



American Planning Association
Washington Chapter

Making Great Communities Happen

January 16, 2011

The Honorable Craig Pridemore, Chair
Government Operations, Tribal Relations and Elections Committee
Washington State Senate
439 J.A. Cherberg Building
PO Box 40466
Olympia, WA 98504-0466

RE: SB 5012 relating to the standard of review utilized by the growth management hearing board

Dear Senator Pridemore:

APA Washington supports the passage of Senate Bill 5012 to clarify the legislature's intent regarding the standard of review utilized by the growth management hearing board when hearing appeals under the growth management act (GMA). Our membership supports the GMA as an important way for our state to protect our valued environment while also encouraging development in appropriate locations, forms, and levels of service. For that reason, our association urges the legislature to provide the important clarification that SB 5012 would provide.

The standard of review set forth at RCW 36.70A.320 provides guidance to the growth board in its review of challenged local government actions. When the legislature adopted the "clearly erroneous" standard in 1995, it replaced the earlier "preponderance of the evidence" standard. While it is clear that the legislature intended for the growth board to be more deferential to local government choices than was the case with the earlier standard, an unintended consequence of the verbose "legislative intent" section set forth at RCW 36.70A.3201 has been to muddy the waters.

While we believe that the "clearly erroneous" standard continues to be the appropriate standard, we believe that the courts have interpreted RCW 36.70A.3201 in a manner that diminishes the importance of facts in the record and undermines the role of the growth hearings board in



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weighing the facts when an action is challenged. As drafted, SB 5012 would amend RCW 36.70A.3201 to use half the words to more clearly state what the legislature intends and expects of local governments (that they comply with the GMA), of the growth board (that it defer to local choices unless those choices fall rely on an incorrect reading of the law or insufficient record evidence) and of the courts (that they give appropriate deference to the growth board expertise).

Again, we urge your favorable action on SB 5012. Thank you for the opportunity to comment.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Scott M. Greenberg'.

Scott M. Greenberg, AICP
President
Washington Chapter of the American Planning Association

cc Members of the Senate Government Operations, Tribal Relations and Elections Committee