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February 20, 2013

To: Senator Steve Cassano, Co-Chairman
Representative Jason Rojas, Co-Chairman, and
Members of the Planning and Development Committee

From: Kevin Solli, Connecticut Government Affairs Chairman,
International Council of Shopping Centers (ICSC)

Subject: Senate Bill No. 814 An Act Concerning Intervention in Permit Proceedings Pursuant to the
Environmental Protection Act of 1971

The International Council of Shopping Centers (ICSC) was founded in 1957 as a professional trade association for the shopping center industry. We have nearly 600 members in Connecticut and almost 60,000 members in about 90 countries. ICSC members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, engineers, architects, contractors, academics, students, and public officials. As a professional engineer working in the Shopping Center industry, I consider it a privilege to have designed and created some of the downtown centers and shopping malls that hundreds of thousands of people enjoy every day.

The Connecticut Environmental Protection Act of 1971 was created with the best intentions, to ensure that projects that could cause irreparable harm to the environment would not be allowed to move forward. **However, over the past forty years, extensive federal, state and local regulations have been established which now serve in that same function.** While people can point to examples of how 22a-19 has been used to stop "ill-advised" developments, there are countless examples of how 22a-19 has been used as a way to kill projects for competitive interests, and thwart economic development and investment in the state.

Throughout the state, local Inland Wetland and Planning and Zoning Commissions are empowered to review applications, hire peer review professionals, and require that applicants provide enough evidence to demonstrate that their projects will not cause adverse impact to the environment. **These elected commissioners work tirelessly on these projects, reviewing evidence, consulting with municipal engineers, attorneys and planners, and are relied upon to make informed decisions.** When an intervention petition is filed without any evidence to support the alleged impact to the environment, it undermines the process and principals that are imperative to local governance. **It is reasonable to require intervention petitions to be accompanied by evidence to support the claim of an environmental impact,** and the Supreme Court case Nizzardo vs. the STC made this law. Codifying existing case law is imperative, as there have been countless hours and several million dollars wasted due to frivolous claims, even after Nizzardo became law. These petitions cause delays, kill projects, and put Connecticut at a competitive disadvantage when compared to surrounding states that do not have similar statutes.

The ICSC, its members, and I support Senate Bill 814 and reform of 22a-19. To be clear I am not opposed to responsible interventions, or protecting the environment. As an engineer I feel I have a duty to protect the environment, and create places that are harmonious with the surrounding community. **I am opposed to the continued abuse of this statute, and allowing petitioners to use the "environment" as an excuse to stop economic development and investment in this great state.** The bill in its current form contains a number of items which were carried over from last year, and I've attached some suggested revisions to this testimony. State Statute 22a-19 must be reformed, and the time for that reform is now. Thank you for your consideration.

Proposed substitute language for SB 814

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1 (a)(1) In any administrative proceeding where a public hearing is required
2 or held, and in any judicial review thereof made available by law, the Attorney
3 General, any political subdivision of the state, any instrumentality or agency of
4 the state or of a political subdivision thereof, any person, partnership,
5 corporation, association, organization or other legal entity may intervene as a
6 party on the filing of a verified pleading demonstrating [asserting] that the
7 proceeding or action for judicial review involves conduct [which has, or which]
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust
10 in the air, water or other natural resources of the state.

11
12 (2) The verified pleading shall: (A) contain specific factual allegations
13 setting forth the environmental issue that the intervenor intends to raise, and (B)
14 state the material facts upon which the intervention is based in sufficient detail to
15 allow the reviewing authority to determine from the face of the petition whether
16 the intervention implicates an issue within the reviewing authority's jurisdiction.

17
18 (3) In administrative proceedings to which statutory deadlines apply, the
19 verified petition must be submitted within the requirements of the statutory
20 deadlines applicable to accepting evidence or testimony, giving the agency
21 involved adequate time to consider and rule on the petition. In court
22 proceedings, verified petitions must be submitted within the deadlines that
23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by
24 administrative agencies or courts if not filed within the applicable time frames
25 for such proceedings. Petitions rejected for untimely filing are not subject to
26 appeal.

27
28 (b) In any administrative, licensing or other proceeding, the agency
29 shall consider the alleged unreasonable pollution impairment or destruction of
30 the public trust in the air, water or other natural resources of the state and no
31 conduct shall be authorized or approved which does, or is reasonably likely to,
32 have such effect as long as, considering all relevant surrounding circumstances
33 and factors, there is a feasible and prudent alternative consistent with the
34 reasonable requirements of the public health, safety and welfare.

35
36 (c)(1) The decision of an administrative agency may be appealed to
37 Superior Court by intervenors whose petition to intervene in the underlying
38 matter was granted by the agency.

39
40 (2) In the case of an appeal to Superior Court from a decision of an
41 administrative agency, a party may intervene in that appeal under authority of
42 this section only if that party has successfully intervened in the administrative
43 proceeding from which the appeal is taken.