



WASHINGTON COUNTY

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**IMPACT ANALYSIS REQUIRED FOR SECTION 340-4.2 (EFU) OR 344-4.2 (AF-20)
(ORS 215.296)**

Sections 340-4.2 (EFU) and 344-4.2 (AF-20) require applicants to demonstrate that the proposed dwelling will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. From a technical and practical standpoint, meeting the legal requirements of sections 340 4.2 and 344 4.2 can be very difficult.

In order to address the requirements of Sections 340-4.2 and 344-4.2, it is necessary to provide applicants with a brief explanation of the origin of the requirements and how they must be applied to dwellings and other uses. The EFU and AF20 Districts are exclusive farm use zones and are subject to Oregon Revised Statutes (ORS), Chapter 215. In these districts, ORS 215 lists the permitted uses and provides standards for many of the uses. Additionally, there are a number of relevant court cases which interpret ORS and must be applied to the standards.

In land use cases, the "burden of proof" is on the applicant, not the County or an opponent. This means that the applicant must provide evidence and findings which demonstrate compliance with the standards. The evidence must be substantial. The courts have held that substantial evidence is evidence which a reasonable person could accept as adequate to support a conclusion. Findings must be issued on "substantial evidence" in the record, must explain what the relevant facts are and why the facts warrant the conclusion that the standard is satisfied. Examples of evidence are aerial photos of the surrounding area; topographic maps; tax maps; technical publications dealing with soils, farm crops, accepted farm/forest practices; tax records; expert testimony from an engineer, forester, farmer, etc.

In preparing findings it may be helpful to organize the findings by: 1) stating the ultimate fact or conclusion, 2) setting forth the basic or specific evidentiary facts which support the ultimate fact or conclusion, and 3) stating the reasons why the basic findings of fact justify the ultimate fact or conclusion.

Example:

Conclusion: The conclusion may be that the proposed dwelling will not significantly increase the cost of accepted farm practices.

Evidence: The evidence supporting this conclusion includes a recent aerial photo showing surrounding uses, tax maps showing tax lot sizes, tax records from the Department of Assessment Taxation showing improvements and tax assessments for surrounding tax lots, description of accepted farm practices and a USGS topography map for the surrounding area.

Reasons: The reasons why the evidence supports the conclusion are as follows: The photo shows the nearest farm use is ½ mile from the site (orchard). The applicant "field checked" the farm uses and determined that the farm use is an apple orchard; the applicant contacted the owner of the orchard to determine the accepted farm practices (description is in file). This particular orchard is not aerially sprayed and the owner did not believe there would be any off-site impacts. The tax records and photo show that there are seven dwellings between the site and the farm use; the tax records also show none of the land between the site and the farm use is assessed at farm value, which verifies the accuracy of the photo (nearest farm use ½ mile); the topo map shows an intervening hill 300 feet high. Considering the existence of dwelling in the area, the type of farm use proposed and the intervening terrain, it is reasonable to conclude that any potential impacts will be reduced to virtually zero. (Note: when using terrain as a factor, the findings must explain just how the terrain reduces impacts. Staff, in this handout, has not attempted to explain the reason.)

In addressing Sections 340-4.2 or 340-4.2, there are five basic components: 1) an analysis area, 2) inventory of farm/forest uses and accepted farm/forest practices, 3) description of proposed use, 4) identification of potential impacts/conflicts/mitigation measures and, 5) a conclusion summarizing the information.

1. **ANALYSIS AREA:** The applicant must first define what will be considered as "surrounding lands". Once "surrounding lands" is defined, the applicant must provide an inventory of surrounding lands and uses. The applicant may choose a reasonable distance from the site based on factors such as the topography of the area, physical aspects of the property, and the types of uses occurring on nearby properties. The basis of the analysis area must be stated and supported by factual evidence. The boundaries of the analysis area should be clearly stated and usually should follow property lines. Also provide a map showing all of the entire analysis area.
2. **INVENTORY:** If there is farm or forest land in the analysis area, the applicant must determine what specific accepted farm or forest practices are occurring on those on those lands at various times of the year. In the case of forestland, the applicant must consider future forest practices since forest operations are not conducted every year. The inventory must also include rotation crops as well as livestock operations, dairy farms, etc. The applicant must also consider potential farm uses. An inventory of crops or forestland alone is not sufficient. The accepted farm practices must determined for each crop. Findings based on typical or "generic" accepted farm/forest practices are not acceptable. You must attempt to contact the owners of the farm/forest land and find out what the actual accepted farm/forest practices are. If the owner is not the farm/forest operator, then you must contact the operator and find out accepted farm/forest practices they are using or contemplating. If you are unable to contact the owner/operator, then you must explain what steps you took to contact the owner/operator. Descriptions of typical or "generic" accepted farm/forest practices are not adequate because not all farmers/foresters conduct their operations in the same manner even if the "crops" are the same. Frequently the size, physical aspects of the property and surrounding uses affect the "typical" practices. Therefore we must base our findings more precisely on the actual practices rather than the "typical" practices.

