

A RESOLUTION ADOPTING THE AMENDED WASHTENAW COUNTY GRADING/SOIL EROSION & SEDIMENTATION CONTROL ORDINANCE

WASHTENAW COUNTY BOARD OF COMMISSIONERS

April 7, 1999

WHEREAS, the Washtenaw County Board of Commissioners adopted the Grading/Soil Erosion and Sedimentation Control (GSESC) Ordinance on September 3, 1997 (Resolution #97-0158), in compliance with the authority of the laws of the State of Michigan; and

WHEREAS, the Ordinance allows for the Soil Erosion & Sedimentation Control Program to monitor earth change activities for soil erosion and subsequent sedimentation control throughout authorized communities in the County; and

WHEREAS, the State of Michigan Department of Environmental Quality added amendments to Part 91, Soil Erosion & Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 P.A. 451 in June of 1998; and

WHEREAS, Part 91 of Michigan Public Act 451 amendments need to be incorporated into the current Washtenaw County GSESC Ordinance to assure consistency with state law; and

WHEREAS, the Washtenaw County Grading/Soil Erosion and Sedimentation Ordinance Program experience has resulted in proposed changes to improve service delivery; and

WHEREAS, specific changes, shown in the attached copy of the proposed GSESC Ordinance, include:

Exemptions for:

- Public agencies that are certified as soil erosion enforcing agencies
- Environmental health, related boring and percolation tests for wells and septic, respectively, if those are stabilized within 24 hours
- Grading activities that occur on existing roads, and
- Any earth change for an area of less than 225 square feet and stabilized within 24 hours

Clarification of certain definitions, including those for

- Major and minor projects
- The grading waiver
- Agricultural practices
- Wetland(s)
- Part 91 (of the Michigan Act 451 amendments)

Revisions of what constitutes Earth moving activities requiring a permit. These include activities:

- Within 500 feet of surface water (current ordinance) and disturbing more than 225 square feet (new per P.A. 451 amendment changes)

In the following sections, minor wording changes, such as omitting phrases or adding statements, for

clarification only:

- Enforcement Process
- Performance Bond/Fee
- Permit Process
- Throughout the document, "Public Act 451, Part 91" added to provide a consistent reference

Additional language to indicate requirement of permit from partnership agency/program, Building Inspection (per State agency requirement)

Additional language to Earth Changes Requiring Grading Waivers for those less than 500 feet from surface water (current) and disturbing less than 225 square feet (new per P.A. 451 amendment changes)

Removal of waiver requirement for emergency environmental cleanup and lake lot well replacements (hence, such situations would require SE permit unless these meet other requirements such as 24 hour stabilization); and

WHEREAS, the Grading/Soil Erosion & Sedimentation Control Ordinance and Program meet the Washtenaw County Board of Commissioners Guiding Principles of providing mandated services and enhanced customer service; and

WHEREAS, this matter has been reviewed by the Corporation Counsel, the Finance Department, Human Resources, and the County Administrator's Office and the Ways & Means Committee

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby adopts the amended Washtenaw County Grading/Soil Erosion & Sedimentation Control Ordinance as attached hereto and made a part hereof

Grading/Soil Erosion and Sedimentation Control Ordinance

Date of Adoption by Board of Commissioners – September 3, 1997

Sent to Michigan Department of Environmental Quality – September 15, 1997

Ordinance Published – September 15, 1997

Revised – April 7, 1999

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ARTICLE I

A. Purpose

The Washtenaw County Board of Commissioners hereby adopts this ordinance which states the procedures, standards and enforcement that shall be used by the Soil Erosion and Sedimentation Control (SESC) Program to manage soil erosion and subsequent sedimentation in order to promote the safety, public health, and general welfare of the community through effectively sustaining the goal of clean water in Washtenaw County and the State of Michigan.

B. Rules Adopted

Part 91, Soil Erosion & Sedimentation Control, P.A. 451 of 1994, as amended is hereby adopted by reference and made a part of this Ordinance as if fully setforth herein.

C. Authority

This ordinance is adopted under the authority granted by Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, being Sections 324.9101 to 324.9123 of the Michigan Compiled Laws Annotated. (Formerly Section 6 of Michigan's Soil Erosion and Sedimentation Control Act, Public Act 347 of 1972, as amended [MCL 282.101 et seq; MSA 13.1820 (1) et seq.]), Michigan Compiled Laws Annotated 46.11m and 46.10b, Michigan Compiled Laws Annotated 333.1101, et seq (Michigan Public Health Code), and R 323.1701, et seq., of the Michigan Administrative Code.

