Love Your Neighbors
By Ralph Bloemers, Co-Executive Director

Action to save the world starts with a passion for the lands and waters in your own backyard. The joy that a wild river brings, the food from productive farmland, the peace and tranquility of an old growth forest or the springtime songs of birds, drives people to take action, to organize, and to stand up for nature.

Over the past thirteen years Crag attorneys have worked for local people who care about their backyards and want to enforce safeguards that are in place to protect farmlands, forestlands and water supplies. We have worked to protect drinking watersheds and wilderness. We have worked to prevent rural sprawl and gravel mines on our most productive farmland. We have worked to stop harmful fossil fuel exports from the Pacific Northwest. We have helped push for the removal of dams and restoration of wild rivers. We have fought to stop pollution and old growth logging. We have done all of this for local people, either individually or acting through non-profit conservation groups.

In response, the grasping, greedy wastrels of the land have employed a number of tactics to try to sway public opinion against local activists, to portray them as selfish and to convince the public to disregard their concerns. One favorite approach is to call local people fighting for their communities NIMBYs, an acronym that stands for Not In My Backyard. This name-calling is designed to convince the public to disregard the environmental degradation by claiming that the local people are just trying to push the development somewhere else, that the development is inevitable and that the local people are just being selfish.

Crag is a client-focused law center that supports community efforts to protect and sustain the Pacific Northwest’s natural legacy.

www.crag.org
The law requires our clients to be specially affected to sue, but then our opponents state it is wrong for our clients to sue because they are specially affected. This irony teaches us that not only must we forever strike NIMBY from our lexicon but we must also find ways to nurture and celebrate local people who seek to protect their communities. Our clients would much prefer that government agencies do their jobs and enforce the laws on the books. All too often that is not the case and lucky for us there are people willing to stand up and fight for our rights. Our clients see first hand that environmental safeguards create value for all of us, privately and as a community, if those safeguards are respected. For them it is a moral imperative, not a selfish one.

In this issue, you will hear more from Crag staff about our work in local communities to protect special places in our collective backyard. From protecting an elderly community from the impacts of industrial asphalt production, to shielding property owners from illegal pesticide spray on their lands, to ensuring that farmers along the Columbia River do not lose their land to industrial zoning, Crag is working with community members to uphold environmental safeguards that protect all of our rights.

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Cover photo: Associate Attorney Maura Fahey poses in front of the Federal Courthouse with volunteers representing the community members that Crag serves. This fun picture was taken by Mark Gamba for Crag’s Willamette Week Give! Guide Campaign.
Keeping Coal out of the Corn Field

by Maura Fahey, Associate Attorney

The fight against coal export is an issue that has the attention of many across the Pacific Northwest and beyond. National coalitions have formed to stop the coal industry on all fronts. Concerns over climate change, perpetuating reliance on dirty fossil fuels and pollution from transport and eventual burning are the big topics in the coal debate. But for some rural Oregonians the impacts of coal export hit much closer to home.

Crag has been representing Columbia Riverkeeper and its members living in Columbia County to challenge a decision to double the size of the Port Westward Industrial Park to make room for coal export and oil-by-rail proposals. Port Westward extends north of the City of Clatskanie into the Columbia River. Aside from the existing 900 acres of industrial land, Port Westward is home to a community of small farmers that depend on the health of the land, air and water to support their livelihoods.

The Port of St. Helens’ application to convert over 800 acres of this prime farmland to industrial land posed a serious threat to the viability of these farms as well as the quality of life for the residents. A catastrophic event at a coal or oil facility could devastate the Port Westward farms where the water delivery system is connected throughout the entire site. Dust from coal could impair air quality and threaten crops. And trains coming and going from the site would cause serious traffic delays.

Tracy and Scott MacGregory’s Port Westward farm.

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In August, we celebrated a victory at the Land Use Board of Appeals that essentially requires the Port to start from scratch in attempting to justify its proposal to expand the Port Westward industrial area.

I was fortunate to be able to visit one of the Port Westward farms shortly after the decision came down. Tracy and Scott MacGregor hosted a farm-to-table dinner at their home to celebrate the victory and to appreciate the bounty that the Port Westward land provides. The dinner consisted of ingredients of all varieties raised, harvested, and prepared on the land. It was an honor to share this victory with the people it affects most.

