

## Commerce input regarding Middle Housing issues

**TO:** Matt Covert, LDC Inc.

**FROM:** Joe Tovar, FAICP, Middle Housing Technical Team, Department of Commerce

**DATE:** September 13, 2022

**SUBJECT:** Commerce input to Road Map III Task Force regarding Middle Housing

### I. Background

- A. Among the contributing factors to the high cost and inadequate supply of housing are the *four L's*: *Labor costs*, *Lumber costs*, *Lending costs* and *Land costs*. The first three L's are outside the authority and control of local governments – while the fourth L, land, is largely within the scope of local government control. This includes the amount of land zoned for specific uses by local governments; their development processes and standards; and the degree to which private development is either supported or constrained by local fiscal decisions such as impact fees and tax policies.
- B. Given the scale and complexity of the housing crisis, middle housing alone is not “the answer.” Nor is “the answer” any one of the following: accessory dwelling units, tiny houses, transit-oriented development, public housing, enhanced local government taxing authority or public subsidies like property tax exemptions. These must all be part of a broad range of strategies and actions to be taken by the federal government, state, counties, cities and the private sector.
- C. Scarce resources to take on multiple policy challenges demands strategies that can reap multiple benefits. Middle housing promotes housing attainability; serves economic viability by providing workforce housing closer to jobs; fosters local business viability by adding consumers in proximity to shops and services; enhances climate resilience by reducing vehicle miles travelled; responds to demographic trends of fewer households with children, fewer automobiles per household, and more seniors wishing to age in place; and broadens home ownership opportunities, and therefore advances generational and racial equity, by providing smaller, less expensive starter homes.
- D. “One size does not fit all” was one of the dominant themes reported in the *Road Map to Washington's Future* final report (June 2019). This guiding principle has been frequently repeated by stakeholders in the *Road Map II* and current *Road Map III* processes. The

principle is that the different circumstances and capacities of the different regions of the state call for tailoring resources and requirements to meet diverse regional needs.

- E. Both Oregon and California have grappled with the housing crisis that Washington faces and have adopted statewide legislation to address housing generally and middle housing specifically. Local governments in those two states have been given clear direction to take local action and many have done so. There are lessons to be learned from those experiences as Washington addresses the housing crisis in our state.

## II. Recommendations

### A. Definitions

#### 1. Middle Housing

- As defined in the original version of Washington House Bill 1782:  
*“Middle housing means duplexes, triplexes, fourplexes, fiveplexes, sixplexes, stacked flats, townhouses and courtyard apartments.”*
- As defined in the Washington Legislature’s 2022 middle housing budget proviso:  
*“Middle housing types” include duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, courtyard apartments, cottage housing, and stacked flats.”*
- As defined in Oregon House Bill 2001:  
*“Middle housing means duplexes, triplexes, quadplexes, cottage clusters, and townhouses.”*
- As defined in the book Missing Middle Housing (2019), by Dan Parolek:  
*“Missing middle housing is a range of house-scale buildings with multiple units – compatible in scale and form with detached single-family homes- located in a walkable neighborhood.”*

The Department of Commerce recommends the following definition of middle housing:

*“Middle housing types means buildings that are compatible in scale, form, and character with single-family houses, and contain two or more attached, stacked, or clustered homes. This includes duplexes, triplexes, fourplexes, sixplexes, townhouses, courtyard apartments and cottage housing.”*

This recommendation combines important features of the above cited definitions. These include:

- *“... buildings that are compatible in scale, form, and character with single-family houses.”*

Concerns about allowing middle housing in areas zoned for detached houses are based in part on perceptions that such buildings will not be compatible with the look, feel and character of the neighborhood. This is largely a design issue that has been successfully

addressed in hundreds of cities with carefully crafted development and design standards. Standards include limiting height to the same two or three stories that apply for detached houses in a given zone and requiring roof shapes, window and door details that are typical of detached houses.

- *“... and contain two or more attached, stacked, or clustered homes”*

A key word in this proposed definition is “homes.” The place in which a person or family resides is their home, regardless of the square footage of the dwelling or whether it shares a wall, floor, ceiling, or courtyard with other homes, and regardless of whether it is owned or rented. It is helpful to bear in mind that we are thinking about people, i.e., “all economic segments of the population of this state” not just buildings.

