February 22, 2013

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

From: Bill Ethier, CAE, Chief Executive Officer

Re: Draft 2013-2018 State Plan of Conservation and Development

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT’s citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year.

As we did on proposed bill 5968 that is before the Planning and Development Committee, we urge you to correct a significant deficiency in how the state plan of conservation and development (POCD) is used by some state agencies, causing conflicts with municipalities and thwarting proposed economic and housing developments. Also, in addition to the proposed language to delete the locational guide map from the state POCD that we attached to that testimony, we attach here additional language to amend chapter 297a to better define priority funding areas.

We also provided to the Continuing Legislative Committee on State Planning & Development the extensive comments that Tim Hollister filed on our behalf before OPM on its draft 2013-2018 POCD. These comments can be found at: http://www.hbact.org/associations/5098/files/Joint%20Comment%20on%20Draft%202013-18%20State%20POCD.pdf

The crux of the issue is two-fold: First, the “locational guide map” (LGM) that is attached to and made part of the POCD is itself replete with inaccuracies due to incomplete and inaccurate data inputs as well as the statewide scale of the map that does not translate well at all to individual parcels the POCD impacts. Second, the reliance on the LGM, versus on the text of the plan, by agencies such as DEEP to make POCD consistency decisions that impact economic and housing development proposals compounds the problems created by the inaccurate map.

The 2013-2018 draft text of the state POCD, up to the LGM chapter, is very good. The six growth management principles are all planning criteria that should be considered when making development and conservation consistency decisions. OPM is to be
commended for outlining these important planning criteria especially in the context of the many various legislative requirements that the agency has had to incorporate. However, as long as the map exists the text will not be read. It is too easy to default to the map rather than do the hard work of reviewing competing planning principles outlined in the text. Therefore, it is not sufficient to merely acknowledge in the plan’s text, as OPM has done in the LGM chapter, that the map “is not intended to be utilized, by itself, as a basis for a state agency to approve or deny funding when rendering applicable funding decisions.”

Moreover, the LGM’s new classifications and criteria are more complicated than the prior policy-based classifications, which also suffer from the same inaccuracy and scale issues. This is largely due to the evolution of and complicated requirements imposed on the POCD (and on OPM) by the legislature, but given the six growth management principles, this level of complexity is both unnecessary and unproductive to sound planning and funding decisions. The further amendment we attach here ties the definition of priority funding area into the six growth management principles.

In the hands of a good “planner” the text of the POCD by itself should become a good document upon which to make consistency decisions. However, having stated that and while we urge your support for deleting the LGM from the plan, state agency consistency reviews that are based on the POCD text will be also subject to potential abuse. A state agency staff person in charge of a consistency decision could predetermine an issue because they like or don’t like a proposed development and find text in the plan to support their decision. This would not be sound planning and we urge the committee to watch for this if a new “mapless” consistency review process and new priority funding area definition are adopted. Nonetheless, we believe deleting the locational guide map from the state POCD will lead state agencies down a better land use planning and funding decision tree.

Thank you for considering our views on this important matter.

Attachment: Draft statutory language to amend chapter 297a, priority funding areas.
Draft statutory language attached to our testimony on HB 5968
In October, 2012, HBRA of CT recommended to OPM in comments on the Draft 2013-2018 Plan that the locational guide map be removed from the state Plan of Conservation & Development (POCD). In response, OPM stated, "OPM believes that discontinuing use of the Map would first require the repeal of CGS Chapter 297a." This is the chapter on Priority Funding Areas adopted with PA 05-205.

HBRA of CT does not agree all of chapter 297a needs to be repealed. However, an amendment to that chapter is warranted. Therefore, to accommodate OPM’s response, and in addition to the HBRA’s proposed deletion of the locational guide map attached to our testimony on HB 5968, AA Clarifying the State Plan of Conservation and Development, the HBRA of CT suggests the following amendment to chapter 297a (see amendment at lines 45-57):

Sec. 16a-35c. Priority funding areas. Definitions. Delineation of boundaries. Review and approval. (a) As used in this section and sections 16a-35d to 16a-35g, inclusive:

(1) "Funding" includes any form of assurance, guarantee, grant payment, credit, tax credit or other assistance, including a loan, loan guarantee, or reduction in the principal obligation of or rate of interest payable on a loan or a portion of a loan;

