

1. Packet

Documents: [SOIL EROSION 10-2-15.PDF](#)

AGENDA
SOIL EROSION AD HOC COMMITTEE
Friday, October 2, 2015 @ 1:00 p.m.
Governmental Center, 400 Boardman, Traverse City
2nd Floor Committee Room

1. Call to Order:
2. Approval of Minutes of 9-4-15
3. Public Comment:
4. Review of Updated draft – Memo from R. Cooney
5. New Business
6. Public Comment:
7. Adjournment:

MEMORANDUM

TO: Soil Erosion Committee

FROM: Bob Cooney

RE: Soil Erosion Ordinance – Revised Draft from September 4th Meeting

DATE: September 25, 2015

Please find attached a revised draft from our September 4, 2015 meeting. You should see comments in the margins for all substantive changes made at our meeting. I also incorporated a number of changes either required or suggested by MDEQ and there are comments next to those changes as well.

Please note that major changes were made to Article III, Section 3, Exemptions and Waivers. As you will recall from our meeting, it was suggested that this section track the language of the statute and rules, and so that's what I have done. All language beyond that contained in the statutes and rules is a holdover from the Jackson County ordinance, so you may want to review that language to see if there is anything that you believe should be salvaged.

Also, there were major changes to Article IV, Section 2, Earth Change Requirements, and Section 3, Plan Requirements. Like the above changes to the Exemptions and Waivers, this was intended to match the language to the statute and rules.

Please review all comments prior to our next meeting on October 2nd. I hope to finalize all substantive issues at that time. **Please ignore any stylistic changes** (font, paragraph numbering, indentation, etc.). That will get cleaned up when I do my final edit. Making those changes at this point will only add to the confusion with the number of comments in this most recent draft.

GRAND TRAVERSE COUNTY
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE_[RC1]
_____

An Ordinance to provide for soil erosion and sedimentation control; definitions; application requirements; soil erosion and sedimentation control permits; soil erosion and sedimentation control plans; inspections; building and other permits; penalties; enforcement; construction; severability; and repeal.

ARTICLE I - General

Section 1. Authority. The authority for this Ordinance is Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, that being MCL 324.9101 et seq. and the Administrative Rules promulgated by the Michigan Department of Environmental Quality.

Section 2. Jurisdiction. This Ordinance shall be administered and enforced throughout the County except within the territorial boundaries of a governmental unit that has adopted an Ordinance and has been designated by the Department as a Municipal Enforcing Agency pursuant to Section 9106 of Part 91, or has been designated by the Department as an Authorized Public Agency pursuant to Section 9110 of Part 91.

Section 3. County Enforcing Agency. The Board of Commissioners is responsible for carrying out the requirements of Part 91. The Board of Commissioners designates the Grand Traverse County Construction Code Department as the County Enforcing Agency responsible for administering and enforcing Part 91, its rules and this Ordinance.

Section 4. Part 91 and Rules Adopted. The County adopts and incorporates by reference Part 91 and the Rules adopted by the Department, and as amended from time to time.

Section 5. Fee Schedule. All fees for administering and enforcing this Ordinance shall be paid to the County in accordance with a Fee Schedule determined by resolution of the Board of Commissioners. The Board of Commissioners may revise the Fee Schedule by adopting a written amendment to the Fee Schedule from time to time. All fees shall be doubled if work starts without a permit.

Section 6. Other Regulations Repealed. All other Ordinances and Regulations and parts of Ordinances and Regulations which are inconsistent with the provisions of this Ordinance are repealed. In addition, the Grand Traverse County Soil Erosion Sedimentation and Storm Water Control Ordinance is repealed.

Section 7. More Restrictive Provisions. To the extent that any regulations contained in this Ordinance are more restrictive than, or are in addition to, the provisions or requirements of Part 91 or the Rules, this Ordinance shall control.

ARTICLE II - Definitions

All definitions included in Part 91 and as amended time to time are incorporated by

reference. The following additional definitions shall apply. Where a definition in this Ordinance conflicts with a definition included in Part 91, or as interpreted by Michigan Courts, the Part 91 definition shall control.

- (1) Accelerated Soil Erosion - The increased loss of the land surface that occurs as a result of human activities.
- (2) Act - Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, being Act 451, Public Acts of 1994, as amended.
- (3) Agricultural Practices - "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.
- (4) Appointed Local Official - The Enforcing Agency or his/her designee who is legally authorized to issue municipal civil infraction citations.
- (5) Authorized Public Agency - "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.
- (6) Board of Commissioners - Grand Traverse County Board of Commissioners.
- (7) Citation - A written complaint or notice to appear in District Court upon which an appointed local official records the occurrence or existence of one (1) or more violations of the Act, the Rules and/or this Ordinance by the party cited.
- (8) County Drain – means any drain, irrespective of size, carrying drainage water or sewage or both originating in 1 county, and includes drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township. [RC2]
- (9) County Enforcing Agency – (6) "County enforcing agency" means a county agency designated by the county board of commissioners under section 9105 of Part 91.
- (10) "Department" – Means the Michigan Department of Environmental Quality
- (11) Designated Agent - A person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name.
- (12) District Court – means the 86th Judicial District Court.
- (13) Earth Change - "Earth change" means 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. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(14) Erosion - The wearing away of land by the action of wind, water, ice, gravity, or a combination thereof.

