

From: [Michael Eng](#)
To: [Exhibits HAGLU](#)
Subject: Testimony in support of HB 2225
Date: Monday, February 4, 2019 9:53:42 PM

Dear Representative Clem and Members of the House Committee on Agriculture and Land Use,

Thank you for taking our testimony and giving it your thoughtful consideration as you determine what changes are needed to clarify state law regarding template dwellings. We regret that we are unable to be there to present our testimony in person.

We live in Wallowa County and would like to share with you our experience in attempting to apply state law regarding template dwellings in a forest zone. Wallowa County has chosen to utilize a Timber Grazing Zone and an Exclusive Farm Use Zone in its Comprehensive Plan to guarantee the preservation of areas for farm and forest use and to prevent conflicts from competing uses. Furthermore, to protect its outstanding wildlife resources and habitat for big game species, which include mule and white-tailed deer, Rocky Mountain elk, Rocky Mountain goats, Rocky Mountain bighorn sheep, black bear, and cougar, Wallowa County also utilizes Wildlife Habitat Overlays to protect Goal V Resources, which generally coincide with either Timber Grazing or Exclusive Farm Use Zones.

The primary conflict with protecting big game habitat that Wallowa County has identified is the placement of dwellings and permanent residences within critical winter range. Current Oregon law, however, allows a dwelling to be built within critical winter range for big game if a certain amount of development and number of parcels existed on January 1, 1993, within an overlaid 160-acre square “template” centered on the subject parcel or tract.

The problems that we have encountered in attempting to prevent inappropriate land use decisions that conflict with Goal 5’s intent to protect Wildlife Resources, especially critical winter range for big game, result from the fact that current law regarding template dwellings lacks definitional specificity of critical terms and procedures regarding exactly how to apply the template dwelling allowance – thereby making it virtually impossible for any ordinary citizen to mount an effective challenge of an application for a template dwelling or for final decisions to be determined based on legal clarity.

To prevent ongoing uncertainty, continued conflict, and wasteful litigation, statutory clarity and legal definitions are needed to address the following issues:

1) What constitutes a qualifying pre-existing “dwelling” on adjacent parcels?

• Must a qualifying “dwelling” be legally constructed, i.e., have a valid development permit, a valid building permit, and a certificate of occupancy?

• Must a qualifying “dwelling” include a kitchen and bathroom with running water and approved septic system?

• Must a qualifying “dwelling” be occupied or

capable of being occupied as of January 1, 1993?

• Must a qualifying “dwelling” be included on the county’s tax roll as of January 1, 1993?

2) How is the “center” of a parcel or tract to be determined?

• Various methods have been used for determining the “center” of regularly and irregularly shaped parcels including, but not limited to the following: Midpoint Method, Centerpoint Method, Center of Gravity Test Method, Equal Area Method, Center by Slicing Method, “Pin” Test Method, Plumb Line Method, as well as a number of complex mathematical methods for determining the “centroid” or geometric center of a plane area. Each of these methods results in different determinations or calculations of the “center” of a parcel, and consequently different outcomes when a 160-acre square template is placed over that “center”. With such a plethora of methods for determining the “center” of a parcel and each resulting in different outcomes, there is no certainty regarding a legally defensible methodology for applying the template test.

• Furthermore, even when a specified method is used to determine the “center” of a parcel, the application of that methodology can be creatively and intentionally misapplied to skew the results in a desired direction, in order to capture the required number of parcels with existing dwellings under the overlaid template. For example, with “flag” shaped parcels, some applicants have used the narrow strip of the “pole” section of the parcel to inappropriately overweight that area and incorrectly locate the center in order to pull the center point of the parcel in the direction that would then result in an allowable template dwelling.

• If the state is to continue using the “template test” as the criterion for allowing a dwelling in a forest zone that would otherwise not be allowed, then the legislature needs to clarify which method or methods are legally acceptable for determining the “center” of a parcel, as well as how to correctly apply the method or methods to parcels of all shapes.

3) How is it determined whether adjacent parcels are located “within a 160-acre template”?

• Precision and accuracy is necessary to determine whether or not the required number of adjacent parcels and parcels with pre-existing dwellings, are located within the boundaries of an overlaid 160-acre square or rectangular template – especially when that determination will be a close call. Despite their acknowledged inaccuracy, GIS parcel maps are commonly used for drawing the template boundaries and making template determinations. In such instances, the drawn template boundary lines could measure to be +/- 30’ wide, depending on the scale of the map.

• The only accurate and precise method for locating template boundaries with respect to adjacent parcel property lines is for a survey to be conducted by a licensed surveyor.

We encourage passage of HB 2225 and support its underlying intent to limit conflicting uses within areas zoned for resource purposes. We greatly appreciate and applaud Representative Helm's commitment to clarifying the statutory language regarding template dwellings and to closing unintended loopholes that undermine the long-term protection of Oregon's forests and the many benefits they provide to its citizens.

Thank you for your consideration.

Michael and Monica Eng
64705 Lostine River RD
Lostine, OR 97857

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