Crag has been working with Columbia Riverkeeper throughout the fight against coal export on several aspects of the two remaining Oregon proposals including challenges to the Army Corps’ environmental review process, involvement in the Oregon Department of State Lands’ denial of Ambre Energy’s removal fill permit, and challenging land use decisions that would open up the lower Columbia River to coal off-loading terminals.
Defending Low Income Communities from Toxic Industry
by Chris Winter, Co-Executive Director

A few years ago, our client Beyond Toxics received support from the Environmental Protection Agency to conduct household surveys and hold community forums to identify air quality concerns in the largest residential neighborhoods in Eugene, Oregon. The results were shocking. When compared to other Eugene neighborhoods, residents in West Eugene have disproportionately high exposure to air toxics. Over 99% of all toxic air emissions (477,000 lbs.) originate near schools and homes in the industrial corridor of West Eugene, compared to all Eugene neighborhoods combined (191 lbs.). This toxic air impacts a neighborhood with a high percentage of low-income and minority households. Schools with the highest asthma rates are located closest to industrial sites.

Having collected this information, Beyond Toxics was concerned when a biomass facility in West Eugene proposed to increase the amount of fine particulate matter it could emit under its air quality permit. Fine particulate matter is a well-known threat to human health, especially for children, the elderly, low-income communities and communities of color. High levels of fine particulates can exacerbate asthma, heart conditions, and other cardiovascular diseases.

A local agency in Lane County is responsible for issuing air quality permits – the Lane Regional Air Protection Agency. Because LRAPA receives money from EPA, it has to comply with Title VI of the Civil Rights Act. Under Title VI, LRAPA is prohibited from using federal funding in a way that has a discriminatory impact on a minority community.

In this case, LRAPA did not conduct any air quality modeling or any other analysis of adverse impacts to human health before issuing the permit modification. Relying on legal technicalities, the local agency avoided a human health analysis and just assumed without any technical basis that the emissions wouldn’t harm the local community. Compounding the problem, LRAPA relied on “offsets” – reductions in pollution from another facility – but that plant was located many miles away in a community that was predominantly white.
Working with Beyond Toxics, we recently submitted a complaint to EPA that LRAPA had violated federal civil rights law in issuing a permit for more pollution in this minority community without considering at all the potential adverse human health impacts. The EPA’s office of civil rights, located in Washington DC, accepted the complaint for review, and we are awaiting the outcome of that investigation. This case is at the forefront of the intersection of civil rights and environmental protection here in Oregon, and we look forward to continuing this work on behalf of everyone who relies on clean air, clean water and a healthy environment. Every person should have a right to these basic human needs.

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**Crag is in the Give! Guide**

Crag is excited to be included in the Willamette Week’s Give!Guide, a year-end celebration of local non-profits making a difference in the Portland-Metro community. The Brainerd Foundation will match the first $3,000 donated to Crag and the Give!Guide offers a great bunch of incentives and gifts just to say thanks for giving back to your community!

giveguide.org/#craglawcenter

December 11th - Happy Hour for Crag Supporters! From 5pm-8pm New Outlook Financial will host a happy hour for Crag at Base Camp Brewing (930 SE Oak St - Portland). Enjoy a round of pints & yummy snacks, support Crag in the G!G and be entered to win a rafting trip on the Rogue!

**Turn $10 into $1,000 for Crag!** - Help us win the Under 35 Contest! If Crag is the non-profit who gets the most donations from donors 35 or younger in the Environment Category, will win $1,000! Please consider asking your kids, nieces, nephews, and young friends to support Crag and help us win $1,000!
Where are They Now? Checking In with Crag’s Former Interns
by Erin Elliot, Duke Engage Intern Summer 2014

Lizzy Zultoski

Lizzy Zultoski worked at Crag from 2009 to 2011 while she was a student at Lewis & Clark Law School. We interviewed her in the summer of 2014.

Lizzy learned about Crag at the beginning of law school when she was a volunteer and clerk for the Northwest Environmental Defense Center. After she expressed interest in working with the Crag team, Chris Winter offered her a school-year position as a clerk that she kept for two years while she focused on completing her degrees at Lewis and Clark.

The time Lizzy spent with Crag helped to teach her “how to be an efficient and powerful advocate.” During her time here, she assisted with advocacy projects and appeals related to regulatory permits for off-shore drilling in the Arctic, which allowed her to refine both her legal research and writing skills as well as build her confidence when it came to addressing complex technical and scientific issues.

Following graduation, Lizzy worked as a Legal Fellow with the Farm Sanctuary through the Animal Law Clinic at Lewis and Clark before joining the public interest law firm Smith and Lowney as an associate attorney.
After joining their office in Seattle three years ago, she recently returned to work at the firm’s office in Portland, which is located in the same building as Crag. At the firm, Lizzy focuses on citizen enforcement of federal environmental laws, such as the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act. Her practice also includes a variety of state and administrative matters involving land use, regulatory permits, and open government issues.

