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# Pig Iron to Wrought Iron: Lake Oswego's Transformation from Iron Smelting to the Privatization of Oswego Lake

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PIG IRON TO WROUGHT IRON: LAKE OSWEGO'S TRANSFORMATION FROM IRON  
SMELTING TO THE PRIVATIZATION OF OSWEGO LAKE

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HST 202: History of the United States  
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## PIG IRON TO ROD-IRON: LAKE OSWEGO'S TRANSFORMATION FROM IRON SMELTING TO THE PRIVATIZATION OF OSWEGO LAKE

For an unassuming outsider looking for a place to escape the summer heat, it probably is not difficult to assume that there might be something horribly wrong or dangerous about the namesake lake in the middle of Lake Oswego, a quiet, affluent suburb of Portland. Trying to enter from the city's Millenium Plaza in downtown Lake Oswego greets the visitor with deterring signs and metal decorations blocking the entrance. And it gets harder from there. At the Lake Grove Swim Park, one can not even get within a few hundred feet of the lake before they are stopped by a chain-link fence and bored snack-shack workers making sure they are a resident of a special dues-paying district. And do not even think about entrance from one of the 700 or so homes on the shore of the lake; they rarely sell for less than \$1 million, and much more if habitable. However, there is not anything wrong with the lake at all, which is exactly why the houses on it sell for so much. They have some of the most coveted real estate in Oregon and their backyard is home to a legal battleground that at its core, is class warfare between the haves and the have-somes.

Driving through Lake Oswego, Oregon today, one might not believe that just over a century ago, the town was bustling with industry. Most notably was the mining and smelting of

iron throughout the town. Looking a little deeper on the drive around Lake Oswego, the remnants of the town's industrial past become fairly ubiquitous. A major road named "Iron Mountain," a restored smelter at George Rogers Park, and a plethora of streets named after founding members and pioneers of the three different iron extraction and smelting companies that existed in Lake Oswego over a fairly short period of time: the Oregon Iron Company, Oswego Iron Company, and Oregon Iron and Steel.

By most accounts, none of the iron businesses in Lake Oswego were ever that successful or profitable, producing 93,404 tons of pig iron<sup>1</sup> between 1867 and 1894. Greater than its iron production was its role in the transformation of the town of Lake Oswego as well as much of the south metropolitan area of Portland toward its current state. The focal point of this transformation is Oswego Lake, a three-mile long lake with approximately 700 lakefront properties. Controlling access to the lake is a glorified homeowner's association, the Lake Oswego Corporation, which claims vehemently that since they own the lakebed, they can control access to the lake.

Albert Durham, the first to stake claim to land in Lake Oswego, returned to Oregon following success in California gold mining to set up his mill on Sucker Creek and its confluence with the Willamette River. Despite successful business, his stake was never registered and a promising review of the area was published in 1851:

Oswego-the plat of the town bearing this name is in my office and may be inspected by anyone who may desire to do so. Of its merits we are not able to say anything, not having seen it. It certainly looks well on paper. The proprietor has enterprise which, if properly directed, will produce favorable results.<sup>2</sup>

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<sup>1</sup> Mary Goodall, *Oregon's Iron Dream* (Portland: Metropolitan Press, 1958), 54.

<sup>2</sup> *Ibid.*, 18.

The first organized iron company began when several Oregonians came together to seek investment for the iron company. And after raising \$500,000 by February 1865, the first of three iron companies at Oswego was born.<sup>3</sup> Their smelter was erected and, by 1867, the Oregon Iron Company was producing pig iron. Lawsuits and other legal issues surrounding water rights made consistent and profitable production nearly impossible, causing the furnace to lay dormant for five years before the company officially shut down in 1876.

It was not long before the Oregon Iron Company's assets were bought and the Oswego Iron Company was formed. Like its predecessor, the Oswego Iron Company never lived up to the profitable enterprise it was supposed to be. Low prices for pig iron forced the second company in Oswego to fold in 1881, less than five years after the first furnace went out for good.

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In 1882, a third group of money-hungry industrialists descended on Lake Oswego to extract the abundant iron ore in the ground. Convinced that the previous companies simply did not have the scale to be profitable, the group went all-in on forming the multi-million dollar Oregon Iron and Steel company. Five years after the formation of the company, the furnace was lit for the first time and began to produce copious amounts of pig iron. True to their plans at inception, Oregon Iron and Steel produced far more than either of the previous companies, including a record 12,305 tons in 1890.<sup>5</sup> But quite predictably, the company could not last.

