, with the help of ASaP hires experts to review and testify against the proposal of developing the 1,000 acre forest.

November 2005

Essex First Selectmen and Board of Finance vote to hold town meeting seeking to hire an attorney to represent Essex at OS hearings. Residents vote overwhelmingly for representation. Town hires Attorney Matt Ranelli of Shipman and Goodwin.

January 25, 2006

Westbrook Conservation Commission weighs in on Preserve proposal. The Commission considered the potential impact of "The Preserve" project to Westbrook's water resources and the health and safety of Westbrook residents. Subsequently the Commission voted unanimously to support the recommendation of Codespoti & Associates, P.C. that an application to the Westbrook Inland Wetlands and Watercourses Commission should be required of River Sound Development, LLC. the applicant for "The Preserve", and to recommend that the Westbrook Inland Wetlands and Watercourses Commission pursue the application vigorously.

January 26 2006

OS Wetlands Commission Hearing Closes

New Haven Register 1/28/06 – "State Attorney General Richard Blumenthal made a second appearance before the commission to reiterate his objection to the project on behalf of the state. **The forest, located in the north end of town, "is a precious, unique and valuable environmental resource of statewide importance," Blumenthal said. "It is the heart of Long Island Sound's last large coastal forest, untouched and pristine." He suggested that there are "prudent and feasible alternatives" to the plan. He said he hoped the commission would consider "the profound importance the area is to the state" while making its "historic decision".** On

Jan. 12, several state legislators and town officials joined Blumenthal and hundreds of residents in voicing opposition to the plan. On Thursday, more than 200 people attended the hearing, at times cheering those who spoke against the proposal.

By close of the hearing, hundreds of residents came out to hearings, 65 (+/-) residents submitted testimony opposed, 500 (+/-) signed petition against, and over 250 mailed in postcards opposed to the development proposal, not to mention many who rose to speak against the proposal without submitting. Two pieces of testimony were submitted for the proposal. The Attorney General, local selectmen, nearly all of the region's state legislators came out against the project and more importantly spoke in favor of protecting this massive state resource.

February 14, 2006

DEP Denies Lehman/ River Sound request for access over CT Valley Railroad State Park

February – March 2006

OS Inland Wetlands holds weekly and sometimes nightly commission meetings to deliberate.

March 17, 2006

Fifty (50) residents attend public hearing at state capitol in support of \$8 Million bond proposal for purchase of 1,000-acre forest. They are joined by Attorney General Blumenthal, then DEP deputy Commissioner David Leff, First and Second OS Selectmen Pace and Peace and Essex First Selectman Phil Miller.

March 18, 2006

OS Inland Wetlands Commission denies Lehman/ River Sound wetlands application. As the Hartford Courant reported “The commission voted 4-3 to reject a plan by River Sound Development, a subsidiary of the Wall Street brokerage house Lehman Brothers, to create a country club community on a 1,000-acre parcel of woods and wetlands in Old Saybrook, Westbrook and Essex. “That piece of property had too many tough issues to get around,” said commission member Kevin Zawoy after the vote. “They wanted to blast right next to the wetlands. Our experts told us there was no way that erosion and sedimentation from all that blasting would not adversely impact our fragile areas.”

May 6, 2006

ASaP issues press release that headlines “1,000 Friends for 1,000 Acres”. In just over one week the group received their goal of 1,000 signatures (1352) to a sign-on letter calling on state leaders to provide full funding for the entire 1,000-acre “Preserve”, calling it the last unfragmented forest of its size along Connecticut's coast.

Spring 2007

DEP has an appraisal done on the property (prior to the economic and housing markets “crash”); Sam Stern (then River Sound Agent, said the appraisal came in at \$9.1 million, though no official offer was ever made because of the gap in value determinations. Mr. Stern claimed value of the property was upwards of \$33 million, but never offered an appraisal or any documentation to support this inflated valuation.

Spring 2007 – May 2008

ASaP hires a mediator to act as a liaison between all parties who would help get a negotiation going. TR Roosevelt, IV (a Lehman Brothers board member) was contacted and asked to assist in putting together a meeting to discuss protection of the property. A discussion between all stakeholders began though Lehman was still stating no interest in selling as their hope was to get the highest value out of the property and that would be through development. Through their agent Sam Stern they were valuing the property at \$30 million plus.

May 2008

A meeting is held in New York with then U.S. Senator Dodd, Chairman of Banking. All parties were aware of the huge gap between the appraised price and the developer's thoughts on value. The meeting ends with Senator Dodd asking Lehman to get him numbers to justify the \$30 million number since the state and any non-profit entity who

might be involved in a purchase would need such information to support the use of public funds. Senator Dodd's office followed-up weeks later to no avail. Lehman remained silent, thereby continuing to be an unwilling seller.

September 2009

Lehman Brothers files for Bankruptcy and closes its doors. River Sound Development LLC, a wholly-owned subsidiary of Lehman (exact structure is unknown), holds "The Preserve" as its only asset.

Fall 2010

A new person is hired by River Sound (or bankruptcy trustee of Lehman) to act as agent for the property and bring forth a new proposal at a later public hearing. It is stated he was hired with the intention to get the highest value out of the asset.

