

**BERRIEN COUNTY
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE**

ORDINANCE #24

Adopted: September 5, 2013

PREAMBLE

This is an Ordinance to administrate and regulate the proper use and protection of natural resources within Berrien County, namely soils and sedimentation, and related earth change activities; to provide for the administration and enforcement of a soil erosion and sedimentation control program for those areas within Berrien County through the County's designated County Enforcing Agency, excepting those areas of Berrien County where a Municipal Enforcement Agency program or Authorized Public Agency program is in effect, under Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; to establish civil penalties for violations; and to provide for the reimbursement of costs incurred by Berrien County pursuant to this Ordinance and Part 91, Act 451 of 1994, as amended.

ARTICLE 1 – GENERAL PROVISIONS

- 1.1 Title and Headings.** This Ordinance shall be known, and may be cited, as the "Berrien County Soil Erosion and Sedimentation Control Ordinance." All Articles, Sections, and other topical headings are for reference only and shall not be construed as substantive terms of this Ordinance.
- 1.2 Purpose.** This Ordinance is passed for the express purpose of protecting the health, safety, and welfare of the people of Berrien County, it having been determined by the Board of Commissioners that failure to provide adequate regulation and enforcement of earth change activities within Berrien County would constitute a danger to the health, safety and welfare of the people and property of Berrien County by harming the environment through erosion and the unnatural accumulation of sediment.
- 1.3 Authority.** The Berrien County Board of Commissioners adopts this Ordinance pursuant to applicable law and regulations, including but not limited to the provisions of Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("Part 91"), being MCL § 324.9101 *et seq.* of the Michigan Compiled Laws, and the Administrative Rules promulgated by the Michigan Department of Environmental Quality ("MDEQ"), and in particular, Rules 323.1701 to Rule 323.1714 ("Rules").
- 1.4 Severability.** If any provision of Part 91, the Rules, or this Ordinance is declared by a court of competent jurisdictions to be invalid, the invalid provision shall not affect any remaining provisions of Part 91, the Rules, or this Ordinance that can be given effect without the invalid provision. The validity of Part 91, the Rules, or this Ordinance as a whole or in part shall not be affected, other than the provision invalidated.

- 1.5 Other Regulations Repealed.** All other County Ordinances and Policies and parts of Ordinances or Policies, which are inconsistent or conflict with the provisions of this Ordinance, are hereby repealed.
- 1.6 More Restrictive Provisions.** To the extent that any provisions or requirements of 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 2 – DEFINITIONS

Berrien County adopts by reference the definitions contained in Part 91, being MCL § 324.9101, and the Rules, being R. 323.1701, unless expressly given a different meaning by this Ordinance. In addition, the following definitions shall apply in the interpretation and enforcement of this Ordinance:

- **“Agricultural Practices”** means all land farming operations except plowing or tilling of land for the purpose of crop production or the harvesting of crops.
- **“Cease and Desist Order”** means an order that stops only that work relative to a project which is causing a violation of this Ordinance or Part 91 until said violation is corrected.
- **“Certificate of Completion”** means a signed, written statement by the Soil Erosion Control Agent that the specific construction, permitted activities, and inspections have been performed and that such work complies with the applicable requirements of Part 91, the Rules, and this Ordinance.
- **“County”** means the County of Berrien, Michigan.
- **“County Enforcing Agency”** means the officer, office, department, director or other entity of Berrien County, as designated by the Berrien County Board of Commissioners under Section 9105 of Part 91.
- **“Department”** means the Michigan Department of Environmental Quality
- **“Designated Agent”** means a person who has written authorization from a landowner to act on the landowner’s behalf for earth change activity’s on the landowner’s property, including executing an earth change permit application, securing said permit, and other permit or earth change activities.
- **“Earth Change Permit”** or **“Permit”** means a permit issued by the Soil Erosion Control Agent to authorize work to be performed under the provisions of Part 91, the Rules promulgated thereby, and this Ordinance.
- **“Grading”** means to level off to a smooth horizontal or sloping surface.
- **“Landowner”** means a person who fulfills 1 or more of the following requirements:
 - (i) The person owns or holds a recorded easement on the property.
 - (ii) The person is engaged in construction in a public right-of-way in accordance

with sections 13, 14, 15, and 16 of 1925 PA 368, MCL 247.183, 247.184, 247.185, and 247.186.