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<sup>3</sup> *Ibid.*, 45.

<sup>4</sup> *Ibid.*, 47.

<sup>5</sup> *Ibid.*, 51.

Falling prices moved the company out of profitability and production ceased in 1892 and the assets of the company were sold in 1926. However, the impact of the third and final iron company in Oswego had already been made. The company owned 2,000 acres of mineral land, 14,000 acres of contiguous timberland, and another 10,600 acres of timberland in present-day Washington. But the most important asset to their legacy today: the land under the future Lake Oswego.

Today, Lake Oswego is at the center of a heated debate surrounding access to the water of Lake Oswego. The Lake Oswego Corporation asserts dominance over the lake and claims to have jurisdiction to regulate what craft are on the lake; this status quo is being challenged by people looking to gain access to the lake for recreation but do not live on it or belong to one of the many deeded easements. Most residents of Lake Oswego fall into this category; there are fewer than a thousand homes on the lake and just a few thousand more with deeded easement access. The town has a population of nearly 40,000.<sup>6</sup> But today's struggles surrounding lake access are not new, and began in the early 20th century when the Oregon Iron and Steel Company developed the shoreline for residential properties. The Company, and by extension of it the Lake Oswego Corporation, had and still has the jurisdiction to control what enters or passes through the property under their control and the lakebed that they own. Access to the surface of the lake however is blocked to the public by the city which began restricting access in the 1900s. The Corporation is not directly to blame for the access issues: the city of Lake Oswego is. However, the Corporation is wrong for attempting to prosecute non-Lake Corp members on the

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<sup>6</sup> United States Census, *QuickFacts Lake Oswego: 2018*, available from <https://www.census.gov/quickfacts/fact/table/lakeoswegocityoregon/INC110218>.

surface of the lake for violating Lake Corp rules; the surface of the lake is a state waterway by the public trust doctrine and therefore the only charges one could reasonably face is violating city ordinances.

The desire for access to the lake began very soon after the end of iron production in Oswego, when the town became a getaway for the wealthy of Portland. A narrow-gauge railroad system connected the two cities conveniently and the Oregon Iron and Steel company changed their focus to profiting off of the wealthy's desire to inhabit the area. The company subdivided their lakefront property and sold it to developers who cemented Lake Oswego's suburban status. Residents enjoyed hunting, fishing, watersports, and the fast growing network of churches, schools, a country club, and the Hunt Club. Further increasing its appeal, the lake was renamed from "Sucker" to "Oswego" in 1927.<sup>7</sup> The town's growth from tiny settlement to attractive suburb took about a century, and slowly along the way amenities were added. The town got its first post office in 1852, public library in 1894, fire department upgrades, and a cemetery. All the while, the lake appears to have been a large part of the city for all residents. Boats were available to rent on the lake and the Lake Oswego High School swim and water ballet teams even used the lake for practice and competition.<sup>8</sup>

The most momentous step in the development of Lake Oswego as a residential community came in 1912 when Oregon Iron & Steel began the transition with their lakefront property. They subdivided part of their lakefront property into individual residential lots and

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<sup>7</sup> Ann Fulton, *Lake Oswego* (Portland, OR: Portland State University and the Oregon Historical Society, 2018, accessed February 2020); available from [https://oregonencyclopedia.org/articles/lake\\_oswego/#.XhhobEdKiUk](https://oregonencyclopedia.org/articles/lake_oswego/#.XhhobEdKiUk); Internet.

<sup>8</sup> Goodall, 118.

began to market them to the public. 140 lots were apportioned and the “Lake View Villas” were born.<sup>9</sup> The company marketed the properties hard because at first, they were not a hot commodity. The properties themselves and the setting with which they were set was nothing like it is today. Instead of the manicured lawns sloping down to a nice lake surrounded by other lavish houses today, the lake was filled with exposed tree stumps and overgrown greenery marred the shores of the lake. So, the Oregon Iron & Steel Company hired marketing agents Atchison & Allen to bring in clients and permanently cement Lake Oswego’s residential community.