Lizzy feels fortunate to be working at her ideal job right out of law school, and is thankful to Crag for preparing her for the rigors of her current litigation position.

She is passionate about wilderness preservation and wildlife protection. While she is thankful to live in a region with ample public lands available for recreation, she believes there is still much to be done to protect these lands from destructive development and activities.

“I continue to be inspired by Crag’s dedication to and success at providing a voice to underserved communities in environmental disputes with corporations and governments who often have substantially greater resources. The individual members of Crag’s team are brave and the most impressive part of the organization; their energy is felt throughout the communities they serve through trees left uncut, ocean swaths undrilled, and wilderness unspoiled.”

Erin Elliott is a junior at Duke University. As an intern at Crag last summer, she developed “Where Are They Now?” series to highlight former Crag interns and volunteers. More interviews can be found at crag.org. She is majoring in biology with a minor in environmental science and policy. This fall she is studying abroad in Glasgow, Scotland.
Since the spring of 2013, Crag has been working with residents of Talent, Oregon and Rogue Advocates in an ongoing challenge to halt the operation of an asphalt plant. The asphalt plant is located on the banks of Bear Creek, directly across the water from a residential neighborhood. This case addresses the very foundation of land use zoning: certain uses of property, useful as they may be in society, do not belong side by side.

Mountain View Paving has been operating an industrial facility on land zoned for residential use without any land use permits for over thirteen years. The operation is located in the Bear Creek floodplain adjacent to Talent city limits. Over 150 senior residents are directly impacted by noxious fumes, dust and noise. Jackson County has failed to enforce its land use code, allowing the plant to continue operations unabated for years.

The U.S. Supreme Court has recognized the value of zoning laws, noting that some uses of land are more “like a pig in the parlor instead of the barnyard.” In this case, the asphalt plant is a pig in the parlor. Rogue Advocates’ Steve Rouse described the goal of the legal challenges: “We hope Mt.View Paving will relocate their asphalt operation to a new location and continue to provide their valuable services to the Rogue Valley. We are aware of available properties with existing approvals and resources for this use. This is simply a good business in a poor location.”
This case involves questions about grandfathered land uses, impacts to health and livability from industrial operations, historic gravel mining in the floodway of Bear Creek, and public participation rights in local decision-making. So far, Crag has won two decisions from the Land Use Board of Appeals finding that the asphalt batch plant is not a legal grandfathered use and cannot be permitted within the floodplain until the plant is determined to be lawful. We are currently seeking an order from the local circuit court that would require the asphalt plant to stop operating unless and until it receives all necessary permits.

Crag is helping these Talent residents, organizations like Rogue Advocates, and other concerned citizens to have an opportunity to be heard on decisions that will ultimately affect the land, air and water in their communities.

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**Taking on a Toxic Law: Protecting Rural Families from Chemical Trespass**

by Chris Winter, Co-Executive Director

Although our offices are in Portland, our work is spread throughout the Pacific Northwest, and we often help people in rural communities working on local issues. Not too long ago, I received a phone call from a family in Gold Beach, Oregon, the southern coast, who had recently been sprayed by pesticides that were supposed to have been applied to some private timberland in the area. Many people in the area were sprayed, and they experienced many medical problems, damage to their property, and injury to pets and livestock. They contacted us for help, because in their view Oregon state agencies like the Department of Forestry and the Department of Agriculture had done too little, too late to protect their private property.

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One of the injured people is John Burns, the assistant chief of the local volunteer fire department. John wanted to defend the right of his family to be free from chemical trespass. He did not want to have to suffer again from these irresponsible practices that made him sick, killed pets and interfered with the use of and enjoyment of this land. He couldn’t understand how our legal system and our state agencies could allow this to happen, and he was concerned about protecting his rights in the future and about making sure this didn’t happen to other people.

As the facts slowly came to light, we learned that these Oregonians had been exposed to toxic chemicals including 2,4-D, the active ingredient in agent orange, and triclopyr, among other chemicals, which had been sprayed by a helicopter that was contracted to treat timberlands owned by Crook Timberlands, LLC and Joseph Kaufman. And we also began to learn that the pesticide applicator – Pacific Air Research – had likely provided inaccurate information to state agencies, which interfered with the ability of the local citizens to learn about their chemical exposures much earlier in time.