(2) "Growth-related project" means any project which includes (A) the acquisition of real property when the acquisition costs are in excess of one hundred thousand dollars, except the acquisition of open space for the purposes of conservation or preservation; (B) the development or improvement of real property when the development costs are in excess of one hundred thousand dollars; (C) the acquisition of public transportation equipment or facilities when the acquisition costs are in excess of one hundred thousand dollars; or (D) the authorization of each state grant, any application for which is not pending on July 1, 2006, for an amount in excess of one hundred thousand dollars, for the acquisition or development or improvement of real property or for the acquisition of public transportation equipment or facilities, except the following: (i) Projects for maintenance, repair, additions or renovations to existing facilities, acquisition of land for telecommunications towers whose primary purpose is public safety, parks, conservation and open space, and acquisition of agricultural, conservation and historic easements; (ii) funding by the Department of Economic and Community Development for any project financed with federal funds used to purchase or rehabilitate existing single or multi-family housing or projects financed with the proceeds of revenue bonds if the Commissioner of Economic and Community Development determines that application of this section and sections 16a-35d and 16a-35e (I) conflicts with any provision of federal or state law applicable to the issuance or tax-exempt status of the bonds or any provision of any trust agreement between the Department of Economic and Community Development and any trustee, or (II) would otherwise prohibit financing of an existing project or financing provided to cure or prevent any default under existing financing; (iii) projects that the Commissioner of Economic and Community Development determines promote fair housing choice and racial and economic integration as described in section 8-37cc; (iv) projects at an existing facility needed to comply with state environmental or health laws or regulations.
adopted thereunder; (v) school construction projects funded by the Department of
Education under chapter 173; (vi) libraries; (vii) municipally owned property or public
buildings used for government purposes; and (viii) any other project, funding or other
state assistance not included under subparagraphs (A) to (D), inclusive, of this
subdivision.

(3) "Priority funding area" means the area of the state designated under subsection
(b) of this section.

(b) The Secretary of the Office of Policy and Management, in consultation with the
Commissioners of Economic and Community Development, Energy and Environmental
Protection, Administrative Services, Agriculture and Transportation, the regional
planning agencies in the state and any other persons or entities the secretary deems
necessary, shall develop recommendations for delineation of the boundaries of priority
funding areas in the state and for revisions thereafter. In making such
recommendations, the secretary shall consider [areas designated as regional centers,
growth areas, neighborhood conservation areas and rural community centers on the
state plan of conservation and development] (i) the growth management principles
outlined in the 2013-2018 state plan of conservation and development, or its successor
plan, such that a reasonable conclusion may be made that an area should be a priority
funding area, and (ii) areas designated as redevelopment areas, distressed
municipalities, as defined in section 32-9p, targeted investment communities, as
defined in section 32-222, public investment communities, as defined in section 7-
545, enterprise zones, designated by the Commissioner of Economic and Community
Development under section 32-70 and corridor management areas [identified in the
state plan of conservation and development] as defined in section 16a-27(d). The
secretary shall submit the recommendations to the Continuing Legislative Committee
on State Planning and Development established pursuant to section 4-60d for review
when the state plan of conservation and development is submitted to such committee in
accordance with section 16a-29. The committee shall report its recommendations to the
General Assembly at the time said state plan is submitted to the General Assembly
under section 16a-30. The boundaries shall become effective upon approval of the
General Assembly.
HB 5968, AA Clarifying the State Plan of Conservation & Development

Proposal to delete use of a locational guide map or similar map within the state plan of conservation and development.

Section 1 (NEW) (Effective from passage). Notwithstanding any other provision of the general statutes, the state plan of conservation and development authorized under chapter 297 of the general statutes shall not contain a locational guide map or similar map that divides the state into different conservation, development or other areas. Each state agency or other authority that is required to determine whether any type of funding or other action is consistent with such state plan shall make such determination based on the text of such plan.