(iii) The person is engaged in a project that meets all of the following conditions:

(A) The project is related to 1 or more roads, highways, sidewalks, trails, driveways, parking areas, forms of public transit, forms of non-motorized transportation, or boating, including all structures, improvements, features, and lands related to the project.

(B) One or more state agency or local unit of government owns, exercises jurisdiction over, or holds a recorded easement on the property in the area where the earth change will occur.

(C) All state agencies or local units of government that own, exercises jurisdiction over, or have a recorded easement on the property in the area where the earth change will occur grant a permit or written authorization to the person that specifies where the earth

change is allowed to occur.

(D) No state agency or local unit of government that owns, exercises jurisdiction over, or holds a recorded easement in the area where the earth change will occur has control over the project during construction. The control prohibited by this subparagraph includes, but is not limited to, paying for or having a financial interest in the project during construction or directing contractors and other individuals engaged in construction work. The control prohibited by this subparagraph does not consist solely of establishing construction requirements or conducting inspections

- **“On-Site Authorized Agent”** means the person identified on the permit application by a landowner or the designated agent to be authorized and responsible for making decisions on behalf of a landowner.
- **“Permanent Soil Erosion and Sedimentation Control Measures”** means those control measures, which are installed or constructed to control soil erosion and sedimentation and which are maintained after completion of a project or earth change activities under Part 91 or this Ordinance.
- **“SESC Board of Review”** means the appeal panel consisting of three (3) members of the Board of Public Works, including a County Commissioner, and excluding the County Enforcing Agency, whose members maintain comprehensive SESC certification and are appointed by the County Board of Commissioners. The SESC Board of Review will hear and decide formal appeals of the County Enforcing Agency’s decisions under this Ordinance.
- **“Soil Erosion Control Agent”** means a person who has a certificate of training in soil erosion and sedimentation control from the MDEQ, and that is appointed by the Department Head of the County Enforcing Agency to perform the responsibilities for administering and enforcing Part 91, the Rules, and this Ordinance on behalf of the County Enforcing Agency.
- **“Stabilization”** means 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.

- **“Stop Work Order”** means an order that stops all work on a project until any and all violations of Part 91, the Rules promulgated thereby, and this Ordinance are corrected, except for remedial measures to correct the violation.
- **“Temporary Soil Erosion and Sedimentation Control Measures”** means those control measures, which are installed or constructed to control soil erosion and sedimentation during a project or earth change activities under Part 91 or this Ordinance.
- **“Violation”** means a violation of Part 91, the Rules, this Ordinance, or a permit issued thereunder.

