

- LITIGATION AGAINST ILLEGAL MINING CONTINUES
- 2023 PHOTO CONTEST WINNERS REVEALED
- SQUANDERING GORGE ASSETS IN CASCADE LOCKS
- PROTECTING AGRICULTURAL LANDS IN THE GORGE

# PASSAGES



Hiring people is a tricky business. Job interviews typically favor extroverts, the charismatic individuals who are comfortable captivating a room full of people. This hiring bias creates a huge risk for nonprofit organizations as so often the profound, game-changing work of an organization unfolds

through years of quiet work and obsessive attention to detail. Show me a successful nonprofit organization and I'll guarantee there are several selfless introverts who are toiling away for love of mission.

Friends' Senior Staff Attorney Nathan Baker is such a person. For over two decades, he has led and shaped Friends' legal efforts, arguing cases over individual home sites as well as Gorge-wide legal cases before both the Oregon and Washington Supreme Courts.

Over the years, he has helped me and countless others see just how important Friends' role is in making sure the laws are upheld. Government agencies will only go so far, only so deep. Nathan takes his work both far and deep. He has done as much to hold the legal line in the Columbia Gorge as any one individual. He has an encyclopedic knowledge of Gorge laws, Gorge land-use cases and even Gorge movie history trivia. He has won the respect of opponents and the unending gratitude of Gorge residents, including the neighbors of the Zimmerly gravel mine. As you read our feature story about the legal saga around the Zimmerly mine on page 3, remember that this is just one of dozens and dozens of legal cases that Nathan has undertaken over the years.

As I mentioned above, hiring is a tricky business. Over 22 years ago, I sat across from Nathan as he interviewed for our staff attorney position. He was fresh out of Lewis & Clark Law School and did little, in my mind, to sell himself with me. He simply and in his matter-of-fact style shared his interests and qualifications. When our staff said to me they wanted to hire Nathan, I asked "Are you sure?" They were, and today the Gorge is in a much better place because we chose substance over exuberance.

Kevin Gorman, Executive Director

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Audio versions of all articles are available on SoundCloud. Click/tap the yellow button to listen.

LISTEN TO ARTICLES



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## FEATURE STORY

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Since its inception, Friends has shared the latest news from the Gorge with members like you through the Friends of the Columbia Gorge newsletter. The newsletter has had the same look and feel for many years, so we thought the time was right to make some changes. Beginning with this issue, we'll be turning our newsletter into a magazine through a refreshed design and even more beautiful photography to bring the Gorge to life on the pages!

But what's a brand-new design without a brand-new name? We asked our supporters to help us come up with a new magazine name, and you delivered! We received more than 50 ideas, but one stood above the rest: **PASSAGES**.

There's no one better to share the meaning behind "Passages" than the person who created it, so read on for the story of how former Friends staff member Jane Harris of Manzanita, OR, was inspired to create this new name.



The Columbia River is the only sea-level passage through the Cascade Mountain Range. © Linda Steider

*by Jane Harris*

When Friends of the Columbia Gorge challenged its supporters to come up with a new name for its magazine, I knew that as both a former Friends staffer and a current member of 25 years and counting, I might have something to offer. I am so pleased to have suggested the name "Passages" for the wonderful new magazine. The name came to me instantly, but I think it really took many years to formulate.

You see, I came to work for Friends of the Columbia Gorge in 1996 as the organization's first Development Director. Nancy Russell and I worked shoulder to shoulder to build the resources needed to fulfill our critical mission.

Over the next nearly 12 years I learned about the Missoula Floods ebbing and flowing through the low point in the mountains on the water's journey to the Pacific, eventually forging the only sea-level passage through the Cascades. I began to see and understand the passage of time that is etched in the basalt cliffs that define and shape the region. Reading "Undaunted Courage" about Lewis and Clark's epic journey and their challenging passage through the Columbia Gorge added another aspect to my appreciation of the place.

Finally, as I imagine the new magazine, I see passages, including poetry, memoirs, and history, that will make up the writing that will inspire all of us to continue our experience of and support for this remarkable place.



# FRIENDS ACHIEVES MAJOR LEGAL VICTORIES AGAINST SERIAL MINING VIOLATORS

Text by  
Nathan Baker

Senior Staff Attorney



**WHEN THE HARD WORK BEGINS:** The Zimmerly mine is the largest and longest-running violation in the history of the Columbia River Gorge National Scenic Area. Click/tap the yellow button on the right to watch a video exploring our fight to stop illegal mining at the gateway to the Gorge.

**WATCH THE VIDEO**



**IKE OVERLAPPING GLACIAL CYCLES, THE CONSTANT STREAM OF** litigation brought by the owners and operators of the illegal Zimmerly gravel pit in the Columbia River Gorge National Scenic Area has been slow, steady, and massive. But just as glacial periods often abruptly come to an end, such is now the case with

multiple phases of the Zimmerly litigation.

Friends of the Columbia Gorge has played a pivotal role in the litigation, repeatedly defeating the mining violators for more than five years. In late March and early April, the violators suffered a spectacular trifecta of defeats in three different courts over just a twelve-day period. More recently, they were denied permission by Clark County to resume mining at the site. These decisions mark a watershed moment in the protection of the National Scenic Area from the illegal mining at the Zimmerly pit, which harmed Gorge resources and the Washougal community for years.

**DEFIANT VIOLATORS**

In late 2017, the Nutter Corporation began illegally mining the Zimmerly property in southeast Clark County, just north of the Steigerwald Lake National Wildlife Refuge and at the western gateway to the National Scenic Area. The mining created a constant traffic, noise, and dust nightmare for Gorge residents and visitors alike, and also harmed fish and other wildlife in the adjacent Steigerwald Refuge.

Street sweeper vehicles at the Zimmerly mine only made the dust problems worse, spewing huge billows of dust onto adjacent properties and into local waterways. © Friends Archives





In September 2022, just inside the northwestern boundary of the National Scenic Area, Steigerwald Lake National Wildlife Refuge was reopened to the public after a two-year closure to reconnect the refuge's main waterway, Gibbons Creek (seen here), to its historic Columbia River floodplain. The work restores wetlands and aquatic habitat for salmon, birds, and other wildlife, and reduces the risk of flooding in nearby communities by restoring natural drainage patterns. Mining on the Zimmerly property has previously harmed protected salmon in Gibbons Creek, and now threatens to repeat that harm in the newly restored refuge. © Cate Hotchkiss

After receiving numerous complaints from concerned citizens, Clark County and Columbia River Gorge Commission officials ordered Zimmerly and Nutter to stop mining without first seeking and obtaining land use review and permits.

