

April 6, 2023, To: Senate Committee on Rules

From: Mike McCarthy, PhD
McCarthy Family Farm,
Parkdale, OR 97041

Testimony on Hearing on SB 1087

Chair Lieber and members of the Committee
Please oppose SB 1087.

Our family raises apples, pears and cherries in Hood River County. This bill is of particular interest to me and those of use who farm in Hood River County where non farm uses in the farm zone are of extreme concern for those of us who want to continue to raise food in a commercial manner.

I have been involved in working to protect farm land in Hood River County and throughout the state for 42 years. The only reason that there is still a significant farm industry in Hood River County is that we have the Oregon Land Use System that works to protect farm land. The pressures to take over all farm land in Hood River County for development is extreme. Even though Hood River County produces the most food per acre of any county in Oregon developers push the county government to convert it all to destination resorts, short term rentals, and second homes.

Hood River County is not unlike other counties in the state where the pressure to use cheaper farm land for every conceivable use is intense. This bill for Lane county is one more attempt to damage the statewide land conservation program and this will effect all who want to grow food in Oregon.

We bought orchard land in Hood River County in 1980 in what we thought was the Exclusive Farm Use Zone (EFU). This was important to us as we wanted to invest the huge amount of capital it takes to farm in an area where there was a stable zone and stable industry to support our farm and US sales. Since that time the state has added some 50 additional uses to the farm zone, most of them non farm.

Over my 42 years working on farm land protection in Oregon, I have participated in county and city land use hearings, LUBA appeals, appeals to the Court of appeals, submitted land use complaints, written land use laws, hired attorneys to do enforcement work, worked with almost all land use watch-dog groups in Oregon and founded land use groups. Through this time I have gained an understanding of great benefit the system provides to those of us who want to grow food, plants, or seed commercially but also I am very aware of the flaws and abuses to the system.

The problems with SB 1087 as I see them.

1. Saturation of the farm zone with tourism venues is incompatible with farming and real food production.

The incompatibility with farming is intense. We are not protected by Right to Farm because there is no enforcement by anyone of our Right to Farm. That is left to the farmer to file complaints, hire lawyers, go to court with never any compensation for the farmer's time to deal with this.

We have roads that we can not use some times of the year because it is too dangerous with parked cars, foot and car traffic. Our harvest season with empty bin hauling, cherries, pears and apples lasts about 3 months. We haul up to 14 semi loads per day so with empty and full that is 28 trips into our orchards on

crowded roads from nearby tourism events. We have to send an escort to help them get through parked cars etc.

2. There is often no compliance with the Conditional Use Permit and there is no enforcement.

The number of Conditions placed on Conditional non farm uses (B and B's, Short Term Rentals, Home Occupations, Wedding Venues, Breweries/Wineries/Cideries, camp grounds, etc) in EFU must now be in the tens of thousands in Oregon. There has never been a system to monitor if any of these conditions are met. Many are not met from Day One of the permit. Many are not met everyday: for example the Incidental and Subordinate requirement.

Before you add more uses please fix the system. **As Lane County has a particularly bad reputation** for any having interest in going by the Land Use Laws of the State of Oregon they should not be the poster child for an experiment. Ask Lane County first to demonstrate that the previous Conditions of Approval they have issued for Conditional Uses are being met.

And that all permits issued in farm and forest follow the letter and intent of the law. That is the first step.

Counties and the state spends hours writing lengthy conditions which are never met. Conditions also are intentionally vague as in SB 1087 so they are unenforceable. Anti land use lawyers spend hours weasel wording the laws so that counties and applicants can interpret the code any way they want.

For example in SB 1087:

Section 2. (2)

(c) "Is owned by the owner of the farm tract". **It could be leased and operated by anyone with no association with the farm or anything sold on the farm.**

(d) "Other than parking and outdoor seating areas, is operated substantially within one or more dwellings or other buildings normally associated with farm uses that are lawfully established".

