

**REPORT ON MATTERS CONCERNING OPERATION and
USE OF THE CITY OF RIVERGROVE'S STARK BOAT RAMP**

&

**COMMENTS ON CITIZEN PETITION PROPOSALS
CIRCULATED IN AUGUST 2020**

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with the assistance of Councilor Brenda Ruble

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I. RESPONSES TO COMMENTS FROM CITIZENS AT THE AUGUST 2020 AND PRIOR CITY COUNCIL MEETINGS

This report was prepared in accordance with a City Council request that Councilors David Pierce and Brenda Ruble research any regulations that impact the use and operation of the City's Stark Boat Ramp, so that Council could better determine what it could and could not do to operate the facility. In light of the Councilor's findings, this report also looks into the feasibility of some residents' recommendations in a petition they circulated in August 2020.

The document preparers have spoken to many different agencies and entities to research the City's options. They communicated with METRO, Clackamas County, the Army Corp of Engineers, the Riverkeepers, the Department of State Lands, the Oregon Marine Board, the Oregon Department of Fish and Wildlife, past City officials, residents, and City Attorney Bill Kabeiseman and attorney, Michael Blumm, Lewis and Clark College Law Professor, and noted Public Trust Doctrine scholar.

Useful acronyms used in this report:

OSMB - Oregon State Marine Board

DSL - Oregon Department of State Lands

PTD - Public Trust Doctrine

TVFR - Tualatin Valley Fire & Rescue

RESIDENTS' CONCERNS

Emergency vehicle access – This is an issue for many Rivergrove streets. If vehicles are parked on both sides of narrow streets, it effectively leaves only one street travel lane available. It is expected (legally required) that people yield to an emergency vehicle on public roads. They are required to move out of the way to allow safe passage for emergency vehicles if their vehicle is in the street travel lanes.

A letter was sent to TVFR regarding Dogwood Drive and the residents' concerns regarding emergency vehicle passage, given the street's design and parking concerns. TVFR responded that if they were involved in the planning process back in 1966 when the street was built, their authority would only extend to the original conditions of approval at that time. Therefore, the street design met their design requirements, and there is no requirement for the County to restrict parking or make changes to the roadway.

Congestion on the street – Occasionally, this can be an issue, but people seem to work it out. Politely asking people to move should help, vs. yelling at them. However, some people will always be inconsiderate and hog the road. Perhaps having a sign(s) noting no parking or stopping allowed in the street travel lanes might help, but it boils down to enforcement and effectiveness.

Multiple measures for limiting or prohibiting parking on the Dogwood Ave. or adjacent streets, have been discussed in numerous Council meetings. None of the proposed solutions have been acceptable to the residents. Respecting that, the City has implemented none of them.

COVID-19 regulations and their enforcement – The boat ramp was not closed in April 2020 due to directives by the Governor. The Governor's directives were for State agencies and were only recommendations for cities. The Governor's directive covered only certain State Parks closures. It did not include the City's ramp.

Currently, in place, COVID-19 regulations note there are no capacity limits for public outdoor areas. Examples of these areas are State parks, golf courses, campgrounds and mountain biking trails. Outdoor spaces open to the public should, but are not required to, post signs about the mask, face covering or face shield requirement. The City has posted signs at the boat ramp noting mask and distancing protocols in order to protect our citizens. Also, the requirement to have a physical distancing monitor is not applicable to public outdoor area operators, since the requirement is not feasible in most public outdoor areas.

A poll revealed that none of the surrounding jurisdiction's boat ramps or docks have been closed to the public at any time during COVID-19 restrictions. Signs requesting social distancing and/or masks have been posted at most facilities. No enforcement action has been noted at them. Lack of social distancing is not a viable reason to close the ramp, and it is questionable that the City has the authority to do that, or capacity to enforce it. Any such closure of the ramp assuredly exposes the City to legal actions.

Clackamas County's recommendation regarding COVID-19 regulation enforcement is: *"Please don't bully, yell at or harass anyone you see in a large group at a park, waterfront or other areas of town. Also, please refrain from calling 9-1-1 in these instances. Instead, email Environmental Health at eh@clackamas.us."*

Lack of masks or social distancing is not a hazard to the residents as users on the ramp are more than 6-feet from neighboring properties.

The Ramp COVID signs are too small - See the above response. The City is not required to post the signs, but does out of concern for residents and users. They are posted in conspicuous locations, for example, on the gate as you enter the ramp. It is not the City's intent for the ramp to be peppered with numerous and/or large signs. The intent is to have signs that are appropriate in size and nature for a park setting.