The advertisements were highly idyllic, pitching a nice new life on the banks of the lake outside of Portland. However, the biggest point that the marketers were trying to convey was not the lake, but the price and value. Of course, the lake was a major selling point, however price was placed front and center. In one 1914 ad for the properties, they marketed that “We will build a modern bungalow for you at the lake and sell you the house and a one acre tract for \$1,600 on easy terms like rent or we will sell an acre tract for \$400 alone.”<sup>10</sup> For years, the properties alongside the lake were a hard sell, even as tourism and the number of people visiting the area exploded. The “Red-Electric” commuter train connected the lake to Portland in minimal time and

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<sup>9</sup> Patience Stuart, *Oswego’s Iron History, 1865-1928* (Lake Oswego, OR: 2010, accessed January 2020); available from <https://www.ci.oswego.or.us/WebLink/ElectronicFile.aspx?dbid=0&docid=738601&>; Internet.

<sup>10</sup> Erin O’Rourke-Meadors, Susanna Kuo, and Marylou Colver, *NH: 1912 Lake View Villas* (Lake Oswego, OR: accessed February 2020); available from <https://lakeoswegopreservationsociety.org/nh-1912-lake-view-villas/>; Internet. The properties were so undesirable at first that Atchison & Allen marketed the lake as a great watering hole for the family cow. A far cry from the present where the closest cow is often on the seats of the family car(s).



for a reasonable cost, prompting an influx of visitors to the lake. They swam, picnicked, and enjoyed the lake immensely. Meanwhile, Oregon Iron & Steel could barely sell the properties.

Although Oregon Iron & Steel was having issues selling the properties on the lake, there was no shortage of eyes being laid on them by the increasing numbers of day-trippers coming to the lake to picnic and swim.<sup>11</sup>

The undesirable nature of the lake front properties obviously did not last forever, and demand for the properties quickly picked up steam. The next large development on the lake came in 1922 with the “Oswego Lake Villas.” The properties were on the east side of the lake, as opposed to the Lake Grove area for the “Lake View Villas,” and the goal was to lure in the city-slickers who flocked to the east side of the lake to boat, swim and picnic. Once again, the developers marketed the lots as a great combination of value, convenience, and beauty. In one early 1920s ad for lots, they advertised the many amenities of both the lake and the town:

Beautiful Oswego Lake lies only 25 minutes from Fourth and Washington Streets by the Big Red Electric Line or the Pacific Highway. Oswego has all city conveniences, including water, electric lights and gas. Commuter’s fair [sic] only 9 cents. Beautiful groves of dog-wood, cedar, yew and fir adorn its banks. Build your home at the lake.<sup>12</sup>

Then, to appear to the budget-minded buyer, they offer a \$10 coupon in the ad to put towards the first payment for the lot. Once again, the biggest selling point is not the lake itself but the terrific value and convenience a home on the lake offers.

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<sup>11</sup> Erin O’Rourke-Meadors, Marylou Colver, and Corinna Campbell-Sack, *Building Blocks: A Pictorial History of Lake Oswego’s Neighborhoods* (Lake Oswego, OR: accessed February 2020); available from <https://lakeoswegopreservationsociety.org/pdf/exhibit-building-blocks.pdf>; Internet.

<sup>12</sup> “A Photographic Memory.,” *Lake Oswego Review*, LVII (May 3, 2018).

In the last development before the lake's ascent to the top of the ranks of highly sought-after real estate, Lakewood Bay was created from a swamp and new parcels of land were created. Surprisingly, there was motivation to "construct two speculative homes for lower income buyers on Ridgeway Road. Yeon, the pioneer of Northwest Regional Architecture, was innovative in many cost-saving but design-savvy ways, including the use of exterior plywood for construction."<sup>13</sup> The lake was such a hard sell to the upper-echelon that even into the 1930s they had to continue reaffirming that the lake provided incredible value for the dollar-minded buyer.

The thriftiness of the lake did not last for long and in 1938, after two years of work, the Ladd Estate finished its reclamation of three acres of land to be sold to prospective buyers and builders. As the *Oswego Review* put it, "the heavy demand for lakefront property was entirely responsible for the reclamation project which will make available 18 more lots."<sup>14</sup> In just a few years, the demand for property on the lake skyrocketed, leading to sweeping changes to the management of the lake by Oregon Iron and Steel.

