

**ORDINANCE NO. 193**

**AN ORDINANCE ADDING CHAPTER 141 “EROSION CONTROL” TO TITLE XIV OF THE DUNES CITY CODE AND REPEALING SECTION 154.05 OF THE DUNES CITY CODE**

**WHEREAS**, the City Council of Dunes City is considering the adoption of various regulations to promote water quality in Dunes City; and

**WHEREAS**, it is most appropriate to place new regulations promoting water quality in Title XIV of the Code of Dunes City, a title intended for this purpose; and

**WHEREAS**, the City Council of Dunes City is concerned about the degradation to the lakes of Dunes City from the erosion of sediment from land disturbance; and

**WHEREAS**, proposed Chapter 141 is intended to replace Section 154.05 of the Dunes City Code.

**NOW THEREFORE, Dunes City ordains as follows:**

**Section 1.** Section 154.05 of the Dunes City Code is hereby repealed, effective on the day this Ordinance becomes effective.

**Section 2.** Chapter 141, entitled “Erosion and Sediment Control,” is added to Title XIV of the Code of Dunes City and shall read as follows:

**§141.001 PURPOSE**

The purpose of this Chapter is to establish standards and practices to restrict sediments resulting from land disturbance from intruding into any public water bodies or onto any right-of-ways or crossing ownership property lines. The objective is to control erosion at its source in order to maintain and improve water quality and reduce downstream impacts.

**§141.002 APPLICABILITY**

In all cases of land disturbance including, the landowner or City, whichever is the responsible party is responsible for preventing erosion and sediment transport and is subject to requirements and penalties listed in this Chapter. This ordinance pertains to planned land disturbance or to accidental transport of sediments across property lines.

Requirements of this section shall apply to activity on both privately and city held properties.

**§141.003 DEFINITIONS**

**Best Management Practices (BMPs):**

A technique or series of techniques, which is the best known practice available to be effective in protecting water quality and lake / stream habitat.

**Development:** Any manmade change that results in land disturbance. Development does not include the following: Stream enhancement or restoration projects approved by the city; b)

Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of this Chapter, and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2)

**Emergency:** “A situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard

**Erosion:** The process by which wind or water can impact the land surface and remove sediment. The rate of erosion depends on a variety of factors such as type of soil, climate, presence or absence of vegetative cover, the topography and surrounding land management practices. Erosion occurs naturally as a result of weather or runoff but can be intensified by clearing, grading or excavation of the land surface. Erosion usually refers to processes of surface erosion and not to mass soil movement (landsliding).

**Excavation:** The mechanical removal of earth material

**Grading:** The act of excavating and moving soil. Grading also refers to the mechanical smoothing of a road bed to maintain a free-draining smooth traveling surface.

**Land disturbance:** Any activity that results in a change in the existing soil cover (both vegetative and non-vegetative and both temporary or permanent) and / or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, paving, clearing, and grubbing.

**Mitigate:** To avoid or minimize real or potential negative environmental impacts or effects through the application of additional controls or actions.

**Off-site:** Any area lying upstream of the site that drains onto the site and any area lying downstream of the site to which the site drains.

**On-site:** The entire property that includes the proposed development.

**Private roadway or street:** Any street, road or right-of-way that is not a public street, as defined in this standard.

**Public roadway or street:** A street or road dedicated or deeded for public use. For the purpose of these standards, public street may include “alley”, “lane”, “court”, “avenue”, “boulevard”, “cul-de-sac”, and similar designations, and any county roads or state highways.

**Qualified Professional:** For purposes of this ordinance this means an Oregon registered professional engineer, an Oregon registered landscape architect, or a professional in erosion and sediment control certified by the Soil and Water Conservation Society.

**Responsible party:** The property owner and/or the person who creates the land disturbance or, if such person works for a contractor, either as an employee, subcontractor, or independent contractor, the contractor and/or other employer; and any licensee, permittee, or agent, manager, or person in charge.

