



Mayor Joe Buck
City of Lake Oswego
P.O. Box 369
Lake Oswego, OR 97034

May 22, 2021

Minority Law Student Association, Lewis and Clark Law School,
Native American Law Student Association, Lewis and Clark Law School,
NEDC (Northwest Environmental Defense Center),
OPAL (Organizing People / Activating Leaders),
Tualatin Riverkeepers,
and Willamette Riverkeeper

Subject: Petition for Public Access to Oswego Lake to Create a More Diverse, Equitable, and Inclusive Community

Dear Mayor Joe Buck:

The Lake Oswego City Council's adopted goal for 2021 is to "foster diversity, equity, and inclusion in Lake Oswego..." In support of that goal, we ask that you abolish public access restrictions to Oswego Lake historically designed to exclude minority and low-income communities.

Mayor Buck, you have the honor, privilege, and ability to realize the stated goals of the City Council and your mayoral campaign for a more diverse, equitable, and inclusive community. We request that you use your authority as mayor to bring forth a proposal to repeal Resolution 12-12 and eliminate public access restrictions to Oswego Lake.

Moreover, we do not seek unfettered public access. We wish to foster a collaborative relationship with the City to create reasonable public access regulations. Such a relationship will not only benefit the public by restoring their constitutional right to recreate on the lake, but it will also benefit the city and its residents by 1) increasing tourism, 2) increasing overall property values as a function of the city's increased desirability, and 3) improving environmental stewardship of the lake and its watershed by connecting people directly with this unique natural resource. To achieve this positive feedback loop, we ask that the City adopt the following positions:

1. The City must allow well-regulated public access so that all Oregonians, including historically excluded individuals, may enjoy the natural beauty of Oswego Lake in support of the Council's goal for a more diverse, equitable, and inclusive community.

2. The City must agree with the plaintiffs in the ongoing litigation from *Kramer v. City of Lake Oswego*, 446 P.3d 1 (Or. 2019) that the public’s access rights should be limited to non-motorized vessels and swim access.
3. The City may adopt reasonable time, place, and manner restrictions to ensure public safety, prevent overcrowding, and protect water quality as allowed for waterways throughout the state. *See Kramer v. City of Lake Oswego*, 446 P.3d 1, 6 (Or. 2019).
4. The City may be legally entitled to charge a reasonable fee for access to the lake. For example, the New Jersey Supreme Court has previously held that a municipality could charge non-residents higher fees to compensate the city for maintaining public beaches. *See Borough of Neptune City v. Borough of Avon-By-the-Sea*, 294 A.2d 47, 55 (N.J. 1972).
5. The City should update its existing park regulations to promote using the public waters of Oswego Lake which will increase economic productivity in Lake Oswego. For example, researchers at Oregon State University found that non-motorized boating contributes millions of dollars to Oregon’s state and local economies. Kreg Lindberg & Tyson Bertone-Riggs, *Oregon Boater Survey Report*, 56 OREGON STATE UNIVERSITY (2015).
6. The City is capable of funding updates to existing public infrastructure, as only minor modifications will be required to improve the parks’ accessibility and safety from its \$21 million-dollar parks and recreation budget. *See Online Biennial Budget 2019-21*, 30 CITY OF LAKE OSWEGO (2019).
7. The City should recognize that it could have better spent the hundreds of thousands of dollars it used to defend public access restrictions modifying these facilities. *See Progress Payment Recap–CAO116*, CITY OF LAKE OSWEGO (last modified Jan. 15, 2021).
8. The City should partner with the Oregon State Marine Board to optimize the use of the State’s significant available funding for public access facilities, invasive species prevention, water quality management, and public safety as provided for every other public waterway in Oregon. The State Marine Board already implements and controls regulation over recreational watercraft in Oswego Lake. Therefore, the City’s continuing partnership with the agency will promote safe and enjoyable experiences for the public. *See Agency Info, Oregon State Marine Board*, OREGON.GOV, (last visited March 5, 2020), <https://www.oregon.gov/osmb/info/Pages/About-Us.aspx>.

Oswego Lake has a fascinating and complex natural and human history. Contrary to popular belief, it is a natural, navigable lake within a former channel of the Tualatin River. The lake and land were inhabited by indigenous communities before colonists arrived and enlarged the lake through various dam iterations. The U.S. government surveyed the lake, and at statehood, in 1859, the State of Oregon took ownership of the lake. Public access rights are enshrined in the Oregon Statehood Act mandating:

“....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” Act of Feb. 14, 1859, ch. 33, § 2, 11 Stat. 383.

In the early 1900s, Lake Oswego was transitioning from a gritty iron and steel town to a suburban paradise with restrictions against minority and low-income communities. As the Oregon Iron and Steel

Company platted the land for residential development, racially restrictive covenants were attached to the parcels that stated:

“...nor shall the same or any part [of the land] thereof be in any manner used or occupied by Chinese, Japanese, or Negroes, except that persons of said races may be employed as servants by residents...”
CLACKAMAS COUNTY, OR., DEED BOOK 132:166 (1913).