Apparently believing themselves to be above the law, Zimmerly and Nutter responded by arguing that they have a “vested right” to mine the site as much as they want, whenever they want, for as long as they want, with no land use oversight under National Scenic Area rules. They also argued that both Clark County and the Gorge Commission lacked jurisdiction to stop them.

Thus began the first phase of the Zimmerly litigation: the enforcement phase. Incredibly, this phase has been in constant litigation for five straight years and counting.

In their arguments against land use enforcement, Zimmerly and Nutter assert that they should be able to mine the site without any land use oversight by

either Clark County or the Gorge Commission. They have now challenged these agencies' authority at five appellate levels, from the Clark County Land Use Hearing Examiner, to the Gorge Commission, to the Clark County Superior Court, to the Washington Court of Appeals, and they are now asking the Washington Supreme Court to hear new claims. They also filed and lost a case in federal court.

Zimmerly and Nutter eventually stopped mining the site in early 2020, but only after two and a half years of violations. Despite stopping the mining, they have never stopped litigating.

#### **LAST-DITCH EFFORT**

On April 4, 2023, a three-judge panel of the Washington Court of Appeals issued a published opinion rejecting numerous arguments by Zimmerly and Nutter in which they challenged the Gorge Commission's 2019 enforcement decision against the illegal mining. In their



During illegal operations from 2017 to 2020, the Zimmerly mine regularly discharged murky water off the site through a network of unpermitted drainage ditches. © Rachel Grice

judicial opinion, Chief Judge Rebecca Glasgow and Judges Meng Li Che and Ian S. Birk unanimously agreed with Friends that Zimmerly and Nutter cannot mine in the National Scenic Area without land use permits. The court upheld prior decisions by the Clark County Community Development Department, Gorge Commission, and Judges Gregory M. Gonzales and John P. Fairgrieve of the Clark County Superior Court.

Undeterred, Zimmerly and Nutter have filed a last-ditch petition for review in the Washington Supreme Court, radically changing their theory of the case and asserting numerous newly minted arguments after five years of litigation.

Friends has filed an answer to Zimmerly and Nutter's petition, urging the supreme court not to take the case. The court will decide in the coming months (most likely in September) whether to hear the appeal.

#### MAKING A FEDERAL CASE OF IT

Not content to litigate their challenges to Gorge Commission authority solely in state court, Zimmerly and Nutter also filed a federal lawsuit against the Gorge Commission and individual Gorge Commissioners. Friends intervened and participated in Zimmerly and Nutter's federal case to defend our state court victories. Fortunately, their federal lawsuit went nowhere.

Zimmerly and Nutter raised a host of claims, including assertions that the Gorge Commission had violated their civil rights and interfered with their business relationships merely by confirming that they are not allowed to mine in the National Scenic Area without land use permits. They also complained that a former Gorge Commissioner had discussed referring their

violations to federal law enforcement officials when they continued their mining activities without land use permits even after the appeal hearing at which the Gorge Commissioners told them it was illegal to do so.

On March 23, 2023, Judge Benjamin H. Settle of the U.S. District Court for the Western District of Washington dismissed Zimmerly and Nutter's federal case. Judge Settle noted that the mining violators were asking the federal court to invalidate the decisions of the Gorge Commission and Clark County Superior Court, and correctly held that the federal court could not do so, because that would be an improper appeal of a state court matter in federal court. Accordingly, the federal case was dismissed.

#### CHALLENGING THE RULES

On March 24, 2023, the very next day after Judge Settle dismissed the federal case, Judge Derek J. Vanderwood of the Clark County Superior Court issued a final judgment in favor of Friends and the Gorge Commission, and against ZP#5, LLC (a Zimmerly corporation), in a case originally filed by Zimmerly in late 2020.

In this case, Zimmerly challenged mining-related revisions made by the Gorge Commission to the Gorge Management Plan, which contains the core land use rules for the National Scenic Area. Zimmerly raised a number of far-fetched legal theories, starting with an argument that the Gorge Commission violated one of Governor Inslee's COVID-19 emergency proclamations by holding meetings via Zoom during the early days of the pandemic to discuss the proposed rule changes. Zimmerly also argued that its equal protection rights were being violated, apparently because mining trucks are regulated in the National Scenic Area while other types of trucks are not.

Judge Vanderwood rejected all of Zimmerly's arguments and deemed Friends a prevailing party in the case, thus ending the rule challenge phase of the Zimmerly litigation.



**TIMELINE:** Litigation to stop illegal mining activities on the Zimmerly property has been ongoing since 2017. Catch up on the full timeline of court cases and decisions by clicking/tapping the yellow button on the right.

**TRACK THE TIMELINE**

## INCOMPLETE PERMIT APPLICATION

Although the rule challenge phase of the Zimmerly litigation is now over and the enforcement phase is drawing to a close, the permitting phase is well underway and will likely remain so for the foreseeable future.

In February 2020, Zimmerly’s lead attorney, James D. “Jamie” Howsley of the Jordan Ramis law firm, filed an application in his own name seeking land use permits from Clark County to mine the property. Mr. Howsley indicated that he was filing the application “under protest” and falsely asserted that his client’s property was legally operated as a mine for more than 50 years.

In early June, Clark County Land Use Hearing Examiner Joe Turner denied the land use application, agreeing with Friends that it was incomplete and that an environmental impact statement is required for the mining project before it may proceed. The hearing examiner also signaled agreement with Friends that the proposed mining “haul road” cannot be approved because it would be located in an area zoned for

residential uses where mining uses are prohibited.

## MOMENTUM IN FRIENDS’ FAVOR

Friends’ recent court victories confirm that the mining activities at the site from 2017 to 2020 were, in fact, illegal—just as Friends and allies have said all along. Even more recently, Friends’ victory at Clark County has stopped the mining proposal in its tracks—at least for now.

