American Planning Association
Oregon Chapter

Creating Great Communities for All

March 5, 2025

House Committee On Housing and Homelessness
Re: HB 2138 with -1 Amendments
Position: **Support**

Dear Chair Marsh, Vice-Chairs Andersen and Breese-Iverson, and members of the committee:

I am writing in support of HB 2138, on behalf of the Oregon Chapter of the American Planning Association. While we support the broader goals of promoting housing in well-connected, complete communities, and most of the specific measures in this bill, we have specific feedback where this legislation can be stronger and produce clearer implementation.

The Oregon Chapter of the American Planning Association (OAPA) is a nonprofit professional membership organization of over 800 planners and those who work with planning in formulating and implementing development and conservation policies at the state and local level. OAPA works to create sustainable and vibrant Oregon communities through professional development, advocacy for sound planning, providing resources to meet the challenges of growth and change, and embracing and promoting diversity, inclusion and equity.

We share Governor Kotek's commitment to a future with a more abundant and diverse housing stock, where people can afford to live in thriving communities. An OAPA legislative and policy priority is to support legislation that addresses the housing supply and housing affordability crisis to ensure that all Oregonians have access to safe, stable, and affordable housing. OAPA supports planning for increased housing supply with data-driven insights, a clear sense of desired outcomes and robust engagement to create a vision and method for increasing housing supply. While we support the general aims of the package of changes, our membership includes professionals who work on the ground in putting together or

reviewing housing development proposals on both sides of the counter, and we would like to highlight areas where further changes could better foster shared certainty between applicants and jurisdictions alike.

Section 1(c). New Cottage Cluster Definition
While we support more cottage cluster development, the new proposed cottage cluster definition introduces a more ambiguous (distinctly less clear and objective) framework for what a cottage cluster should be.

A standard definition of cottage cluster, both locally in Oregon and the northwest and as well nationally, is “a cottage cluster is a group of small homes that share a common space, such as a courtyard or garden”. While often a cottage cluster may feature shared buildings, it is the shared common space that distinguishes a cottage cluster. Shared open space promotes interaction and safe design as well as fostering community that may not be the case for other “amenities”. An attached cottage cluster development with no particular courtyard design or unit size standard could more properly be classified as a small multi-unit development and we don't think that should be the intent for cottage clusters. We recommend retaining a requirement for a common courtyard with cottage cluster development.

We appreciate the change of direction in the -1 amendment (page 19, Section 22) to defer to DLCD to create rulemaking for at least the “small footprint or floor area” change in the definition of cottage clusters, however, the “amenity” aspect remains vague. The footprint limitation does not appear to create a major barrier to this housing type and smaller housing units are a desirable addition to Oregon’s housing stock.

Section 1. Middle housing lot references in -plex and townhouse definitions
The change to update some housing type definitions to include the phrase, *“on a lot or parcel, other than a lot or parcel created by a middle housing land division”* seems on its face like a reasonable attempt to clear up potential confusion and further affirm that middle housing land divisions do not modify housing types. That said, similar language has not been added to the definition for “townhouse.” This has the potential to create unnecessary confusion by more strongly implying that this same distinction cannot be true for townhouses.

Instead, it would be cleaner to provide a clearer term and definition for the result of middle housing land divisions such as “child lots,” or another distinguishing title consistent with the original adopting legislation. A separate term would provide

foundational certainty that the result of a middle housing land division does not convey similar requirements and privileges of traditional platted lots or lots of record. Getting at this distinction at the definitions level would better untangle legal rights and standards for builders, jurisdictions, surveyors, and future residents alike, and avoid the need for other cluttered clarification efforts.

Section 1(5)(c). Traffic analysis/exactions
OAPA understands that resource-intensive analysis or disproportionate extractions are not appropriate for small infill development, and can support the intent to decrease costs and time for middle housing. However, OAPA recommends that there be a maximum number of units to be exempt from a traffic impact analysis, especially if a development site is on a facility that a local transportation system plan has identified as deficient. We also recommend affirming that on-site frontage requirements such as providing missing sidewalks remain appropriate.

Section 3(b)(B). Middle housing density bonus for affordability/accessibility
OAPA concurs with the concept of applying a density bonus for affordability or accessibility. However, 10 years is a short time for affordability requirements and not consistent with other common measures of regulated affordable housing such as found in ORS 197.308. It would be a better approach to mirror the affordable housing requirements of legislation from recent years, including at least a 30-year time horizon for affordability. We would also like to see additional language to allow for affordable homeownership options.

Section 6. SROs
Allowing SROs where single detached/middle housing is allowed is a positive direction for reintroducing this housing type and acknowledging many realities of shared housing. The provisions for single rooms is reasonably proportional to what is found in converted homes and similar housing types. These figures should remain clear as they are through any future amendments.