The final step to Lake Oswego's successful transition to an exclusive suburban town was the transfer of the lakebed from Oregon Iron and Steel to the newly formed Lake Oswego Corporation. This occurred in 1942 when the Company deeded control of the lakebed to the Corporation in perpetuity. Presently, the Corporation claims their rights to control the lake are derived as follows:

As a condition of the conveyance, the Corporation must preserve the Lake for all time for the benefit of property owners with lake access privileges. The terms of the deed limit public access to the

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<sup>13</sup> Erin O'Rourke-Meadors, Marylou Colver, and Corinna Campbell-Sack, *Building Blocks: A Pictorial History of Lake Oswego's Neighborhoods* (Lake Oswego, OR:City of Lake Oswego, 1910) 11.

<sup>14</sup> "Ladd Estate Completes Reclamation.," *Oswego Review*, XVII (July 7, 1938), 1.

Lake. In addition, the deed assigns responsibility to the Corporation for regulating the use of the Lake. The Corporation must evaluate historical records to determine whether a property owner has access to the Lake. The Corporation's authority to regulate the Lake is derived from its Articles of Incorporation, Bylaws, and other documents recorded in Clackamas County.<sup>15</sup>

The Lake Oswego Corporation's reasoning is really quite simple and if taken at face value, seems just and reasonable. If Oregon Iron and Steel owned the land in and around the lake, then they had the right to subdivide it, deed the lakebed to a different entity, and therefore control access as long as the deeded corporation owned the lakebed.

There is no dispute that Oregon Iron and Steel owned all of the area in and around the lake, and therefore had the right to subdivide and sell off parcels to developers and future residents. However, the privatization of the lake as we know it today began in the early 1900s with the shift toward residential, and peaked in the 1940s and 1950s. It was a concerted effort between the city of Lake Oswego and the Lake Oswego Corporation to maintain the prestige of the lake, satisfy landowners, and increase property values and desire for the city. The Corporation banned entry for the public from their owned property while the city banned access from theirs. But what the Lake Oswego Corporation and the city consistently do not have an answer for is the Public Trust Doctrine and its intended freeing of Oregon waterways.

Despite the unsuccessful attempts at freeing the lake thus far, several compelling points against the Lake Oswego Corporation have been brought to light. In almost every article or court summary Oregon's Public Trust Doctrine emerges as the strongest case for the liberation of Lake Oswego. Introduced at statehood in 1859, the original Public Trust Doctrine protected the state's

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<sup>15</sup> Available from the Lake Corporation's website, <https://lakecorp.com/info/about-us.html>. Accessed February, 2020.

navigable waterways for public access in perpetuity. Then, “Over the years, Oregon courts have applied the public trust doctrine to include not just navigable waters at the time of statehood, but all waters susceptible to use by recreational watercraft.”<sup>16</sup> Indeed, today the Public Trust Doctrine still plays a large role in the affairs of Oregon waterways and private property: “[Department of State Lands] must manage submerged and submersible lands to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values.”<sup>17</sup>

Controversy surrounding the enforcement of the public trust doctrine is far from just a recent issue of disgruntled open-water swimmers. In 1882, *Shaw v. Oswego Iron Company* was a monumental victory for the proponents of the public trust doctrine. Using their canal between Sucker Lake and the Tualatin River several miles away, the Company was diverting water from the river and into the lake. At the same time, the Company failed to erect the locks necessary to maintain proper water levels on both sides. As a result, the water level in the Tualatin River dropped and made the regular log floats much more difficult. A court injunction stopped the diversion of water from the river<sup>18</sup> and in *Shaw v. Oregon Iron Company*, the injunction was

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<sup>16</sup> Michael C. Blumm and Mary Christina Wood, *Undermining Oregon's Public Trust Doctrine: Guest Opinion*, Oregonian (December 5, 2013); available from [https://www.oregonlive.com/opinion/2013/12/undermining\\_oregons\\_public\\_tru.html](https://www.oregonlive.com/opinion/2013/12/undermining_oregons_public_tru.html); Internet.

<sup>17</sup> Oregon Department of State Lands, *Public Trust Doctrine Managing State-Owned Waterways for the Public*: (Salem), [https://www.oregon.gov/dsl/About/Documents/Public\\_Trust\\_Doctrine.pdf](https://www.oregon.gov/dsl/About/Documents/Public_Trust_Doctrine.pdf).