"Substantially" is unenforceable. With seating outside, most of the Cafe could be outside, not inside. If inside it might take less farm land out of production and be less intrusive to neighbors. If it is in a "Dwelling" this will take housing away from rural areas where housing is already in short supply. "Other buildings...lawfully established"; applicants are applying for an "Ag building" one day and then a venue the next in that Ag building. The Ag building was never used for an Ag building, just for a non farm venue and was not a "building normally associated with farm uses". This is just another way to avoid the intent of the law.

(f) "Has a seating area that occupies no more than 5,000 sq feet" **If it is outside seating it can easily be expanded from moment to moment and not meet the law. 5000 sq feet could easily be a restaurant with a capacity that would exceed 25 car parking. Who is monitoring the 5000 sq ft outside seating every weekend.**

(h) "Prominently promotes the sale of farm products produced on the farm tract or farms within the local vicinity". **"Prominently promotes" is too vague to be enforceable. Is it the first item on the menu? Even though we don't have any available 9 months of the year? "Local vicinity" has been interpreted to mean "anywhere in Oregon and surrounding counties in adjacent states". This is not local!! This does not help sell local produce. This works against local farms. Many venues in the farm zone have the United Grocers trucks show up to drop off ALL of the produce and other food items. If it really is the intent to sell products from that farm to help that farm survive, 75% of the items should come exclusively from that farm. And most importantly there need to be an auditable path to determine if it is met. We have tried to do this several times and it is almost impossible to get counties to cooperate and also to get relevant useable information from the permittee.**

(I) "Is incidental and subordinate to the existing farm use on the tract".

Yea, that is really clear. What does that mean? And the reality is that any successful restaurant will have gross revenue that greatly exceeds farm gross revenue unless it is a really big farm. So immediately any successful restaurant will not be "incidental and subordinate".
Who will audit this?

(j) Similar comments to (h).

(k) "Has no more than 25 parking spaces designated for the farm cafe customers". Again, this is weak wording. "Designated for"? Can other cars beyond the 25 park in undesignated areas? What is the penalty if they park in undesignated areas? Who will monitor when they get on the neighbors farm. Who will monitor when they park on the road shoulders and create a traffic safety problem?

3. Farm families in Oregon have traditionally had to work off of the farm to make ends meet.
We can not guarantee that all farms can be self supporting. We can not throw out the whole Oregon farm land conservation movement to guarantee profitability of farms through commercial non farm uses that cover up and convert land away from farming. Because other states are doing Agritourism and restaurants does not mean it is right for the strong farm land protection system Oregon has.

4. Adding uses to the farm zone increases the price of farm land, so it becomes even more difficult for young farmers to buy land and grow food.
Realtors now ask appraisers to add the value of each potential venue, each potential use to the appraised value farm land., vastly inflating land prices.

5. It takes business away from rural communities where business is needed and where people paid commercial prices to have a commercial use.
This is a real fairness issue. Restaurants in our rural communities struggle and do not need customers taken away to farm cafes. Many rural communities have empty store fronts. This is where development should occur. This is the basis of the whole Oregon Land Use system: development inside of the community boundaries where there is infrastructure and services. Farmers can take advantage of farm markets in communities and can work together to create cafes/produce markets in rural communities. This is a far better model.

6. As we work on climate issue in Oregon, this work should extend to our decision making process within the Oregon Land Use System.
Agritourism has a huge carbon footprint and in some areas of the state the carbon footprint of agritourism is likely larger that that from food production. Lets keep restaurants in communities.

Please, before you consider this bill, consider how we can make everyone follow the rules, get counties to monitor compliance and create a means for enforcement. The farm zone is crumbling under the weight of too much non farm use.
Oregon has a real advantage globally, long term to keep farm land with water and precipitation available for food production.
Thank you:
Mike McCarthy PhD, McCarthy Family Farm

