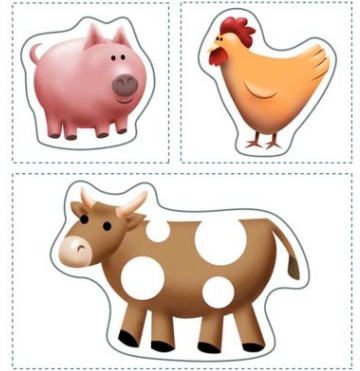


# Being a Good Neighbor When Farming Offends: How to Handle Ag Conflicts

Oregon Department of Agriculture

Farm Mediation Program

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When you are accustomed to something, it's easy to feel "at home," comfortable in your setting, and certainly not offended by your surroundings.

But to the newcomer, the un-accustomed, or the non-farm public, normal and customary farm practices can appear bothersome, unnatural, or even offensive in what they may have unwittingly expected to be an idyllic and undisturbed rural retreat.

With an encroaching non-farm population into rural areas and urban growth boundaries smashing into exclusive farm use zones, the perceptions are bound to differ.

Fortunately, the Oregon Legislature long ago recognized the need to create "zones" where certain activities would occur, thereby limiting to some degree, the conflicts that might otherwise arise.

In Oregon there are residential zones within urban growth boundaries and rural areas. There are exclusive forest and farm zones. And there are industrial and port zones that enable specified activities to occur in those areas.

But even with this zoning structure boundaries aren't always clear. Dust, odor, noise, drift, and equipment can move into areas that create concerns from others.

Again, the Oregon Legislature was far-sighted in adopting what are called "Right to Farm" (RTF) laws (ORS 30.930-30.947). The law provides that a farm practice which may generate noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and other crop production substances shall not give rise to any private right of action or legal claim for relief based on perceptions that these are "nuisance or trespass," IF the practices meets these criteria:

- (a) Is or may be used on a farm of a similar nature;
- (b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;
- (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;
- (d) Complies with applicable laws; and
- (e) Is done in a reasonable and prudent manner.

There are two exceptions to this:

1. Damage to commercial agricultural products; or,
2. Death or serious physical injury ("physical injury" means impairment of physical condition or substantial pain.)

As may be apparent, in spite of the zoning and the RTF laws, there is lots of room here for interpretation by creative lawyers. For example, what is “reasonable and prudent” as a farm practice? Who defines “substantial pain” or impairment?

While Oregon’s zoning statutes and Right to Farm laws are some of the strongest in the nation, they are not immutable. And some organizations and individuals are finding ways to challenge them. Think about smoke.

For the most part farmers have a good image with the public. But at the individual level, occasionally, situations are created that necessitate a good neighbor plan.

One expert on this topic said: “A good-neighbor policy is one of the best economic insurance policies you can have as a grower. It’s time and money well spent.” (*David White, Ohio Farm Bureau*).



Neighbors generally complain for one of three reasons:

- a. They are annoyed;
- b. they don’t understand what is happening and why;
- c. or, they are concerned about natural resources or animals (which relates to perceptions and understanding of what is being done).

When working with new neighbors, or those expressing concern about practices, here are some important and practical tips to addressing these issues and creating a strategy and plan that “banks good will.” (Some of these tips are gleaned from the August 2004 OAN Digger Magazine article titled “Good-neighbor Policy”.):

Preventative:

1. Communicate early and often. Get to know your neighbors. Talk with them about what you do, what you grow, and what happens on your operation. Most will be interested. Friendships, if they can be developed, lead to easier conversations when concerns are expressed about nuisances.
2. Don’t assume. Just because someone is living in the country (no matter how long) doesn’t mean they understand agricultural practices and the customary noises and odors, etc. that go with farming, especially if you change a crop or plant something they are unaccustomed to, or bring in animals that weren’t there before.
3. Educate. Invite neighbors over to pick fruits and vegetables, glean fields, or watch production activities while they happen (with appropriate safety precautions). Most school-age children have science projects – see if there is something you can assist with. Have an open house for customers and neighbors featuring educational and information exhibits, demonstrations, and hands-on activities.
4. Build your “good will” bank account. One grower stated: “Build a bank account of good will within the community you live and work....when things happen that

reduce that bank account you will be glad you have it. It can affect the ability of future generations to be able to farm.” Some additional ways to create good will include donating produce to food banks or food pantries, or nursery stock to charitable causes; or, when operating wide equipment or machinery on public roads, pulling off at safe places to letting traffic pass; also, when possible, moving equipment when there is less traffic.