D. Objectives

- To prevent soil erosion resulting from earth changes, by requiring proper provisions for drainage and the protection of soil surfaces during and after construction
- To prevent unnecessary stripping of vegetation and loss of soils, especially adjacent to surface water
- To ensure that soil erosion and sediment control practices are incorporated into site development in the planning and design process
- To ensure that all drainage, soil erosion, and sediment control facilities are properly designed, constructed, and maintained so as to provide water quality protection and prevent the conveyance of sediment via wind and stormwater runoff
- To eliminate the need for costly remediation projects as a result of accelerated soil erosion and sedimentation
- To provide for enforcement of this Ordinance and establish penalties for violations

- To provide education and assistance to the community regarding soil erosion

ARTICLE II

A. Language

The following rules of language shall apply to the text of this Ordinance:

The word "shall" is mandatory. The word "may" is permissive. When not inconsistent with the context, words in the present tense shall include the future and words designating singular numbers shall include the plural.

B. Definitions

The following rules, terms, and phrases shall have the definitions given:

Accelerated Soil Erosion– the increased loss of the land surface that occurs as a result of human activities.

Agricultural Practices– all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

Authorized Public Agency– state, local, or county agency designated in Section 9110 of Part 91 for the purpose of enforcing soil erosion control requirements with regard to earth changes undertaken by that agency.

Best Management Practices (BMP)– structural, vegetative or managerial measures, activities, which help to achieve soil erosion and sedimentation control objectives.

Board of Commissioners– Washtenaw County Board of Commissioners.

County Drain– drains established and/or constructed pursuant to the Michigan Drain Code (Act 40, P.A. 1956 as amended).

Disturbed Area– an area of land subject to erosion due to the removal of vegetative cover and/or earth moving activities, including filling.

Drain– a drain will be considered a County Drain (as defined) or a storm drain (as defined).

Drain Commissioner– Washtenaw County Drain Commissioner or authorized representative of the Drain Commissioner's Office.

Earth Change– a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the State. This includes, but is not limited to, grading and preparation for wells, septic fields (including perimeter drains), driveways, foundations, backfill, final grade changes, and stockpiling of material. "Earth change" shall not apply to the practice of plowing and tilling soil for the purpose of crop production, ordinary household gardens or normal maintenance.

Erosion– the wearing away of land by the action of wind, water, gravity, or a combination thereof.

Fill– material placed on-site which raises an existing elevation.

Grading– any stripping, excavating, filling, stockpiling or combination thereof, including the land in its excavated or filled condition.

Grading Permit– a permit issued to authorize work to be performed under this Ordinance.

Grading Waiver– a waiver forgoing the need for a Grading Permit, issued after the receipt of a signed affidavit from the landowner, stating that the earth change will: 1.) Occur farther than 500 feet from surface water (as defined), and disturb less than one acre; OR 2.) Occur within 500 feet of surface water, disturb less than 225 square feet, and will not contribute sediment to any surface water.

Lake– the Great Lakes and all natural and artificial inland lakes and or impoundments that have definite banks, a bed and visible evidence of a continued occurrence of water and a surface area of water that is equal to or greater than one acre. This does not include sediment basins and lakes constructed for the sole purpose of cooling water or for treating polluted water.

Local Agency– City, Village, or Charter Township.

Local Enforcing Agency– an agency designated by a city, village, or charter township to enforce Section 9106 of Part 91.

Major Project–earth changes undertaken for the purposes of commerce, multiple residential, or public service, including, but not limited to residential developments (as defined), commercial projects and additions, industrial projects, recreational developments, churches, schools, road and street construction, drainage construction, mining, utilities and pipelines not exempt under Part 91.

Mineral- coal, gypsum, stone, metallic, or material mined for its metallic content and other similar solid material or substance to be excavated from natural deposits or in the earth for commercial, industrial, or construction uses. Mineral does not include clay, gravel, marl, peat, or sand.

Mining- the process or business of extracting ore or minerals from a mine.

Minor Project– earth changes undertaken for a proposed or already existing private residence, landscaping activities that require a grading permit, or agricultural practices other than the plowing and tilling of fields for crop production.

Normal Maintenance- lawn maintenance, road and driveway leveling, and miscellaneous property repairs at a developed site, or other activities determined to be exempt from permit requirements, provided that such activities do not violate the standards of Part 91 or this Ordinance.

Part 91- Part 91, Soil Erosion and Sedimentation Control, P.A. 451 of 1994, as amended

Permanent Soil Erosion and Sediment Control Measures– control measures installed or constructed to control erosion and sedimentation and maintained after project completion.