Have Tualatin enforce the regulations for ramp uses –

Regarding enforcement, the City has looked into some type of intergovernmental agreement with other local jurisdictions or hiring a part-time off duty policeman from LO or another jurisdiction. In all cases, the cost would be inordinately expensive and unaffordable by the City due to costly insurance requirements. It is also questionable that the City would qualify for the insurance.

The City should enforce the current policies – See the above response. The City lacks enforcement mechanisms and capabilities for such actions. The City has no enforcement agency or individual to accomplish this task. The City can post the regulations and request compliance. The current locked gate arrangement seems to enforce access hours. The City may want to review the current set up for the gate locking and unlocking and perhaps consider a more neutral party controlling the gate opening and closing.

The City should levy fines up to \$500 for violation of park regulations – See the above response. The City lacks enforcement mechanisms and capabilities for such actions. The City has no Municipal Court. There are also legal concerns for the ability of the City to enact such fines.

Since we don't have a police dept., it puts the neighbors in a situation of policing without clear guidance or authority.

- The City Attorney notes that Citizen enforcement can be problematic. If done properly, it's possible, but more often it does become harassment or worse. He feels that it's best that enforcement be left to professionals. He is not certain he sees a path that would lead to City liability from citizen enforcement, if we've explicitly encouraged citizens not to do so. Residents were warned of such actions in 2018. However, he notes the reality is that the City could be pulled into a lawsuit, even if there is no path to liability. Although it is likely that such a lawsuit would be covered by the City's insurance coverage, it would still be a potential drain on city resources, which the City cannot afford.

For these reasons, the City and OSMB does not condone this sort of activity by our residents. Residents should never take enforcement issues into their own hands. It is noted the City continues to receive complaints from users about citizen attempts at enforcement and/or intimidation.

Any enforcement for violations needs to come from the Clackamas County Sheriff's Dept. or Statewide County Marine Patrols (for on water violations), 503-655-8218 (Dispatch: 503-655-8211)

Use of volunteers for information and presence at access point - As noted above, the City and OSMB do not condone residents 'policing' or having any presence at the ramp that would interface with ramp users. Their doing so could create a liability issue for the volunteer resident and possibly the City.

Complaints against youth. Should limit their use - The City Attorney is on record stating the City could request that there be no unaccompanied minors at the boat ramp. The City would need to determine what legally defines a minor and provide good reasons why it should impede their reasonable public access to the river. However, once again, enforcement is a problematic. See above responses.

Other ramps are closed, so ours gets used - during this summer, due to COVID-19 restrictions, not one of the local ramps or docks were ever closed to public access at any time. Local jurisdictions have confirmed this and they noted that only COVID-19 warning signs were posted at their ramps.

Other local ramps are closed and/or locked at nights - The Stark Boat Ramp is the only local boat ramp closed and locked at night. Other local jurisdictions on the Tualatin River do not gate or lock their ramps or docks.

The Department of State Lands notes that some municipalities and state agencies close access points to waterways overnight. A survey of State parks (ocean coast boat ramps) indicates they

close most of their public access points to the public overnight, from dusk to dawn. However, they do not gate or lock them, nor do they have any regular enforcement patrols.

Our City attorney's opinion is that the City can close the ramp and lock it during evening hours that we set in our Ordinance, especially in light of the actions taken by DSL and State Parks noted above. PTD scholar, attorney Michael Blumm agrees reasonable closure may be acceptable. Possibly, the City should consider a more neutral party controlling the gate opening and closing.

Close the ramp on weekends – Our City attorney is not worried about such a regulation, which he notes could be incorporated into our Ordinance. He notes it is doable, but there is some risk. See above response.

However, the reality of such a regulation seems very problematic. This type of regulation could be interpreted by some to violate public river access rights noted in the PTD values and by DSL. Citizen's could claim proposed weekend closures would substantially impair public rights to access the river, especially at a time when access is most desired. Many of our Rivergrove residents have noted their strong desire for expanded (beyond those currently in place) hours of access to the City's boat ramp and that their families enjoy using it on weekends.

Such a regulation would also seem counter to the City's adopted Comprehensive Plan that notes:

- Goal #5: Natural Resources, Policy #14: The City will make every effort to improve public access to the Tualatin River.
- Goal #8 : Recreational needs, Policy #4: Work with the affected agencies to improve the Tualatin River and allow access to its recreational opportunities.

Close the ramp 3 nights a week so (immediate) neighbors can have a "cook out." - See the above two responses. While

perhaps it may be possible, it is very problematic. It could substantially impair river access rights contrary to DSL statutes and the PTD values, as well as the City's adopted Comprehensive Plan. It would be contrary to many residents requests for more access hours. It may subject the City to legal actions it cannot afford.

