OREGON PROPERTY OWNERS ASSOCIATION

**Senate Committee on Rules**
**Senate Bill 1087 Letter of Support**

April 6, 2023

Chair Lieber and Committee Members:

We write in support of Senate Bill 1087 and thank you for holding a hearing on it.

SB 1087 is a very modest bill that applies to Lane County only. The bill authorizes farm cafes in a limited capacity, conditioned upon several narrowing factors that ensure that the use be secondary to the farm use on the subject property and in the surrounding area. The bill does not allow the farm café to be the predominant use or require Lane County to approve it.

To aid the committee's understanding of the bill, here are the limiting factors to the siting of a farm café contained in existing Oregon land use law and in the provisions of the bill:

1. The farm café is authorized by ORS 215.213, not 215.283: There are two Oregon statutes governing non-farm uses in exclusive farm use (EFU) zones – ORS 215.283 and 215.213. There is a historical reason for this, but for modern purposes, ORS 215.213 regulates non-farm uses in the "marginal lands" counties. There are only two marginal lands counties – Lane and Washington. SB 1087 only amends ORS 215.213, not 215.283. Furthermore, the bill specifically applies only to Lane County. Therefore, this bill has zero impact on 35 counties, and only effects 1 county.
2. The farm café is authorized by ORS 215.213(2), not 215.213(1): There is a longstanding recognition in Oregon land use law between non-farm uses authorized by ORS 215.213(1) (known as "sub-1 uses"), and ORS 215.213(2) (known as "sub-2 uses"). Sub-1 uses are allowed as a matter of right, meaning the County lacks authority to impose any additional requirements on the use beyond what is in the statute or LCDC administrative rule. Sub-2 uses are more open-ended, meaning the County has the authority to impose additional requirements beyond those found in the statute and LCDC rule. SB 1087 makes a farm café a Sub-2 use, meaning that Lane County is free to impose additional requirements for the siting of the café beyond those in the bill itself and any accompanying LCDC rules that are adopted should the bill pass. In fact, the bill specifically provides that the County may impose additional criteria, something the statute already authorizes.
3. LCDC may further restrict farm cafes: LCDC has the authority to enact rules that impose additional limits that go beyond the limitations imposed on a non-farm use in ORS 215.213 or 215.283. They exercise that authority frequently, and could do so here as well, should they choose to.

4. Sub-2 uses are subject to the "significance" tests in ORS 215.296(1): SB 1087 authorizes a farm café as a Sub-2 use. Sub-2 uses are governed by the provisions of ORS 215.296(1), which requires a person seeking to make a non-farm Sub-2 use to demonstrate that the use will not 1) "force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use", and will not 2) "significantly increase the cost of accepted farm and forest practices on surrounding lands devoted to farm or forest use." There is an extremely well-developed body of Oregon case law interpreting the requirements of the "significance" tests, which are difficult to satisfy in the face of any legal challenge. A farm café approved under this bill will have a steep hurdle to overcome to qualify under this test.
5. The farm café must be "incidental and subordinate" to farm activities on the subject property: Section 2(2)(i) of SB 1087 requires a farm café approved under the bill to be "incidental and subordinate" to the primary farm use on the subject parcel. This requirement will serve to greatly limit the size and scope of the farm café, likely beyond the significant limitations found within the bill itself. Like the "significance" tests referenced above, there is a very well-developed body of Oregon case law on the "incidental and subordinate" requirements for a land use in a farm or forest zone. Not only will an applicant for a farm café under this bill need to demonstrate that they aren't creating significant impacts on neighboring farm and forest practices, they'll also have to demonstrate that the predominant use of the parcel used for the farm café remains agricultural use. In other words, a farm café under this bill will be a working part of the farm operation, not a primary or sole use of the farm parcel.

There are many additional limitations on size and scope of the farm café written into the bill, along with requirements that the farm café incorporate and promote ingredients grown on the farm and on farms in surrounding areas. Vertical integration of farm operations is a win for farmers, not a loss, and many of the non-farm uses in ORS 215.213 and 215.283, including farm processing, agri-tourism, wineries, cideries, breweries, and farm stands, are designed for that very purpose. A farm café is another example of this trend.

In sum, it will take a very dedicated property owner and a very narrow and specific set of facts in order to approve a farm café under this bill, particularly in the face of what is likely hostile opposition from advocacy groups. There are bills that make significant changes to non-farm uses in EFU zones – this is not one of them. To the extent that the bill demonstrates that a farmer can farm a parcel and also vertically integrate with a non-farm use that showcases farm operations on the parcel and in the surrounding area, it is a positive for farming, not a negative, and should be supported.

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