What the private companies and the state agencies had once hoped to brush under the rug quickly grew into a concrete and public example of the shortcomings in the laws to regulate the use and application of pesticides. Oregon’s Right to Farm and Forest Law (ORS 30.936) insulates pesticide and herbicide applicators from liability for certain
claims for nuisance or trespass other than death or serious injury that arise from forestry operations, including the application of those chemicals. John Burns would therefore face an uphill and very daunting battle to vindicate his property rights and to seek compensation for the harm done to his private property. In addition, under the same law, John could be liable for the attorneys’ fees of the people who sprayed him if he lost the case.

John was shocked to learn that the law had stripped away the remedies that would normally protect him against trespass, including drifting of toxic chemicals onto his land. But he was not deterred. In August, Crag teamed up with another attorney, Liam Sherlock of Eugene, Oregon, to bring a legal action seeking to protect the private property rights of individual landowners. The case, filed in Curry County where John and his neighbors live, asks the court to declare that this onerous law is unconstitutional under the Oregon constitution because it strips away private property rights and does not provide any substitute remedy.

Many rural communities in Oregon have been struggling over the last several years with the effects of exposure to these same types of chemicals. Residents in Triangle Lake, Oregon complained of being sprayed by a nearby forestry operation, and tests ultimately revealed the presence of toxic chemicals in 100 percent of urine samples collected from the neighbors. The group Beyond Toxics has been working to organize rural communities impacted by pesticide and herbicide exposure for some time and has reported receiving many phone calls from rural communities about herbicide drift. The reported pattern is strikingly similar, including nosebleeds, nausea, severe headaches and breathing problems as well as pets often getting sick and dying. We are working with these local citizens and Beyond Toxics to help guarantee that Oregon residents who experience chemical trespass have a right to pursue justice in a court of law.
Black Lillies and a Masquerade!
by Suzanne Savell, Development Director

While we are pretty well-known for working hard here at Crag, we also know how to have a good time! In September, Crag supporters enjoyed a private house concert with the Black Lillies, raising over $3,000 to support Crag’s work to fight coal export. A special group of donors joined the band for a private reception and enjoyed fresh-caught salmon by Crag board member Gary Kish. Black Lillies guitarist Tom Pryor took pride in helping our host Alan Garren grill the salmon and serve it to our guests. Thanks to Alan & his partner Marilyn Zornado for donating their beautiful church for this truly special occasion.

On September 2nd, community members who are fighting coal export projects gathered for a private house concert with the Black Lillies.

On October 24th, Crag supporters got creative and generous for the Wild Shots Masquerade. Crag Associate Attorney and Legal Fellow Maura Fahey talked about the work that means the most to her and together we raised over $50,000 to support legal aid for the environment!
Crag Credits

Artists & Photographers
Mark Gamba – Cover Photo
Suzanne Savell – Graphic Design
Sara Thilman – Wild Shots Mask Design
Evan Cohan – Wild Shots Photographer

Office Volunteers
Lynn Schaffer – Legal Volunteer
Mitch Turk – Legal Volunteer
Beth Keegan – Communications

Fall Events Volunteers: Barb Tetenbaum, Alan Garren, Marilyn Zornado, Jenn Stefanick, Lisa Marsicek, Calla Wanser, Margaret Masten, Susan & Ken Johnson, Scott Johnson, Graham Klag, Nellie McAdams, Sara Hemmer, Susan Hawes, Jane Clugston, Phillip Johnson, Jasmine Zimmer-Stucky, Kathrin Sears, Trip Jennings, Karen Russell, David Anuta, Emma Bruden, Emily Bartha, Liv Brumfield

Summer Volunteers & Interns
Erin Elliott – DukeEngage Summer Intern
Will Carlon – U. of Oregon School of Law
Kelsey Skaggs – Harvard Law School
Alexandria Zafone – Vermont Law School

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Attorneys
Ralph Bloemers, Co-Executive Director
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Maura Fahey, Associate Attorney
Oliver Stiefel, Associate Attorney

Support Staff
Suzanne Savell, Development Director
Karen Russell, Bookkeeper
Bella, Office Dog

Law Clerk
Kara Tebeau – Lewis & Clark Law School

Foundation Support

Sweeten your support of Crag with a delicious box of Hood River Valley pears!

Donate to Crag this holiday season and Trout Creek Orchard will send you or a loved one a box of delicious pears:
- Become a Crag Guardian with a monthly donation of $21+
- Make a donation of $250 or more to Crag Law Center by December 31st
- Donate $75+ to Crag through GiveGuide: giveguide.org/#craglawcenter

When you make your donation, just let us know where you’d like the pears to be shipped and a personal message - and we’ll take care of the rest!

For holiday delivery, donate by Dec. 15th!