

Devils Lake Watershed Protection Ordinance

This ordinance is enacted pursuant to ORS 552.305 and ORS 198.010, *et seq.*

Section 1.010. Emergency Ordinance.

(1) This is an emergency ordinance which shall take effect upon adoption by the Devils Lake Water Improvement District Board.

(2) The reasons for immediate and emergency action on this ordinance are the recent soil erosion, water pollution, wildlife, fish, aquatic life and resource impairment, and/or deforestation occurring or threatened to occur within the watershed of Devils Lake. These occurrences and the threat of further such occurrences pose an immediate threat of damage and destruction to life and property, injury to the public health, welfare and safety, and frustration of the goals and purposes of the Devils Lake Water Improvement District.

Section 1.020. Purpose. The purpose of this Ordinance, pursuant to ORS 552.108, is to promote the health, welfare and safety of the public and to protect the Devils Lake watershed from acts which are or could be injurious to the public, domestic, commercial, agricultural, scenic or recreational uses of Devils Lake and/or injurious to water, soil, livestock, wildlife, fish, other aquatic life, and other resources of Devil's Lake and its watershed.

Section 1.030. Definitions. The following definitions apply to the terms in this act:

(1) "Board" means the Devils Lake Water Improvement District Board of Directors.

(2) "District" means the Devils Lake Water Improvement District.

(3) "Harvest timber" means:

(a) Harvesting of forest tree species, for sale or barter, including, but not limited to, felling, bucking, yarding, decking, loading or hauling.

(b) Construction, reconstruction and improvement of roads.

(c) Site preparation for reforestation involving clearing or the use of heavy machinery.

(d) Application of insecticides, herbicides, rodenticides, and fertilizers.

(e) Clearing forest land for conversion to any non-forest use.

(f) Disposal or treatment of slash.

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- (g) Pre-commercial thinning.
- (h) Cutting of firewood, when the firewood will be sold or used for barter.
- (i) Surface mining.
- (4) "Permit" means a permit issued pursuant to this ordinance.
- (5) "Person" includes any individual, sole proprietorship, partnership, corporation, business, trust, or other profit or non-profit legal entity, and includes any association or the above entities which form a non-legal entity.
- (6) "Watershed" means Devils Lake, D River, all bodies of water which empty into Devils Lake and all lands upon or under which any water travels into Devils Lake or D River.

Section 1.040. Prohibited Acts in the Watershed. No persons shall, without permit, do any of the following acts in the watershed of Devils Lake except where the prohibition of such acts is in direct violation of the Oregon Revised Statutes:

- (a) Violate the Oregon Forest Practices Act.
- (b) Violate any other local, state or federal laws or regulations the primary purpose of which is to protect the environment, wildlife, plants, aquatic life, recreation, or scenic values.

Section 1.050. Prohibited Acts in an Urban Growth Area. No person shall, without permit, harvest timber within an acknowledged urban growth boundary in the watershed of Devils Lake. This prohibition is in addition to those stated in Section 1.040.

Section 1.060. Civil Penalties. Civil remedies and/or penalties for violation of Section 1.040, 1.050 and 1.090 of this Ordinance may be imposed by the Board after a contested case hearing as described in ORS 183.413, *et seq.* The remedies and/or penalties imposed by the Board may include: (1) an order directing the violator or landowner to repair, or pay reasonable compensation for any damage or correct any condition resulting from any act prohibited in this ordinance; (2) an order to cease and desist all potentially damaging or destructive activities until restoration, reparation, or correction has occurred and a permit has been issued; (3) an order requiring the violator to pay a fine not exceeding \$5,000.00 for each violation of Section 1.040, 1.050 and/or 1.090; and (4) an order allowing attorney fees and costs for prosecution of any violation, including costs or attorney fees incurred by the District on appeal or by reason of collateral challenges to violations of this

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ordinance. Provided, however, nothing in this ordinance shall restrict the Board from pursuing any other civil remedies provided for by state or federal law.

Section 1.070. Permits.

1. Permits may be issued upon application and hearing before the Board.
2. Any person wishing to obtain a permit to do any act otherwise prohibited by this ordinance shall fill out an application for a permit. Applications shall be available during regular business hours at the Devils Lake Water Improvement District's main office located at 1845 S.W. Highway 101, Lincoln City, Oregon 97367; (503) 994-5330.
3. Upon receipt of a properly completed and signed application for a permit, the Board or a hearings officer appointed by the Board shall consider the application at a hearing within 60 days of receipt of the application.
4. The Board has the power to appoint any person it finds qualified to act as a hearings officer in any hearings provided for in this section.

Section 1.080. Hearings.

1. Any hearing for a permit to be considered under Section 1.070 shall be held pursuant to the contested case provisions of ORS 183.413.
2. Upon completion of the hearing, the Board or appointed hearings officer shall issue the permit only if it appears that the issuance of the permit will not be injurious to the health, safety and welfare of the public. In particular, the permit shall be issued only if it appears that the activity for which the permit is sought will have no substantial adverse impact on water quality; nutrient inflows; wildlife, waterfowl, and/or fish habitat; macrophyte growth; scenic values; or water-related recreation; provided, however, the Board or appointed hearings officer may issue a permit if it appears that the applicant is able to and will eliminate any adverse impact specified above within a reasonable time.
3. The Board or appointed hearings officer may issue a restricted permit which allows the applicant a limited right to perform otherwise prohibited acts if such restrictions are sufficient to insure the health, safety and welfare of the public and will not otherwise defeat the purpose of this statute.

Section 1.090. Injunctions. Upon receipt of substantial evidence that a violation of Section 1.040 or Section 1.050 of this ordinance is imminent, the Board may issue an injunction enjoining such violations from occurring. Violation of any injunction issued pursuant to this Section shall give cause to impose civil penalties stated in Section 1.060 of

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this ordinance. Upon issuance of an injunction, the party being enjoined may request a contested case hearing before the Board to be held within 60 days and pursuant to ORS 183.413, *et seq.* If the party enjoined demonstrates at a hearing requested pursuant to this section by a preponderance of the evidence that a violation of this ordinance is not imminent, the injunction shall be terminated. Provided, however, that any misrepresentation, deceit, or other bad faith act by a person which caused an injunction to be terminated shall be cause for any damages, fines, costs and attorney fees provided for in Section 1.060 to be trebled.

Section 1.100. Appeals. (1) Any person:

- (a) penalized under Section 1.060 or 1.090;
- (b) denied a permit under Section 1.070 and 1.080; or
- (c) enjoined under Section 1.090,


(1) Shall within 30 days of the adverse decision have the right to appeal to the Board any such adverse decision.

(2) Upon such appeal the Board may reconsider the matter and may alter the decision appealed.


(3) The Board may order reasonable attorney fees and costs to the prevailing party upon any appeal taken under this Section.

Section 1.110. Savings Clause. If any part of this act is declared void, the remainder shall remain in effect.

Section 1.120. Rules and Regulations. The District may make such rules and regulations, from time to time, as may be necessary to carry out the purposes of this Ordinance.


KARL ORDELHEIDE, M.D., Chairman
Board of Directors
Devils Lake Water Improvement District

8-29-90
Date


GARY KREUTZ, Secretary
Board of Directors
Devils Lake Water Improvement District

8-29-90
Date