(15) Grading – means to level off to a smooth horizontal or sloping surface.^[RC3]

(16) 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 (1) acre. This does not include sediment basins and lakes constructed for the sole purpose of storm water retention or detention, cooling water, or for treating polluted water.

(17) Landowner - A person who owns or holds recorded easement on the property or who is engaged in construction in a public right of way in accordance with Sections 13, 14, 15, and 16 of Act 368, Public Acts of 1925, as amended.

(18) Mining - The process or business of extracting ore or minerals from a mine.^[RC4]

(19) Municipal Enforcing Agency - means an agency designated by a municipality under section 9106 of the Act to enforce a local ordinance.

(20) Municipality – means any of the following: a city, a village, a charter township or a general law township that is located in a county with a population of 200,000 or more.

(21) Municipal Civil Infraction - An act or omission that is prohibited by the Act, the Rules, and/or this Ordinance, and for which civil sanctions, including without limitation, fines, damages, expenses and costs may be ordered as authorized by Chapter 87 of Act 236, Public Acts of 1961, as amended.

(22) Non-erosive Velocity - A speed of water movement that is not conducive to the development of accelerated soil erosion.

(23) Permanent Soil Erosion and Sediment Control Measures - Control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.^[RC5]

(24) Person - An individual, firm, partnership, corporation, association, organization, or legal entity of any kind including governmental entities.

(25) Pond - A permanent body of open water less than one (1) acre. This does not include sediment basins and ponds constructed for the sole purpose of storm water retention or detention, cooling water, or for treating polluted water.^[RC6]

(26) Rules – means the administrative rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, those being Rules 323.1701 to 323.1714.

(27) Sediment - “Sediment” means solid particulate matter, including both mineral

and organic matter that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

- (28) Soil Erosion - "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.
- (29) Soil Erosion and Sedimentation Control Permit (hereinafter referred to as "soil erosion permit" or "permit") - A document issued to authorize work to be performed under this Ordinance signed by a representative of the Enforcing Agency.
- (30) Stabilization - The establishment of vegetation, or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.
- (31) Stream - A river, creek, or other watercourse which may or may not be serving as a drain as defined in Act 40, 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.
- (32) Temporary Soil Erosion and Sediment Control Measures - Interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion [RC7]. [RC8]
- (33) Vegetative Cover - Grasses, shrubs, trees, and other vegetation which are sufficiently established such that soils may be considered stabilized. [RC9]
- (34) Waters of the State - Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under the Act, and wetlands regulated under Part 303 of Act 451, Public Acts of 1994, as amended.
- (35) 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, and is commonly referred to as a bog, swamp, or marsh.

ARTICLE III –Earth Changes Requiring a Permit

Section 1. A person shall not maintain or undertake an earth change governed by this Ordinance, except in accordance with this Ordinance, and except as authorized by a permit issued by the enforcing agency.

Section 2. Earth Changes Requiring Soil Erosion Permits. Except as noted below in Section III, earth changes requiring a soil erosion permit include any of the following:

- a. An earth change (including spoils from grading activities within or adjacent to the earth change area) that disturbs one (1) or more acres.
- b. An earth change within 500 feet of the Waters of the State.
- c. Earth change involving the removal of clay, gravel, sand, peat, or topsoil that is either one (1) or more acres or within 500 feet of the water's edge of a lake or stream; and, access roads to and from the removal site or ancillary activities associated with removal.
- d. Earth change for access roads to and from the site where active mining or logging is taking place or ancillary activities associated with mining or logging^[RC10].
- e. Earth change within 500 feet of ~~an inlet to or an open~~^[RC11]County drain.

Section 3. Permit Exemptions and Waivers. - A soil erosion permit is not required for any of the following:

- a. Exemptions
 - i. A beach nourishment project permitted under Part 325 of Act No 451 of the Public Acts of 1994, as amended, being MCL 324.32501 et seq. of the Michigan Compiled Laws.
 - ii. Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to ~~lakes or streams~~^[RC12].
 - iii. An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to ~~lakes, streams~~^[RC13]~~, or regulated wetlands~~.
 - iv. Installation of oil, gas, and mineral wells under permit from the supervisor of wells if the owner-operator is found by the supervisor of wells to be in compliance with the conditions of part 91.
 - v. Earth changes associated with the logging industry, the mining industry, or the plowing or tilling of land for the purposes of crop production or the harvesting of crops. The exemption from obtaining

a soil erosion permit does not apply to access roads to and from the site where active mining or logging is taking place, or ancillary activities associated with logging and mining.