<sup>18</sup> Michael Bloom and Erica Doot, *OREGON'S PUBLIC TRUST DOCTRINE: PUBLIC RIGHTS IN WATERS, WILDLIFE, AND BEACHES* (Portland, OR: Lewis and Clark Press, 2012, accessed January 2020); available from <https://law.lclark.edu/live/files/11170-421blummpdf>; Internet.

upheld and “defendant enjoined from diverting the waters of the Tualatin from its natural channel, and it is so ordered.”<sup>19</sup> Essentially, the decision to uphold the injunction reemphasized the commitment to protecting public passageways over private rights. The private Oregon Iron Company had the right to draw water from the river, except when it inhibited the public waterway’s capacity to be used by the public for boating and floating logs. The case may not have established Lake Oswego as a navigable waterway but it did establish that the public’s right to use navigable waterways unimpeded trumped the private landowner’s ability to restrict access or impede the public waterway.

As time passed and development around the lake increased, the question of the lake’s status as a navigable waterway became more important. Obviously the lake became seen as non-navigable in the law since its access is heavily restricted, but should it be? Oregon Public Trust Law states that “the people of Oregon are the owners of the submerged and submersible land (“beds and banks”) underlying all navigable and tidally influenced waterways.”<sup>20</sup> And according to the 2005 Attorney General report on the Public Trust Doctrine and navigable waterways in Oregon, “on waterways that have not been determined to be state-owned, the public is allowed to use the surface of the waterway for any legal activity unless the waterway isn’t wide, deep or long enough for a boat to pass along it.”<sup>21</sup> Since the Attorney General’s report

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<sup>19</sup> Bancroft-Whitney Company, *The American Reports: Containing All Decisions of General Interest Decided In the Courts of Last Resort of the Several States*: (San Francisco: Bancroft-Whitney, 1912), 147.

<sup>20</sup> Oregon Department of State Lands website, February 2020: <https://www.oregon.gov/dsl/WWW/Pages/Waterways.aspx>; Internet.

<sup>21</sup> *Ibid.*

spurred no change for access to Lake Oswego, the Attorney General's statements must have been consistent with what's been espoused by

the state government since the privatization in the 1910s, 1940s, and 1950s.

The debate over Lake Oswego's status as a navigable waterway has also been a common defense by both the Lake Oswego Corporation and the City of Lake Oswego. It's true, the lake has no outlet on either end to other navigable waterways. By the 1882 ruling in *Shaw v. Oregon Iron Company*, the Tualatin River was not a navigable waterway and nor was the canal between the Tualatin River and then Sucker Lake:

The company, in pursuance of this act, did make some improvements in the navigation of the river, constructed a canal to divert the waters of the Tualatin to Sucker Lake, and succeeded to float a small steamboat on the river for a short time. But the locks were never built as required by the act, the navigation of the river seems to have proved a failure, and no attempt has been made to navigate it since in such mode.<sup>22</sup>

Unless the canal was somehow navigable at a time between the *Shaw v. Oregon Iron Company* in 1882 and present day, there was never a navigable waterway into Lake Oswego from the upstream or western side.

There has also never been a navigable path into the lake from the downstream or east side. In order to create the body of the lake, a dam was constructed to generate power and raise the water level. The resulting stream coming from the dam is not navigable. Additionally, all other tributaries in or out of the lake are far too small to be considered navigable.

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<sup>22</sup> Bancroft-Whitney Company, *The American reports: containing all decisions of general interest decided in the courts of last resort of the several states*: (San Francisco: Bancroft-Whitney, 1912), 150.

Despite there being no navigable waterways in and out of the lake, the lake must be a navigable waterway body itself and it has been from fairly early in its existence until present day. Presently, the lake is clearly navigable as large watersport boats, row boats, kayaks, canoes, and stand up paddleboards are allowed to be registered with the Lake Oswego Corporation for use on the lake by owners of shore property or easement members. Additionally, the Lake Oswego Corporation rents barges for use by homeowners including one that's 28' long.

Because there is no navigable entry by water in and out of the lake, focus must move away from whether the lake is a navigable route between the Tualatin River and the Willamette River. The body itself is navigable, but if the entirety of property surrounding the lake were private then the debate could be settled. Private property is private, and so only those with private access to the lake could access the lake. This situation is the Lake Oswego Corporation's dream, and they were very close to getting it when Oregon Iron and Steel transferred the lakebed and all surrounding property to the Lake Oswego Corporation. About 99% of the shoreline was owned by private homeowners who were and still are controlled and governed by the Lake Oswego Corporation. This allowed the Lake Oswego Corporation to essentially set the rules for the lake. The Corporation's boat ramp was the only ramp into the lake, and only Lake Oswego Corporation members could use it, and since all of those homeowners had to register their crafts with the Lake Oswego Corporation, the Lake Oswego Corporation was able set all of the rules.