These legal victories are not the end of the story. Zimmerly and Nutter’s petition for review remains pending at the Washington Supreme Court, the county hearing examiner’s decision can be appealed, and a new land use application can be submitted.

With that said, the past three months have been the most important period yet in the longstanding legal battles over the Zimmerly mining, and the momentum is decidedly in our favor. Friends will continue to vigorously protect the Columbia Gorge and its resources, and we will do our level best to halt and hold accountable those who would despoil the Gorge. ■



The unpermitted mining operations at the Zimmerly site transformed a narrow, otherwise quiet rural residential road into an industrial mining “haul road,” creating a traffic, noise, and dust nightmare for residents. © Friends Archives, Peter Cornelison



8

Government enforcement orders ignored or defied by Zimmerly and Nutter (Z&N)

19

Cases, appeals, and contested motions filed by Z&N since 2018



29

Attorneys who have worked for the various parties in the Zimmerly litigation

26

Decision makers who have presided over the Zimmerly litigation



26

Years Zimmerly has failed to apply for retroactive land use approval for drainage ditch construction

\$32M

Cost of the Steigerwald Lake Reconnection Project, which restored floodplains and habitat for protected fish species

6

Identified potential off-site discharge points from Zimmerly property

3

Federally protected fish species potentially harmed by Zimmerly mining (Lower Columbia River coho salmon, Lower Columbia River steelhead, Columbia River chum salmon)

450

Peak number of truckloads of gravel hauled per day along unpermitted "haul road" during illegal operations (estimated)



93 dB

Noise levels from mining trucks on adjacent residential properties (equivalent to a leaf blower in one's living room)

## SUPPORT FRIENDS' LEGAL WORK AGAINST ILLEGAL MINING

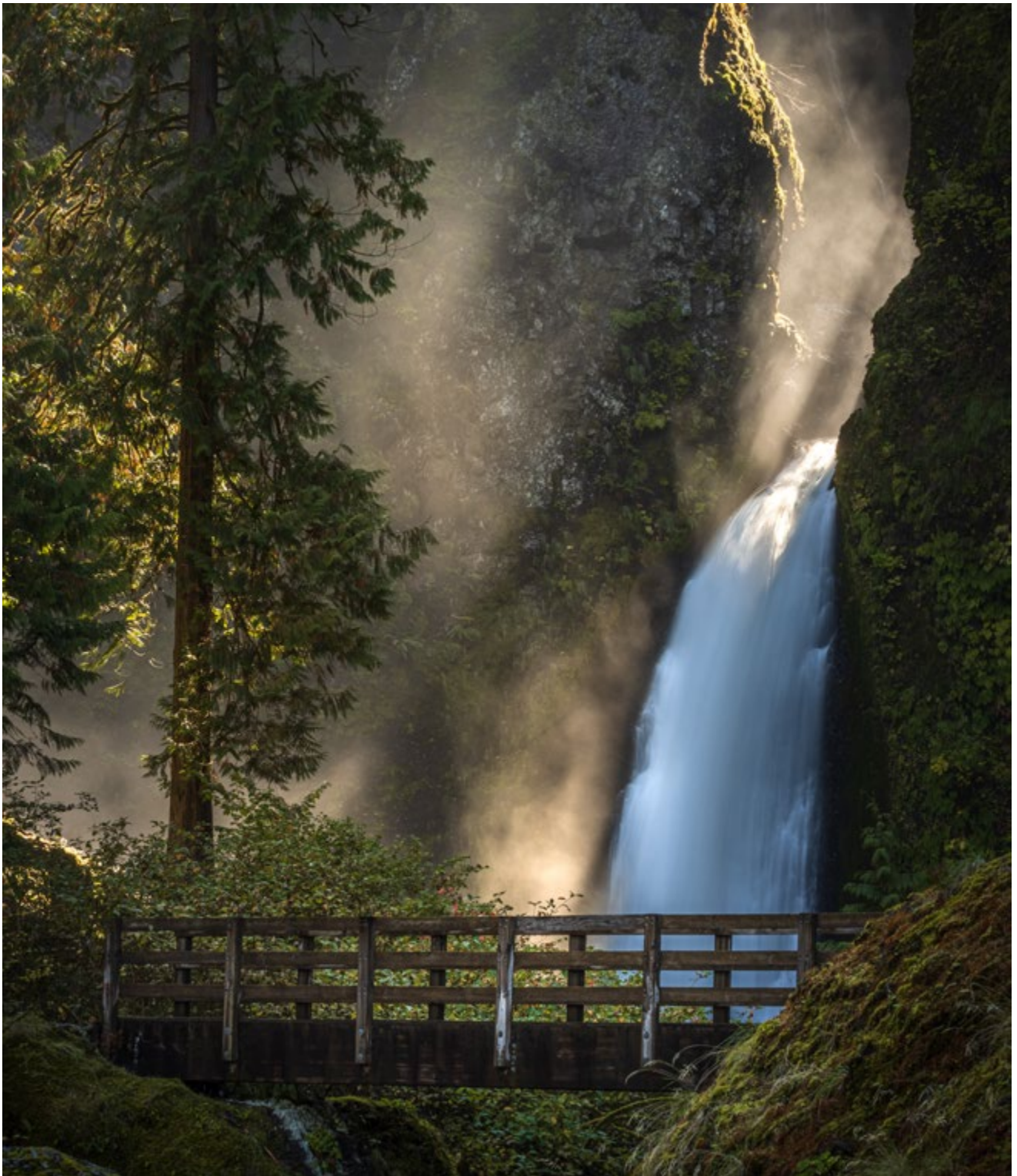
For more than five years, Friends and a team of citizens, lawyers, and expert witnesses have fought back against Zimmerly and Nutter's steady stream of litigation, resulting in **VICTORY AFTER VICTORY AGAINST THESE BRAZEN LAND USE VIOLATORS.**

But the legal fights have been expensive, and we have only achieved this success because of the generous financial support of members like you. As the **MOST LITIGIOUS VIOLATORS IN THE HISTORY OF THE SCENIC AREA**, Zimmerly and Nutter continue to file lawsuits and appeals—nine so far—in their relentless push to resume mining the site without any land use restrictions.

