American Planning Association
Washington Chapter

Making Great Communities Happen

January 14, 2026

The Honorable Jesse Salomon
Senate Local Government Committee
Washington State Senate
Olympia, WA

Subject: Follow up to January 12, 2026, committee presentation

Dear Chair Salomon,

Thank you for inviting the Washington Chapter of the American Planning Association (APA WA) to speak at the January 12, 2026, Senate Local Government Committee meeting. We have prepared these written comments to follow up and expand on the points presented at the meeting.

Inconsistencies and Potential Remedies Presented at Committee Meeting

At the meeting, APA WA Legislative Committee Chair Robin Proebsting and Committee member Joe Tovar presented three inconsistencies in recent land use legislation, together with suggestions for reconciling the inconsistencies. They presented slides parsing the statutory language in RCW 36.70A (the Growth Management Act [GMA]), RCW 36.70 (the Planning Enabling Act), and RCW 58.17 (Plats/Subdivisions). Ms. Proebsting and Mr. Tovar explained how recent legislation, including HB 1293 (design review), E2SHB 1110 (middle housing), E2SHB 1096 (lot splitting) and ESB 5559 (unit lot subdivision) all focused on making the development permit process more timely, fair, and predictable.

Mr. Tovar then showed how the aforementioned recent bills were codified at RCW 36.70A.030(3), RCW 36.70A.630, and RCW 58.17. He explained how these provisions apply many of the same terms. Most commonly used and significant of these terms are "objective," "ascertainable," and "standards." He explained how consistent use of the term "objective, ascertainable standards" could remove ambiguity and inconsistency among these statutory provisions. Mr. Tovar also explained that the terms "variance" and "guidelines" undermine GMA Goal 7 that local government permit processes should be "timely, fair, and predictable" (RCW 36.70A.020(7)). To remedy this problem, we recommend deleting the term "guidelines" and replacing the word "variance" with "departure." These suggested revisions are described below.

To implement our suggestions, the GMA definition of Administrative Design Review could be revised as follows (suggested changes denoted by highlighted and underlined/strikethrough text):

RCW 36.70A.030(3) "Administrative design review" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on clear and objective design and development standards that are

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ascertainable by reference to measurable written or graphic criteria available and knowable to the permit applicant, the public, and public officials prior to submittal without a public predecision hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city planning director or designee may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for departures ~~variances~~ from locally established design review standards.

In addition, the GMA design review provisions could be revised as follows:
RCW 36.70A.630 (1) For purposes of this section, "design review" means a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance.
(2) Except as provided in subsection (3) of this section, counties and cities planning under RCW 36.70A.040 may apply in any design review process only clear and objective development regulations governing the exterior design of new development. For purposes of this section, a clear and objective development regulation:
(a) Must include one or more ~~ascertainable~~ ~~guideline,~~ clear and objective standards~~, or criterion~~ that are ascertainable by reference to measurable written or graphic criteria available and knowable to the permit applicant, the public, and public officials prior to submittal. ~~by which an applicant can determine whether a given building design is permissible under that development regulation~~; and
(b) May not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.

If you, members of your committee, or legislative staff have questions or would like to discuss these draft revisions, please feel free to contact Ms. Proebsting or Mr. Tovar.

Additional Potential Areas for Refinements

We have also identified potential areas for other refinements to recent land use legislation, to be considered in the longer term.

1. **E2SHB 1096 (2025), lot-splitting and verifying tenancy (owner- vs. renter-occupation)**: This bill updated standards pertaining to lot splitting and included the provision, “If the lot split would require demolition or alteration of any existing housing that would displace a renter, the applicant must recommend a displacement mitigation strategy that may include, but is not limited to, relocation assistance.”

APA supports housing choice, however, tenancy is not tracked by local governments, therefore in order to find tenancy information that would verify and document that this provision is met, either: 1) additional processing time would be needed, which delays permit issuance; or 2) or additional

staff resources would be needed, necessitating an additional revenue source, which poses a challenge to local governments.