Person– an individual, firm, partnership, corporation, association, organization, or legal entity of any kind including governmental entities.

Pond– a permanent body of open water which is less than one (1) acre in size.

Residential Development– subdivision developments as defined by Section 102 of Act 288, P.A. 1967, as amended; and/or site condominium developments or condominiums as defined by Act 59 of 1978, as amended, Section 559.101 et seq. of the Michigan Compiled Laws; and lot splits where three (3) or more sites are created.

Sediment– any solid material, mineral, or organic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, or gravity as a result of soil erosion.

Site– lot or parcel of land or combination of contiguous lots or parcels proposed for

development or activity undergoing earth moving.

Stabilization– the proper covering of soil to ensure its resistance to erosion, sliding or other earth movement, can be temporary or permanent.

Storm Drain– a conduit, pipe, natural channel, or human–made structure, which serves to transport stormwater runoff.

Stream– a river, creek or other watercourse which may or may not be serving as a drain as defined in Act No. 40, of the Public Acts of 1956, as amended, which has definite banks, a bed, and visible evidence of continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

Surface Water– any water including ponds, lakes, streams, rivers, drains (as defined), and wetlands, which holds or conveys water continually or seasonally.

Temporary Soil Erosion and Sediment Control Measures– interim control measures which are installed or constructed to control soil erosion or sedimentation until permanent soil erosion control measures are established.

Vegetative Cover– grasses, shrubs, trees, and other vegetation which hold and stabilize soils.

Wetland– land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life.

ARTICLE III

A. Grading Permits

Earth changes requiring a Grading Permit include the following except as exempted by Part 91:

- Earth changes within 500 feet of surface water's edge and disturbing more than 225 square feet
- Earth changes (including spoils from grading activities) that disturb one (1) or more acres
- Access roads to logging and mining operations
- Installation of new ponds or alterations to existing ponds, regardless of size or proximity to surface water
- Transportation facilities, including streets, highways, railroads, airports, common carrier pipelines and mass transit facilities

An application shall be required and fee(s) paid as established by the Washtenaw County Board of Commissioners.

A. Grading Waivers

A Grading Waiver will be required for:

- Earth changes over 500 feet from surface water and disturb less than one (1) acre

- Earth changes within 500 feet of surface water, disturbing less than 225 square feet, and not contributing sediment to surface water

A Grading Waiver will be issued upon receipt of a signed affidavit from the landowner that the proposed project meets the above criteria. Issuance of a Grading Waiver shall not be construed as an exemption from enforcement procedures pursuant to Part 91 or this Ordinance.

A. **Exemptions**

The following activities are exempt from Grading Permits and Grading Waivers:

- Earth changes disturbing less than 225 square feet and stabilized within 24 hours
- Plowing and tilling of fields for the purpose of crop production
- Work performed by an Authorized Public Agency (as defined)
- Grading and leveling of existing roads that does not increase the width or length of the road and will not contribute sediment to lakes or streams
- Borings and percolation tests that are stabilized within 24 hours of the initial earth change and disturb less than 225 square feet

Exemptions from Grading Permits and Waivers shall not be construed as exemptions from enforcement procedures if the activity results in a violation of Part 91 or this ordinance.

A. **Approval from Other Governmental Agencies**

If a Grading Permit is required, an agency shall not issue a building permit without the applicant first obtaining a Grading Permit.

Grading Permits and waivers issued in accordance with this Ordinance do not relieve the owner of responsibility for obtaining all other necessary permits or approvals from federal, state, and/or county agencies. If requirements vary, the most stringent requirements shall be followed.

ARTICLE IV

A. **Grading Permit Process**

All applications *for* Grading Permits and Waivers are made through:

WASHTENAW COUNTY

Soil Erosion and Sedimentation Control (SESC) Program

P.O. Box 8645

Ann Arbor, MI 48107-8645

A Grading Permit or Grading Waiver shall be obtained prior to the start of any earth change including construction of access roads, driveways, well and septic field installation, tree and shrub removal or grading. The permit or waiver must be posted on-site and clearly visible from the road. Any unauthorized work shall be considered a violation of these procedures regardless of any later actions taken toward compliance. The review period begins upon the receipt of a completed application, plans, and fees.

B. Permit Approval

Approval will be given to permit applications provided the grading plans meet the requirements of this Ordinance and Part 91. If the plan does not comply with the Ordinance, additional information may be required or the request shall be modified.