Responsive (when a complaint is made to you or others about you):

5. Explain your dilemma. Share, in as much detail as possible, the challenges you face (bird depredation, mold or pest problem, etc.). Most people will be understanding.
6. Explain the time period. Often the activities that sometimes “offend” are short lived. Noise cannons or wind fans in orchards, harvesting at night, or spraying may only take a day or two or a couple weeks at most. If they know the ending date, most people are more accepting or tolerant of the situation.
7. Share the options. Talk about the various options that might provide a solution to the challenges you face, and the costs associated with each. Invite the other party to share in the cost of resolving the situation.
8. Define “Generally accepted, reasonable and prudent”: explain how what you are doing is based on best management practices, Extension or other research, and is used on other farms to address this issue.

When you need help talking to the neighbor – Who You Gonna Call?

The Oregon Farm Mediation Program is available to assist in these and other types of farm-related disputes.

The Farm Mediation Program provides confidential mediation services for farm-related disagreements. A neutral mediator helps disputing parties discuss concerns and work toward agreeable solutions. The program has an overall settlement rate of 85%.

Mediation is an informal, private, “sit down” between the parties, with the help of the mediator.

Mediators are neutral facilitators who work with the parties to ensure facts are correct, to consider whether further research or investigation into the issues is needed, to help evaluate realistic options/solutions, to ensure that communication is clear between the parties, and to help draft mediation documents that represent a mutual agreement of the parties.

Unfortunately, nuisance or trespass issues are not the only potential areas where farms may find conflicts arise.

- Employment disagreements – whether they are wage and hour disputes, housing or poster complaints – occasionally happen despite efforts at good record keeping and human resources management.
- Sales contracts – growers who enter into sales agreements can find themselves at odds with their buyer over some detail of the transaction.
- Landlord-tenant issues. Much of the farmland in Oregon is rented or leased. Good

- contracts help prevent disagreements, but they can happen.
- Family partnership workouts – sometimes developing a farm transition plan is very challenging and would benefit from an outside neutral expert to help facilitate the discussion and evaluate the options for the family.
  - Farm loans – when the unfortunate occurrence happens with debt repayment, some lenders are willing to meet with the grower and a mediator to resolve the workout.

These are just a few of the other instances where the Oregon Farm Mediation Program can assist the parties involved in disagreement.

The service for most types of mediation is available at \$30 per hour per party for the time spent with the mediator. Much easier on the pocket book than court fees and attorneys!

Farm mediation sessions generally average 2-4 hours to reach a settlement. However, while the program has assisted a high percentage of participants reach agreements, we cannot promise results. That is up to the parties.

Mediators do not have decision-making authority. Any agreement, if reached, is worked out by the parties. The mediator can assist in drafting an agreement document, which then becomes legally binding between the parties once signed by the participants.

Participants may want to have legal counsel advise them and review any documents developed in mediation before final signature. The mediator cannot provide legal advice.

If your operation finds itself in a dispute, like any of those described here, or any other where at least one of the parties in the dispute is a farmer or agricultural business, the Oregon Farm Mediation Program is available to assist.

The Oregon Department of Agriculture manages the program and does the initial intake of calls or inquiries, provides orientation about mediation, and obtains signed documents by the parties agreeing to mediation. The case is then assigned to a private, professional mediator on contract with the department to conduct the mediation.

The mediator will contact the parties to schedule the mediation as soon as everyone's schedule permits. Most mediations are resolved within 45 days of initial contact to the department. Mediations are held at convenient locations close to the parties, such as county extension offices, libraries, other public buildings, or any other location that is in agreement with the parties.

Got a situation? Give us a call!



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