ARTICLE 3 – ADMINISTRATION

- 3.1 County Enforcing Agency.** The County Enforcing Agency, as appointed by resolution of the County Board of Commissioners, shall be responsible for administering and enforcing Part 91, the Rules, and this Ordinance for the County.
- 3.2 Soil Erosion Control Agent Training.** The County shall ensure that all Soil Erosion Control Agents, or other individuals responsible for administering the Part 91, the Rules, and this Ordinance within the County Enforcing Agency are properly trained and certified pursuant to Section 9123 of Part 91 (see, MCL § 324.9123).
- 3.3 Jurisdiction.** The County Enforcing Agency shall administer and enforce this Ordinance throughout the County except within the territorial boundaries of a governmental unit that has adopted its own SESC ordinance, and has been designated by the MDEQ as a Municipal Enforcing Agency pursuant to Section 9106 of Part 91, or has been designated by the MDEQ as an Authorized Public Agency pursuant to Section 9110 of Part 91.
- 3.4 Adoption by Reference.** The County hereby adopts by reference and incorporates into this Ordinance as if fully set forth herein Part 91, the Administrative Rules promulgated by the MDEQ, pursuant to Part 91, and in particular, Rules 323.1701 to Rule 323.1714, or as hereafter amended, and duly filed with the Michigan Secretary of State. A copy of Part 91 and the Rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the County Enforcing Agency.
- 3.5 Applications and Documents Made Available.** Earth Change Permit Applications, affidavit forms, fees schedules, change notices, and related documents for earth change activities, containing state prescribed information as required, shall be made available to the public at the County Enforcing Agency, and/or through contact with the Soil Erosion Control Agent.
- 3.6 Permit Fees Schedule.**
- (a) 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 County Board of Commissioners. The County Board of Commissioners may from time to time amend the Fee Schedule .
- (b) Double Fees. All fees shall be doubled if work starts without a valid permit.

3.7 Soil Erosion and Sedimentation Control Fund.

- (a) The Soil Erosion and Sedimentation Control (SESC) Fund is created within the County Treasury.
- (b) The County Treasurer may receive money or other funds from any source for deposit into the SESC Fund, including but not limited to those described in subparts (c) and (d) of this provision. The County Treasurer shall direct the investment of the SESC Fund assets. The County Treasurer shall credit to the SESC Fund interest and earnings from fund investments.
- (c) All fees, cash bonds, money received from an irrevocable letter of credit or a certificate of self-insurance, and reimbursements for expenses incurred by the County Enforcing Agency made payable to the County with regard to Part 91, the Rules or this Ordinance shall be deposited by the County Treasurer into the SESC Fund.
- (d) All fines, costs, or damages received as a result of a violation of Part 91, the Rules or this Ordinance, or settlement or agreement arising from a claim therefrom, shall be deposited by the County Treasurer into the SESC Fund.
- (e) Money in the SESC Fund at the close of the fiscal year shall remain in the fund and shall not lapse to the County General Fund; *provided however*, the County Treasury may transfer money from the SESC Fund to the General Fund by resolution of the County Board of Commissioners.

3.8 Other Governmental Agencies; Building Permits. (see R 323.1711)

- (a) If an earth change is under the jurisdiction of one (1) or more local governmental or county enforcing agencies, in addition to this County, an Earth Change Permit from the County Enforcing Agency is required for the activities under the jurisdiction of this Ordinance.
- (b) Receipt of an Earth Change Permit or waiver from the County Enforcing Agency, issued in accordance with this Ordinance does not automatically relieve the Landowner or Designated Agent of responsibility for obtaining all other necessary permits or approvals from federal, state, county and/or local agencies. Nor does receipt of such an Earth Change Permit or waiver relieve the Landowner from all other obligations under Part 91 and the Rules.
- (c) A local governmental unit within the jurisdictional boundaries of the County, that issues building permits shall notify the County Enforcing Agency immediately upon receipt of a building permit application that includes activities requiring an Earth Change Permit identified in this Ordinance. A building permit shall not be issued without the applicant first obtaining any necessary Earth Change Permits, or waivers in accordance with this Ordinance.
- (d) A local governmental unit within the jurisdictional boundaries of the County, shall not issue a building permit to a person engaged in an earth change if the change

requires a permit under Part 91, the Rules or this Ordinance until the County Enforcing Agency has issued the Earth Change Permit or a waiver.

ARTICLE 4 – EARTH CHANGE ACTIVITIES AND REQUIREMENTS

4.1 In General (see R. 323.1702 & R. 323.1709)

- (a) A Landowner, Designated Agent, On-Site Authorized Agent, or like person or entity shall conduct earth change activity in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation; including but not limited to the design, construction and completion of an earth change activity in a manner that:
 - 1. Limits the exposed area of any disturbed land for the shortest period of time as permitted by Part 91 or as determined by the Soil Erosion Control Agent, whichever is more restrictive.
 - 2. Removes sediment caused by accelerated soil erosion from run-off water before it leaves the site of the earth change activity.