- vi. A metallic mineral mining activity that is regulated under a mining and reclamation plan if the plan contains soil erosion and sedimentation control provisions and is approved by the Michigan Department of Environmental Quality under Part 631 or 632, respectively.
- vii. Earth changes associated with well locations, surface facilities, flow lines, or access roads relating to oil or gas exploration and development activities regulated under Part 615 of Act 451, Public Acts of 1994, as amended, if the application for a permit to drill and operate under Part 615 contains a soil erosion and sedimentation control plan that is approved by the Michigan Department of Environmental Quality under part 615. This section does not apply to a multisource commercial hazardous waste disposal well as defined in section 324.62506a.
- viii. As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.
- ix. ~~Earth change necessary for septic repair or well replacement that is not greater than one (1) acre of disturbance or within 500 feet of Water's of the State.~~^[RC14]
- x. A residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:
 - i. An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.
 - ii. Gardening, if the natural elevation of the area is not raised.
 - iii. Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
 - iv. Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

v. All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:

- a. Planting of trees, shrubs, or other similar plants.
- b. Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.
- c. Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.
- d. The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.
- e. Seawall maintenance that does not exceed 100 square feet.

b. **Waivers**^[RC15]

- i. Earth changes within 500 feet of a regulated wetland or County drain, but only upon an affirmative showing by the property owner by clear and convincing evidence that the earth change will not result in sedimentation of the Waters of the State. This waiver provision does not apply, however, if the county drain meets the definition of a stream as defined at MCL 323.1701(1)(k).
- ii. The Enforcing Agency may grant a permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to **lakes and streams**^[RC16].

Exemptions provided under this Section, with the exception of plowing and tilling for purposes of crop production^[RC17], shall not be construed as exemptions from enforcement procedures under part 91 or the Rules or this Ordinance. If the activities exempted cause or result in a violation of Part 91, its Rules or this Ordinance. Where there is a violation of the Act, the Rules, or this Ordinance at a site where a soil erosion permit was not otherwise required, then the County Enforcing Agency may require the owner to obtain a soil erosion permit^[RC18], unless that activity is specifically exempt, in which case the CEA may take enforcement action only. ^[RC19]Earth changes not requiring a soil erosion permit under this Section shall conform to the same standards and shall be subject to the same enforcement

procedures when there is a violation of the Act, the Rules, or this Ordinance, as if they required a soil erosion permit.

Section 4. Approval from Other Governmental Agencies.

- a. **Responsibility for other permits:** Soil erosion permits issued in accordance with this Ordinance do not relieve the owner of the responsibility for obtaining all other necessary permits or approvals from federal, state, and/or local agencies.
- b. **Notice to other permitting authorities:** The enforcing agency shall notify all other permitting agencies of permits authorized under this Ordinance, and provide a copy of the permit requirements to those other permitting agencies. **[The Drain Commissioner shall be notified of all permits issued for earth changes within 500 feet of a County drain.]****[RC20]**
- c. **Building permits; ingress and driveway permits:**
 - i. Pursuant to Rule 323.1711, a township, city, village, or any county agency within the jurisdiction of the County Enforcing Agency shall not issue a building permit to a person engaged in an earth change if the earth change requires a soil erosion permit under the Act, the Rules, or this Ordinance until the County Enforcing Agency has issued the required soil erosion permit.
 - ii. The Grand Traverse County Road Commission shall not issue an ingress or driveway permit to a person engaged in an earth change if the earth change requires a soil erosion permit under the Act, the Rules, or this Ordinance, until the County Enforcing Agency has issued the required soil erosion permit. **[RC21]**
 - iii. In the event that a soil erosion permit is revoked, or a violation of the Act, the Rules, or this Ordinance is found by the County Enforcing Agency, the applicable township, village, and/or county agency, including the Grand Traverse County Road Commission, that issues building permits or other permits, shall be requested to place a "hold" on any permits, approvals, inspections or legal exchanges of property until the site is brought into compliance.
- d. **Copies of other permits; verifications by other agencies prior to soil erosion permit issuance:** Applicants for a soil erosion permit, shall provide the County Enforcing Agency with copies of the following permits, if those permits are required under the applicable law, and if in the determination of the County Enforcing Agency, those permits are necessary to review the application for compliance with the Act, the Rules, and this Ordinance:
 - i. Wetland permit, pursuant to Part 303 of Act 451, Public Acts of 1994, as amended, or pursuant to a local wetland ordinance.
 - ii. Inland Lake and Streams permit, pursuant to Part 301 of Act 451, Public Acts of 1994, as amended. **[RC22]**

- iii. The County Enforcing Agency (CEA) may require the applicant to provide verification as to the location of surface waters, if necessary to ensure compliance with the Act, the Rules, and this Ordinance. The CEA may require the applicant to provide verification that the local Planning Commission has approved the zoning or special use permit for this site.[RC23]
- iv. The CEA may require the applicant to provide a copy of the land use site plans provided to the local township or city, including updated or amended site plans or other documentation to reflect changes at the site during the pendency of the soil erosion permit.

