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March 14, 2007

To: Senator Eric Coleman, Co-Chairman
Representative Art Feltman, Co-Chairman
Members of the Planning and Development Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 7090, AAC Responsible Growth**

The HBA of Connecticut is a professional trade association with almost one thousand three hundred (1,300) member firms statewide employing tens of thousands of Connecticut's citizens. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We also created and administer the Connecticut Developers Council, a professional forum for the land development industry in the state.

Due to a previous commitment, I will be unable to appear before the committee today but will make myself available at any other time if I can answer any questions on this legislation and our following section by section comments on RB 7090.

While section 1 establishes a task force to identify responsible growth criteria and standards, **we are not sure why transfer of development rights (TDR) laws, policies and programs are singled out for study.** This concerns us because from our experience TDR programs are used more often as a ruse to prevent development because they do not adequately give a developer sufficient credits to use in a receiving area or do not guarantee that such credits can ever be used. **Moreover, the makeup of the task force should include significant users of our land use system,** such as the HBA of Connecticut and CCAPA.

Sections 2 and 3 further restrict the use of state funds. Currently, OPM can deny use of state funds if the project for which they would be spent does not comply with the state plan of conservation and development. Adopting sections 2 and 3 means that the projects would also have to comply with responsible growth criteria, whatever those might be as determined by the task force and a future legislature. That sounds good – nobody certainly wants to be irresponsible – but as with smart growth policies, it all depends on your perspective. As we and others have argued over many years, many so-called smart growth policies are not very smart. Renaming these policies “responsible” does not mean they necessarily will be. **We suspect these sections, if adopted, will cause good projects to go unfunded and will cause much angst and regret among legislators and policy makers.**

In section 4, the exception for school construction is somewhat disingenuous, and it is as much political as it is revealing. If it is the policy of the state to spend its resources only in accordance with the state plan of conservation and development, any exception to that policy reveals a fault with the policy. By excepting (and paying for) school construction in areas outside where the state plan of C&D says people should go, the state is recognizing that those areas are where people have chosen to live. Once the state has made that admission, then it should also fund other projects that support those citizen's choices. This argument supports our belief that smart growth, responsible growth or whatever else you might call it should be about servicing and facilitating greater choices for people on where they want to live, work, shop and play. We believe too much emphasis is already placed on the state plan of C&D, particularly the locational guide map. The text of the state plan can provide useful guidance, things we should all think about, to land use users and regulators. But too much central planning will bring down our economy, inhibit the choices people can make and drive more people out of the state.

Section 5 creates stronger teeth in the statutory command that municipalities adopt a local plan of conservation and development every ten years. This is fine, but as we have stated in the past, there should also be a mechanism to review the adequacy of such local plans, not just that they have been updated every ten years. We believe that too many municipalities do not adequately consider and incorporate into their plans of C&D the housing elements that are in section 8-23 of the general statutes. Having said that, however, and recommending that a review mechanism be considered by the committee, we are not comfortable that OPM's planning staff is the appropriate body to conduct such review. We do not believe that OPM's planning staff presents a balanced view of both conservation and development policies. Therefore, we urge extreme caution before going down this path.

In section 6, we respectfully suggest that defining "significant regional impact" as meaning "significant and measurable" is no definition at all. We would like to see more objective criteria in order to evaluate the potential impact of this new regional review process. **Given our comments on section 8 below, we urge you to delete section 6.**

Section 7 will create a huge increase in the number of applications that will flow to regional planning agencies for review. **Moreover, changing the zoning on a 5 or 10 acre or even larger parcel, or increasing the density by fifty percent, especially since densities in many towns are very low, are not reasonable indications of projects that should require RPA review.** We do not believe, for example, that changing the density from 2 acre zoning to 1 acre zoning on a 10 acre parcel warrants regional review of what is equivalent to changing the housing yield from 5 units to 10 units. Also, this section will directly impact the HOMEConnecticut proposal because of the intended higher densities in that legislation. **Therefore, we urge you to delete section 7 from the bill.**

Section 8 begins to identify objective criteria for regional review of projects that presumably have a significant regional impact. Therefore, section 8 makes sections 6 and

7 superfluous. **However, even with section 8, the identified objective criteria, without more, should not be deemed to have a significant regional impact.** We dispute the notion that a development, merely because it is fifty thousand square feet, or 100 homes or apartments, or requires more than 200 parking spaces, will have a significant regional impact. It depends on where in the community it is proposed. It depends on how much the proposal will utilize transportation and utilities that directly feed from or to neighboring municipalities. It depends on what type of development is proposed – e.g., a 50,000 square foot retail store is different from a similar sized building that is a manufacturing plant or an assisted living facility; 100 apartments in a high rise building is different than 100 town homes or 100 single family homes; and 100 single family homes spread out over 200 or 300 acres is different than 100 single family homes condensed into a cluster or conservation subdivision. The numbers in the legislation are arbitrarily small and we suggest making them high enough to really mean something regionally. **Therefore, if you move forward with this legislation, we urge you to make the thresholds higher and add criteria, such as, “and such projects have a measurable adverse impact on the environment, economy, housing, public facilities or transportation system,” to section 8. But, we strongly urge you to consider the following as an alternative to sections 6 through 8.**

Our basic concern with the approach of this legislation is the potential additional bureaucracy that will be created by increasing the role of regional planning agencies in reviewing what development is taking place in our municipalities. We are not sure what this will really accomplish.

We also believe this review and comment role is the wrong charge to give to RPAs and COGs. Rather, RPAs and COGs should be enhanced to provide greater planning and technical assistance to our municipalities, to help municipalities increase their own capacity to review proposed developments and to do so properly and efficiently with objective standards and criteria and streamlined review processes. You know the story – if you catch a fish for a man, he’ll eat for a day, but if you teach him to fish, he’ll eat for a lifetime. Having RPAs and COGs conduct additional reviews and comment themselves on individual projects, without providing increased planning and technical capacity at the local level, will do little to improve the system.

Thank you for considering our views on this legislation.