- (b) A Landowner engaged in any earth change activity identified in Part 91 or the Rules (see R. 323.1704) shall plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with Part 91, which effectively reduce accelerated soil erosion and off-site sedimentation, including but not limited to:
 - 1. Utilizing temporary or permanent control measures that address the conveyance of water around, through, or from the earth change area to limit the water flow to a non-erosive velocity.
 - 2. Utilizing temporary or permanent control measures before or upon commencement of the earth change activity and maintains those measures on a daily basis.
 - 3. Removing temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized.
 - 4. Stabilizing the area with permanent soil erosion control measures under approved standards and specifications as prescribed by Part 91, the Rules, and this Ordinance.
 - 5. Completing permanent soil erosion control measures for all slopes, channels, ditches, drains, or any disturbed land area within five (5) calendar days after final grading or the final earth change has been completed. However, if it is not reasonably possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then ensure that the temporary soil erosion and sedimentation control measures are in place and are maintained until permanent soil erosion control measures are in place and the area is stabilized.

- (c) A Landowner, Designated Agent, On-Site Authorized Agent, or like person or entity shall set forth soil erosion and sedimentation control measures in a plan as

prescribed by Part 91, the Rules (see R. 323.1703), and this Ordinance; and shall make said plan available for inspection at all times at the site of the earth change; and shall complete all soil erosion and sedimentation control measures according to said approved plan or operating procedures.

- (d) At the request of the MDEQ, the County Enforcing Agency may be required to file a copy of the submitted plan with the MDEQ.
- (e) A Landowner, Designated Agent, On-Site Authorized Agent, or like person or entity shall obtain an Earth Change Permit containing state prescribed information, as required by Part 91, the Rules (see R. 323.1707), and this Ordinance, and shall make said permit available for inspection at all times at the site of the earth change.

4.2 Soil Erosion and Sedimentation Control Plan (See R. 323.1703).

- (a) A Soil Erosion and Sedimentation Control (SESC) Plan shall be designed to effectively reduce accelerated soil erosion and sedimentation, and shall identify factors that may contribute to soil erosion or sedimentation or both.
- (b) The SESC Plan shall be drawn to a standard engineering scale on sheets not exceeding 24 inches by 36 inches in size, or as may be otherwise directed by the County Enforcing Agency, in the County Enforcing Agency's sole discretion that adheres to permit elements and requirements.
- (c) The SESC Plan shall include, but is not limited to, all of the following:
 - 1. Name, address, and telephone number of the Landowner and also the Designated Agent if the Landowner is not completing the application.
 - 2. A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the County Enforcing Agency. The maps shall include:
 - (i) A legal description of the property where the proposed earth change is to occur;
 - (ii) A site location sketch showing the Landowner's property boundaries and all Waters of the State (as that term is defined in Part 91, MCL 324.9101(20)), and major roads within 500 feet of the property boundary;
 - (iii) All predominant land features, including structures and vegetation on-site and extending 50 feet beyond property boundaries; and
 - (iv) Contour intervals or slope description.
 - 3. A soils survey or a detailed written description of the soil types of the exposed land area contemplated for the earth change.
 - 4. Details for the proposed earth changes including all of the following:
 - (i) A description and the location of the physical limits of each proposed earth change;