Restoration work at Steigerwald Lake National Wildlife Refuge is already benefiting wildlife—salmon have returned to a restored section of Gibbons Creek! But Zimmerly and Nutter are **ACTIVELY SEEKING TO RESUME MINING OPERATIONS**, and if they do, the consequences could be dire. Continued mining threatens to irreparably damage this vital resting ground for anadromous fish (fish that migrate up rivers from the sea to breed) and migratory birds.

To help sustain Friends' defense of the Columbia River Gorge against the illegal Zimmerly mining, **WILL YOU MAKE A CONTRIBUTION TODAY?** Please visit [gorgefriends.org/stop-illegal-mining](http://gorgefriends.org/stop-illegal-mining) or scan the QR code to make your special gift.

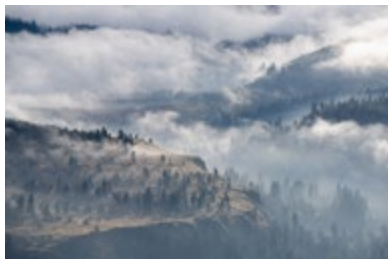
**MAKE A DONATION**



**Wildflowers**  
BECKY KUPERSTEIN



**Scenic Eastern Gorge**  
BECKY KUPERSTEIN



**Community and Culture**  
RALPH SANDERS



**Scenic Western Gorge**  
CHRISTIAN PLATT





# Grand Prize Winner



**CHRIS ELKINTON**  
**PORTLAND, OR**

**WAHCLELLA FALLS** Chris Elkinton of Portland is the grand prize winner of “Treasures in Hi-Res,” Friends’ eighth-annual photo contest. Elkinton’s grand-prize-winning photo was taken at Wahclella Falls on the Oregon side of the Columbia River on what the photographer described as a still morning in October. Elkinton used his Canon EOS 90D with a 70-300 mm lens to capture the mist from the upper falls as it caught the sunlight streaming through the gap between the moss-festooned rocks framing the waterfall. “The beauty of the Columbia River Gorge was one of the main reasons my family and I moved to Oregon 15 years ago,” said Elkinton. “Since then, I have loved exploring and hiking in this magical place, and it has renewed and inspired my love of photography. This photograph reminds me of the peacefulness and wonder I often feel in the Gorge.”



**FULL GALLERY:** To view full-size versions of all prize-winning and honorable mention photos, click/tap the yellow button below.

**VIEW WINNING PHOTOS**



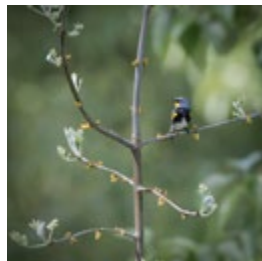
**Camera Phone Photography**  
**JOHN HALL**



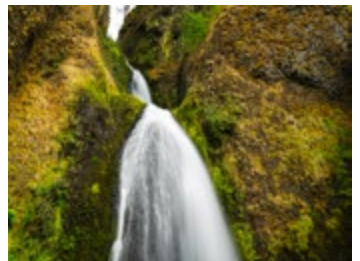
**Waterfalls**  
**BILL KIRKLAND**



**Wildlife**  
**JARED STRAWDERMAN**



**Youth Photographer**  
**SOREL JOHNSON**



# SQUANDERING GORGE ASSETS



Text by  
Sofia Urrutia-Lopez  
—  
Conservation Organizer

Click/tap the yellow button below to read the full article from Columbia Insight.

**READ THE ARTICLE**

**W**

**ATERFALLS, WILDFLOWERS, AND SCENIC VIEWPOINTS**

are the classic emblems of the Columbia wildflowers, and scenic viewpoints are classic emblems of the Columbia Gorge. But the Gorge is also home to vibrant communities and residents passionate about maintaining their quality of life. With the bounty of water and energy close at hand, Gorge residents like me are nervously

watching corporations try to seize Gorge assets while providing little in return. Nowhere is that more evident than in Cascade Locks.

I look out at the community of Cascade Locks from my home every day and nearly six years ago watched the Eagle Creek fire threaten the Gorge. Just as natural disasters can imperil the Gorge, so can ineffectual leadership. The Port of Cascade Locks is considering working with a newly created startup called Roundhouse to place a data center in the port’s business park. Data centers, like Google’s in The Dalles and Facebook’s and Apple’s in Prineville, typically consume significant energy and water while employing relatively few people. This proposal, while expected to nearly double the energy needs of the community, would only employ eight people. This combination of high consumption of community assets and low employment leads many data centers to seek out rural areas with fewer economic opportunities.

While the proposed data center itself is of concern, it is the lack of transparency in the vetting process that has caused the greatest controversy. Many questions have been posed to the Port of Cascade Locks for which there have been no clear answers, even months after the initial proposal. Despite holding public meetings,



The Flex 6 building in Cascade Locks © Jurgen Hess

**On March 20, Columbia Insight published an extensive investigative report on Stephen D. King, the CEO of tech startup Roundhouse, which has proposed a new data center in Cascade Locks, Oregon. Here is a summary of the article’s main takeaways:**

Roundhouse has begun the process that would lead to a 25-year lease for a “green” data center at the Port of Cascade Locks’ Business Park.

Some Cascade Locks community members are frustrated by what they perceive as contradictory information and a lack of transparency about the proposed project from both Roundhouse and Port of Cascade Locks commissioners.

Community members have also voiced concerns about water usage, pollution, and potential utility rate hikes.

King has a history of failed business ventures; interview subjects claim lost investments and misrepresentation (King disputes these claims).

The Port itself is dealing with budget shortfalls stemming from overreliance on bridge tolls, a previous tenant breaking its lease, and a racial discrimination lawsuit.

the community has felt excluded. During the single public open house with data center executives and port commissioners, answers were vague and evasive.

The community has asked questions about water, electricity, and chemical usage. Many are concerned about how much water will be used, and from where the water will be drawn. How much electricity will the data center use and would that eventually increase community electricity rates to the point of inequity? Concerns have also been raised over any chemicals used to cool the servers. What will the community be on the hook for if the deal falls through? All of these are valid questions and concerns, and none have been addressed properly.