November 2010

A proposal to develop three peripheral "pods" at each proposed access point is presented to the OS Planning Commission. The proposal again is met by unanimous opposition by OS residents. An online petition generated approximately 1,000 Old Saybrook signatures calling for the Commission to deny the application. Testimony, both submitted and verbal, was unanimously against the proposal. Residents cited very tangible concerns that the OS Planning Commission could use for a denial (e.g. lack of access, public safety issues, inconsistency with town Plan of Conservation & Development).

February 2011

After receiving concerns from the town's attorney and staff that the "three pod" application was wrought with complexities due to its phased approach, River Sound modifies their proposal and withdraws the part of the application in which they sought the three pods to be stand alone sites (thereby removing any chance of a quicker build opportunity). In doing so, River Sound could not proceed with the "pods" as three separate building sites, apart from the whole master site plan, as they had originally wished. Instead, they would now need to fold the pods back into the master plan, and come back to the Inland Wetlands Commission with an overhauled and updated plan to address the multitude of wetlands concerns cited in the Inland Wetlands denial of 2006.

March 2011

Before a standing-room only crowd, OS Planning Commission approves by a 3-2 vote the very watered down application as referenced above.

April 2011

The OS Planning Commission decision of March 2011 is appealed by an abutting property owner, Robert Lorenz.

November 2011

River Sound loses its motion to dismiss Mr. Lorenz's appeal, and the appeal is given permission to move forward. It is expected that a court date will be set for late spring of 2012.

Additional Challenges facing River Sound:

Among other things, a Water Diversion Permit by DEEP would be needed; such application involves a decision process that would take approximately 2-years.

Yale Farms Golf Course, the now defunct proposal in Northwest Connecticut with similar topographical and hydrological challenges faced similar challenges not to mention finally folding due to the collapse of private golf clubs. The developer/owner was quoted in Golf Digest as saying "In short, our economic model, which was dependent on membership sales, is no longer viable. (We realize that much was written about "housing" but in fact, housing was the tail not the dog.) Private clubs throughout the Northeast are under enormous stress. They are losing members, cutting dues, making deals to keep existing members which I would never have thought possible, even poaching each others' members. And still many will not survive. A new club dependent on high initiation fees is simply not a viable option today or in the foreseeable future. Over the past two months, we have engaged numerous golf experts and analyzed all of our options from a variety of different angles. Simply stated, none of them work. An investment of \$25 million can no longer be justified. As painful as it is to give up the fight (we came to quite enjoy

it) it is the only prudent course of action. Yale Farm, conceived as one of the finest courses in the country (and we have no doubt that it would have been) is no longer financially viable."

Legal and Environmental experts suggest the properties have reasonably similar water issues and have raised serious questions whether they could overcome the problems of diverting as much as 250,000 gallons of water per day for golf course irrigation (DEEP estimates such numbers involving 18-hole golf courses of this nature).

Westbrook Access off of Route 153:

The primary proposed access to the property exists off of state highway Route 153 (also known as Essex Road). River Sound owns a 2-4 acre residential lot that they purchased with the intent of gaining primary access to the development (per then agent Bob Landino over half of the access into development is expected to be handled at this point.)

Aside from the unanimous resolution by the Westbrook Board of Selectmen against the Preserve made in 2005, a Westbrook leader explained on record that a great challenge for the overall Preserve proposal is putting a road through the Route 153 property for access, because it is a *residential* lot. The town has interpreted language in its zoning regulations to confirm that a road is not a legal use of a residential lot; therefore putting a road through this lot will not only require final approval from the Planning Commission and Inland Wetlands, but first, the developer will have to either: (1) challenge the town's argument in court; (2) amend the zoning regulations; or (3) seek a zone change on the lot. *Residents along route 153 are very well organized and successfully opposed an application from Konover from October 2000 whereby Konover sought a zone change along Route 153 (just down the road from the proposed Preserve road entrance). Konover was met with huge opposition in Zoning where after several public hearings their application was immediately denied by the Planning Commission. Residents made reference throughout the hearings to "The Preserve" as yet another battle they will fight to protect their town's character.*

The Westbrook Inland Wetlands Commission denied the previous developer's (Tim Taylor) application based upon a lack of hydrologic information on the amount of drainage (anticipated to be significant) that would be draining into Westbrook's Trout Brook; it is anticipated the amount will be excessively large.

LEGAL BATTLES – Decided and Pending:

- The decision by the OS Planning Commission of March 2005 to approve the master plan with conditions will require major reconfiguration of the golf course as well as many other parts of the proposed development in order to satisfy the numerous citations made by the OS Inland Wetlands Commission in its denial of the master plan in 2006. The approval by the OS Planning Commission of the "three pod" modification in 2011, as mentioned earlier, is now under appeal and will be heard in court in 2012.
- River Sound appealed the denial from the OS Inland Wetlands Commission in its decision of March 2006 and lost. The Connecticut Fund for the Environment, the town of Essex, DEP, the Attorney General's Office and an abutter to the property were all in the action. In February 2008 the Middletown Superior Court Judge Aeriama ruled AGAINST the developer and upheld the Wetlands Commission decision to deny. The developer further appealed that decision and on July 10, 2010, the Appellate Court upheld the Superior Court decision.