**Riparian area:** The area adjacent to a river, lake or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. [City Ordinance § 155.1.3 Adopted 12/12/06] [Alternative language: “As defined by DCC § 155.1.3.”]

**Sediment:** Organic or inorganic material that is carried or suspended in water that settles out to form deposits in the storm drain system or receiving waters or increases turbidity.

**Sediment Transport:** The horizontal conveyance of sediment suspended in moving water. Suspension and deposition result from the combined effects of sediment grain size, turbulence and channel configuration.

**Shoreland Area (Zone):** For purposes of construction near the shorelines of Woahink Lake, Little Woahink Lake, Siltcoos Lake, and Siltcoos River, the shoreland area is the section of land within fifty (50) feet measured horizontally inland from the ordinary high water (OHW) line of Woahink and Siltcoos Lakes and Siltcoos River and bounded by tax lot sidelines. [City Ordinance § 155.1.3 Adopted 12/12/06] [Alternative language: “As defined by DCC § 155.1.3”]

**Significant amount of sediment:** One cubic foot or more of sediment.

**Slope:** The vertical inclination of a line joining two points expressed as a percentage (%), equal to unit rise divided by unit horizontal distance between the points multiplied by 100.

**Stormwater:** The surface water runoff that results from all natural forms of precipitation.

**Wetland:** An area inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and which, under normal circumstances, does support a prevalence of vegetation typically adapted for life in saturated soil conditions.

#### **§141.004 REQUIREMENT FOR AN EROSION CONTROL PLAN & STANDARDS.**

(A) Landowner Responsibility. In all cases of land disturbance as defined in 141.004, the landowner is responsible for submitting a plan for Erosion & Sediment Control (hereafter referred to as the ESC Plan) to the City for approval. The specific erosion control measures and BMP practices to be used shall be selected from the Oregon Department of Environmental Quality (DEQ) Erosion and Sediment Control Manual (April, 2005). These practices shall be the primary guide for establishing and reviewing erosion control plan and its application.

(B) Standards. All ESC plans shall address the following standards:

- (1) Specific measures are given to prevent erosion and sediment transport.
- (2) The plan is designed to limit land disturbance of natural topography and soils.
- (3) The site design plan will seek to preserve native vegetation, healthy trees and ground cover.
- (4) Activities will be scheduled to avoid land disturbance during periods of heavy rain.
- (5) Measures are specified to stabilize disturbed soils if land disturbance activities cease for any extended period.
- (6) Measures are specified for delineation and protection of wetlands, riparian or shore land zones on the parcel.

- (7) Control measures are included for site access points to prevent tracking of sediments off site by any equipment.

**§141.005 SEDIMENT AND EROSION CONTROL PLANS**

(A) ESC Plan Not Required. For all land disturbances less than 3,000 square feet no Erosion and Sediment Control Plan is required unless land disturbance occurs within 100 feet of a lakeshore. For all land disturbances greater than 3,000 square feet or in any situations when sediment transport has occurred across property lines, an ESC Plan is required.

Vegetable gardens, and orchards are excluded from the ESC plan provisions of this ordinance unless there is greater than 3000 sq ft of land disturbance and greater than 15% slopes or if any portion of the land disturbance occurs within 100 horizontal feet of the high water level of any lakes of Dunes City..

(B) Levels of Erosion Control Plans. There are three levels of Erosion Control Plans:

(1) Simple ESC Plan. A Simple ESC Plan does not require any professional engineering but an outline is submitted covering the items listed in Section 141.003 and with a general plan with drawings of the site. A Simple ESC Plan shall be used for planned land disturbance of greater than 3000 square feet (sf) but less than 10,000 sf and with slopes of less than 15% or for planned land disturbance of greater than 1000 square feet if any portion of the land disturbance occurs within 100 horizontal feet of the high water level of any lakes of Dunes City.