Recommendation: Options for resolution include revising this provision so that it is not tied to tenancy and/or updating RCW 36.70B to lengthen or remove the time limits by which local governments must issue project permits.

2. **ESB 5559 (2025), Unit Lot Subdivision standards and the creation of nonconformity**: Unit Lot Subdivisions may create lots that are nonconforming if they do not meet zoning standards, as noted in the definition in RCW 58.17.020(18): "Unit lot subdivision" means a subdivision or short subdivision proposed as part of a residential development project that meets the development standards applicable to the parent lot at the time the application is vested, but which may result in development on one or more individual unit lots becoming nonconforming...." Nonconforming lots are not attractive to buyers, as they make it difficult to obtain loans and insurance, as well as to refinance properties in the future. The definition as nonconforming in the bill makes the unit lot subdivision process less likely to be utilized by developers.

Recommendation: This is a complex topic that would benefit from analysis by APA WA and possibly other interested parties between legislative sessions. An option for resolving this issue might involve further amendments to RCW 58.17, describing how lots created through a unit lot subdivision may be modified in the future.

3. **3SHB 1491 (2025), Transit Overlay District (TOD) bill and affordable housing requirements**. This bill made statutory updates mandating that housing developments in transit station areas provide 10% of units as affordable (60% Area Median Income [AMI] or below) or 20% workforce housing (80% AMI or below) for a period of 50 years. While housing affordability is a policy goal APAWA strongly supports, in practice, construction costs and achievable rents make this standard infeasible outside of the Seattle area, even with the expanded multi-family tax credit. This conclusion is based on analysis by the City of Vancouver's real estate specialist, which the City of Spokane has reviewed and concurs with.

   As a result, there would likely be little, if any, new housing construction in station areas elsewhere in the state, which would not help advance the stated goal of increasing housing production in such TOD areas. Another concern is that 3SHB 1491 retroactively applies the affordability requirements to projects that have already been approved or may even be under construction before the local jurisdiction implements the TOD regulations, which is inconsistent with the state's development vesting doctrine and case law.

Recommendation: We recommend targeted changes to the legislation that would build in flexibility for how to achieve affordability goals outside of the Seattle area, where market conditions are very different.

4. **HB 1337 (2023), accessory dwelling units**: A finding in HB 1337, which required local governments to adopt specified standards for accessory dwelling units (ADUs), was: "The legislature intends to promote and encourage the creation of accessory dwelling units as a means to address the need for additional affordable housing options." However, condominium law (Chapter 64.90 RCW) presents challenges for fostering affordability for ADUs. This chapter requires that condominiums not be regulated differently from "a physically identical development under a different form of ownership". This presents a challenge when it comes to code standards for utility connections.

   Utilities typically require condominium developments to have separate connections for each dwelling unit because this is an equitable way to provide sustainable funding for the utility—new users adding demand to the system pay into the system. However, if detached ADUs were to be treated differently from condominiums, for example by sharing a utility connection with their primary unit, this would violate Chapter 64.90 RCW. In order to remain consistent with this chapter, local governments would need to require a separate utility connection for detached ADUs (which adds substantial cost to the ADU development, making the unit less affordable).

   A similar conflict arises from the rate discrimination statute, RCW 80.28.100. This statute prohibits utility purveyors from assessing special rates to different customers under substantially similar conditions receiving the same service. Like the requirement of RCW 64.90.025, this includes the similarity between ADUs and other forms of detached dwellings. ADUs can be similar to other dwellings, like small single detached units (called single family homes by some jurisdictions) and duplexes. If utility connection fees are assessed differently among similar dwelling units, utilities risk being in violation of RCW 80.28.100.

   Recommendation: This is a complex topic that would benefit from analysis by APA WA and possibly other interested parties between legislative sessions. An option for resolving this conflict might include updates to RCW 64.90.025 and RCW 80.28.100.

Thank you for your consideration.

Respectfully,

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Cc Robin Proebsting, Chair, APA Washington Legislative Committee