[RC24]

- e. **Copies of Notice of Coverage, Permit-by-Rule:** Soil erosion permit holders, required to obtain a Notice of Coverage (Sites disturbing greater than 5 acres with a direct discharge to waters of the state), Permit-by- Rule, under the National Pollution Discharge Elimination System (NPDES), Rule 323.2190 of Part 31 of Act 451, Public Acts of 1994, as amended, shall submit to the County Enforcing Agency:
 - i. A copy of the NPDES acknowledgement letter within ten (10) business days of issuance of coverage.[RC25]
- f. **Notice by Authorized Public Agency:** Pursuant to Rule 323.1706(4), an authorized public agency exempt from obtaining a soil erosion permit under this Ordinance, shall notify the County Enforcing Agency of each proposed earth change in Grand Traverse County at least 5 days[RC26] prior to commencement of that activity.

ARTICLE IV - Soil Erosion Permit Application Process

Section 1. **Soil Erosion Permit Application Process.** Whenever an earth change activity requires a soil erosion permit under this Ordinance, a soil erosion permit shall be obtained from the County Enforcing Agency prior to the commencement of that activity. Any unauthorized work shall be considered a violation of this Ordinance, subject to all enforcement actions and penalties under this Ordinance, regardless of any later actions taken toward compliance.

To make application for a soil erosion permit, the landowner or designated agent shall submit to the County Enforcing Agency a completed application form, a fee, and a soil erosion and sedimentation control plan along with any other materials required in the application[ES(27)]. Application shall be made to:

Grand Traverse County Construction Code Department
Soil Erosion and Sedimentation Control Program
2650 LaFranier Road
Traverse City, MI 49686

The County Enforcing Agency shall review and determine if the application and soil

erosion and sedimentation control plan is complete, informing the applicant of any deficiencies found. If no deficiencies are found, pursuant to Section 9112(1) of the Act, the County Enforcing Agency shall approve or deny an application for a soil erosion permit within ~~thirty (30)~~ [RC28] calendar days after the filing of a complete application.

Section 2. ~~Earth~~ [RC29] **Change Requirements [RC30].**

1. A person shall design, construct, and complete an earth change in a manner that limits the exposed area of any disturbed land for the shortest possible period of time as determined by the county or local enforcing agency.
2. A person shall remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
3. A person shall design a temporary or permanent control measure that is designed and constructed for the conveyance of water around, though, or from the earth change area to limit the water flow to a non-erosive velocity.
4. A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. A person shall remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures under approved standards and specifications as prescribed by R 323.1710.
5. A person shall complete permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area within 5 calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.
 - (a) ~~Minimize the area of unstabilized soils left unprotected from runoff and wind.~~
 - (b) ~~Minimize the amount of time areas of unstabilized soils are exposed to erosive forces.~~ [RC31]

~~Protect exposed soils with temporary or permanent vegetation, mulch, or other approved erosion resistance material, as soon as practical after earth disturbance.~~ [RC32]

(d) Minimize the erosion potential of a disturbed site with design that considers soil type, time of year, proximity to waterways, duration of exposure, length and steepness of slope, anticipated volume and intensity of runoff. [RC33]

(e) [RC34] Avoid concentrating runoff. If concentrated runoff is unavoidable, implement measures to reduce runoff to a non-erosive velocity. |
Trap eroded sediments on-site with temporary and permanent barriers, basins, or other sediment retention measures and allow for the controlled discharge of runoff at a non-erosive velocity. [RC35]

(f) Implement a continuous inspection and maintenance procedure, which includes written documentation of the soil erosion and sedimentation control actions. [RC36]

Section 3. Soil Erosion and Sedimentation Control Plan Requirements. A person shall prepare a soil erosion and sedimentation control plan for any earth change identified as requiring an soil erosion and sedimentation control permit under Article III, above. A person shall design the plan to effectively reduce accelerated soil erosion and sedimentation and shall identify factors that may contribute to soil erosion or sedimentation, or both. The plan shall include, but not be limited to, all of the following: [RC37]

- a. A map or maps including all of the following and to the scale indicated:
 - i. Site location sketch that includes the proximity of any proposed earth change to Waters of the State. [RC38].
 - ii. Legal description of the affected parcel of land including the property tax identification number, easements, township, section, and address, if available. [RC39]
 - iii. Predominate land features. This may include: large trees, wells, railroad grades, forested areas, etc.
 - iv. Contour at 2 foot [RC40] intervals or slope description.
 - v. Scale.
 - a. Commercial. A scaled site plan, of not more than 100 feet to the inch for commercial soil erosion plans.
 - a-b. Residential. A scaled site plan not more than 50 100 [RC41] feet to the inch for residential soil erosion plans, or as otherwise determined by the County Enforcing Agency but not to exceed 200 feet to the inch. North

arrow shall be shown or indication of exact distances between notes features on site plan.