*Note: A higher level plan may be required within the 100' setback depending on size and slope of the disturbed area. See 2(a) and 3(b).*

(2) Standard ESC Plan. A Standard ESC Plan does not require professional engineering but does require scale drawings of the full site and detailed plans for erosion control. A Standard ESC Plan is required for:

(a) Any land disturbance greater than 3000 sf and less than 10,000 sf and where the slopes are greater than 15% and less than 30% or if any portion of the land disturbance occurs within 100 horizontal feet of the high water level of any lakes of Dunes City. Here the applicant is to obtain a review of the plans by a qualified professional prior to submission.

(b) A planned land disturbance of greater than 10,000 sf but less than 43,560 sf and with slopes less than 15%. No review by a qualified professional is required prior to submission.

(3) Engineered ESC Plan. An Engineered ESC Plan shall be prepared and stamped by an Oregon Registered Professional Engineer, an Oregon Registered Landscape Architect, or a Certified Professional in Erosion and Sediment Control (Soil and Water Conservation Society) and must be accompanied by a full set of drawings. In all cases where slopes are referred to, the slopes are any areas on the property where land disturbance is planned. An Engineered ESC Plan is required for:

(a) A planned land disturbance of greater than 3000 sf

(b) A planned land disturbance of greater than 10,000 sf and with slopes greater than 15% or if any portion of the land disturbance occurs within 100 horizontal feet of the high water level of any lakes of Dunes City.

(c) All planned land disturbance of greater than 43,560 sf.

(C) Expedited ESC Plan. An Expedited ESC Plan may be required when previous methods of sediment and erosion control have not been effective and sediment transport occurs moving material across property lines. See Section 141.007(C) regarding Correction of Ineffective Measures and Expedited Plans.

#### **§141.006 INSPECTOR REQUIRED**

Roads and driveways that require an ESC plan will be inspected by the City Engineer. Site plans will be inspected by the building official, or another City contracted engineering agency.

#### **§141.007 SIMPLE ESC PLAN SUBMISSION REQUIREMENTS**

A standard and engineered erosion plan should address all items in Section 141.003 as well as the following specific items:

- (A) Description of project
- (B) Scaled drawing of lot, showing planned area of ground disturbance, riparian areas and waterway.
- (C) Scheduling of activities to minimize land disturbance during wet weather.
- (D) Covering or otherwise protecting bare soil during wet weather.
- (E) Perimeter erosion control methods indicated as needed.
- (F) Site entrance and exit sediment control.
- (G) Designation of the on-site representative.
- (H) Sign & submit the Summary ESC form available from City.

#### **§141.008 PLAN IMPLEMENTATION REQUIREMENTS**

(A) Plan Approval. Plan approval is required by inspectors defined in 141.006 prior to land disturbance.

(B) Implementation. The owner and/or responsible party shall implement the measures and construct facilities contained in the approved ESC in a timely manner and consistent with the following:

(1) Erosion control measures shall be installed prior to or concurrent with any land disturbance or road-work. Upon completion of the installation or a phase of the installation the on-site representative shall call for City inspection to certify that erosion control measures are installed in accordance with the Erosion Control Plan

(2) In all cases, the owner and/or responsible party shall be responsible for maintenance of erosion control measures to ensure that they are functioning properly without interruption.

(3) The removal of significant amounts of sediment that are carried off the site are the responsibility of the owner and/or responsible party. Sediment shall be removed daily from road surfaces. The owner and/or responsible party shall also be responsible for cleaning and repairing streets, catch basins, and adjacent properties where sediments transport affects such

properties. In no case shall sediments be washed into storm drains, ditches, drainage ways, streams, wetlands or lakes.

(C) Correction of Ineffective Measures and Expedited Plans.

(1) If the implementation of the approved plan, based on an inspection of the site by the Inspector, does not fulfill the requirements of the approved Erosion Control Plan the Inspector shall require immediate compliance, with remedial action to be completed within 72 hours.