The project proposal states that the data center will use

is said to be the best of disinfectants.” Columbia Insight brought some needed sunlight to this issue. In May, Columbia Insight published a second article regarding questions around power usage and increased payer rates as a result of the proposed data center. Representatives from Bonneville Power Administration (BPA) confirmed that it does plan to charge the city a higher rate for its electricity due in part to the proposed data center’s power usage. BPA also confirmed that Cascade Locks would be responsible for some of the increased energy costs even if the proposed data center closed.

What the Columbia Insight article also made clear was that the energy usage of Cascade Locks would skyrocket with the emergence of data centers (see graph on page 14). The city of Cascade Locks currently provides



## JUST AS NATURAL DISASTERS CAN IMPERIL THE GORGE, SO CAN INEFFECTUAL LEADERSHIP.

“cooling system technology that does not require vast amounts of water.” However, Roundhouse CEO Stephen D. King and Chief Engineer James Longacre have made contrasting statements about the nature of the cooling system. In what I observed firsthand, it was stated on different occasions that: a) the data center would use a “closed loop” cooling system; b) there will be no water usage; and c) there will be water usage, but only equivalent to the total water usage of four households in a year—numerous answers to the same question, depending on who and when you ask. How can a community trust an answer that constantly changes?

To add to the mistrust and lack of communication, King has a checkered history with other business dealings, as highlighted in the Columbia Insight article linked via QR code on page 12. Reading the Columbia Insight article makes one thing very clear: a fuller picture exists than what’s currently being shared with the public.

When it comes to government transparency, the late Supreme Court Justice Louis Brandeis stated, “Sunlight

approximately 4.5 megawatts (MW) of electricity a month to its local businesses and households. In the first phase of Roundhouse’s proposal, the data center would consume nearly 4 MW of power per month, nearly equaling the entire community’s energy usage. A second data center would then consume 7.2 MW of Cascade Locks’ usage per month. If successful, Roundhouse would then pursue a third data center consuming 13-18 MW per month. All told, these three data centers would consume the energy equivalent of five to seven Cascade Locks.

While these data centers are all heralding that they will



Roundhouse CEO Stephen D. King addresses concerned Cascade Locks residents at a March 15 open house inside the Flex 6 building. © Columbia Insight/Nathan Gilles



On February 22, 2023, The Oregonian published an article revealing that water usage at this data center in The Dalles had nearly tripled in the last five years and now consumes more than a quarter of all water used in the city. Cascade Locks residents' questions about water usage at the proposed new data center have not been adequately answered. © Google Photo

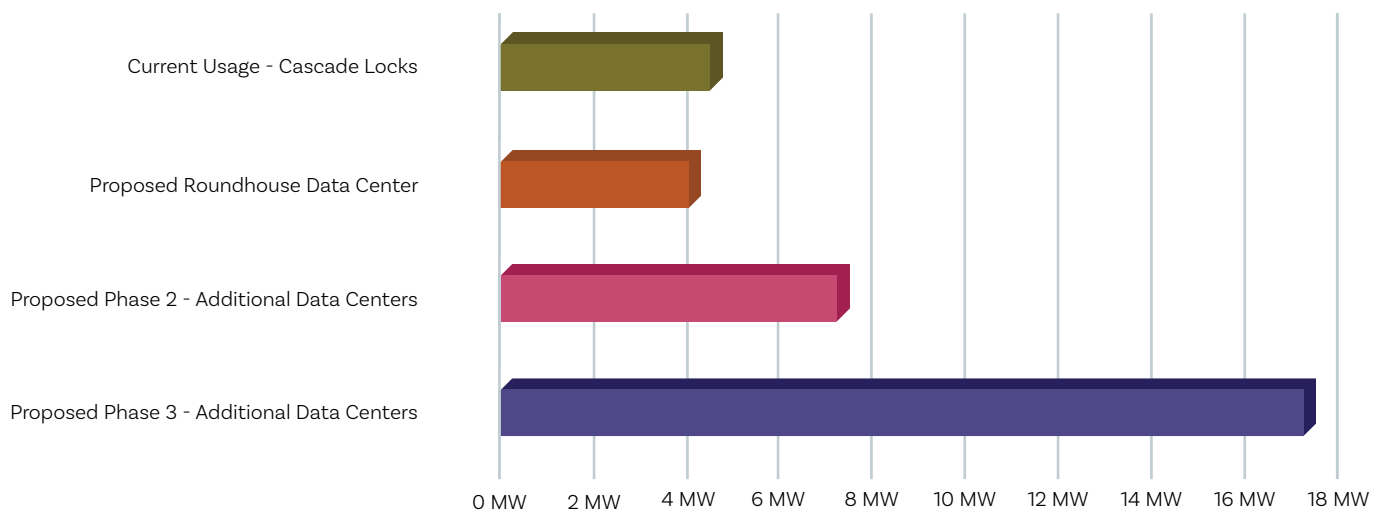
only use green, renewable energy, they are creating a destructive cycle that could impact the Gorge for decades. The huge influx of energy needs will result in more poorly sited renewable energy projects throughout the Columbia Basin. And greater energy creation will require more energy transmission, meaning an increase in power lines throughout the Gorge.

While the emergence of data centers is playing out statewide and nationally, the community of Cascade Locks is pushing back. As bad contracts, poor vetting, and unfulfilled promises have led the Port of Cascade Locks to suffer financially time and again, community

activists have risen up, hosting their own public meetings, running candidates for two port commission seats, and gathering signatures for a recall election of two sitting port commissioners.

In May, two community members who raised concerns about the proposed data center defeated two incumbent port commissioners and begin their terms in July 2023. The recall election occurred on June 13 and Cascade Locks voters recalled two port commissioners, including the Port President, by a two-to-one margin. As Roundhouse continues to pressure the port to sign a land lease, their window of opportunity appears to be closing quickly. ■

## WILL DATA CENTERS GOBBLE GORGE ENERGY SUPPLIES?



ENERGY USAGE CASCADE LOCKS (MEGAWATTS, MW)

\*data sourced from 3/20 Columbia Insight article

# PROTECTING AGRICULTURAL LANDS FOR AGRICULTURAL USES

Text by  
Nathan Baker

Senior Staff Attorney

The National Scenic Area Act, passed by Congress in 1986, protects agricultural lands for agricultural uses. © Debbie Asakawa

FRIENDS IS CURRENTLY GEARING UP TO DEFEND A RECENT APPELLATE DECISION OF THE COLUMBIA RIVER GORGE COMMISSION THAT, IF UPHELD ON FURTHER APPEAL BY THE COURTS, WILL CONTINUE TO PROTECT FARMLAND IN THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA NOW AND INTO THE FUTURE.

