

**From:** Todd Prager  
**Sent:** Thursday, January 19, 2012 8:05 PM  
**To:** Weigel, Laura; Selden, Sarah  
**Cc:** Jon Gustafson; Puja Bhutani; Jim Johnson; jdglisson@earthlink.net; Andreades, Debra  
**Subject:** Oswego Lake Subcommittee

***(Please see attached aerial at the end of this document)***

I attended the Oswego Lake subcommittee meeting on January 18, 2012 and appreciate the time staff and the subcommittee spent looking into this issue. While I understand the subcommittee is still in the process of formalizing their findings, my take away from observing their discussion was they will be recommending against a policy on public access to the lake (either for or against) mainly because they think it would be too specific for the Comprehensive Plan.

In my opinion, a policy on lake access would be no more specific than many of the other policies in the existing or draft Comprehensive Plan. Consider the following policies:

**GOAL 15: Willamette River Greenway (recreational component)**

**10. When appropriate as part of the development review and approval process, require dedication of public access easements within the Greenway and to the Willamette River.**

Comment: A similar policy could be crafted regarding public access to Oswego Lake from public lakefront properties.

**GOAL 5, Section 7: Oswego Lake (recreational component)**

**11. Continue to provide swimming access on Oswego Lake through the City's Swim Park.**

Comment: A similar policy could be crafted regarding public access from other public properties that directly abut the lake (see attached map of city properties/properties planned for city acquisition that directly abut the lake).

**GOAL 5, Section 7: Oswego Lake (recreational component)**

**8. Work with the Lake Oswego School District to preserve its rights to the existing swimming easement in the Lake Grove Area Swim Park.**

Comment: Same as previous.

**GOAL 5, Section 7: Oswego Lake (proposal is to move to Inspiring Spaces and Places)**

**2. Establish significant public viewpoints to assure that residents of the community can identify with and enjoy Oswego Lake.**

Comment: This policy is specific to public viewpoints. The previous two policies are specific to swimming access. Is city policy to limit public access beyond views or the existing swim parks? If so, I think it would clear up a lot of confusion to clearly state that as city policy.

However, my recommendation is not to address Oswego Lake access within the Recreation topic area. I think Oswego Lake should be considered as its own topic area rather than broken up across multiple topic areas. In the existing Comprehensive Plan, Oswego Lake is treated as a distinct topic ([Section 7, Oswego Lake](#)) and I think it should remain that way. In the proposed Comprehensive Plan, the Library and the Arts enjoy their

own topic areas. Oswego Lake is of equivalent importance to this community and should be provided equivalent consideration. By treating Oswego Lake as a distinct topic, closely related issues (recreation access, zoning, natural resources, etc.) could be addressed comprehensively.

Thank you for considering my comments,

Todd

**From:** Kristy Neubo

**Sent:** Wednesday, January 18, 2012 1:14 AM

**To:** WeLoveLO

**Subject:** Opposition to any further public Lake Access beyond the access already provided

Message Body:

My husband, children, and I are residents of Lake Oswego and we own 7 homes in Lake Oswego, one is Lake front and two have Lake easements. Todd Prager has led a campaign to open the Lake up to further public Lake access,, taking away the rights that have been paid for, of the Lake Shareholders and easement holders. The Lake shareholders and easement holders represent the largest tax paying entity in Lake Oswego. Todd Prager has garnered the support of a Law Professor at Lewis and Clark University to support his campaign. Professor Blumm takes a lot of liberties in his writings with the law and misinterprets a great deal of the law and the facts for which he basis his opinion. Remember this is one man's opinion and is not proven case law which has not been properly adjudicated in an Oregon Court of Law or higher judicial authority. In addition, Professor Blumm states that he is worried that the City may be sued if it does not provide public Lake access. The City does provide Lake access through it's Ridgeway Swim Park and through the School Districts Swim Park on Lakeview Blvd. It is current law that the City has no authority to provide public Lake access beyond the access that it already provides to every resident of Lake Oswego. The Ridgeway Rd. Swim Park gets so little usage, that the City has contemplated closing it because lack of use. There are approximately 12,000 to 13,000 residents of Lake Oswego who have legal deeded access to boating rights on Lake Oswego currently. This is roughly 1/3 of all Lake Oswego residents who hold legal boating rights on Lake Oswego. Professor Blumm fails to address that the City already currently provides legal access to the Lake to every resident in Lake Oswego through the two swim parks. Let me assure you, that if the City somehow addresses additional Public access to Lake Oswego as part of their Long Term Plan, the current Lake Shareholders, shall sue to protect their interests. This is by far a bigger threat to the City, based on cost alone, than a Law Professor's opinion, that the City might be sued, by an unknown entity. Lake Oswego was a private Lake long before Oregon became a state. The Federal Government has made a law stating that Lake Oswego is a private Lake. Lake Oswego was developed as a recreational Lake from a small pond and some other small ponds in the area specifically to benefit the development of specific pieces of land and the subsequent property owners of that land. If the City decides to take on the Shareholders and begin a legal battle to undue the current operation of the Lake and make this part of the plan, The Lake Corporation does have the ability to lower the water level of Lakewood Bay and begin a Passive- Aggressive stance of blocking Public access at Millennium Fountains, and I as a shareholder and as a property owner of two easement properties, would support this stance as well. The two McVey Ave. properties are being sold off, so that access is a mute issue. The Lakegrove Swim Park belongs to the school district, so additional access for the City there is a mute issue. Millennium Fountains access is not a good option anyway, as there is no parking available to the Park and canoers would have to park about 3 blocks away at the public lot and carry their boats across busy Highway 43 and then carry their boat through a busy small and highly developed sidewalk and park- that at best provides a 10 foot clear walkway dodging families and small children running around. Not a good mix and an accident waiting to happen. Professor Blumm does not address the cost to the City of the operation and policing of Oswego Lake. The shareholders would no longer fund the current \$2,000,000 Lake Operation and Policing cost. The cost of operation would immediately