- (ii) A description and the location of all existing and proposed on-site drainage and dewatering facilities, including downspouts from eaves troughs and storm and sump leads or discharge points for single family residential sites, if applicable;
 - (iii) The timing and sequence of each proposed earth change on a form approved by the Soil Erosion Control Agent;
 - (iv) The location, description, a schedule of installing and a separate schedule for removing all proposed temporary soil erosion and sedimentation control measures;
 - (v) The location and description of all proposed permanent soil erosion and sedimentation control measures; and
 - (vi) A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures that remain after project completion, including the designation of the person or entity responsible for the subject maintenance.
- (d) The SESC Plan shall include terms or conditions requiring that all maintenance responsibilities for permanent soil erosion and sedimentation control measures shall become a part of any sales or exchange agreement on which the permanent soil erosion control measures and facilities are located.
- (e) The Soil Erosion Control Agent shall determine the required contour information necessary to effectuate the provision of this Ordinance. Single family home construction projects, or similar projects in size, may submit written information concerning the slope of the project area instead of a topographical sketch or map unless the Soil Erosion Control Agent determines, in writing, that a topographical sketch or map is needed.
- (f) The Soil Erosion Control Agent shall review and approve a SESC Plan for compliance with Part 91, the Rules, and this Ordinance. If requested, the Landowner or Designated Agent shall meet with the Soil Erosion Control Agent, to ensure that the SESC Plan meets the provisions of Part 91, the Rules, and this Ordinance.
- (g) A Landowner or Designated Agent who applies for an Earth Change Permit shall incorporate the soil erosion and sedimentation control procedures and measures prescribed by Part 91, the Rules, and this Ordinance into a SESC Plan, and shall apply such procedures and measures to all earth changes identified in said Plan, unless the Landowner or Designated Agent preparing the Plan shows, to the satisfaction of the Soil Erosion Control Agent that altering the control procedures or measures or including other control procedures or measures will prevent accelerated soil erosion and sedimentation during the earth change. (see R. 323.1708). Further, the soil erosion and sedimentation control procedures and measures shall be installed and maintained in accordance with the standards and specification of all of the following:
1. The product manufacturer;

2. The local conservation district, when applicable;
 3. The MDEQ;
 4. The Michigan Department of Transportation; and
 5. The County Enforcing Agency, if applicable, and formally adopted.
- (h) If a conflict exists between the standards or specifications being reviewed or applied under the preceding subsection, then the Soil Erosion Control Agent shall determine which standards or specifications are appropriate for a particular project. (see R. 323.1710).

4.3 Permit Required. (see R. 323.1704)

- (a) Earth Change Permit Required. A Landowner who allows, or engages in a non-exempt earth change activity in this County shall obtain an Earth Change Permit from the County Enforcing Agency before commencing said earth change activity.
- (b) Earth Change Activity; Generally. An earth change activity which requires an Earth Change Permit, unless otherwise exempted, is an earth change in which:
1. Disturbs one (1) or more acres of land; or
 2. Is located within 500 feet of the Waters of the State regardless of the amount of land disturbed; or
 3. Is located within 500 feet of a storm drain or storm drain inlet regardless of the amount of land disturbed.
- (c) Violations Not Exempt. An earth change activity that does not require an Earth Change Permit under this Section is not exempt from enforcement procedures by the County Enforcing Agency, under Part 91, the Rules or this Ordinance, if the earth change activity excluded causes or results in a violation of soil erosion and off-site sedimentation standards as proscribed in Part 91, the Rules, or this Ordinance.

4.4 Permit Exemptions and Waivers. (see, R 323.1705 & MCL §§ 324.9115, 324.9115a)

- (a) Earth Change Permit Not Required. An Earth Change Permit is not required for the following:
1. 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.
 2. 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..
 3. An earth change of a minor nature that is stabilized within twenty-four (24) hours of the initial disturbance and that will not contribute sediment to lakes or streams.