The application and site plan shall be acted upon within thirty (30) days. Formal notice of approval is indicated by the issuance of a Grading Permit outlining the work approved and necessary control measures.

C. Denial of Permit

Grading Permits shall not be issued where:

- The proposed grading would cause hazards to the public safety and welfare; or
- The work as proposed by the applicant will damage any public or private property or interfere with any existing stream in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any stream or create an unreasonable hazard to persons or property; or
- The land area for which grading is proposed is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazards to persons or property

A. Permit Expiration

Grading Permits shall expire automatically upon the project completion date provided by the applicant on the application, not to exceed one (1) year. A permit may be extended for six (6) months upon approval.

B. Permit Revocation

Grading Permits may be revoked for any of the following reasons:

- Violation of any condition of the permit

- Misrepresentation or failure to disclose relevant facts in the application or plans submitted
- Authorized work is abandoned or suspended for a period of six (6) months

If a permit has been revoked for any reason, the permit process will have to begin again and an application, plans and necessary fees will have to be submitted.

ARTICLE V

A. Grading Plans

An application and two (2) sets of plans completed as described below will be required for each project requesting a Grading Permit. According to conditions set forth in Rule 1703, Part 91 the following information will be required:

Major Projects

- Names, addresses, and telephone numbers of the owner, developer, and petitioner
- Legal description of the affected parcel of land
- Site location map showing the site and all adjacent properties and proximity to all surface water within 500 feet at a scale not more than 1 inch = 200 feet. If not within 500 feet of surface water, a statement of such must be provided.
- Site plan at a scale of no more than 1 inch = 100 feet which includes:
- Location of predominant features, including all proposed and existing structures and vegetation on-site and extending 50 feet beyond property lines
- Location and written description of soil types
- Existing and proposed topography at a minimum of two (2) foot contour intervals extending 50 feet beyond property lines
- All areas delineated on the plans that are to be disturbed
- A description and location of all existing and proposed on-site drainage, including structure details rim elevations, and de-watering facilities, if applicable
- Type and location of proposed temporary and permanent soil erosion and sediment control measures and details
- Statement of continued maintenance of all permanent erosion and sediment control facilities including designation of party responsible for maintenance
- Timing and sequence schedule indicating dates for the following:
- Temporary measures installed
- Gravel construction access installed
- Land clearing
- Detention/retention/sediment pond installation and stabilization
- Road construction
- Utility installation
- Final grade/seed
- Catch basin/ponds cleaned

- Permanent measures functioning
- Remove temporary measures

Other information may be required to review the impact of the earth change in relation to the specifications of this Ordinance.

Minor Projects

- Site location map showing the site and all adjacent properties and proximity to all surface water within 500 feet at a scale no more than 1 inch = 200 feet. If not within 500 feet of surface water, a statement of such must be provided.
- Location of predominate features including all proposed and existing structures and vegetation on-site and extending 50 feet beyond property lines
- Soil information of site
- Grade/slope information of site
- Areas delineated on plan that are to be disturbed
- On-site drainage facilities
- Location and types of temporary and permanent erosion and sediment control measures
- Statement of continued maintenance of all permanent erosion and sediment control facilities including designation of party responsible for maintenance
- Timing and sequence schedule indicating dates for the following:
 - Temporary measures installed
 - Gravel construction access drive installed
 - Land clearing
 - Final grade/seed
 - Permanent measures functioning
 - Temporary measures removed

Other information may be required to review the impact of the earth change in relation to the specifications of this Ordinance.

A. Plan Modification

Changes to a permitted site will require modification to the plans. The SESC Program shall perform another review and the applicant shall be subject to additional fees as determined by the Washtenaw County Board of Commissioners.

B. Standards for Erosion and Sedimentation Control Measures

All grading plans shall include provisions for temporary and permanent erosion and sedimentation control measures and shall be implemented and maintained in accordance with the standards and specifications of the product manufacturer or those in accordance with, but not limited to, the minimum control measures contained in the most recent versions of the State of Michigan's "Guidebook of Best Management Practices for Michigan Watersheds", Oakland County's "Erosion Control Manual" and "Washtenaw County Conservation District

Standards and Specifications for Soil Erosion and Sedimentation Control". All earth changes shall limit exposed areas of any disturbed land for the shortest possible time as determined by the Washtenaw County Soil Erosion and Sedimentation Control Program. All disturbed areas shall be stabilized within five (5) days of final grading.