# W

**HEN CONGRESS PASSED THE COLUMBIA** River Gorge National Scenic Area Act in 1986, it realized that farmland in the Gorge was being rapidly depleted by development pressure from the Portland and Vancouver metropolitan area.

Seeking to reverse this alarming trend, Congress expressly mandated in section 6(d) of the Act that the Gorge Management Plan and other Scenic Area land use rules must “protect and enhance agricultural lands for agricultural uses.”

That provision of the Act requires the Gorge Commission, U.S. Forest Service, and implementing counties to protect prime farmland from conversion to

residential development and other uses incompatible with agriculture. These agencies and governments have adopted land use rules for protecting farmland in the National Scenic Area in the form of the Gorge Management Plan and county ordinances.

Decades after these rules were adopted, the development pressures continue, as landowners and developers still probe the Scenic Area rules for potential loopholes that might allow them to overdevelop and convert Gorge farmland into large trophy homes. One such legal battle is currently playing out on a parcel of farmland in southeast Clark County.

In a test case that could have wide-reaching implications for prime farmland throughout the National





Norway Green, LLC seeks to build a large non-farm dwelling on this Gorge farmland where cattle graze in the background of this photo. © Sherri Irish

Scenic Area, real estate development company and landowner Norway Green, LLC argues that it should be allowed to build a more than 7,000-square-foot “non-farm dwelling” on an approximately 41-acre parcel of farmland it recently purchased on SE Gibson Road.

Non-farm dwellings are relatively rare in the National Scenic Area because they are limited to parcels that, despite being zoned as Large-Scale Agriculture in the original Gorge Management Plan in 1991, cannot produce a profit from farming. An applicant for a non-farm dwelling must essentially prove that it was a mistake for the parcel to be zoned as Large-Scale Agriculture in the first place.

Here, the 41-acre parcel was part of a family farm for decades, and even new owner Norway Green continues to farm the property after purchasing it in 2020. The company also continues to receive substantial tax breaks from Clark County for keeping the property in farm and forestry use.

When it applied to build a large non-farm dwelling on the parcel, Norway Green simultaneously applied to build a large agricultural building on the same parcel. In other words, the company contended that it needs a large barn in order to keep farming the property yet it

also needs a non-farm dwelling because the property is not farmable. Obviously both assertions cannot be simultaneously true. Yet Norway Green expected Clark County to approve both proposed buildings. This is the first time in the history of the National Scenic Area that a land use applicant has sought permission to build a non-farm dwelling and an agricultural building in the same land use application.

Norway Green also submitted evidence to Clark County from Norway Green’s own farming consultant proving that the parcel is farmable and can produce a monetary profit from a variety of crops, including wine grapes, fruit trees, and Christmas trees. This evidence was corroborated by Friends’ expert witnesses and by multiple local farmers and community members.

Despite these facts, Norway Green contends that its parcel is eligible for a non-farm dwelling. Among Norway Green’s many arguments in the case, the company asserts that the parcel is “predominantly



The fertile countryside of the Columbia Gorge supports a wide variety of crops, including stone fruits like apricots (left), cherries (orchard at top right), peaches, and raspberries (yes, they're a stone fruit!); apples and pears; flowers, and wine grapes (bottom right). © Jesenia Robles (apricots, Hood River, OR), © David Cobb (cherry orchard, Mosier, OR), © Bill Udy (wine grapes from Analemma Wines, Mosier, OR)

unsuitable” for agriculture because more than half of the parcel is wooded and currently used for commercial forestry. Norway Green presents a false dichotomy that the parcel must be used either for forestry or agriculture, when in fact this parcel is suitable for both types of uses—either simultaneously or interchangeably.

Fortunately, the Clark County Land Use Hearing Examiner saw through Norway Green’s claims and denied its development proposal. Norway Green then appealed to the Gorge Commission.

On appeal, the Gorge Commissioners carefully considered and rejected all of Norway Green’s arguments. The Gorge Commission’s final written order establishes important precedents and provides guidance to other potential land use applicants and the other counties about how the National Scenic Area rules for non-farm dwellings are meant to be applied.

Undeterred by these rulings against it, Norway Green has now appealed again, this time to the Clark County Superior Court. Among its numerous meritless claims, Norway Green contends that it was unconstitutionally deprived of its property rights and is seeking monetary damages and attorney fees in the case.

Friends has participated in the public review of Norway Green’s application and the resulting litigation at every step of the way, explaining why Norway Green’s arguments fail under the law. At the Clark County level,

Friends presented evidence and legal arguments refuting the company’s claims that the parcel is predominantly unsuitable for agriculture. On appeal to the Gorge Commission, Friends successfully defended the Clark County Land Use Hearing Examiner’s decision.

The stakes are enormous. An analysis by Friends concluded that if Norway Green’s flawed arguments were to prevail, more than 75% of currently vacant Large-Scale Agriculture parcels in Clark County alone could each be immediately developed with a non-farm dwelling. Such a result threatens to spread urban sprawl throughout the Gorge’s best-remaining farmland and permanently convert it to non-farm use.

Farmland is a vitally important resource for sustaining the Columbia River Gorge’s communities, local economies, and rich cultural heritage. Not only does farmland deserve to be protected for future generations, Congress has in fact mandated that outcome.

Now that Norway Green has filed an appeal in the Clark County Superior Court, Friends will remain involved in this litigation in order to defend the decisions of the Gorge Commission and Clark County denying this ill-advised development project. This precedent-setting legal case allows Friends to ensure the proper implementation of the Scenic Area Act’s requirements for protecting agricultural lands for agricultural uses, just as Congress intended more than 35 years ago. ■

# PLEIN AIR 2023



1

**Tranquility**  
MARK SHASHA



2

**Horsethief Butte**  
GRETHA LINDWOOD



3

**Misty Blues**  
TIFFANIE MANG



**TIMELAPSE:** Experience the creation of a plein air work in a timelapse video with landscape painter Elo Wobig. Visit [gorgefriends.org/timelapse](http://gorgefriends.org/timelapse) or scan the QR code at right with your phone.