The City should set the hours to 9 AM to 7 PM for May through October. - See above three responses.

Our City attorney's opinion is that the City can close the ramp and lock it during the evening hours we set in our Ordinance. He believes that hour restrictions beyond the current ordinance is doable, but, there is some risk.

However, some may view it as further impairment of river access rights contrary to DSL statutes and the PTD values, as well as the City's adopted Comprehensive Plan. It may subject the City to legal actions it cannot afford.

The City has also heard from many people, most all Rivergrove residents, who enjoy paddling or boating before or after their work day. They have requested dawn to dusk hours. City Council reiterated their commitment to the current ramp operating hours in 2018 after much public testimony and deliberation. Limiting access further does not seem to be the majority will of the community.

West Linn has signs not allowing swimming or fishing -

They have no swimming or fishing allowed due to the fact that both their docks and ramps are on the Willamette River. That river has a great deal of motorized vessel usage. At their ramps and docks, they experience heavy use by large motorized boats and personal watercraft. The amount of motorized boats launched from the Stark Boat Ramp is extremely small. Fishers or swimmers temporarily move off the ramp launch area when motorized boats launch or retrieve. Nearly always they do this, but perhaps signage to this effect would be good.

We should use Lake Oswego's Rules for Parks – While LO has some good park rules, many would not apply to our parks or facilities, most notably because the City has no true enforcement capabilities. They don't allow fishing, diving and swimming from their boat DOCKS. Most likely, because motorized boats and personal water craft are launched there (like West Linn noted above). State Parks have a similar policy at most of their docks or ramps. The amount of motorized boats launched from the Stark Boat Ramp is extremely small. Fishers or swimmers temporarily move off the launch area when motorized boats launch or retrieve. Nearly always they do this, but perhaps signage to this effect would be good.

Recommend "loitering,"swimming and fishing be not allowed – It is uncertain how the term loitering could be construed. One persons "loitering" could be another's quiet enjoyment of the river. Remember, below the ordinary high water line, the City has no jurisdiction. Further, PTD access rights and publications from DSL specifically note that activities such as picnics, collecting agates, skipping stones, bird watching or photographing wildlife are all permissible activities. Additionally, they note that swimming and fishing are also permissible activities. If the City does not allow these activities below the high water line, they risk legal actions.

Out of courtesy, and for their own safety, fishers and swimmers should clear the area when a motorized (or any) boat is being launched. Nearly always they do this. Again, the amount of motorized boats launched from the Stark Boat Ramp is minuscule. But, perhaps something for Council to consider would be signage noting swimmer and fishers need to exit the ramp near the water while motorized (or possibly any) boats are launched or retrieved from the river.

City Council:

- 1. Took down signs defining the location of the boat ramp.** - It is unclear whether the City or a citizen took down

the Stark Boat Ramp sign. There was no found record of City Council desiring or authorizing the removal of the sign.

2. Discouraged use of the boat ramp by organizations of large groups – In 2008, the City Mayor requested that the Riverkeepers organization not have large gatherings at the ramp. The Mayor also requested they remove the ramp location on their maps. They complied with both requests.

3. Funded a locked gate at the boat ramp. - There was first talk of installing a gate recorded in the October 2008 City Council Minutes. On August 9, 2010 the City Planning Commission approved the City's application to install the gate. City Council funded the installation of the gate at the ramp. It was installed sometime around the Fall of 2010. The City is on record as not wanting the lock on the gate. The City may want to review the current set up for the gate locking and unlocking and perhaps consider a more neutral party controlling the gate opening and closing.

4. Recognized multiple parks with river access that were within minutes of Rivergrove. - The City incorrectly noted that there were several parks with river access that were within minutes of Rivergrove. Actually, drive times are closer to 15 to 30 minutes from the Stark Boat Ramp. Also of note, is the fact that the Stark Boat Ramp is not shown on the Riverkeeper's documents nor is it on the OSMB map of public boat ramps.

5. Has an Ordinance regarding hours of the boat ramp's operation and use. - On July 14, 2011 the City passed Ordinance #80-2011 that stipulates the hours of operation for the ramp and also for Lloyd Minor Park. They are noted as November through April, open from 8 AM through 8 PM. From May through October, open 8 AM through 9 PM. It mentions nothing about a gate on the ramp or locking it during closed hours. The City is on record as not desiring the lock on the gate. The City may want to review the current set up for the

gate locking and unlocking and perhaps consider a more neutral party controlling the gate opening and closing.