- *“This includes duplexes, triplexes, fourplexes sixplexes, townhouses, courtyard apartments, and cottage housing.”*

Middle housing types can be found in single family neighborhoods of virtually all cities in the state. There are excellent examples such as duplexes in Mill Creek, triplexes in Edmonds, fourplexes in Bothell, courtyard apartments in Seattle, cottage housing in Shoreline, townhouses in Olympia, and many others. Several Washington cities, including Walla Walla, Spokane, Wenatchee, Olympia and Kirkland have recently adopted middle housing ordinances permitting several of these forms.

We recommend omitting the term ‘stacked flat.’ This term may resonate with architects, but it is not widely known or understood in the Northwest. It has evoked confusion and alarm, even among planning practitioners. Discussing this term has consumed an inordinate amount of time explaining what it is, where the term came from and why it isn’t redundant with the other types listed in the definition. Commerce’s proposed definition above clearly conveys that units may be stacked, hence there is no need to use the term “stacked flats.”

Which of these middle housing types should be permitted and specifically where within a jurisdiction they should be located may vary from region to region or even city to city. The criteria for making those decisions merit a discussion separate from the definition of what middle housing is.

## **2. Transit stops**

As defined in original version of HB 1782, Major transit stop means:

- (a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;*
- (b) Commuter rail stops;*
- (c) Stops on rail or fixed guideway systems, including transit ways;*
- (d) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes;*

- (e) Stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours during the peak hours of operation on weekdays; or
- (f) Washington state ferry terminals.

Several other definitions of “major transit stop” have been used in recent legislation and codified in RCW chapters. We recommend that all these definitions be reconciled into a single definition. The above cited definition of “Major transit stop” from proposed HB 1782 is different than the definition adopted by the Puget Sound Regional Council (PSRC). The PSRC definition is familiar to and relied upon by the four counties and eighty-two cities in the Puget Sound metropolitan region. Explaining and evaluating the differences between these definitions has likewise already consumed an inordinate amount of time. Commerce’s recommended solution follows:

Rather than require PSRC counties and cities to revise their existing definition of “major transit stop” or require the other thirty-five counties and their cities to adopt the PSRC definition of “major transit stop,” we recommend allowing the above definition to apply to all counties **except that** a different definition may be adopted by the buildable lands counties identified at RCW 36.70A.215. This includes King, Pierce, Snohomish and Kitsap counties, and their cities, (who have already done so through the PSRC definition) as well as Whatcom, Thurston and Clark counties and their cities. It may also be advisable to extend this option to the state’s three other large and fast-growing counties (i.e., Spokane, Benton, and Franklin.)

## **B. Middle housing within the GMA framework**

### **1. Background**

Providing the “variety of residential densities and housing types” called for in GMA Housing Goal (4) and the permit process predictability and timeliness called for in the GMA Permit Goal (7)<sup>1</sup> will depend on more than clear definitions of middle housing and transit stops. It will depend on many details of the larger framework of state law and local planning practice. Commerce therefore offers several observations and recommendations in that larger context. These are drawn from the ideas and concerns expressed by stakeholders in all three phases of the *Road Map* process, the Legislature’s intent to increase housing production, attainability, and choice (expressed by adoption of HB 1923 and HB 1220), and lessons learned from middle housing legislation adopted by Oregon in 2019 (HB 2001) and California in 2021 (SB 9).

As noted above, local governments do not control costs associated with construction (e.g., labor and lumber) or lending (e.g., interest rates and loan qualification criteria).

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<sup>1</sup> RCW 36.70A.020(7) provides: “Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.”

However, the impact of local government decisions on housing supply and cost is very direct with regard to land – the supply of land available for development and the regulatory requirements (both processes and standards) that are applied to permit applications. These local decisions are subject to many factors, including the goals and requirements of the Growth Management Act regarding comprehensive plans and development regulations.

HB 1220 made several important changes to the planning framework for local governments. Among these were the amendment to the GMA Housing planning goal as follows:

(4) Housing. ~~((Encourage the availability of affordable))~~ Plan for and accommodate housing affordable to all economic segments of the population of this state, promote a variety of residential densities and housing types and encourage preservation of existing housing stock.”

The Legislature explicitly replaced the passive verb “encourage” with the active verbs “plan for and **accommodate**.” Bold emphasis added. This use of active verbs means that local governments are no longer simply to *encourage* housing affordable to all, but rather to *take implementing actions* to meet the housings needs of our state’s entire population.