**WATCH TIMELAPSE**

TRANQUILITY, A 9X10 OIL PAINTING BY MARK SHASHA OF Swampscott, Massachusetts, has been selected as the winner of the Friends of the Columbia Gorge award at PNW Plein Air 2023, an annual plein air (outdoor painting) event hosted by Maryhill Museum (Goldendale, Washington) in the Columbia Gorge.

Since 2019, Friends has partnered with Maryhill on the contest to support the arts scene in the Gorge and, more broadly, to spotlight the intersectionality of art and conservation. Each year, Friends selects three paintings that best illustrate and celebrate the natural beauty and sense of wonder of the Gorge.

Shasha's winning piece only came to be thanks to a moment of serendipity. "This painting was the result of a wrong turn," he recounts. "I was on my way on Route 14 to Lyle from Goldendale after trying to meet up with some friends and found this exciting scene by the river instead. I pulled the car over at a turnout and immediately set up my kit. It is the kind of challenge which appeals to me as a landscape painter, a combination of near and far, light and shadow and the wild element of the water which was captured here at a very peaceful moment."



MOUNT HOOD WAS MELTING INTO  
THE DISTANT SKY IN SHADES OF  
PINK AND BLUE WITH ITS VIOLET  
REFLECTION IN THE RIVER BEYOND THE  
SPRING GREENS OF THE FOREGROUND.

▶ MARK SHASHA

The Columbia Gorge is a source of creative inspiration for artists of all disciplines, but its scenic vistas, majestic forests, and diverse wildlife are impermanent. Plein air artwork is a way to both honor the splendor of the Gorge and acknowledge its fragility. There's no guarantee that these magnificent scenes will last for future generations, so these paintings remind us all of the beauty we are charged with protecting.

Friends' second-place award went to Gretha Lindwood of Portland, Oregon, for her painting "Horsethief Butte," and third place was awarded to Tiffanie Mang of San Diego, California, for her work entitled "Misty Blues."



TOP LEFT: Kenzie Hammond (center), Friends' youth & community education specialist, demonstrates water quality testing techniques to students from Portland's St. Andrew Nativity School at Bridal Veil Falls as part of our annual outdoor youth education program, the "Great Gorge Wahoo!," on May 22. © Paloma Ayala

TOP RIGHT: Students participate in a salmon migration obstacle course led by Washington Department of Fish and Wildlife Salmon Biologist Elise Olk in which they must avoid dangers like predators and hydrokinetic turbines (simulated by the rope). © Paloma Ayala

BOTTOM LEFT: Students learn to identify plant characteristics with Friends' Stewardship Volunteer Coordinator Sarah Skelly. © Paloma Ayala

BOTTOM RIGHT: Oregon State Parks Ranger Miranda Mendoza presents scats, tracks, and pelts from mammals that may be found throughout the Columbia Gorge. © Paloma Ayala

**VIEW MORE GORGE WAHOO PHOTOS**



TOP LEFT: Morgan Olson, raptor education coordinator at the Columbia Gorge Discovery Center & Museum, introduces students from Washougal's Canyon Creek Middle School to "Killer," a female red-tailed hawk, during our annual outdoor youth education program, "Explore the Gorge," on June 1-2 and June 7-9. © Paloma Ayala

TOP RIGHT: Students share their favorite pictures after an intro to photography session with Hood River-based professional photographer Paloma Ayala. © Tim Dobyms, Friends of the Columbia Gorge

BOTTOM LEFT: Conservationist and wildlife/nature photographer Linda Steider leads students on a walk to search for pikas. © Paloma Ayala

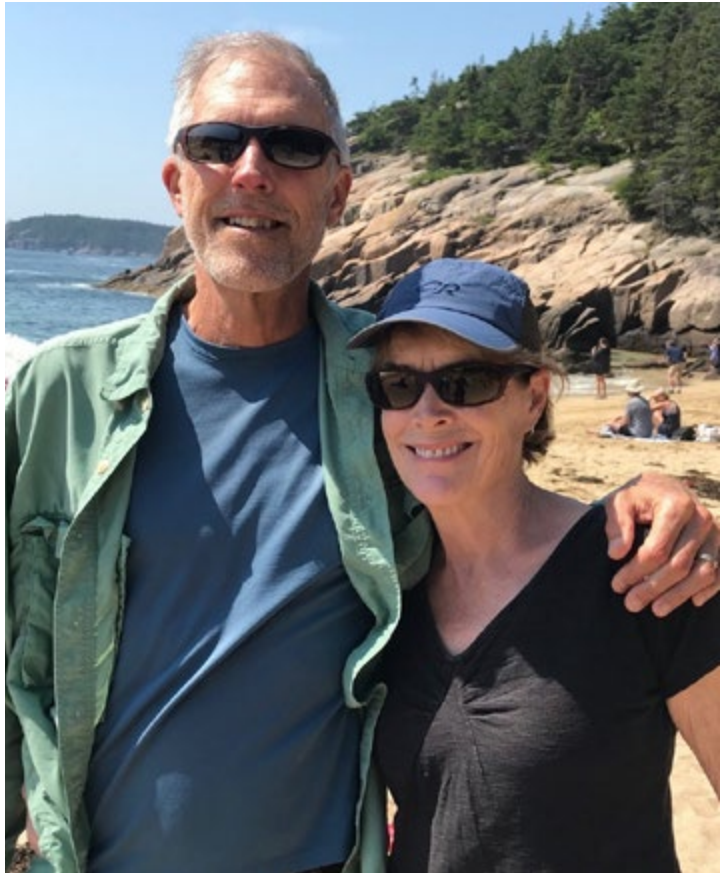
BOTTOM RIGHT: Students take in the view near the summit of Beacon Rock after a challenging hike that introduced them to the geology of the Gorge and history of Beacon Rock. © Melissa Gonzalez, Friends of the Columbia Gorge

ASK DICK BENNER OR LAVINIA GORDON ABOUT their favorite aspect of the Gorge and the answer will change every time. From their house in the Memaloose Hills, the husband and wife team experience so much of what makes the Gorge magical: wildflowers, birds, the changing sky, the community.