There are signs posted at the ramp and park with these hours noted. It has been pointed out these signs do not conform to City Codes. It is recommended that the City design and install signs for the park that meet code and are appropriate for a park. The signs will note the operating hours and rules for the park and ramp.

On August 27, 2018, after extensive public testimony and suggestions, City Council confirmed not amending the ordinance to change the hours of operation in at the ramp. They confirmed they did not want portable restrooms at the park, but did want to deliberate more on park and ramp signage.

There is noise from ramp users - There is no doubt that people using the ramp will invariably create sounds and occasionally they may be louder than normal surroundings. It is unfortunate that the ramp is situated between two residential properties, but the City had no means to change that. Also, the City has no means to enforce any sort of ordinance against sounds. As is done now, the best the City can do is post signage to ask users to respect the residents need for reasonable sound generation while using the ramp. As noted by the Mayor in 2018, the City has no jurisdiction over a sound level that is moderate and reasonable for a public park.

Most people recreating usually are having fun, and as such will express that with sounds. Children using the nearby Lloyd Minor Park and play apparatus can be loudly heard blocks away from the park. Those who live all along the river (not just by the ramp) have occasional loud sounds from boaters, canoeists, paddle boarders or inflatable floaters. Sound travels easily and for long distances over waterways, affecting many residents. The Tualatin River Greenway Bicycle and Pedestrian Shared Use Pathway on the opposite riverbank from Rivergrove (in Brown's Ferry Park) has heavy use year-round, and quite often, users make noise that

travels up and down the river. The river overlook areas along the trail approximately opposite Sycamore Ave., Tualamere Ave., and the property at 5740 Childs Rd. can generate groups of users who produce sounds as they gather and use those areas. Nearby Pilkington Park with its soccer fields generates sounds affecting neighbors. The City of Tualatin operates the Willowbrook Arts Camp in Brown's Ferry Park each year, which generates sounds from excited campers and also musical events during the summer days and evenings.

All of us in Rivergrove live with sounds, and some that are occasionally loud. Our neighbors use some type of power or noise producing equipment – a leaf blower, a lawn mower, string trimmers, a brush chipper, pressure washers, outdoor/patio loudspeakers or loud vehicles or motorcycles. There are loud children, games, or pets in a neighboring yard, etc. Noisy traffic on I-5, Childs Road, or Nyberg Lane. Even though we are fortunate to live amongst much nature in Rivergrove, we are living in a suburban area and not in a rural area with large parcels of land buffering neighbors. EACH of us live with some type of sounds we probably find obtrusive EACH day. Thankfully, in most cases, this noise is for a limited duration. Similarly, noise generated on the boat ramp is for a limited time, and is mostly seasonal.

As population has grown, too many users. - Projections for the 2020 census estimate there are 505 people, 155 housing units, and 120 families living in the city. According to the 2010 census, 374 people were living in the city and there were 133 housing units. The city population has increased by about 35%, and 22 new homes were added to the community in the past ten years.

It is more possible usage of the boat ramp has increased due to increased public knowledge of the facility. Each time the Council or Mayor have public/press meetings regarding the ramp, additional press and visibility is generated, which increases regional knowledge of this public river access point. Ramp users

have posted the location on social media, especially when they have been ill treated by residents.

Certainly, this year due to families sheltering in place, there has been an increase in public use of outdoor recreational facilities. For example, the Tualatin River Greenway Bicycle and Pedestrian Shared Use Pathway on the opposite side of the river from us is almost constantly in use. The amount of people recreating on the river this year was at an all-time high. Quite understandably, this year has been an anomaly for increased usage.

Only Rivergrove citizens should be able to use the ramp - The City absolutely cannot create a situation that prioritizes or limits access to the river because of PTD values and DSL restrictions. Further, any limitation of access to only Rivergrove residents would highly expose the City to costly litigation it cannot afford. Our City Attorney and other authorities contacted regarding this possible limitation of users, strongly agree these are valid concerns, and see real problems with limiting access to just Rivergrove citizens.

As an example, the Rivergrove City Council sees the MILLIONS of dollars the City of Lake Oswego and the Lake Corporation have spent in somewhat similar litigation, and the issue remains unresolved. As noted by attorneys, if and when those lawsuits are ever resolved, then the Rivergrove City Council may have a clearer picture of how courts determine public or private ownership of waterways and public rights to them.

The City should Employ the use of a mediator to resolve the boat ramp problems. - This is possibly a good idea and City Council may choose to explore this option.