The 1% of the shoreline that the Lake Oswego corporation does not own or control has given the Corporation all of its problems. The City of Lake Oswego has owned two parcels of land on the lake, one at Sundeleaf Plaza and one at Millenium Plaza Park.<sup>23</sup> And while the two

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<sup>23</sup> Available from <http://gis.ci.oswego.or.us/pub/>; accessed February 2020.

places are almost right next to each other, there is still a gap between the two where the private Lakeshore Inn sits. Between the two parcels of public shoreline the lake could potentially serve as a navigable waterway to get between the two.

Public trust doctrines are by no means unique to Oregon, and are fairly common in the United States. The public trust doctrine has its roots in English common law, where the crown held title and possession of all soil beneath waterways. The law was not just out of the crown's greed however, because "the Crown was thought to have ownership of waterways and the beds below them in order to control the highways of commerce and navigation for the advantage of the public."<sup>24</sup> Then, as Milan Smith described it, the public trust doctrine has two components:

The public trust doctrine has two primary components. First, the doctrine holds that certain resources are highly important to citizens of a state and, therefore, deserve to be protected by the state. Historically, the value of these resources was tied to what philosophers call 'utility.' Certain public trust resources, such as navigable waters, carry significant utility for commerce, the economy, and consumption. Other resources, a national park for example, embody an intrinsic environmental utility, which encompasses the personal enjoyment one might gain from the resource. Second, the public trust doctrine holds that, because of the significance of the public trust resource, the government is forbidden from privatizing the resource and must maintain it for public use.<sup>25</sup>

Smith goes on to write that three types of restrictions reign in the government's power to use or restrict public lands. Included is that the "property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public."<sup>26</sup>

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<sup>24</sup> Milan Smith. "A Blast From the Past: The Public Trust Doctrine And Its Growing Threat to Water Rights." *Environmental Law*, 46; no. 3 (2016), 469.

<sup>25</sup> *Ibid.*, 470.

<sup>26</sup> *Ibid.*, 470-471.



Smith's interpretation of the English public trust doctrine may not pertain specifically to Lake Oswego, however the precedent it sets is important in the interpretation and enforcement of the public trust doctrine in Oregon. Oregon's public trust doctrine is less than two pages in length, almost microscopic for such an important piece of law. And it's fairly vague too, briefly outlining where trust of the waterways should be held: "in the Admission Act, the federal government implicitly vested ownership of all submerged and submersible lands under navigable waterways to the state to manage so that they remained "common highways and forever free."<sup>27</sup> Because the traditional precedent of public trust forbids the restriction and Oregon's public trust doctrine does not say otherwise, the literature appears to make the case that under traditional common law, the government can not restrict access to public waterways.

Despite the government's restriction of authority over public waterways, the city of Lake Oswego and other government entities have, for decades, restricted entry to the lake from their several access points. First, and most reasonable, is the Lake Grove Swim Park. The swim park is owned and operated by the Lake Oswego School District and is maintained by the assessments of houses within a boundary inside Lake Oswego.<sup>28</sup> The second is Lake Oswego Swim Park which is near the city's other two properties. This is "lawfully" restricted to "residents because they are the ones whose tax dollars pay to maintain it."<sup>29</sup> Then, there is Sundeleaf Plaza and Millenium Park Plaza, where the city's restriction on lake access is more dubious.

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<sup>27</sup> Oregon Department of State Lands, *Public Trust Doctrine Managing State-Owned Waterways for the Public*: (Salem), [https://www.oregon.gov/dsl/About/Documents/Public\\_Trust\\_Doctrine.pdf](https://www.oregon.gov/dsl/About/Documents/Public_Trust_Doctrine.pdf).

<sup>28</sup> Map available from <https://www.losdschools.org/Page/1946>, accessed February 2020.

<sup>29</sup> Aimee Green, *Oregon Supreme Court Ponders: Must the Public Be Allowed Access to Oswego Lake?* Oregonian (2018) accessed January 2020).

At the city's Sundeleaf plaza, it appears that there certainly was a time when it could have been the perfect place to enter the lake; far better than at Millenium Plaza Park. However, ground level has been raised above the lake and a stout metal fence adorned with signs about staying out of the private lake make it all but impossible to enter the lake now. There is a gate to the docks, but passage is restricted to Lake Oswego Corporation members of course.