- b. A soils survey or a written description of the soil types of the exposed [RC42] land area contemplated for the earth change.
- c. Details for proposed earth change, including all of the following:
 - c. Description and location of the physical limits of each proposed earth change, labeled limits of earth disturbance [RC43][RC44].
 - d. A description and the location of all existing and proposed on-site drainage and dewatering facilities, including drainage arrows and discharge pipes [RC45] and the location of catch basins. [RC46]
 - e. The timing and sequence of each proposed earth change.
 - f. The location and description for installing and removing of all proposed temporary soil erosion and sediment control measures. The plan is to reflect that permanent soil erosion and sediment control measures are to be completed for all slopes, channels, ditches, or any other disturbed area within five (5) calendar days after final grading or the final earth change has been completed. [RC47][RC48]
 - g. A description and the location of all proposed permanent soil erosion and sediment control measures. The plan is to reflect that permanent soil erosion and sediment control measures are to be completed for all slopes, channels, ditches, or any other disturbed area within five (5) calendar days after final grading or the final earth change has been completed. [RC49]
 - h. A program proposal for the continued daily maintenance of temporary soil erosion and sedimentation control measures until removal and for the continued maintenance of permanent soil erosion and sediment control measures all permanent soil erosion and sedimentation control measures that remain after project completion, including the designation of the person responsible for each maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

[RC50]

- i. Name, address, and telephone numbers of the landowner, builder, and designated agent, if any. [RC51]
- j. Any other specific information needed to determine the adequacy of the soil erosion plan for assuring minimization of soil erosion and sedimentation, as determined by the County Enforcing Agency. ~~Any other specific requirements of a complete plan as noted in writing on the application form for the commercial or residential soil erosion permit.~~
- k. This could include requesting engineering calculations, product specifications, etc.

Section 4. [RC52] Except for single family developments and/or developments disturbing 1 acre or less, the soil erosion plan for shall be prepared under the direction of a qualified individual, certified in Michigan, unless waived in writing by the County Enforcing Agency. A "qualified individual" is an engineer or landscape architect, or other qualified individual if approved by the CEA. [RC53] However, the County Enforcing Agency may require a plan prepared under the direction of a qualified individual for single family developments and/or developments disturbing 1 acre or less when, in the discretion of the CEA, a qualified individual is needed due to site conditions. All commercial soil erosion permit applications shall contain three (3) sets of plans. The soil erosion plan for residential soil erosion permits will not require preparation under the direction of a professional engineer, certified in Michigan, unless determined necessary by the County Enforcing Agency in writing to the applicant. All residential soil erosion permit applications shall contain one (1) set of plans. A soil erosion plan, for both commercial and residential soil erosion permits, shall be considered complete when all the following have been included on the plan, in accordance with Rule 1703 and this Ordinance:

All temporary and permanent measures proposed in the soil erosion plan shall be installed and maintained in accordance with the standards and specifications of the product manufacturer, the Michigan Department of Environmental Quality "Guidebook of Best Management Practices for Michigan Watersheds", and the Michigan Department of Transportation. If a conflict exists between the standards and specifications, then the enforcing agency or authorized public agency shall determine which specifications are appropriate for the project. [RC54]

Section 5. **Best Management Practices.** The Enforcing Agency shall provide all applicants with information regarding Best Management Practices for soil erosion and sedimentation control. Best Management Practices are aspirational only unless specifically required by this Ordinance, Part 91 and its Rules, or other State, Federal or local law or regulation. [RC55]

Section 6. **Soil Erosion Permit Approval and Issuance.** A soil erosion permit will be issued provided the applicant meets all the requirements of the Act, the Rules, and this Ordinance; and if, in the determination of the County Enforcing Agency, the earth disturbance is designed such to assure minimization of erosion and sedimentation and will not result in or contribute to the soil erosion or sedimentation of the waters of the State and adjoining properties. If the application and soil erosion and sedimentation control plan is approved and a soil erosion permit is issued, the applicant shall be notified by first-class mail. The County Enforcing Agent need not notify by mail if the permit is given to the applicant in person. A soil erosion permit

is issued for six (6) or twelve (12) months, based upon the project, and must be renewed unless the site is stable and the permit is closed by the County Enforcing Agency. The soil erosion permit shall be posted at the site in a location noted in the permit^[RC56], until the site is stable and the permit is closed by the County Enforcing Agency. The soil erosion plan shall be available on-site for inspection upon request by the County Enforcing Agency.