jump to an estimated \$5,000,000 to the City for the Lake Operation. Does the City have the funds to spend an extra \$5,000,000, simply to allow a few people to launch their boat in Lake Oswego? This cost does not address the condemnation and legal costs that will be due to the shareholders, nor does it address the loss of property values of the shareholders thus lowering the shareholders property tax bills and revenues to the City from the largest tax base of properties in the City. Yes, we Lake Shareholders pay significantly more in property taxes than any other group of properties in this City and if we lose some of our rights, we will want to be compensated for our loss.

Mr. Prager's own survey showed very little interest in the City providing additional Public access to Lake Oswego from Lake Oswego residents. There were people from outside the area who showed an interest, but very few residents of Lake Oswego showed an interest. This is Mr. Prager's own agenda, and for the life of me, I don't understand why he is going after this issue. Additional Lake access is not a significant issue for most residents of this City. Why is Mr. Prager not bringing up the issue of a boat ramp and boat docks being installed back at George Rogers Park, like they used to be? This makes so much more sense and is a small cost to the City, vs. the huge cost of this tiny Lake to a potential small few who want to launch a canoe in Oswego Lake.

The glaring flaw in Mr. Blumm's opinion is that his opinion states that all bodies of water in this state are for the public benefit. That means every swimming pool; pond on private property and every creek running through private property are for public access, regardless of how the Public could gain access. He is dead wrong here. The law clearly states that the Public must gain "lawful" access to the body of water before it uses the body of water. The City cannot, without condemnation, provide access to any Lake waters, as the Lake Corp. owns the entire perimeter of the Lake. Mr. Blumm also states that because "logging" uses can access private uplands to access private lakes for logging purposes, this law can somehow be extended to all public uses. This case law has not been established by any court to support his opinion. It is a waste of City time, resources and would cost the City Millions per year to attempt to provide Lake access to a group that really doesn't want access and certainly does not want to pay for it. There is no legal presedence for the City to provide Lake access.

Try again Mr. Prager.

## **NORTHWEST ENVIRONMENTAL DEFENSE CENTER**

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**January 17, 2012**

Oswego Lake Workgroup, Comprehensive Plan Citizen Advisory Committee  
Lake Oswego Planning Commission

### **Re: Public Access to Oswego Lake**

Dear Committee Members:

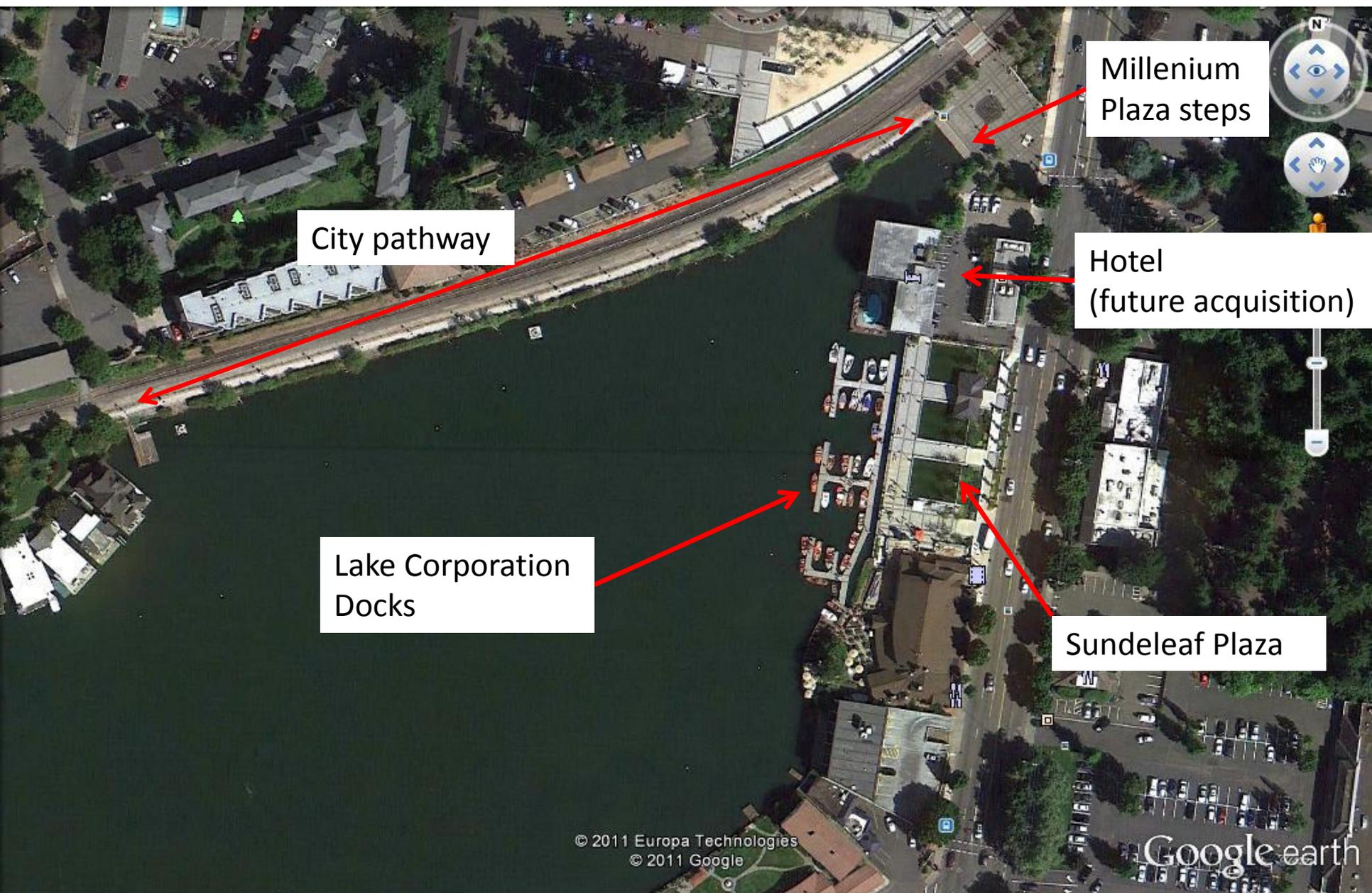
The Northwest Environmental Defense Center (NEDC) is writing to express our strong support of public access to Oswego Lake. NEDC's mission is to preserve and protect the environment and natural resources of the Pacific Northwest. NEDC is interested in preserving Oregon's waters, which are held in the public trust, and public access to these precious resources. In order to comply with statewide planning Goal 8 and the state's public trust doctrine, the Lake Oswego Planning Commission should develop a policy of public access to Oswego Lake.

Local comprehensive plans must comply with both state law and statewide planning goals. Goal 8 requires local governments to plan for its citizens “recreational needs.” OAR 660-015-0000(8). Guideline 10 of Goal 8 states, “comprehensive plans should be designed to give a high priority to enhancing recreation opportunities on the public waters and shorelands of the state.” *Oregon’s Statewide Planning Goals & Guidelines, Goal 8: Recreational Needs*, 7. Further, the state’s public trust doctrine provides the public with access rights to the waters of the state, including Oswego Lake, regardless of lakebed ownership. *Guilliams v. Beaver Lake Club*, 174 P. 437 (Or. 1918). The determination of non-navigability for purposes of the Rivers and Harbors Act, Senate Bill 2315, has no bearing on the public’s right to access the state waters. According to Dr. Jeff Kroft, Senior Policy Specialist with the Oregon Department of State Lands, the public has the right to use the surface water of Oswego Lake. See <http://lakeaccess.wordpress.com/about/>. Pursuant to the public trust doctrine, the city thus does not have the right to exclude the public from Oswego Lake.

Historically, the public has had access to Oswego Lake for recreational purposes, including fishing. The current swim park, which provides severely limited use and excludes the public from the remainder of the Lake, is insufficient to satisfy the public’s recreational needs and does not constitute public access under the public trust doctrine. Should the City grant public access, it would retain its police powers and could limit the public’s use for purposes of safety and prevention of pollution, for example.

Denying public access to Oswego Lake is thus in violation of state law. NEDC urges the commission to use the comprehensive plan update process to develop a policy on public access to Oswego Lake and come into compliance with state law.

Sincerely,  
Maggie Hall  
NEDC Law Clerk



City pathway

Millenium Plaza steps

Hotel (future acquisition)

Lake Corporation Docks

Sundeleaf Plaza

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Google earth