Date: February 5, 2007

From: Washington Chapter, American Planning Association (APA)

To: The Honorable Darlene Fairley, Chair
Committee on Government Operations and Elections
Washington State Senate

Re: **SB 5507 - Changing Washington's Vesting Laws.**

Position: APA SUPPORTS SECTIONS 4 & 5 OF THE BILL;
APA SUPPORTS SECTIONS 1, 2 & 3 ONLY IF AMENDED; AND
APA DOES NOT SUPPORT SECTION 6 OF THE BILL.

The general intent of this legislation is consistent with the legislative agenda of the Washington Chapter of APA as it relates to advocating for GMA refinements. There are certain aspects of the bill, however, that warrant amendment and one section that we would recommend be deleted. Our specific comments are listed below:

Section 1: On a technical point, the proposed bill ties vesting "permits" to legislative body action on preliminary plat approval, yet many jurisdictions have changed this permitting authority to be administrative (i.e., approved by staff, hearing examiner, etc.). The bill should be revised, so that it applies to both legislative and administrative approvals.

Sections 1, 2 and 3: APA supports the concept of having vesting occur at the time of project approval. Such a change would place Washington in the company of most states in the country. However, the bill goes even further and would allow regulatory changes to take effect after approvals, but prior to "substantial construction." APA opposes adding this additional layer of uncertainty in the development process, because many investment decisions and financial commitments are made by the private sector during this time period. For example, between preliminary and final plat approval, site improvements (such as construction of access roads) are often required, even though the "substantial construction" of new houses will not occur until after final plat approval. This problem would also occur for building permit and other project permit applications. Once a permit is issued, we believe that the permit applicant would have a reasonable right to expect that he/she would be able to proceed under the rules in place at the time of issuance. Therefore, rather than tying it merely to "substantial construction," APA recommends setting a timeline of two years for "substantial construction" to occur for the vested right. In other words, if a development project has not been "substantially" acted on within two years after approval, then the vesting would lapse and any

Tel: (206) 682-7436
Fax: (206) 626-0392
office@washington-apa.org

Lloyd Building, Suite 610
603 Stewart Street
Seattle, WA 98101-1275

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newer regulations would apply. We would also support the ability of a jurisdiction to grant a one-time extension of an additional two years.

Another APA issue relates to vesting is in regard to the preparation of a public policy document or development standard, such as a Comprehensive Plan, Zoning Code, Subdivision Code, Construction Code, Shoreline Master Program amendments, etc., that is in process but takes for good reason a relatively long time in public review to be completed. Our concern is that, currently, development applications are often submitted once a draft plan or regulation is published, in order to "sneak under the wire" and not be covered by the proposed plan or development standard. APA is interested in helping to draft legislative language to be added to SB 5507, which would have the vesting of such draft plans or standards occur once they have been published but not yet adopted.

Section 4: APA supports Section 4, because it would close a troubling loophole in state law. Under state law, development permits must be consistent with development regulations, which in turn must be consistent with local comprehensive plans, and both regulations and plans must be consistent with the goals and requirements of the GMA. However, if a locally adopted regulation is challenged to a growth management hearings board and subsequently determined to be invalid under the GMA, it makes no sense that permits should be able to vest to that illegal regulation. Section 4 would close this existing loophole in the law.

Section 5: APA supports Section 5, because it adds clarification to Energy Facility Site Evaluation Council statute (RCW 80.50).

Section 6: APA opposes this section of the bill, because it would mean that new development agreements would no longer be allowed in Washington State. The authority for development agreements was authorized by the legislature in 1995 as part of Regulatory Reform. Development agreements are valuable optional tools that a jurisdiction can use to provide flexibility at the front end of a project, while providing certainty to the applicant at the end of the review process.

The Washington Chapter of APA, along with others who played a role in opposing I-933 because it was an unreasonable way to address questions of regulatory fairness, recognizes that there were issues that should be taken up by the legislature to achieve sensible and reasonable reform. Therefore, the Chapter supports refinements to the Growth Management Act (GMA) to address concerns about the fairness and effectiveness of GMA implementation as well as to address emerging planning issues.

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office@washington-apa.org

Lloyd Building, Suite 610
603 Stewart Street
Seattle, WA 98101-1275

Contacts: Esther Larsen, Legislative Committee Co-Chair
509-477-5709, elarsen@spokanecounty.org
Josh Peters, Legislative Committee Co-Chair
360-385-9167, jpeters@co.jefferson.wa.us
Steve Butler, President
206-973-4830, sbutler@ci.seatac.wa.us

Tel: (206) 682-7436
Fax: (206) 626-0392
office@washington-apa.org

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603 Stewart Street
Seattle, WA 98101-1275