II. COMMENTS ON CITIZEN PETITION PROPOSALS CIRCULATED IN AUGUST 2020

Generally, the petition proposal recommendations focus on use of the boat ramp and ways to regulate or possibly improve that. While usage is a concern, the overarching concern, is not as much use but rather the legal matters regarding the public's access to the river. In other words, are there things the City can and cannot do in regulating the use of the ramp because it provides public access to the river. If the City chose to enact various regulations, they could well make it vulnerable to legal actions, which the City cannot afford.

Looking at each proposal item, below are comments regarding them:

Purpose: It is noted the purpose is to provide recreational access to the river for small boats, etc. The term "small" is ambiguous and probably not enforceable. How is "small" determined, who makes that decision, and on what legal basis?

It is possible that the City cannot regulate the types or sizes of vessels launched from the boat ramp. We are still attempting to get clarification on that matter. The only restriction on vessels for the Tualatin River is for personal watercraft ("jet skis") and towed water sports equipment.

It is also unclear, if the City can make accessibility to the ramp more problematic or impossible for larger vessels, as long as it's reasonable for our ramp's size. We are still attempting to get clarification on that matter. To a certain degree, this was accomplished with the large log placed in Lloyd Minor Park, alongside Dogwood Drive. It fairly effectively prevents larger boats and vehicles for entering the ramp. If allowable, a more permanent barrier would be appropriate and should be explored by the City for installation. This would further discourage larger trailered boats from attempting to use the ramp.

The petition notes that the proposed regulations are not intended to regulate public use below the ordinary high water line. It is true the City has no jurisdiction in that area. However, as noted above, the legal issue is not so much use, but rather public access. A fair number of the proposed regulations directly impact public's right to access the river, and could very well create legal issues for the City.

Time: The City Attorney's position is that he thinks the hours of ramp operation are subject to reasonable regulation. While there may be some risk, he would think the hours identified in the petition are not unreasonable.

However, while such action may be implementable by City Council, it may not be viewed as reasonable by many citizens and Rivergrove residents. Council has received testimony and correspondence from a number of Rivergrove residents requesting to have the ramp operating hours from dawn to dusk, to enjoy river access before and/or after work. There has been limited support for further restricting hours of operation. Limiting access beyond current Ordinance regulations does not seem to be the majority will of the community. City Council reiterated their commitment to the current ramp operating hours in 2018 after much public testimony and deliberation.

Place: It is noted the proposed petition regulations apply to the land area above the ordinary high water line. The City has the authority to regulate that area. However, if regulating it prohibits the public's rights to river access, the City has potential legal problems and legal actions.

It is uncertain how the City would enforce a regulation that prohibits any activity within 8-feet of an adjacent dwelling and if that is, indeed, a problem. Since city code requires a minimum 10-foot setback from the side property line, any ramp user being within 8-feet of a dwelling would be trespassing on private property, which may violate criminal law. The existing residents' fencing and vegetation at the ramp surely are a deterrent and barrier to any user crossing into adjacent property. It has been

noted that existing property fencing may be partially on City property. A survey would be required to substantiate this.

Manner: A number of vessels or devices are listed in the petition proposal as appropriate for the boat ramp. As noted above, according to OSMB regulations, the City is not able to restrict the size of vessels launched. Also, the City is not able to restrict the ramp to launching only unpowered vessels. The City cannot restrict vessels with gas or electric motors. The only restrictions for the Tualatin River are a prohibition of personal water craft and towed water sports equipment.

The proposed petition regulations to prohibit picnicking and camping on the ramp may seem to be worth consideration. However, there are several very concerning matters to look at. If a person(s) picnics below the ordinary high water line, they are not subject to City regulations and the DSL specially notes picnicking is allowed in this area. For most of the entire summer months, when the ramp is highly used, about the last 10 to 12-feet of the ramp is below the ordinary high water line. Therefore, picnicking in that area would be beyond our regulation. Having only certain areas of the ramp for picnicking would be very confusing for users. Further, enforcement of that regulation in only the area above the ordinary high water line would probably not be possible. It would seem reasonable, however, that the City could prohibit fires or barbecues.

Regarding camping, according to the PTD values and DSL documents, river users have the right to camp along the banks of the river below the ordinary high water line, when traveling a long distance. Proposing such a regulation against camping would violate public use rights, and discussion of it would seem to only bring attention to this possibility. Therefore, perhaps it is best left unmentioned. Enforcement would be an issue and most likely fall to the Clackamas County Sheriff's office. Unless a person was camping above the ordinary high water line, trespassing on private property, or creating a serious threatening problem, the Sheriff would be prone to not respond. The Sheriff's Department

does not have the personnel to enforce any non-emergency situations.

