

# Friends of the Columbia Gorge

*Protecting the Gorge Since 1980*

*Winter 2018 Newsletter*



## Protecting Wildlife and Wetlands

# Director's Letter

One of the most challenging jobs I have witnessed in my 20 years with Friends is that of the executive director of the Columbia River Gorge Commission. The person in that position must work effectively with two governors, two state legislatures, and six counties, plus numerous stakeholders like Friends. The commission director guides staff and the commissioners through both land-use permitting and big-picture planning.

Congress, along with the Washington and Oregon legislatures, made the Gorge Commission executive director position challenging because it is so critical. At stake is one of the country's most precious resources. So it gave the director authority beyond even the Gorge Commission itself. While the commission hears land-use legal appeals that can drag on for months, the director has the sole authority to act

immediately when enforcing the rules of the National Scenic Area. This includes investigating violations of the rules, initiating enforcement actions, and even issuing stop-work orders to halt violations.

Over the past several years, the various executive directors of the Gorge Commission have moved further and further away from those enforcement responsibilities, when in fact that role is needed more than ever. Our lead story (see page 4) outlines the problem we face today: a massive quarry operating without a permit and moving more than 200 trucks a day in and out of the quarry, adjacent to a wildlife refuge. This is just one example of several egregious violations occurring in the National Scenic Area with no response by the commission executive director.

The current Gorge Commission director, Krystyna Wolniakowski, needs to act. I respect Krystyna. She has been a fresh voice for the commission: passionate and hard-working with a deep appreciation for conservation and the Gorge itself. During her three years, she has worked to rebuild relations with Tribes, county officials, conservation groups, and local residents. She has worked to increase agency funding and is rebuilding a diminished staff. But we



Photo: Richard Kolbell

are at a moment in time where she must reclaim the power of her position and use her enforcement authority to stop these massive violations.

While Friends supports increased funding for the Commission, current funding is adequate to enforce against major violations. It's a matter of reprioritizing funding to enforce Gorge protection laws. Only when the Gorge Commission is recognized as a steady protector and enforcer of Gorge rules will the agency be able to build the support needed to ensure it remains robust and well-funded to protect this landscape for generations to come.

A handwritten signature in black ink, reading "Kevin Gorman".

Kevin Gorman, Executive Director  
kevin@gorgefriends.org

*Friends of the Columbia Gorge works to ensure that the beautiful and wild Columbia Gorge remains a place apart, an unspoiled treasure for generations to come.*



# Illegal Quarry Threatens Gorge Resources

## Gorge Commission staff not enforcing Scenic Area rules

**Nathan Baker, Senior Staff Attorney, [nathan@gorgefriends.org](mailto:nathan@gorgefriends.org)**

**F**or the past year, illegal mining in eastern Clark County, just inside the northwest boundary of the Columbia River Gorge National Scenic Area, has been harming Gorge lands, waterbodies, and wildlife, as well as the surrounding community, on a daily basis. An unpermitted rock quarry, located just north of Steigerwald Lake National Wildlife Refuge, is one of the largest and longest-running land use violations in the 32-year history of the National Scenic Area.

The property, located on SE 356th Avenue in unincorporated Clark County and owned by the Zimmerly family, has a

history of mining-related violations. For example, during a brief mining effort in the mid-1990s, Zimmerly illegally discharged millions of gallons of sediment-laden mining runoff into nearby Gibbons Creek and Steigerwald Refuge, destroying endangered salmon habitat and harming other natural resources.

Zimmerly was fined nearly \$200,000 by the Columbia River Gorge Commission and Washington Department of Ecology for causing this devastating environmental damage. Afterwards, mining on the property was curtailed and was completely discontinued from 2004 on.

### **Mining without permits**

In October 2017, Zimmerly's new tenant, the Nutter Corporation, once again began mining, crushing, and hauling rock from the property, and began using an unpermitted drainage ditch to discharge mining runoff onto adjacent property. Neither Zimmerly nor Nutter ever attempted to obtain the required land use approvals for resuming mining operations. A prior land use decision, issued by the Gorge Commission's executive director in 1993, had previously approved mining on the property, but that approval expired long ago under its own terms, when the mining was discontinued.

Above: Unpermitted rock quarry above Steigerwald Lake National Wildlife Refuge.

## Endangering the community

As soon as the mining resumed in 2017, nearby residents and landowners immediately complained of excessive noise, massive dust clouds, dangerous truck traffic, and polluted runoff coming from the quarry. The unpermitted mining also poses a serious threat to the nearby Steigerwald Lake National Wildlife Refuge, where a multi-million dollar enhancement project is now underway to restore salmon habitat.

Over the past year, the unpermitted mining operation has hauled hundreds of truckloads of gravel and dirt per day along SE 356th Avenue, threatening the safety of families who live on this narrow and otherwise quiet residential street, as well as hundreds of schoolchildren who attend the nearby Columbia River Gorge Elementary School and Jemtegaard Middle School. In July, the safety risks posed by the mining were brought into sharp focus when a fully loaded gravel truck lost control of its brakes while coming down the hill from the quarry and crashed into the BNSF train tracks at more than 60 mph, destroying the tracks and blocking train traffic for more than twelve hours.

Despite repeated pleas for action from hundreds of citizens, the staff of the Gorge Commission have not carried out their enforcement responsibilities under the Scenic Area rules, thus allowing the quarry to keep operating with impunity. The Commission's executive director could shut

A quarry truck was mangled after crashing across BNSF rails at high speed.

Photo: Sean Streeter



down the mining immediately by issuing a simple stop-work order. Yet, for more than a year, the Commission's director and staff have not taken action.

## Abdicating responsibility

This abdication of enforcement responsibilities is all the more disappointing given that the Gorge Commission's executive director has already stated that the current mining is violating both the Scenic Area rules and a 1997 legal settlement between the Commission and Zimmerly. Under the Commission's rules, the director is required to initiate enforcement whenever she concludes that a violation is occurring.

The lack of enforcement by Gorge Commission staff is not limited to the Zimmerly property, but appears to be broad and systemic. In 2016, the Gorge Commission removed references to land use enforcement from the Commission's mission statement on its website. Since then, the Commission's director has not initiated any land use enforcement actions anywhere in the National Scenic Area. These changes send the wrong message to Gorge landowners—that the Gorge Commission staff will no longer enforce the Scenic Area rules, leaving Gorge residents who are harmed by violations to suffer the consequences.

In the Zimmerly case, Clark County, to its credit, did attempt to enforce the Scenic Area rules. However, Clark County's enforcement powers are significantly weaker than those of the Gorge Commission. Ultimately, a Clark County hearing examiner concluded that mining on the Zimmerly property appears to be lawful under the Gorge Commission director's outdated 1993 land use approval. The hearing examiner also concluded that it is now up to the Gorge Commission to explain whether that 1993 approval is still in effect. Yet for the past year, the Commission's director has been unwilling to answer that question.

## Friends appeals

Friends of the Columbia Gorge has joined with a dozen Clark County residents and landowners in appealing the Clark County hearing examiner's decision. Our appeals will be heard in 2019 by the 12 appointed commissioners who serve on the Gorge Commission.

This case is a stark reminder that, regardless of how strong land use and environmental laws may be on paper, they are meaningless if not enforced. In addition to the appeals we have filed with the Gorge Commissioners, Friends and the affected neighbors are currently pursuing other legal methods for ensuring fair, consistent, and thorough enforcement of the Scenic Area requirements. ■

## Swans above Steigerwald Refuge.

Photo: Debbie Asakawa