ARTICLE VI

A. Inspections

Authorized representatives of the SESC Program may conduct on-site inspections on any property for which a Grading Permit is applied for, currently active, or any property suspected to be in violation of this ordinance and Part 91. Such inspections may take place before, during and/or after any earth change activity.

If upon inspection, existing site conditions are found to be in conflict with an approved Grading Permit or plan, a stop work order may be issued. No earth moving shall be until all violations have been addressed, and/or until revised plans have been submitted, reviewed, approved, and the Grading Permit or plan modified.

ARTICLE VII

A. Fees

All fees shall be paid to Washtenaw County at the time of application, in accordance with the current fee schedule approved by the Washtenaw County Board of Commissioners.

ARTICLE VIII

A. Performance Guarantees

A performance guarantee is required for all major projects (as defined). The performance guarantee provides an assurance that all exposed soil surfaces will be stabilized should development discontinue or proper control measures are not installed and/or maintained. This performance guarantee shall cover all expenses incurred by Washtenaw County, including administrative and legal costs, required to implement and maintain soil erosion and sedimentation controls until the site is stabilized. The performance guarantee shall be in the form of cash, check, or letter of credit and shall extend for the duration of the permit (until project completion) with the option of renewal for an amount to be determined by the Washtenaw County Board of Commissioners. The performance guarantee will be returned to the applicant when the site is completely (permanently) stabilized and has met all requirements set forth by this ordinance and Part 91.

B. Resource Remediation Fees

The Washtenaw County SESC Program may accept a resource remediation fee in lieu of a performance guarantee. The Resource Remediation Fee gives applicants for major grading permits the opportunity to contribute to a fund to be used for remediation of abandoned and badly polluted sites. This contribution is usually less than the cost of obtaining a performance guarantee. Applicants who are eligible to participate are assessed an amount determined by the Washtenaw County Board of Commissioners. The Resource Remediation Fee satisfies the applicant's requirement for posting a performance guarantee.

C. Notice of Noncompliance

If the County SESC Program determines that a violation of this Ordinance and Part 91 is occurring, it may seek to enforce compliance by notifying the person who owns the land by way of a stop work order. If no response has been received from the party in violation within a time determined by this office, a letter will be sent by certified mail, with return receipt requested, outlining the violations. The notifications shall contain a description of specific control measures which would bring the landowner into compliance. The control measures listed in the notification shall be implemented within 10 calendar days from the dated mailed.

ARTICLE IX

A. Remedies and Penalties

Any violations of Part 91, Administrative rules, or this ordinance are considered criminal misdemeanors and/or civil infractions that may be remedied by the following criminal and/or civil penalties:

- Upon conviction, ninety (90) days in jail and/or a one hundred (\$100.00) dollar fine.
- A five hundred (\$500.00) dollar civil fine if the person fails, after proper notice, to comply with Part 91 and this Ordinance.
- Upon ten (10) days written notice to the property owner, if the violations have not been corrected, the SESC Program may enter upon the land and construct, implement and maintain soil erosion and sedimentation control measures which comply with this Ordinance and the Act, provided, however, that such remedial measures may not exceed five hundred (\$500.00) dollars. Upon twenty (20) days after written notice to the property owner, however, if the violations have not been corrected, the SESC Program may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in any amount necessary to correct the violation. The County shall have a lien for any work completed by the County or its contractor to bring a violator's property into compliance with this Ordinance. With respect to single-family or multi-family residential property, such a lien shall have priority over all liens and encumbrances filed or recorded after the date the County SESC Program expends money to correct the violation. For all other property, the lien to collect money expended by the County to correct the violations shall be collected and treated in the same manner as property taxes under the General Property Tax Act. MCLA 211.1 to 211.157.
- Notwithstanding any other remedy, the County may seek injunctive relief against the violator to restrain or prevent violations of the Act and Rules promulgated in conjunction with the Act, or this Ordinance.

ARTICLE X

A. Appeals

The right of an appeal or the authority to interpret this Ordinance shall be provided by the Washtenaw County Soil Erosion and Sedimentation Control Board of Appeals. All requests for an appeal of any action related to this Ordinance must be filed within fourteen (14) days of that action. All requests shall be made in writing and include the article number and reason for the appeal.

The Washtenaw County Board of Commissioners shall appoint members of the Washtenaw County Soil Erosion and Sedimentation Control Board of Appeals.

ARTICLE XI

A. Effective Date

This revised ordinance shall take effect when notice of adoption is published in a newspaper of general circulation within the County. All permits issued prior to adoption of revisions of said ordinance and bonds shall remain in effect and shall be subject to provisions of this Ordinance.

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