4. Gardening, if the natural elevation of the area is not raised.
5. Post holes for fencing, decks, utility posts, mailboxes and similar applications, if no additional grading or earth change occurs for use of the post holes.
6. The removal of tree stumps, shrub stumps, or roots on residential property not exceeding 100 square feet.
7. 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 Waters of the State has not or will not reasonably occur:
 - (i) Planting of trees, shrubs or other similar plants.
 - (ii) 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.
 - (iii) Seeding or reseeding of lawns closer than 100 feet from the Water of the State if the area to be seeded or reseeded does not exceed 100 square feet.
 - (iv) 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.
 - (v) Seawall maintenance that does not exceed 100 square feet.
8. Plowing or tilling of land for the purpose of crop production or the harvesting of crops. However, all earth changes associated with the activities shall conform to the same standards as if they required an earth change permit.
9. Earth changes associated with the logging or mining industry. However, all earth changes associated with these activities shall conform to the same standards as if they required an earth change permit. The exemption from obtaining a permit under this subsection does not apply to the following:
 - (i) Access roads to and from the site where active logging or mining is taking place.
 - (ii) Ancillary activities associated with logging or mining.
10. A person is not required to obtain a permit for a county enforcement agency or a municipal enforcing agency for 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
11. Earth changes associated with a metallic mineral mining activity regulated under Part 631 or Part 632 of the Natural Resources and Environmental Protection Act,

1994 PA 451, as amended, being MCL § 324.63101 *et seq.* and MCL § 324.63201 *et seq. and MCL § 324.9115*, provided a mining and reclamation plan that contains SESC provisions is approved by the Department under Part 631 & Part 632.

12. Projects undertaken by an Authorized Public Agency or Municipal Enforcing Agency; the Agency shall provide prior written notification to the County Enforcing Agency of each qualified earth change activity.

- (b) Waiver. The County Enforcing Agency may grant a SESC Permit waiver for an earth change activity located within 500 feet of the Waters of the State or within 500 feet of a storm drain inlet after receiving a signed affidavit from the Landowner, that the earth change will disturb less than 225 square feet, and the earth change will not contribute sediment to the Waters of the State, storm drains or storm drain inlets; and further accepting any liability, fines, or costs arising from a failure to conform to the promised conditions of said affidavit.
- (c) Violations Not Exempt. With the exception of the practice of plowing and tilling for crop production, an earth change activity that is exempt from the Earth Change Permit requirement under this Section is not exempt from enforcement procedures by the County Enforcing Agency, under Part 91, the Rules or this Ordinance, if the earth change activity hereby exempted causes or results in a violation of soil erosion and off-site sedimentation standards as proscribed in Part 91, the Rules, or this Ordinance. Furthermore, once enforcement procedures of the County Enforcing Agency commence, an Earth Change Permit shall be required before work may resume.

4.5 Permit Application; Review; Process. (see R 323.1706, R. 323.1707 & MCL§ 324.9112)

- (a) To obtain an Earth Change Permit, a Landowner or Designated Agent shall submit a completed Earth Change Permit Application to the County Enforcing Agency.
- (b) The Permit Application will be considered complete when it is submitted, signed and dated by the Landowner or Designated Agent, and has accompanied therewith a SESC Plan and the required fees, as provided under this Ordinance, as well as any other documents that the Soil Erosion Control Agent may require.
- (c) If the Landowner is a company, corporation, or other business entity, rather than individual person(s), the Permit Application shall include the name and title of the authorized corporate representative of the Landowner.
- (d) If a Designated Agent is signing the Permit Application for the Landowner, the Landowner shall either also sign the Permit Application or provide a letter authorizing the Designated Agent to act on Landowner's behalf, including authority for the Designated Agent to designate an On-Site Authorized Agent.
- (e) The County Enforcing Agency shall approve, disapprove, or require modification to a Permit Application within thirty (30) calendar days after receipt of a completed Permit Application. The County Enforcing Agency shall notify an applicant of approval by first-class mail or hand delivery. If a Permit Application is disapproved, then the Soil Erosion Control Agent shall advise the Applicant by certified mail of its reasons for

disapproval, and conditions required for approval. The County Enforcing Agency need not notify an Applicant of approval or disapproval by mail if the Applicant is given written approval or disapproval of the Permit Application in person. A Permit issued by the County Enforcing Agency to the Applicant either in person or by first-class mail (or other written delivery methods as may be approved by the County Enforcing Agency) constitutes approval.

