



TO: Columbia River Gorge Commission
FROM: Steven D. McCoy, Staff Attorney
DATE: October 12, 2020
RE: **Comments on Agricultural Product Sales Proposed Language**

Friends of the Columbia Gorge (“Friends”) has reviewed the Staff Report on the Agricultural Product Sales Proposed Language and offers the following comments. Friends is a non-profit organization with approximately 6,500 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area.

Friends would first like to thank the Commission and staff for the many hours of hard work that have gone into the current draft of the Management Plan. The current draft is a compromise – no party got everything it wanted. However, in its current form, it generally represents good policy for the National Scenic Area and comports with the Act. **Thank you for your hard work.**

Comments on Agricultural Product Sales Proposed Language

Friends opposes the proposed change to allow unlimited sales of “associated incidental products from the local region” at fruit and produce stands. There are no proposed definitions for “associated incidental products” or for “local region” which would inject uncertainty into what products can be sold and from where those products can originate. The vagueness of the definition would allow a situation where the “tail wags the dog” and, in violation of the National Scenic Area Act, produce stands could be opened as largely non-farm commercial endeavors rather than as a marketing opportunity for goods grown on the subject farm. The determination that “[f]ruit and produce stands are not a commercial use” simply cannot be made if, as is being proposed, unlimited sales of undefined “associated incidental products from the local region” are allowed. Simply saying that something is not a commercial use without ensuring that the use is not commercial does not make it so.

The proposed changes would also allow more intensive commercial sales of incidental products at farm stands in the National Scenic Area than are allowed at farm stands on farm lands elsewhere in Oregon. Oregon state law authorizes only farm stand “structures that are ‘designed and used for the sale of farm crops and livestock’ that are grown on the farm where the farm stand is located” and requires that the structures may not “be designed for ‘activities other than the sale of farm crops and livestock,’ and further prohibits structures designed for ‘banquets, public gatherings or public entertainment.’” *Greenfield v. Multnomah Cnty.*, 259 Or.App. 687,

317 P.3d 274, 277–78 (Or. App. 2013), *quoting*, *Greenfield v. Multnomah Cnty.*, 67 Or LUBA 407 (2013). In addition, Oregon state law limits annual retail sales for products not grown on the subject farm to no more than 25 percent of the total annual sales of the farm stand and it allows farm stands to sell “fresh and processed farm crops,” but not “prepared food items.” *Id.*

The prohibition on serving prepared foods is to prevent farms stands from becoming *de facto* restaurants and the 25% limitation is to ensure that the sale of incidental items does not overtake the sales of products from the farm such that a farm stand becomes a *de facto* convenience store or other non-farm related retail establishment. These limitations have been put into place due to past or threatened abuses of the farm stand authorization in Oregon and, if this proposal moves forward, should be put into place here to prevent similar problems in the National Scenic Area. In addition, these limitations are necessary to prevent violation of the Act’s requirements that the Management Plan “protect and enhance agricultural lands for agricultural uses”, that commercial uses in Special Management Areas be prohibited, and that commercial development outside urban areas take place without adverse effects, including cumulative adverse effects, to the scenic, cultural, recreation, or natural resources of the scenic area. 16 U.S.C. § 544d(d)(1), (5), & (7). In addition, these definitions would be more likely to comply with Goal 3 of Oregon’s land use planning program, which is required under Oregon’s implementation of the National Scenic Area Act at ORS 196.107(3).

If the Commission is intent on making a change, then the following would prevent the opening of a loophole that would allow unlimited sales of “associated incidental products” at fruit and produce stands in violation of the Act:¹

Fruit and produce stand: A venue on a ~~property~~ farm or ranch primarily selling produce and agricultural products primarily grown on the subject ~~parcel~~ farm or ranch. Associated incidental products and farm products from the local agricultural area may also be sold but may not make up more than 25% of the sales at the fruit and produce stand. Structures that are used as fruit and produce stands must be designed and used for the sale of farm crops that are grown on the farm where the farm stand is located and may not include structures that are designed for activities other than the sale of farm crops including banquets, public gatherings, and public entertainment. Fruit and produce stands are not a commercial use.

Associated incidental products: Products that promote the sale of farm crops sold at the fruit or produce stand. Associated incidental products include fresh and processed farm crops including jams, syrups, and other similar farm crops that have been processed and converted into another product. Associated incidental products do not include prepared foods.

Local agricultural area: Clark, Skamania, and Klickitat Counties in Washington and Multnomah, Hood River, and Wasco Counties in Oregon.

Friends asks the Commission to not adopt the language proposed in the Staff Report and instead to take no action. If the Commission decides to act, Friends suggests the following

¹ Neither “associated incidental products” nor “local agricultural area” appear elsewhere in the current or draft Management Plan.

motion to comply with the above-cited requirements of the National Scenic Area Act and to correspond with Oregon laws in effect outside the National Scenic Area.

Suggested Commission Motion

I move to adopt the following changes to the 8/27/2020 Draft Management Plan:

Amend the glossary definition for fruit and produce stand to say:

Fruit and produce stand: A venue on a farm or ranch primarily selling produce and agricultural products grown on the subject farm or ranch. Associated incidental products from the local region and farm products from the local agricultural area may also be sold but may not make up more than 25% of the sales at the fruit and produce stand. Structures that are used as fruit and produce stands must be designed and used for the sale of farm crops that are grown on the farm where the farm stand is located and may not include structures that are designed for activities other than the sale of farm crops including banquets, public gatherings, or public entertainment. Fruit and produce stands are not a commercial use.

Add a glossary definition for associated incidental products saying:

Associated incidental products: Products that promote the sale of farm crops sold at the fruit or produce stand. Associated incidental products include fresh and processed farm crops including jams, syrups, and other similar farm crops that have been processed and converted into another product. Associated incidental products do not include prepared foods.

Add a glossary definition for local region saying:

Local agricultural area: Clark, Skamania, and Klickitat Counties in Washington and Multnomah, Hood River, and Wasco Counties in Oregon.

And where fruit and produce stands are listed as a review use, say only “fruit and produce stands” since it will be referring to the glossary definitions above.