Parking: The proposed petition recommends 5 marked spaces for the boat ramp. The City has considered a number of proposals to somehow regulate parking on the street(s) near the boat ramp. None of them have met with acceptance of the residents. The petition proposal may seem worth consideration at face value, but the track record for creating some type of parking control has all but failed.

If this proposal would move forward for Council deliberation, there are a number of questions and issues that would need to be resolved before it is seriously considered. They include, but are not limited to:

1. Where would the 5 spaces be located?
2. Could the residents all agree on the location? In the past the residents have proposed "No Parking" signs, yellow curbs, or marked fire lanes, but could not agree on a location and wanted to have parking available for their cars and their visitors nearby their homes. Thus, the signs were never installed and the curbs were never painted. As noted above, several other parking restrictions have been proposed and none of them have been acceptable to the residents.
3. Will having only 5 spaces for ramp users truly limit ramp use? Most likely it will force users to park in other nearby areas and then carry vessels along the street. This will create more congestion, noise, and impact to the residents. This would also cause people to stop their vehicles in the middle of the street in front of the boat ramp to unload. Only 5 spaces could also be viewed as creating an impediment to public's rights to access the river.
4. What would keep residents from parking their vehicles in the spaces as a tactic to limit the public's right to access the river? This sort of activity occurred this past summer.

5. The City has not had a response from Clackamas County regarding its ability to legally reserve parking spaces on a County road or if it could do permit parking. The public has the right to drive and park on the road. How and who determines if a car parked in the spaces is actually a ramp user? It could be a park user, a resident or a visitor. Who enforces this regulation and how? The Sheriff's Department does not have the personnel to enforce any non-emergency regulations. The City can't enforce parking permit violations because it doesn't have a municipal court.

Of note also, is the fact that the City made application for a \$80,000 grant from the OSMB for ramp improvements. However, the State has continued to prioritize the project as a low priority because the City lacks a parking area for the boat ramp.

III. REGULATIONS and THEIR DEFINITIONS

Determination of Navigability

Determination of whether or not a waterway is navigable, is important as it determines rights to its use for various purposes. For the City, recreational uses are most important.

The DSL determines a waterway as title navigable through a declaration of ownership by the State Land Board at the conclusion of a navigability study, or a court opinion, or both. Most of the rivers in the State were determined to be title navigable when Oregon became a state in 1859. Few have been added since then, and the Tualatin River is not one on the State's list as navigable. It is, however, listed as navigable on the Corp of Engineers List of Navigable Rivers and the US Coast Guard's list of navigable rivers.

However, the City Attorney believes the Tualatin would likely to be found a navigable river. It has not been adjudicated, but he'd be shocked if it wasn't declared navigable, as it meets necessary qualifications set out by the DSL - it "has sufficient capacity in terms of length, width and depth to enable watercraft such as canoes, kayaks or drift boats to make successful progress." PTD scholar, attorney Michael Blumm also says the Tualatin is "navigable in fact," meaning the public has rights to use the river for recreational purposes.

This is further supported by documents from DSL that notes even if waterways have **not** been formally determined as title navigable, a person may use the waterway and up to the ordinary high water line for various water related or dependent recreational uses they describe. (See rights and uses allowed by DSL and allowed by the PTD below).

Additionally, under federal law, rivers that were used by fur trade canoes or navigable for lumber drives are legally navigable.

Also, rivers that are useable for raft trips, or canoe or kayak trips are legally navigable.

Determination of ordinary high water line

Oregon state law defines the term ordinary high water line to mean a line on the bank made by the water when it rises to its highest level each year to the limit of upland vegetation. It is not the flood line.

Uses allowed on Oregon navigable waterways

As noted by DSL, the public has the right to use the waterway and land below the ordinary high water line, even if navigability for title has not been determined (such as the Tualatin River). These rights include recreational activities such as swimming, boating, kayaking, canoeing, fishing, collecting agates, skipping stones, nature watching, photographing wildlife, and incidental water dependent uses such as camping when traveling a long distance and walking while fishing. Also, you may use this area for repairing a boat damaged on a trip, or recovering supplies dumped in a rapid.

Uses may not violate any law. For instance, a person may not commit offensive littering, harassment, menacing, disorderly conduct II, minor in possession of alcohol, reckless burning, criminal mischief or deposit of trash within 100 yards of water.

Access to navigable waterways

The public does have the right to access navigable waterways across public lands as noted in DSL documents and in an opinion from PTD scholar, attorney Michael Blumm.

However, public rights to use Oregon's waterways for recreation is not unlimited. Unauthorized use of private lands for waterway access is a trespass and may violate criminal law. The exception for going above the high water line, onto private property, can occur only if it is absolutely necessary for use of the waterway. It cannot merely be for convenience or ease of use.