Section 7. Soil Erosion Permit Denial. A soil erosion permit will be denied, or the application required to be modified, when the County Enforcing Agency determines that the application and/or soil erosion and sedimentation control plan as submitted is incomplete, not assuring minimization of soil erosion and sedimentation, will result in or contribute to the soil erosion or sedimentation of the waters of the State and adjoining properties, and is not consistent with the requirements of the Act, the Rules, and this Ordinance. If the application is disapproved, and the permit denied, the County Enforcing Agency shall notify the applicant by certified mail of the reasons for denial and the conditions necessary for approval. The County Enforcing Agency need not notify by mail if the applicant is given written disapproval in person.

[RC57]

Section 8. Soil Erosion Permit Modification. A soil erosion permit may be modified by written order of the County Enforcing Agency at any time. If there are any changes to the scope or character of the project from what was approved in the issued soil erosion permit, including but not limited to the area of disturbance or temporary soil erosion control measures, the permittee must submit these changes to the County Enforcing Agency for approval as a modification of the permit prior to that change occurring. This request shall be in writing and include a revised soil erosion plan reflecting any proposed modifications. If the change is a result of an emergency, and already performed, the permittee shall submit for an after-the-fact approval to the County Enforcing Agency within five (5) days after the change has been made. The County Enforcing Agency shall provide written notification of its determination of the request for permit modification within ten (10) days of receipt of the request. There will be no additional fee for

modification of a permit, unless the area under disturbance is increased.

Section 9. Soil Erosion Permit Renewal. All soil erosion permits must be renewed before expiration unless the County Enforcing Agency determines that the earth disturbance is permanently stabilized and the permit can be closed. If the County Enforcing Agency has not made that determination, the permittee shall make application for renewal at least two (2) weeks prior to the expiration of the permit. The request for renewal shall include the appropriate fee in effect at the time of renewal, and a written description and revised soil erosion plan reflecting any changes to the scope of the activity or other information, since the previous permit was issued. The renewal permit is to be posted on-site with the original permit.

Soil Erosion Permit Transfers.

If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.

The CEA may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.

Whenever a property changes ownership, the soil erosion permit and all responsibilities including conditions of issuance, fees, fines, and penalties owed, shall be transferred to the new landowner. Transfer of the permit shall be made by completing a form developed by the Michigan Department of Environmental Quality and provided by the County Enforcing Agency, with signature of the new landowner, and then filing that completed form with the County Enforcing Agency. There is no fee required for transferring a soil erosion permit. [RC58]

Section 10. Soil Erosion Permit Closure. A soil erosion permit will be closed when the County Enforcing Agency has determined that the earth disturbance has been permanently stabilized. For purposes of this determination, the earth disturbance is considered permanently stabilized when permanent control measures (pavement, rock, grasses or other vegetation and landscaping) are installed in a manner that ensures its resistance to soil erosion, sliding, or other earth movement which prevents soil from entering the waters of the State or onto adjacent properties after project completion. For grass to be considered established sufficiently for permit closure, The Construction Site is considered permanently stabilized when all permanent control measures have been installed, maintenance for the permanent controls has been arranged, vegetation is well established throughout all areas that were disturbed to a degree that ensures their resistance to erosion, slumping, etc., and temporary controls have been removed. It must be at least three (3) inches tall and uniformly cover over 90% of the disturbed area. [RC59]

Section 11. Section 10.

Section 12. Section 11. **Soil Erosion Permit Revocation.** Soil erosion permits may be revoked for any of the following reasons:

- (a) Failure to adhere to conditions of the permit, including the approved SESC plan.
- (b) Misrepresentation or failure to disclose relevant facts in the application or plans as submitted.
- (c) Failure to adhere to the requirements of the Act, the Rules, and this Ordinance that results in the issuance of a Cease and Desist Order.

Notice of permit revocation shall be by certified mail and by posting on-site. A copy of the notice may also be given in person or by facsimile, but will not substitute for the other notice. If a permit has been revoked for any reason, the permit process will begin again and an application, plan, and necessary fees, including re-inspection fees, will have to be submitted. Fees will be based on those in effect at the time of reapplying for a permit. Revocation must be made in accordance with the Administrative Procedures Act[RC60].

Section 13.Section 12. **Soil Erosion Permit Performance Guarantees** [RC61].