- (f) Upon a determination by the County Enforcing Agency that a Permit Application and plans meet all of the requirements of Part 91, the Rules, and this Ordinance, as applicable, the County Enforcing Agency shall issue an Earth Change Permit for the proposed earth change activity.

4.6 Permit Deposit as Condition (see MCL § 324.9108)

- (a) As a condition for the issuance of a permit, the County Enforcing Agency may require a permit applicant/holder to deposit with the County Treasurer in the form of cash bond, certified check, or an irrevocable letter of credit, whichever the applicant selects; or a surety bond acceptable to the County Board of Commissioners, in an amount sufficient to assure the installation and completion of such corrective measures as may be required by the County Enforcing Agency.
- (b) An acceptable surety bond shall be executed by the permit applicant/holder and a corporate surety who has authority to do business in the State of Michigan as a surety; and in a form approved by the County Corporate Counsel, or the Corporate Counsel's duly authorized agent, and shall be issued to the County Soil Erosion and Sedimentation Control Fund.
- (c) A deposit of a cash bond, certified check, irrevocable letter of credit or surety bond, shall include and be made on the conditions that the permit applicant/holder shall comply with all of the provisions of Part 91, the Rules and this Ordinance; and all terms and conditions of the Earth Change Permit, including but not limited to the completion of all the work within the time limit specified in the Permit.
- (d) In the event that the permit applicant/holder fails to comply with the terms and conditions of the Earth Change Permit; or fails to comply with the provisions of Part 91, the Rules, or this Ordinance; or fails to implement the approved SESC Plan, the County Enforcing Agency may order such work as necessary to provide for effective soil erosion and sediment control. The permit applicant/holder and the surety executing the surety bond, jointly and severally, or the permit applicant/holder issuing the irrevocable letter of credit or making the cash or certified check deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses, including legal fees, that the County Enforcing Agency incurs in causing any and all work to be done to comply with the provisions of Part 91, the Rules, or this Ordinance.
- (e) In the event of the use or expenditure of a cash bond or certified check deposit by the County Enforcing Agency to bring work into compliance as described in the preceding subsection (d), the County Enforcing Agency shall authorize the County Clerk to refund any unused portion to the person or entity who posted the cash bond or deposited the certified check.

4.7 Permit Application Disapproval; Modification; Revocation; Suspension

- (a) Disapproval. The County Enforcing Agency shall disapprove an Earth Change Permit application where:
1. The proposed work would cause uncontrolled soil erosion and/or off-site sedimentation, or create an unreasonable hazard to persons or property; or
 2. The proposed work would interfere with or damage any public or private property, any existing stream or waterway, or any existing drainage course; or
 3. The Earth Change Permit application is incomplete or does not comply with the provisions of Part 91, the Rules or this Ordinance.
- (b) Modifications. The County Enforcing Agency may provide written authorization for modifications to an Earth Change Permit or the approved SESC Plan upon receiving a request from the Landowner, Designated Agent, or On-Site Authorized Agent. No work in connection with any proposed modification shall take place without the written approval of the Soil Erosion Control Agent. The County Enforcing Agency may, upon recommendation of the Soil Erosion Control Agent or in the County Enforcing Agency's discretion, require new fees prior to providing written authorization if, as a result of the proposed modification, the scope of the earth change activity would change or the proposed modification would require significant outside technical review.
- (c) Revocation; Suspension.
1. Any Earth Change Permit issued under this Ordinance may be revoked or suspended for any of the following reasons:
 - (i) A violation of the condition of the Permit; or
 - (ii) Misrepresentation or failure to fully disclose relevant facts in the Application or in the SESC Plan; or
 - (iii) A change in a condition that requires a temporary or permanent change in the activity; or
 - (iv) The term of the Permit has expired without an authorized extension being obtained; or
 - (v) Authorized work is abandoned or non-occurring at the site for a period of one (1) year.
 2. Notice will be given to the permit holder of a revocation or suspension of an Earth Change Permit in person or by certified mail.
 3. If an Earth Change Permit has been revoked for any reason, a new Earth Change Permit Application accompanied by new plans and fees would be required for any further earth change activities at a particular site.