For instance, a person could likely carry a seriously injured boater to a nearby road or portage a boat and its contents around a waterfall. You must do so in the least disruptive and damaging way possible, using the shortest most direct route available.

Public Trust Doctrine

As noted by our City Attorney, the PTD is not a written document. It's a common law principle. A number of State and Federal court cases have interpreted what it means. There is no writing in the US Constitution that says here's the PTD.

Public Trust Doctrine values and responsibilities were handed down to Oregon when it became a state. Section 2. Act of Congress Admitting Oregon into the Union February 14, 1859 states " . . . *all the navigable waters of (the) State, shall be common highways and forever free, as well as to the inhabitants of said State as to all other citizens of the United States. . .*"

The PTD enjoins upon government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The public at large is the beneficiary of the government as a trustee under legal duty to protect all natural resources. Natural resources being a gift of nature, should be freely available to everyone irrespective of the status in life.

Traditionally, the public trust has been applied to access and uses in navigable waters. The public trust applies to both waters influenced by the tides and waters that are navigable in fact. If legal action is filed regarding access or use of the City boat ramp, a court case would determine what is reasonable access or use and thus falls under PTD. It also falls under the State's Public Use Doctrine, which has not been fully tested in courts.

OSMB Regulations

A complete list of OSMB regulation is available at this website:

<https://www.oregon.gov/osmb/boater-info/Pages/Statewide-and-Local-Regulations.aspx>

Conversations with OSMB, informed the City that residents involved in trying to enforce any regulations, may subject themselves, and possibly the City, to legal actions for harassment or menacing. (See also above opinion from the City Attorney on citizen enforcement actions.)

A critical regulation for waterway users in Rivergrove is that no personal watercraft ("jet skis") or towed water sports equipment are allowed on the Tualatin River.

Of possible consideration also is that operators of boats must observe Slow -No Wake, within 200' of a boat ramp, marina or moorage with a capacity for six or more vessels; a floating home moorage with six or more structures; or people working at water level. The operator may be liable for damage caused by the wake. This rule does not apply to commercial vessels or river navigation when more speed is needed to ensure safe passage.

IV. BOAT RAMP HISTORY

Prior to subdivision of the area

Anecdotal history notes there was a sawmill at the current location of the Tualatin Community Center run by Parr Lumber. They used the Stark Boat Ramp for shipping logs up the Tualatin to the sawmill, either by steam ships or pulled with chains by men along the river banks. Also, anecdotal history notes that the Pilkington's used the ramp area as access to the river for drawing irrigation water.

Prior to 1975

Anecdotal history notes that when the area was subdivided (perhaps in the '60's), some lots would not perk for septic field installation. Those parcels and the boat ramp property were deeded to Clackamas County and the irrigation access to the river was graveled over, providing public river access.

1975

Clackamas County then deeded the property to the City of Rivergrove June, 3, 1975. The lots became Lloyd Minor Park along with the boat ramp access. If the property is not used for 5 consecutive years, it reverts back to the County.

1975-80

The boat ramp was a simple gravel trail to the river. Local residents on Childs Rd, the Morrison family, were involved in Rivergrove's founding, the city government, and cleaning up the river's pollution. At that time, Blue Mountain Pet food in Tualatin was dumping its offal into the river as well as the City of Tualatin dumping raw sewage into the river. Mr. Morrison and a fellow contractor installed concrete bars at the ramp around late 70's - early 80's. No record of how the project was funded was available. Mr. Morrison's son, Larry, noted the plans for the boat ramp were found when they sold his parents home and they were

given to Bill Tuttle. It is possible they are in the City's storage locker, but have not been located.

1986

May 22nd the City signs a LWCF grant contract for \$8,002.80 to purchase and install an irrigation and turf repairs at Lloyd Minor Park. The grant requires the land to essentially be kept in park (including the ramp) use in perpetuity.

2006

The City receives 60% - 40% matching State Lottery funds (\$38,000) to construct a children's playground in Lloyd Minor Park.

2008

The City's citizens' survey notes that 66.2% of Rivergrove residents consider the boat ramp a great asset. 52.3% use the boat ramp to access the river.

2010

At the February 8th City Council meeting City Council discusses issues with the boat ramp, and the suggestion of installing a gate was noted by, then Mayor, Hafez Daree.

Also at that meeting, Rich Refvem, City Manager, reported that he had gotten a quote from American Landscaping for installing a sprinkler system shut off valve and drain valve at Lloyd Minor Park. The sprinklers have not worked for three years. They may have been damaged when the play structure was installed. An additional bid item included setting sprinkler heads back to ground level and removing dirt from asphalt at boat ramp, as well as getting bids for installation of a gate at the ramp.