Permit performance guarantees may be required by the County Enforcing Agency at the issuance of a permit, including after a Cease and Desist Order has been issued. The performance guarantee shall be in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the County Enforcing Agency to implement and maintain soil erosion and sedimentation controls authorized by the permit, until the site is properly stabilized. All necessary costs and expenses incurred, including the incidental administrative and legal costs, shall be covered through this performance guarantee. At the permittee's choosing, this performance guarantee shall be in the form of cash, certified check, irrevocable bank letter of credit or bond acceptable to the County Enforcing Agency. The remaining balance of the performance guarantee will be returned to the permittee upon a determination by the County Enforcing Agency at a close-out inspection, that the site is permanently stabilized and has met all requirements set forth by the Act, the Rules, this Ordinance, and the issued permit. The remaining balance of the performance guarantee shall be returned within one month of this determination.

ARTICLE VI

Inspections. As specifically allowed under Section 9113(2) of the Act, the County Enforcing Agency may enter at all reasonable times upon any property to conduct on-site inspections to ensure compliance with the Act, the Rules, this Ordinance or any issued permit. 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 the Act, the Rules, this Ordinance, or with an issued soil erosion permit, a Cease and Desist Order and/or any other enforcement action authorized under the Act, the Rules, or this Ordinance may be pursued by the County Enforcing Agency.

ARTICLE VII

Fees. All fees shall be paid to the County Enforcing Agency in accordance with a fee schedule determined by resolution of the Grand Traverse County Board of Commissioners, which shall be amended from time to time.

ARTICLE VIII

Section 1. **Notice of Violation.** If the County Enforcing Agency determines that soil erosion and sedimentation of the waters of the State or adjoining properties has occurred or could reasonably occur in violation of the Act, the Rules, or this Ordinance, the County Enforcing Agency may seek to enforce compliance by notifying the landowner by certified, return receipt requested, of its determination. In addition, the property upon which the violation is occurring will be posted with the notice. The notice shall contain a description of the violation, what must be done to remedy the violation, and specify a time in which to comply with the notice, but not more than five (5) calendar days from mailing of the notice.

In addition, the County Enforcing Agent may require the landowner to obtain a permit and remit fees for the activity, even if the activity causing the violation was otherwise not required to obtain a permit. [RC62]

Section 2. **Compliance; time.** If the landowner has failed to comply with the notice of violation within five (5) calendar days of mailing, the County Enforcing Agency may enter upon the land to construct, implement, and maintain soil erosion and sedimentation control measures in conformance with the Act, the Rules, this Ordinance and the notice, whenever soil erosion and sedimentation of the waters of the State or adjoining properties could reasonably occur or have occurred. However, the County Enforcing Agency shall not expend more than \$10,000 for the cost of the work, materials, labor and administration without prior written notice that the expenditure could exceed

\$10,000. If more than \$10,000 is to be expended, then the work shall not begin until at least ten (10) calendar days after the notice of violation has been mailed.

C. Reimbursement of County Enforcing Agency's Lien for Expenses; Priority; Collection and Treatment of Lien. All expenses incurred by the County Enforcing Agency to bring land into compliance under this Section shall be reimbursed by the landowner. The County Enforcing Agency shall have a lien for the expenses incurred to bring the land into conformance. With respect to single-family or multi-family residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure, pursuant to the Act. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act, being Act 206, Public Act of 1893, as amended.

Section 3. **Cease and Desist.** The County Enforcing Agency may issue a Cease and Desist Order upon finding a violation of the Act, the Rules, or this Ordinance, an issued soil erosion permit, including the soil erosion plan, or an affidavit of compliance. Notice shall be given by certified mail, return receipt requested, and posted on-site. When a Cease and Desist Order is issued, the soil erosion permit or affidavit of compliance is revoked pursuant to Section 1 of Article V.

ARTICLE IX – Injunctive Relief

Notwithstanding any other remedy and penalty provided in the Act, the Rules, or this Ordinance, the County may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent violation of the Act, the Rules or this Ordinance.

ARTICLE X – Violation and Penalties

Section 1. A person who violates Part 91, the Rules or this Ordinance, is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.

Section 2. A person who knowingly violates Part 91, the Rules or this Ordinance or knowingly makes a false statement in an application for a permit or in a Soil Erosion and Sedimentation Control Plan is responsible for the payment of a civil fine [RC63] of not more than \$10,000 for each day of violation. A person who knowingly violates Part 91 after receiving a notice of determination under MCL 324.9112 or 324.9117 is responsible for the payment of a civil fine of no less than

\$2,500 or more than \$25,000 for each day of the violation.[RC64]

Section 3. Enforcement Officer – Any peace officer and any soil erosion and sedimentation control officer designated as such by the Enforcing Agency is authorized to issue a municipal civil infraction for violation of this Ordinance.