Section 13. Changes to Clear and Objective Standards Requirements
Some of the language proposed in the original and -1 amendment versions of this bill present changes to clear and objective standards, including more specific language to include public works standards and tree code standards. While many jurisdictions are aware of the broad need to conform standards that are applied to housing to be clear and objective, the timeline presented is overly brief for those jurisdictions that have not been able to engage with the engagement-intensive work of meaningfully updating any necessary changes to public works standards or

tree codes, and in the meantime could leave behind critical protections. If the legislature wishes to see deeper change in this regard, it may be more productive to direct DLCD to create a model code of rulemaking to better define what can be considered clear and objective within the context of public facilities standards and tree codes.

It is also not clear why the -1 amendment under Section 13 – **"(b)** The standards, conditions and procedures: "[*(a)*] **(A)** May include[*, but are not limited to,*] one or more provisions regulating the density or height of a development "– omits "*but are not limited to*" from the existing law describing clear and objective standards. This change does not create greater clarity unless it is sincerely the intention to limit housing standards to only density and height.

Section 14(c). Changes to Middle Housing Land Divisions

Changes to allow an ADU or existing duplex on a middle housing lot pose a lot of promise for greater flexibility in retaining existing housing stock and a more flexible range of options. However, the wording of these changes introduces further ambiguity for jurisdictions in implementing standards that already allow for conversion of existing units to middle housing types. Jurisdictions that allow simple conversion to a -plex set-up, but that have not otherwise created pathways that allow the combinations of -plexes and ADUs contemplated by this section, may struggle with appropriate implementation as currently worded. Implementation could be clearer to all if the legislature could consider alternative approaches to creating this flexibility such as:

- Allow middle housing lots to contain 1-2 units if that is a desirable outcome, rather than strictly one dwelling per middle housing lot with special exceptions for specific existing configurations.
- Clarify whether or not this language is intended to require jurisdictions to require jurisdictions to allow new combinations of middle housing with ADUs more generally.

Section 15. Middle Housing Land Division Sequencing

Acknowledging Middle Housing Land Divisions as a land use process is a sensible change and makes good use of the existing land use framework and aids public understanding of an already nuanced process. The further action to allow concurrent Middle Housing Land Divisions with traditional land divisions (instead of first requiring the creation of the platted parent lots to be divided) presents both opportunities and challenges.

Concurrent review can provide better communication and clarity to community members. With large greenfield middle housing developments, community members have sometimes expressed a sense of “bait and switch” as further notice of a series of middle housing land divisions arrives. It is nevertheless still important to continue to clarify where middle housing land divisions do not modify housing types and applicable development standards on a given parent parcel. A clearer term distinguishing middle housing lots from general “lots” would be supportive of this distinction.

Section 20(4). Notice changes

Any changes to noticing practices should consider the aims of Goal 1 and the concurrent push for more equitable engagement and communications, as well as the functional aims of noticing.

There seems to be little to gain in directing jurisdictions specifically not to provide notice of decision to parties other than the applicant, except to the extent this aligns with other applicable noticing practices. Declining to provide this information where public notice is otherwise required creates more confusion and the potential to create the unproductive impression that authorities making land use decisions have something to hide when it comes to this public information. It may be better to more broadly allow jurisdictions to align notice practices for Middle Housing Land Divisions with their own practices for Type I land use processes, without further specific language at the state level.

Section 22(f). Historic demolition review

While OAPA understands reasons for this -1 provision related to contributing structures in historic districts it is a relatively small part of meeting overall statewide housing production goals while drawing some of the most attention to this bill. To the extent the legislature wishes to take up this issue, it may be a productive direction to give DLCD a broader set of tools but with a firmer goal: to create rules that ensure historic districts do not create further barriers to housing development except as needed to further Goal 5. This could create more space to avoid any unintended consequences for historic resource review, while still working to ensure districts do not unnecessarily conflict with housing production. Elements to be considered could include: the time, cost and uncertainty the review process entails; that the the form of places in historic districts were influenced by exclusionary practices; and that to the extent adding failing to add middle housing to these districts is attributable to the review other, non district neighborhoods will need makeup that housing production if the State’s goals are to be meet.

Section 22(a). Operative date
To help ensure cities and counties comprehensively plan for today and future generations, governments at all levels need funding and resources to support healthy, equitable, and thriving communities. This bill needs to ensure the funding and resources needed for the DLCD and local governments to meet the new demands in the bill while maintaining ongoing responsibilities.

With the -1 amendment, we see that there are timeline changes from the original overall emergency clause, with statutory amendments needed for sections of 14 and 15 becoming operative on July 1, 2026, and work on the cottage cluster definition due in 2028. It may make more sense to move more of the changes that need fine-tuning like the changes to definitions into a rulemaking direction for DLCD. The legislature could then consider additional time and resources to support needed changes for public facilities and tree code standards, and the expansion of middle housing to additional jurisdictions.

We look forward to the potential of a further amendment and welcome the opportunity to further engage these ideas.

Sincerely,

Jonathan Harker
Chair, Legislative and Policy Affairs Committee
Oregon Chapter of the American Planning Association
www.oregonapa.org