On March 1st, the City signed an Intergovernmental Agreement with METRO for \$10,507 of grant funds for installation of a gate

at the ramp and to make trail improvements. There was no records found regarding the City receiving any other grant funds for improvements at the ramp. The METRO grant notes the improvements must remain in place for 20 years and the grant contract ends on June 30, 2027. The agreement stipulates that use of the property in the agreement must be maintained as parks, open space, natural areas, or trails. The City is to recognize on site and in any publications that funding for the project came from the Metro Natural Areas Bond Measure.

From best information available, sometime in the Fall of 2010, the City installs the gate at the ramp.

2011

The City's adopted Comprehensive Plan notes the following:

- Goal #5: Natural Resources, Policy #14: The City will make every effort to improve public access to the Tualatin River.
- Goal #8 : Recreational needs, Policy #4: Work with the affected agencies to improve the Tualatin River and allow access to its recreational opportunities.

2018

July 11, during the Public Comment on Non-Agenda Items, the City Council hears of concerns by the ramp residents. The City Attorney, present at the meeting for a Planning Commission appeal, explained to the attendees the limitation of regulations that are legal for the boat ramp. Council passes a motion to temporarily close the boat ramp on the second and third weekends of July.

July 14, Council met and rescinded the temporary closure of the boat ramp. It was then decided to hold a public hearing on potential closure and/or hours of operation.

August 13, Council met to hold a Type IV hearing considering amending Ordinance #80-2011 regulating park and boat ramp hours. Council heard testimony from 6 proponents for amending the ordinance to decrease the hours of ramp access. They also heard from 1 neutral party, and 30 opponents to amending the Ordinance, many of those requested increasing public access to the river from dawn to dusk. Council voted unanimously to leave the public record for testimony open until August 20th, and continue the hearing to August 27, 2018.

August 27, Council met to hold a Type IV hearing considering amending Ordinance #80-2011 regulating park and boat ramp hours. At meeting the City Attorney gave an opinion that the boat ramp is entirely legal within City Ordinances and uses. After a lengthy discussion by Council, they decided to retain the current operating hours in a 5-0 unanimous decision.

In subsequent discussion, it was noted that any other change that the Council decides does not need to be an ordinance. Other regulations may be decided by a resolution, with no notice to the public. However, the public had been invited to participate in this community-wide discussion. Council went on record for not wanting port-a-potties at the park, nor wanting ramp parking in Lloyd Minor Park, at that time. That also seemed to be the desire of the ramp area residents. There was discussion of multiple parking resolutions, such signs, yellow curbs, or placing boulders across from the ramp to prevent larger vehicles and trailers from attempting to access the ramp and also driving on the lawn areas of Lloyd Minor Park.

2020

In March, due to COVID-19 concerns, the Mayor closes and locks the gate at the boat ramp because he felt responsible for protecting the health and safety of residents after seeing violations of social distancing.

The Mayor and City receive concerns about the ramp closure from nearly 100 citizens. Most of those wanted the ramp

reopened, some wanted it opened with conditions put in place for safe use, a relative few were in favor of keeping it closed.

On April 22, City Council held a special meeting to decide whether to leave the boat ramp closed or to reopen it. It was noted closure required action by the entire Council. Also, the governor's executive orders regarding COVID-19 restrictions were for State agencies only, and were only recommendations for local cities. Council passed a motion to authorize it to adopt the governor's executive order 20-12 (Guidelines for Outdoor Recreation and Travel). It would allow the Council to have the authority to close any property or facility where it is very clear that proper social distancing cannot be maintained. This only could be done after a Council meeting and discussion on the closure. A subsequent motion was unanimously passed that the boat ramp be reopened on April 23rd , with appropriate signage indicating the need for social distancing. The signs were posted and the ramp reopened the next day.

From May through July, the Mayor receives correspondence from citizens living near the boat ramp residents with concerns about social distancing and concerns previously expressed regarding boat ramp operation and use. He meets several times with the residents.

At the August 10th City Council meeting, Council has lengthy discussions regarding the boat ramp issues and statutory requirements. The Mayor and City Manager share with Council the citizen comments and a petition ramp area residents had circulated. It is decided that Councilors Ruble and Pierce will research and provide a report with facts regarding restrictions, regulations or legal matters with the Stark Boat Ramp operations. During subsequent meetings, it is reported that communications with the appropriate agencies has been very slow, due to staff working from home and not having immediate access to files at their agencies. It was projected the report would be available to the Council in January 2021.