(2) In the event that visible amounts of sediment have been inadvertently deposited on adjacent property, on roadways, in a wetland, stream, or lake, the owner or his designee shall take remedial actions within 72 hours to correct the breach and is to notify the City within the same time period.

(3) If the City finds that significant amounts of sediment have been deposited on adjacent property, on roadways, in a wetland, stream, or lake, the property owner has 48 hours to correct the problem in consultation with the City or be in violation.

(4) In the event that the above remedies are ineffective a modified and expedited Erosion Control Plan shall be provided within five working days after written notification by the City. This plan shall be done in consultation with the Erosion Control Inspector. This expedited plan shall address measures for the immediate erosion concern as well as prevention of future episodes. The owner and/or responsible party shall implement the expedited plan within five (5) working days of approval.

(D) Emergency Measures.

If the owner or Inspector judge that the health or safety of residents or the community is under immediate threat by circumstances that have developed on the site, corrective action including excavation or grading can commence without prior notice to the city. In this case notice shall be provided to the city at the earliest possible opportunity

(E) Additional Standards. The following additional standards shall apply:

(1) Pollutants such as fuels, lubricants, raw sewage, and other harmful materials shall not be discharged onto the ground, shall be protected from the weather, and shall be properly stored and disposed of. Where the construction process results in or reveals soils contaminated with hazardous materials or machine fluids, the owner and/or responsible party shall remove all spill-contaminated soil from the site to an approved location. Spill kits are required on-site when construction machinery is present.

(F) Duration of Maintenance.

Temporary erosion control facilities constructed to control erosion shall be removed once the site is permanently stabilized. The ESC plan measures are to be maintained during all periods of construction whether currently active or delayed. When the construction activity is completed or ceases, temporary facilities constructed to control erosion shall be removed once the site is permanently stabilized. Subsequent to the above circumstance, the individual property owner is then responsible for the continued observance and maintenance of the ESC on their property as applicable and described in this Chapter.

In the case of a PUD, responsibility for on-going observance and maintenance of the ESC plan measures will lie with the homeowners association or responsible party that are owners of property in the PUD. Copies of the ESC plan shall be kept in the Dunes City Offices and made available for review.

**§141.009 ENFORCEMENT**

(A) Violation is a Civil Infraction. Failure to carry out the conditions and standards of erosion and sediment control set forth in this Chapter shall be unlawful and a civil infraction subject to the enforcement provisions of Chapter 36 of the Dunes City Code.

(B) Additional Penalties. In addition to fines imposed under Chapter 36 of the Dunes City Code the Inspector or Planning Official may enforce the following additional mitigating measures:

(1) Issue a stop work order or suspend any development or building permit on the subject property, or deny occupancy of the subject property until erosion control measures have been installed properly and maintained in accordance with this ordinance.

(2) In the event costs are incurred by Dunes City to mitigate problems of erosion or sediment transport caused by the inadequacy of an Erosion Control Plan or it's application, all costs and penalties must be paid in full by the owner before work is resumed, permits reinstated, or occupancy permitted. In the event the costs incurred by Dunes City are not reimbursed to the city within seven days of notice of violation, development or building permits can be revoked by the City and a lien may be issued on the property.

(C) The owner of the property from which the erosion and/or sediment transport occurs, together with any person or parties, who cause such erosion, shall be responsible for mitigating the impacts of the erosion and for preventing future erosion. A property owner shall not be held responsible for the products of erosion or sediment transport that originate on other properties.

**Section 3.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.

While not a part of this ordinance, the findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this decision.

**ADOPTED BY THE DUNES CITY COUNCIL THIS 14TH DAY OF JUNE, 2007.**

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Abstain: \_\_\_\_\_ Absent: \_\_\_\_\_

\_\_\_\_\_  
Sheldon Meyer, Mayor

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Joanne Hickey, City Recorder