ARTICLE XI - Appeals[RC65]

Section 1. **Appeal of Permit Decision; Informal Hearing.**[RC66] If any person [RC67] is aggrieved by a permit decision, a written appeal including the reason for the appeal, which references the applicable section of the Ordinance along with the required fees, if any, may be filed with the Grand Traverse County Construction Code Department within 10 days of the decision. An informal hearing before the Construction Code Director will be scheduled within 5 calendar days of receiving the request. The informal hearing will allow the landowner or designated agent an opportunity to submit additional information or re-emphasize previously submitted data. The Construction Code Director will then review the information and take under advisement any other comments received before making a final decision which shall be made within 5 calendar days after receiving the request, not including the day on which the request is received, and forward this final decision to the landowner or designated agent by first class mail.[RC68]

Section 2. **Appeal of Notice of Violation; Informal Hearing.** If the landowner or designated agent is aggrieved by a compliance and enforcement action made by the county enforcing agency pursuant to this Ordinance; a written appeal including the reason for the appeal, which references the applicable section of the Ordinance along with the required fees, if any, may be filed with the Grand Traverse County Construction Code Department within 24 hours of receiving a notice of violation. If an appeal is filed, an informal hearing will be scheduled within 5 days of the date of the filing. The informal hearing will allow the landowner or designated agent an opportunity to submit additional information or re-emphasize previously submitted data. The Construction Code Director will then review the information and take under advisement any other information received before making a final decision within 5 days of having received the request, and forward this final decision to the landowner and any designated agent in person or by certified mail, return receipt requested.

Section 3. **Standard of Review.** The Construction Code Director shall sustain the decision of the County Enforcing Agency staff unless the Construction Code Director finds, by clear and convincing evidence [RC69] that the decision of the County Enforcing Agency staff was:

- (a) Based upon a mistake(s) of fact and that the correction of that mistake(s) leads to a different result; or,[RC70]
- (b) Based upon a mistake(s) of law and that the correction of that mistake(s) leads to a different result; or,
- (c) 3) Constitutes an abuse of discretion [RC71] and no factual or legal argument provides any support for the County Enforcing Agency staff's position.[RC72]

Section 4. **Appeal – Formal Hearing.** Appeal from an informal hearing of either a permit decision or notice of violation shall be to the Soil Erosion Arbiter and all decisions of the Arbiter shall be final. A formal hearing must be heard and a final decision made within 10 calendar days of the receipt of an appeal from an informal hearing, not including the day on which the appeal is received.

Section 5. **Soil Erosion Arbiter.** The Grand Traverse County Board of Commissioners shall appoint 3 Soil Erosion Arbiters to hear formal appeals. Arbiters shall serve for 3 year terms. and must be qualified as described in Section 8 and will be appointed based upon their level of expertise. Arbiters need not be Grand Traverse County residents. Arbiters for individual appeals shall be selected based upon a rotation that is alphabetical based upon the Arbiter's last name. If the Arbiter selected is unable to hear the appeal within the time periods required under this Article.

Section 6. **Final Decisions.** All decisions of the construction code director or arbiter shall [RC73] be in writing [RC74] and shall include a brief recap of testimony and evidence presented. The decision of the Construction Code Director shall be binding upon the County Enforcing Agency and the Landowner, Designated Agent and/or On- Site Authorized Agent. [RC75]

Section 7. **Administrative Procedures Act.** All appeals shall comply with the requirements of the Administrative Procedures Act.

Section 8. **Qualifications.** The Construction Code Director and any Arbiter hearing any appeal must have a level II certification issued by the Michigan Department of Environmental Quality.

Section 9. Irrespective of the filing of an appeal, the landowner must come into compliance within five days of notice of determination and ensure that there is no discharge off-site or to waters of the state in order to be in compliance with Part 91. An appeal does not put the obligation for compliance on hold. The appeals process does not extend or void the responsibility of the landowner to comply with Part 91, nor does it alleviate the obligations of the Part 91 agency to pursue enforcement remedies necessary to return the site to compliance in a timely manner.

ARTICLE XII – Miscellaneous Provisions

[RC76]

Section 1. **Severability.** The various parts, sections, subsections, paragraphs, sentences, phrases, and clauses of this Ordinance are declared to be severable. If any part, section, subsection, paragraph, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it shall be considered severed from this Ordinance and shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Section 2. **Repeal.** All ordinances or parts of ordinances inconsistent with this Ordinance are repealed.

Section 3. **Effective Date.** This Ordinance shall be effective when notice of adoption is published in a newspaper of general circulation within the County. All unexpired permits issued prior to the adoption of this Ordinance and bonds on file pursuant to those permits shall remain in effect and shall be subject to provisions of this Ordinance.

Commissioners Present: Wheelock, Maxbauer, Crawford, Clous, Lathrop, Kroupa, Johnson

Commissioners Absent:

Ayes:

Nays:

Adopted: _____, 2015

Christine Maxbauer
Chairperson, Board of Commissioners