Down the street just a few hundred meters is the city's lake access point at Millenium Plaza Park. Here, there are steps that led conveniently into a calm little alcove of the lake. Despite this easy access point, metal posts resembling tall plants have been placed in the water just at the end of the steps, blocking any attempt to launch a craft or swim from there. Also, a permanent sign on the steps reads "Private Lake. Please stay on the steps."

Despite numerous legal challenges against the city over the freeing of public access to the lake, the city has successfully used every reason possible to win the courts over. The city has used environmental concerns and planning concerns to defend their ordinances against public access to the lake. The most ridiculous defense is that the city could not provide lifeguards to protect the people that swim there. Less than a mile down the road at George Rogers Park, there is a much better, larger, and more crowded access point to the Willamette River and there is no lifeguard.

Despite the present controversy surrounding the private status of the lake, the public opinion at the time of its privatization by the lakefront owners did not seem to be in too much opposition. When the newly formed committee on Lake Oswego, chaired by Andrew McCann, learned of their impending control of the lake deeded by Oregon Iron and Steel, they called a meeting to discuss the assessments and scope of control. As reported in the *Oswego Review*, the

“Oregon Iron and Steel company [presently] will maintain the level of the lake perpetually... Now they are disposing of much of their lake property and no longer feel obligated to do this extra work”<sup>30</sup> It goes on to report that “the three principal objects of the forming of the voluntary corporation are, according to McCann, to keep the lake sanitary and patrolled... The corporation will include all property owners on the lake, including the city owned parks.”<sup>31</sup> The point about the city is especially interesting given their stance today and restrictions on access from public places. If the city parks are or at one time were controlled by the corporation in what could be done on them or who could access the lake, then the city’s consistent stance, while maybe not excusable today, makes perfect sense.

With the public meeting discussing the transfer scheduled for the 15th of September, 1941, the Review released the proposed offer by Oregon Iron and Steel for the transfer to the corporation: “Under the provision of the various easements covering the lots, the [Oregon Iron and Steel] has reserved the right to adopt reasonable regulations relative to the use of said lots. We propose to assign and delegate to [Lake Oswego Corporation] to make such rules and regulations... To take necessary steps to keep the waters of the lake as pure and clean as possible under the circumstances.”<sup>32</sup> Then, after several iterations of the agreement with Oregon Iron and Steel to transfer the lake to the corporation, the Lake Oswego Corporation voted to accept responsibilities in March 1942.<sup>33</sup>

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<sup>30</sup> “Lakefront Owners to Have Meeting,” *Oswego Review*, XX (August 29, 1941), 1.

<sup>31</sup> *Ibid.*

<sup>32</sup> “Mass-Meeting Called for Discussion of Lake Transfer to Property Owners.,” *Oswego Review*, XX (September 12, 1941), 2.

<sup>33</sup> “Corporation Takes Over.,” *Oswego Review*, XXI (March 20, 1942), 1.

Almost immediately after assuming ownership and responsibility for the lake, the Lake Oswego Corporation began to make rules and regulations for use of the lake by its owners. In cooperation with sheriffs of Clackamas County, numerous regulations were drawn up to ostensibly increase safety on the lake. They say to not “forget that with the rights and privileges that you enjoy on Lake Oswego, you have a corresponding duty to abide by the rules.”<sup>34</sup> These rules include having “to register your boat and display its identifying number at all times” and that it “is the duty of the warden to remove all boats from the lake not so registered.” Also, “don’t fail to report to the warden all boats without a proper identifying number.”<sup>35</sup> These rules are strikingly similar to today, where the non-law enforcement lake patrol fines and tries to incriminate both lake-owners and non-lakefront owners without proper identification. Additionally, the initial rules of the lake make it clear that the rules of the lake are laws punishable criminally, announcing that “Warnings will be issued to all offenders and arrests will be only be made as a last resort.” Although they do not want to arrest anyone, the Lake Corporation acknowledges that it is a possibility.

Nowhere in their declaration of rules and rights as owners of the lake does the Lake Oswego Corporation acknowledge that the surface of the lake may in fact be public. With all the talk of arrests and rules surrounding the conduct of crafts on the lake, the precedent is set that the Lake Oswego Corporation controls all aspects of the lake. This is reaffirmed in an August 28, 1942 edition of the *Oswego Review* with an article titled “Lake Corp. To Enforce All Rules.” It was an accepted fact that the corporation controlled the lake and the public had no expectation of

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<sup>34</sup> “Lake Front Owners Make Rules,” *Oswego Review*, XXI (June 12, 1942), 1.