In the 1940s, when Oregon Iron and Steel conveyed its properties surrounding the lake to the Lake Oswego Corporation, overtly racist deed restrictions were replaced with more general restrictions against “outsiders” from accessing the lake:

“It was and is the intention of and desire of the Grantor and parties purchasing property from the Grantor to exclude the general public from using Lake Oswego for any purpose whatsoever...and to protect said residents of the Lake Oswego district against public intrusion.” *CLACKAMAS COUNTY, OR., DEED BOOK 358: 676 (1945).*

These restrictions against “public intrusion,” born from racially restrictive covenants, are still in effect today, enforced by the Lake Corporation and buttressed by lake exclusion laws adopted by the Lake Oswego City Council.

“The Council report notes the Council ha[d] . . . an informal process relating to the public debate about public use or rights on the lake, that it prefers the status quo, that the Lake is private.” *CITY OF LAKE OSWEGO, CITY COUNCIL REGULAR MEETING MINUTES 6 (Apr. 3, 2012).*

The Lake Oswego City Council continues to support the Lake Corporation’s efforts to prevent “public intrusion” of the lake. Council has authorized spending hundreds of thousands of taxpayer dollars defending laws such as Resolution 12-12 that perpetuate lake use practices originally designed to exclude minority and low-income communities.

Community leaders have used dog whistle language to justify public access restrictions while at the same time adopting goals for a more diverse, equitable, and inclusive community. The following quotes from 2012 illustrate the fear of “outsiders” that drive lake access restrictions, such as Resolution 12-12:

“Public Access to Oswego Lake will negatively impact property values, thereby decreasing local option revenues, and will negatively impact the education of Lake Oswego’s children. It is that simple. In my capacity as Chair of the Board for the Lake Grove Swim Park, our Board has the responsibility to maintain the conditions that protect the viability of this important community asset. We also must protect the safety and well-being of the children and families who use this facility. We currently have controlled conditions by having Oswego Lake private. Public access to Oswego Lake would adversely impact these controlled conditions. Costs for operating the park would likely increase, and the safety of our patrons could be compromised with uncontrolled conditions.”

-John Wendland, Chair of the Lake Oswego School Board (current City Councilor)

“It is not an illusion to think that public access to the higher priced properties will provide access to those people who look for ways to commit property and violent crimes. Ask the Lake Oswego Police Department. Will Lake front homeowners be forced to defend their property with fences, dogs and cameras? To state that public access will be “low impact” and limited to kayaks, canoes and paddleboards, is a marketing expert’s way to sugar coat carrying a handgun in a Prada purse.”

- Justin Harnish, Principal Broker, Harnish Properties at Realty Trust

“It may be difficult to empathize, but I would liken it to a non-shareholder having to worry about random people having access to come by anytime and sit on your fence or in most of our cases, have no fence and just have people peering into and having easy access to our backyards. Currently, those people are our neighbors, they are familiar faces. There is relief in knowing that we are in the presence of ‘neighbors.’ We have two, small children and for those of you who have children as well, I am sure you can relate to not wanting strangers allowed this type of access to your children while they play in their own yards.”
- Jarrett and Yolanda Price

“A public lake is not public for one city, it is public for all. If the lake were no longer private, then that would be the case. If the City were to ask its citizens if they would like people from the entire metro area and beyond to come into the City to recreate on the lake, I believe that very few in Lake Oswego would respond in a positive way. (Remember, these are the same citizens who did not want a streetcar because it would attract outsiders – Image the attraction that a public lake would be.)”
-Elizabeth Buchanen

“We are happy to have people come visit and join us on boat outings...but not have the lake invaded by non-lake owners.” -Marla Matar

“Public means public.... It doesn’t mean ‘Lake Oswego public.’ It means when the guy from Arkansas comes up and wants to have a kegger on the water.”
-Rose Deggendorf

At this moment in history, communities across the country are reassessing policies and systems that create barriers to a more diverse, equitable, and inclusive society. The City’s lake access prohibitions perpetuate historical deed restrictions designed to exclude minority and low-income populations. They stoke unfounded fears that a diverse and inclusive community means increased crime, decreased property values, and overall community decline. In reality, access to natural resources is proven to improve communities, increase property values, and support economic development. The lake is the symbol of the Lake Oswego community. Together we can change history so that the lake may represent the City’s commitment to a truly diverse, equitable, and inclusive community.

If you have any questions or concerns regarding this letter, contact Mauricio Valadrian at mauricio@valadrian.com or 503.863.6952.

Respectfully,

Minority Law Student Association, Lewis and Clark Law School,
Native American Law Student Association, Lewis and Clark Law School,
NEDC (Northwest Environmental Defense Center),
OPAL (Organizing People / Activating Leaders),
Tualatin Riverkeepers,
and Willamette Riverkeeper

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Senator Jeff Merkley	531 Hart Senate Office Building, Washington, DC 20510
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Portland Mayor Ted Wheeler	1221 SW 4th Avenue, Room 340, Portland, OR 97204
Tualatin Mayor Frank Bubenik	18880 SW Martinazzi Avenue, Tualatin, OR 97062
Tigard Mayor Jason Snider	13125 SW Hall Boulevard., Tigard, OR 97223
West Linn Mayor Jules Walters	22500 Salamo Road, West Linn, OR 97068
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