Using Income Criteria to Protect Commercial Farmland in the State of Oregon

Oregon Department of Land Conservation and Development

635 Capitol Street NE/Suite 150/Salem, OR /97301-2540/ Phone: 503-373-0050 X266/FAX: 503-378-5518/www.lcd.state.or.us

Protecting Oregon farmland is our state's policy. The 1973 Oregon Legislature gave special emphasis to farmland protection when it adopted the Oregon Agricultural Land Use Policy.[1] This policy statement has been LCDC's touchstone for Goal 3 (Agricultural Land) ever since:

> ***The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.***

The same law authorized farm dwellings in farm zones if they are "customarily provided in conjunction with farm use...."[2] In 1979, the Oregon Tax Court held that tax relief for farm use "is not to be extended to the professional man's fine residence in the filbert orchard, the city worker's five suburban acres and a cow, the retired person's 20 acres of marginal land on which a travel trailer constitutes the personal residence, unless the day-to-day activities on the subject land are principally and patently directed to achieving a profit in money through the farm use of the land." The Oregon Supreme Court affirmed the Tax Court in 1983.[3]

Also, in 1983, the legislature directed counties and the Land Conservation and Development Commission (LCDC) to report to the legislature on dwellings, nonfarm uses and land divisions in farm zones in order to evaluate the effectiveness of Oregon's efforts to achieve the 10-year-old Legislative Agricultural Land Use Policy. After several years of reports, the legislature became concerned about the number of new dwellings being approved in farm zones and ordered a study of new farm dwellings. The study showed that the large majority of the tracts on which new "farm" dwellings had been approved by counties were contributing very little to commercial agriculture. In fact, several years after the "farm" dwellings were built,

- 37% of the tracts were producing zero gross farm income,
- over 50% were producing under $2,500 in gross income, and
- 75% were producing under $10,000 in gross income.

It became clear that LCDC rules were not helping counties distinguish between dwellings for farmers and dwellings for what the Tax Court called "the professional man's fine residence in a filbert orchard."

The study results showed LCDC that it needed to change the rules. After the 1993 Legislature told the commission to treat "high-value farmland"[4] differently from the rest of land in farm zones, LCDC established a technical advisory committee of farmers to advise it on a new way to ensure that new farm dwellings would be for farmers rather than for people who simply wanted to live in the country.

[1] *ORS 215.243*
[2] *ORS 215.283(l)(f)*
[3] *Capsey v. Dept. of Revenue*
[4] Defined in *ORS 215.710*

The advisory committee worked hard to develop this new tool to carry out the state's farmland protection policy. The committee considered a number of possible solutions, including a gross income test, a net income test, a capability test, and an acreage test. **The committee then recommended a gross income test as the preferred method.**

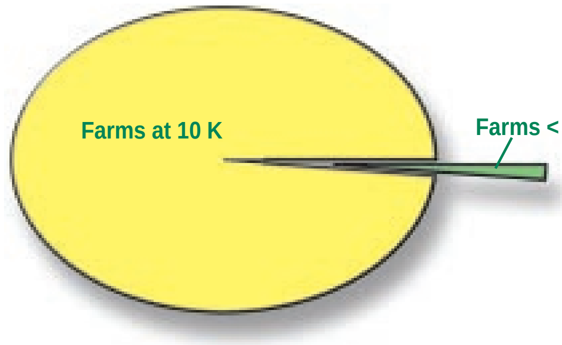
Some committee members thought the income level should be set at the average gross income of commercial farms in each county. But LCDC concluded that the average income (e.g., $198,000 in Benton County; $251,000 in Umatilla County) was too high and would make it difficult for people to get started in agriculture. LCDC accepted the recommendation of the majority of the advisory committee and set the gross income test at $80,000. While $80,000 is far below the average income of commercial farms, it is enough to sort farmers from people just looking for a home in the country. (A gross income of $80,000 generates a net income of about $16,000.)

LCDC followed the direction of the 1993 Legislature and applied the $80,000 gross income test only to "high-value" farmland.[5] This clear and objective standard is much easier than the previous method for citizens to understand and for local staff to administer.

For the rest of land in farm zones, LCDC gave counties three other tests: a *lower income* test, a *parcel size* test and a *production capability* test. Counties can use all three tests. There are also opportunities for non-farm dwellings.[6]

1997 Farm Census Facts: Commercial Farms

98% of Total Ag Products Sales vs. 2%



Are the tests working to achieve the state's farmland protection policy? We believe so. While not all of the data are in, a contemporary comparison indicates that these tests are doing a better job than earlier methods. Between 1988 and 1992, before the income tests, counties approved 1,378 new farm dwellings. In the three years since adoption of the new tests, counties have approved only 332 new farm dwellings.

Farm activities often conflict with non-farming neighbors' expectations of a rural residential life.

"The farm income test is an essential safeguard for the State's economy. It ensures new farm dwellings are for farmers. Before we started using this test, lawyers, doctors and others not really farming were building houses in farm zones. If we lose it, we will roll back years of progressive farmland protection policy, potentially adding thousands of new dwellings."

DLCD Director, Dick Benner.

[5]Four to five million acres out of 16 million in farm zones

[6]*ORS 215.284* and *ORS 215.705*