<sup>35</sup> *Ibid.*, 1.

use. In fact, the public trust doctrine was not once mentioned in the three years of newspaper coverage surrounding the ownership of the lake by Oregon Iron and Steel and the transfer of the lake to the corporation.

The current public opinion against the Lake Oswego Corporation seems to be a fairly recent change. When the Lake Oswego Corporation was founded and gained control in the early 1940s, there was almost no backlash from non-lake owners. The only people who had issues with the corporation were the lake owners themselves. The first signs of discontent began to show in 1942 and 1943 when the corporation settled into control of the lake and steadily began to increase their regulation. When the corporation lowered the lake in late 1942, they required that all lakefront owners get permits from them in order to do repair work.<sup>36</sup> This did not draw any ire from the owners, but signalled that the corporation was in control of all aspects of business on and around the lake.

The corporation did face backlash in early 1943 when they banned flatties, a popular small watercraft frequented by young people, on the lake. Resident and corporation member William Tindula charged the corporation as a “Dictator” for their sudden changes in rules without input and warning.<sup>37</sup> The criticism continued for many months, with other owners stepping forward in support of Tindula’s criticism or defending the corporation. But throughout all of this criticism, it seems to have never once been weighed in on by someone outside of the lake community. The lake was its own world, and no one questioned it. The lake is still its own world today, the only difference is that people are questioning it.

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<sup>36</sup> “Must Get Permits to Do Repair Work,” *Oswego Review*, XXI (October 23, 1942), 1.

<sup>37</sup> “Lake Corp Criticized by Tindula,” *Oswego Review*, XXII (April 16, 1943), 1.

The city of Lake Oswego's shift away from viewing the lake as a vital asset to the public began in 1957 when the city purchased Morris' Lake Oswego Swim for \$200,000. City councilors chose not to turn the city property into a public park and soon the Bay Roc apartments were built with private access to the lake.

The city's restriction of public use of the lake and apathy toward making a true public asset ended however when it began to benefit the city's bottom line. Since the city's shift toward an affluent residential community in the 1920s and 1930s, the city has used the lake extensively to benefit itself. While the city parks constructed alongside the lake do not allow access to the water, the city did their absolute best to frame the lake perfectly to the thousands of cars that passed by them each day along State Street in downtown Lake Oswego. Additionally, the city's logo was created with the lake's beauty and value in mind. The city's logo features a sailboat on a body of water; in theory it could be the Willamette River, but let's be reasonable.

There's simply no way the city of Lake Oswego could have formed as a wealthy suburb without the influence of the lake's appeal. The well-heeled owners' valuable property boosted the average property values greatly, increasing tax revenues and allowing for superior public schools, emergency services, and facilities. Nowhere is the value of the lake to the development of Lake Oswego shown more than in the Ladd Estate Company brochures and advertisements. They have idyllic pictures of the lake centered with Mt. Hood in the back, and slogans that show how nice the lake is for anyone working in Portland.<sup>38</sup> The city owes everything to the lake, and touts it immensely as a piece of value to the city. Yet, they make it impossible for even the

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<sup>38</sup> O'Rourke-Meadors  
<https://lakeoswegopreservationsociety.org/pdf/exhibit-building-blocks.pdf>; 8.

citizens of the town to use the lake as an actual public utility, directly contradicting their portrayal of the lake's value to the city.

The Lake Oswego Corporation should not be blamed for unfair exclusion of the lake during its formation in the 1930s and 1940s, with exception of its police-like enforcement of non-Lake Corp members. The Lake Corporation serves the interests of the lakeshore owners, and it should have done that per its agreement with Oregon Iron and Steel. The blame falls on the city of Lake Oswego, who colluded with the Lake Oswego Corporation to restrict access from its several access points. If the city didn't want the lake to be a true public asset, in the form of access for all residents, then it should not have been used for their logo or been the corner-stone to the city's entire up-bringing. The city's argument over cleanliness and safety for residents simply doesn't suffice. From the beginning of the private development of the lake in the early 1900s, the wealthiest of owners, developers, and the Lake Oswego Corporation teamed up with the city to maximize the image and perceived value of the lake to boost their property values, and thus the cities bottom line, while minimizing the control and access of the lake granted to the majority of residents.

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