Section 2. Section 16a-25 of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

Sec. 16a-25. Definitions. As used in this chapter:

(1) "Process" means the procedure for adopting, amending, revising and implementing a state plan of conservation and development;

(2) "Existing plan" means the plan promulgated by Executive Order No. 28, September 27, 1974;

(3) "Secretary" means the Secretary of the Office of Policy and Management;

(4) "Committee" means the continuing legislative committee on state planning and development established pursuant to section 4-60d;

(5) "Adoption year" means the calendar year which is no later than five years subsequent to the year in which the plan was last adopted in accordance with the process established in this chapter;

(6) "Revision year" means the calendar year immediately preceding the adoption year;

(7) "Prerevision year" means the calendar year immediately preceding the revision year;

(8) "State agency" means any state department, institution, board, commission or official; and

(9) "Plan", when referring to the state plan for conservation and development, means the text of such plan[ and any accompanying location guide map].
Section 3. Subsection (b) of section 16a-32 of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

Sec. 16a-32. (b) Without initiating a revision of the plan and after receiving written approval from the committee, the secretary may undertake interim changes in the plan upon the secretary's own initiative or upon application by (1) the chief executive officer of a municipality, with the approval of the legislative body of such municipality, or (2) any owner of real property or any interest therein on which a change is proposed. No application for an interim change from a municipality under subdivision (1) of this subsection may be submitted unless (A) the municipality in which the change is proposed has a plan of conservation and development that has been updated in accordance with section 8-23, and (B) the application includes evidence, in writing, of the opinion of the planning commission of the municipality regarding the interim change. The secretary shall adopt regulations in accordance with chapter 54 to establish procedures for applications for such interim changes by any person, political subdivision of the state or state agency. Such regulations shall include, but need not be limited to, provisions for interviews and consultations with local planning and zoning commissions or, in those municipalities which have adopted the provisions of chapter 124 but which do not have a zoning commission, the persons designated to exercise zoning powers pursuant to section 8-1, review of local plans of development and public hearings. The secretary shall notify the chief executive officer and the persons exercising planning or zoning powers in any municipality which is the subject of an application for change in the [locational guide map] plan and shall notify any members of the General Assembly representing any area which is the subject of such an application. A joint public hearing by the secretary and the committee shall be held in any such municipality if requested by any chief executive officer or planning or zoning official notified by the secretary pursuant to this subsection. The committee shall also hold a hearing in addition to any hearing required to be held in any municipality concerning the [locational guide map] plan on any other proposed changes. After such public hearing, the committee shall approve or disapprove the application and notify the secretary of its decision not more than ten days thereafter. The secretary shall make interim changes in the plan to reflect the approved changes.

Section 4. Section 32-1o of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

Sec. 32-1o. State economic strategic plan. (a) On or before July 1, 2009, and every five years thereafter, the Commissioner of Economic and Community Development, within available appropriations, shall prepare an economic strategic plan for the state in consultation with the Secretary of the Office of Policy and Management, the Commissioners of Energy and Environmental Protection and Transportation, the Labor Commissioner, the chairperson of the Culture and Tourism Advisory Committee, the executive directors of the Connecticut Housing Finance Authority, the Connecticut
Development Authority, Connecticut Innovations, Incorporated, and the Connecticut
Health and Educational Facilities Authority, or their respective designees, and any
other agencies the Commissioner of Economic and Community Development deems
appropriate.

(b) In developing the plan, the Commissioner of Economic and Community
Development shall:

(1) Ensure that the plan is consistent with (A) the text [and locational guide map] of the
state plan of conservation and development adopted pursuant to chapter 297, and (B)
the state's consolidated plan for housing and community development prepared
pursuant to section 8-37t;

... [no changes in the remainder of section 32-10]

Section 5. Subsection (b) of section 32-80 of the general statutes is repealed and the
following is substituted in lieu thereof (Effective from passage):

Sec. 32-80. (b) (1) Before July 1, 2005, the legislative bodies of three or more
contiguous municipalities, each of which is a public investment community and has a
population of not more than sixty thousand, and at least fifty per cent of which
municipalities are located along the same interstate highway, limited access state
highway or intersecting interstate or limited access state highways, may, with the
approval of the commissioner, designate industrial districts in such municipalities as an
enterprise corridor zone. (2) On or after July 1, 2005, the legislative bodies of two or
more contiguous eligible municipalities, at least one of which is located along an
interstate highway, limited access state highway or intersecting interstate or limited
access state highways [and is designated as a regional center in the locational guide
map included in the state plan of conservation and development adopted pursuant to
chapter 297], may, with the approval of the commissioner, designate such
municipalities as an enterprise corridor zone.