Commerce is in the process of preparing guidance to local governments about what actions (i.e., amendments to comprehensive plans and development codes) could meet the GMA goals and requirements as modified by HB 1220. However, Commerce guidance, even if adopted as WACs, does not bind local governments, the Growth Management Hearings Board (GMHB) or a reviewing court. Because all local government plans and codes, or amendments thereto, are subject to a petition for review to the GMHB, the guidance provided by Commerce cannot definitively answer the question of what would constitute GMA compliant actions.

## 2. Four specific recommendations

- **Focus discussion of middle housing on scale, form, and character rather than density.**

Both Oregon and California addressed scale, form and character as important factors in planning for middle housing types (Oregon) and lot splits that would create up to four dwellings where a single-family zoned lot allowed only one home (California). This approach enables people to think more about how a middle housing project or lot split would actually look and function in their neighborhood, rather than simply as a numerical abstraction (i.e., the number of units per acre depicted on a zoning map).

- **Provide predictability for existing neighborhoods by requiring objective development and design standards.**

Both Oregon and California required that local governments adopt **objective** development and design standards to control the scale, form and character of new infill. Objective design standards have been adopted by cities in both states. Objective standards are typically dimensional, such as maximum building height, lot frontage, roof pitch, etc., and are often accompanied with templates, photographs, or diagrams. The public participation requirements of the GMA would assure that the members of each community can provide meaningful input to their local governments about the details of objective development and design standards to be codified in a locally adopted middle housing ordinance.

- **Provide predictability and timeliness for middle housing permit applicants by making local government review of middle housing permit applications a ministerial process.**

A ministerial process is one in which the decision maker reviews an application for consistency with **objective standards**, not **subjective guidelines or personal preferences**. The permit administrator would approve or deny the permit based solely on the standards in the code. This administrative process would be similar to the process used to approve or deny a building permit application based on the requirements of the International Building Code and International Residential Code.

- **Amend the Growth Management Act to give local governments the option of adopting a safe harbor alternative to satisfy the requirements of HB 1220.**

An ongoing complaint of both local governments and the development community in Washington has been the process for determining compliance with GMA requirements. The enforcement process involving appeals to the Growth Management Hearings Board (GMHB) has been criticized by some as unpredictable, uneven and untimely.

While local government adoption of plans and regulations are presumed valid upon adoption it is uncertain what either the GMHB or a reviewing court on appeal might decide. Because GMHB decisions are limited in application only to the parties to the specific case, its decisions are not case law that would provide predictability for other local governments. This can lead to uneven outcomes. For example, if two cities were to adopt identical ordinances, and only one were overturned by the GMHB, the unchallenged city could continue to legally apply it. Finally, to reach an appellate decision on a GMHB case that would constitute case law precedent has in many cases taken years.

In response to these concerns, the concept of optional safe harbors was raised by some stakeholders during Phase II of the *Road Map* project. The idea was proposed as a way to simultaneously satisfy both a compelling state interest (e.g., meeting urgent needs to protect the environment or provide for housing) and local government interests (e.g., predictability, reduced fiscal and political costs to

prepare plan or code amendments, and protection from the risk and cost of appeals).

Unlike the existing process, a “safe harbor” alternative would increase the timeliness of local government action and expedite subsequent outcomes in the form of the production of additional housing types. Oregon’s HB 2001 directed the State Land Conservation and Development Commission to prepare model middle housing ordinances for use by local governments. HB 2001 provided that middle housing permit applications consistent with those ordinances would not be subject to appeals. By the June 30, 2022 deadline, all affected Oregon cities had adopted either the model ordinance or their own local version that satisfied the state’s requirements.

Commerce’s Middle Housing Technical Team is in the process of preparing a toolbox of potential middle housing standards, processes and strategies. Other Commerce guidance is being prepared to address other components of HB 1220 such as anti-displacement policies, and how to plan for the housing needs of various income bands. As noted above, all Commerce guidance is advisory. To make any of this guidance into a “safe harbor”, i.e., exempt from a SEPA appeal under chapter 43.21C RCW or a petition for review to the GMHB under 36.70A.280 RCW, would require an amendment to the GMA. Statutory language could be modeled on the portions of SB 5818 and HB 1923 that made other high priority housing actions exempt from appeal.