Dick and Lavinia have a deep, rich history with the Gorge. Dick served as the first executive director of the Columbia Gorge Commission as it developed its management plan and one of their first dates was a hike at Catherine Creek. But they credit living in the Gorge as the reason why they see it the way they do now. Lavinia explains, “The Gorge is such an incredible resource, the more you’re around it, the more you learn.” Getting to know the community of Mosier has been an unexpected bonus of their time in the Gorge.

They both love Gorge Towns to Trails because it highlights the partnerships between Friends and other organizations working in the Gorge. Dick adds that the program is “a good reminder that [the Gorge] isn’t all about preservation and the environment and natural and cultural resources—it’s a place of culture, not a pristine wilderness area and the culture is amazing.”

Dick loves the Gorge so much that he took his early pandemic journals and observations and turned them into a book of reflections and poetry, titled “**Into The Wind: Tales & Poetry of the Memaloose Hills.**” With chapters dedicated to the birds, flowers, animals, and people of the Gorge and poems that track the different seasons, *Into the Wind* is a beautiful reflection on the many wonders of the Gorge. Order your copy at [gorgefriends.org/shop](http://gorgefriends.org/shop).



Friends members since 2008 Dick Benner and Lavinia Gordon (photo courtesy of Dick Benner and Lavinia Gordon)



Memaloose Hills in spring bloom. © Gary Gilardi

*an excerpt from Into the Wind*

GODSCAPE OF CLOUDS

cumuli from Canaletto’s canvas  
under sail on the ocean sky  
accumulate in the west  
drifting east in billowing florets  
juggled by Zeus

nimbus lowers and creeps  
up a draw to a final jete  
only to fall before the Harpyiae  
and release its moisture over the parched hills

lenticular slips its mountain mooring  
stretches an elastic lance  
to the Klickitat country  
a daring alien craft intruding  
at ease in conservative territory

they are sprites, these clouds  
that puff from the imagination  
a longing to rise and lose oneself  
to depart, to join the  
phantasmagorical swirl  
of the Heavenly godscape



Larch Mountain Salamander © Andrew DuBois

**The Larch Mountain Salamander** (*Plethodon larselli*) is endemic to the Pacific Northwest with about half of its recorded populations being found in the Columbia Gorge. This salamander is a lungless salamander which means they don't have any lungs in their body, and instead breathe through their skin! These salamanders do well in the Gorge since they thrive in talus and rocky environments. They can be found deep beneath the layers of the talus in the winter months, and up higher in spring and early summer under rocks and occasionally nearby decaying logs. These salamanders skip the aquatic larval stage that other amphibians go through and instead hatch directly into small salamanders which allows them to breed away from water sources.



Larch Mountain Salamanders are small enough to fit in the palm of your hand, as shown by this to-scale image of a specimen from the Gorge. © Nature Picture Library

Adults reach sizes of 2-4 inches and breed in the spring and fall. It is unknown where they lay their eggs but hypothesized to happen deep in underground dens where the female salamander will guard the eggs. Their diet consists of small invertebrates including arachnids, worms, snails and other insects. Populations of this species are unknown due to their rarity in the field and very few population studies being done. Threats to this species include habitat destruction primarily from talus mining, climate change, and timber harvest.

## TRIBUTE GIFTS

February 1, 2023 - May 15, 2023

**In honor of Debbie Asakawa**  
Denise Kleim

**In honor of Bruce Melzer**  
Janet Morgan

**In honor of Carey R. Evans**  
Elizabeth C. Evans

**In honor of Cliff Temple**  
Patricia Hutchinson

**In honor of Elizabeth Van Bemmel**  
Ken and Meredith Long

**In honor of Gregg Causey**  
James and Lucy Whipps

**In honor of Jan Kielpinski and Maka Chkhaidze**  
Evans Van Buren and Marsha Warner

**In memory of Amy Marks**  
Chris Marks  
Robert and Judith Scholz  
Rob Closs

**In memory of Dick Springer**  
Denise Frisbee  
Neal Naigus  
Linda Batti

**In memory of Claire Cohen**  
Bruce and Diane Follansbee

**In memory of Donna Enz**  
Susan Saul

**In memory of Franklin Coale**  
Mindy Gomez Casseres

**In memory of Franklin Coale**  
Liz Gorman

**In memory of Jean Dunlop**  
Debbie Murphy

**In memory of John Lovell**  
Anne Goeschl

**In memory of Linda Fuqua-Anderson**  
Hope Stone

**In memory of Mary Nwakaego Mbah**  
Stephen Mbah

**In memory of Nancie McGraw**  
Marie Hall

**In memory of Stan Federman**  
Donald Clark

# FRIENDS OF THE COLUMBIA GORGE

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## SAVE THE DATE

SUNDAY, JULY 30, 11:30 am



Join Friends of the Columbia Gorge for a Gorge-ous outdoor picnic! Gather your family and friends for a day of fun and camaraderie at the beautiful Cape Horn Preserve near Washougal, Washington. We will have music, games, food, beverages, and more. You will also have the opportunity to learn about the amazing natural and cultural resources of the Gorge. Enjoy live music and an exclusive scenic vista of the Columbia Gorge while connecting with other Friends members and Gorge supporters. Families and all ages are welcome. **Click/tap the button on the right to register to attend.**

**REGISTER TO ATTEND**



Cape Horn Preserve © Friends Archives



Passages is a quarterly publication produced for members and supporters of Friends of the Columbia Gorge.

Founded in 1980, Friends of the Columbia Gorge is the only conservation organization entirely dedicated to protecting, preserving, and stewarding the Columbia Gorge for future generations. Friends has offices in Portland and Hood River, Oregon, and Washougal, Washington. Visit [gorgefriends.org](http://gorgefriends.org) to learn more. Send inquiries to [info@gorgefriends.org](mailto:info@gorgefriends.org) or call 503.241.3762.

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