A generalized example of accepted farm practices for one farm crop is as follows: Christmas trees include manual shearing several times during the summer, ground-based application of fertilizer/herbicides, manual harvesting, and transport of harvested trees from the site. Helicopters may be used to transport harvested trees to truck loading areas on areas of the site. Harvesting occurs November through December.

There should also be information about the frequency of these activities. For example, some fields may have 2 crops or two crop cycles annually. This example above is for just one annual crop; you must determine the specific accepted farm practices for every crop in the analysis area, including rotation crops.

Include a generalized example of accepted forest practices, such as harvesting (final harvests and commercial thinning), disposal and treatment of slash (including prescribed burning), site preparation (including application of herbicides), reforestation, pre-commercial thinning, stand maintenance (including herbicide and chemical applications for insect and disease control, competing vegetation control and fertilization), and road construction and maintenance. Include in your discussion, the time of year these practices occur.

- 3. DESCRIPTION OF PROPOSED USE:** In order to determine potential impacts, the applicant must explain the activities, which will be associated with the proposed use. For example, activities associated with dwellings include those customarily carried on as such as eating, sleeping, gardening, outdoor recreation, raising a family, and occasional entertainment of guests. The residents may also have a variety of pets. Also explain the source of water (well, spring, etc.) and whether it will be located on the site. Identify the location of the access and whether it is existing or proposed. Other uses besides drilling are subject to the impact analysis, and may have activities different associated with them. These must be described in a fashion consistent with the example here.
- 4. IMPACT ANALYSIS:** There can be a variety of potential impacts, which create conflicts with farm/forest uses. In analyzing the potential impacts it is important to remember that the Code does not require and absence of conflict. The applicant must evaluate the likelihood of conflicts, and if conflict is likely, and demonstrate whether the conflict will either force a significant change in the farm/forest practices or significantly increase the cost of the farm /forest practices. If there could be a significant conflict, the applicant can propose conditions of approval to mitigate conflicts, "Significant" is not defined in ORS 215 or the Code; staff defines "significant" as meaning important, weighty or notable. Likewise, no dollar amount for "cost" has been defined. Also remember that broad assumptions may make sense to a person who is extremely familiar with accepted farm or forest practices, but the burden here requires the applicant to explain detail, based on evidence showing why the activities associated with the dwelling and the farm/forest use will not result in significant conflicts, giving rise to change or increased costs.

Conflicts often arise from complaints of new residents about noise, dust, chemical drift (either ground based application or aerial application), trespass, smoke (field burning, orchard pruning/burning or prescribed burning), dogs chasing livestock, or other factors. Additional costs to farmers can include having to put up additional fencing because of trespass problems, increased liability for harm to trespassers and costs incurred in

responding to complaints and/or lawsuits. A significant change may also include changing crops because of consistent complaints. Increased traffic can also conflict with farming . There can even be impacts such as water shortages that affect irrigation when additional wells are drilled to serve new dwellings. New dwellings can conflict with forest uses by requiring the operators to modify timber sales to protect residential water systems, to apply herbicides by hand to protect water systems or because of complaints, to maintain roads at standards exceeding those necessary for logging operations to satisfy residents. Other costs may be associated with the time and money spent to resolve claims to repair private fences, ponds, driveways, bridges and vegetation after suppressing fires, complaints and damage

claims regarding forest practices (slash burning, herbicide spraying, etc.) and increased fire danger and increased cost of fire suppression. Even a dwelling's location can cause conflict. Dwellings built too close to property lines can cause farmers to change the way they farm, cause timber sales to be modified, increase fire hazards, etc.

- 5. CONCLUSION SUMMARIZING INFORMATION:** Once the accepted farm/forest practices and potential conflicts in the area have been identified, the findings must demonstrate that significant conflicts will not occur. Findings which describe distances to the nearest farm/forest uses, the physical aspects of the site, location of structures, type of farm/forest use, intervening topography and the nature of activities associated with the proposed use can be used to address this conclusion.

For example, aerial spraying or field burning which occurs ½ mile from the will have a different impact than when it occurs next to the site. When dealing with specifically identified conflicts, be as detailed as possible. For example, the fact that farmers use chemical sprays in the area does not establish that an additional dwelling will cause significant conflict. Evidence that farmers have received complaints or even stopped the practice after receiving complaints shows some conflict but does not establish significant conflict since we cannot tell whether farms halted spraying for an hour, a day or an indefinite period of time after receiving the complaint. Such information is important in determining where the incident amounted to "forcing significant change/cost" in accepted farm practices or relatively insignificant incident. See Schadd v. Clackamas County, 15 or LUBA 70 (1986).

We realize that the land use requirements are difficult, often confusing, and sometimes do not make sense. We will assist you to the extent that we can, but please be aware, as stated above, the burden is on the applicant. We cannot make the findings for you nor can we provide evidence for you. You need to have a very good application with substantial evidence to support your findings and conclusions. If you do not have substantial evidence and adequate findings to support your application, we can not approve the application.