4.8 Permit Expiration; Extension of Time

- (a) Earth Change Permits shall expire automatically upon the project completion date specified in the Permit. If a project completion date is not specified then the Permit shall expire one (1) year from the Permit issuance date. The duration of an Earth Change Permit shall not exceed a period of three (3) years. Permits shall automatically expire if construction has not commenced within one (1) year of the date of issuance of the Permit.
- (b) If the Landowner is unable to complete the earth change activities prior to the Permit expiration date, the Landowner or Designated Agent may request an extension of time provided the request is made in writing at least ten (10) days prior to the Permit expiration date. The request shall include all relevant necessary sustaining reports, supporting documentation, and fees.
- (c) If an extension of time is granted, the Soil Erosion Control Agent shall issue a written extension, which specifies a revised permit expiration date, not to exceed six (6) months.
- (d) An extension does not release the owner or the surety of a bond, or the person furnishing an irrevocable letter credit, or a person furnishing a cash bond, or a person furnishing a certificate of self-insurance from their responsibilities and/or liabilities thereunder.

4.9 Transfer of Permit

- (a) A permit transfer is required when an ownership interest in the property subject to an Earth Change Permit under this Ordinance is transferred or changed.
- (b) If a property is subject to a permit transfer the transferor holder(s) and transferee holder(s) must submit a completed Transfer Notice to the County Enforcing Agency for review within thirty (30) days prior to the proposed transfer. Failure to submit a completed Transfer Notice, signed by both transferor and transferee in time may result in a delay of transfer, and suspension or revocation of the existing Earth Change Permit.
- (c) A Transfer Notice shall include written notification to the transferee holder of the responsibility to comply with all the obligations and conditions of the Earth Change Permit, and shall have a copy of the Permit attached to the Notice.
- (d) If the property subject to an Earth Change Permit is transferred, both of the following are transferred with the property:
 - 1. The Earth Change Permit, including any and all obligations and conditions set forth therein; and
 - 2. Responsibility for any violations of the Earth Change Permit that exist on the date the property is transferred.

However, if the property subject to an Earth Change Permit which is being transferred is not the entire property being transferred, both of the following are transferred with the parcel:

1. The Earth Change Permit obligations and conditions with respect to that parcel, but not the Permit itself; and
 2. Responsibility for any violations of the Earth Change Permit with respect to that parcel that exist on the date the parcel is transferred.
- (e) The County Enforcing Agency may charge a fee for the transfer of a permit as proscribed herein; *provided however*, the fee shall not exceed the administrative costs of transferring the permit. Any fees collected by the County Enforcing Agency for the transfer of a permit shall only be used for the enforcement and administration of this part by the County Enforcing Agency.

4.10 Permit Notice of Completion; Certificate

- (a) Upon satisfactory execution of the approved SESC Plan and Earth Change Permit conditions and other requirements imposed under this Ordinance, the Landowner or Designated Agent shall file a written notice of completion with the County Enforcing Agency.
- (b) The Soil Erosion Control Agent, or the Soil Erosion Control Agent's designee shall make a final inspection within sixty (60) days of receiving the notice of completion and shall issue a Certificate of Completion and release of any deposited certified check or bond if the permit applicant/holder has satisfactorily complied with the SESC plan, Earth Change Permit conditions and this Ordinance.
- (c) A Certificate of Completion shall not be issued unless the earth change activity is stabilized as set forth in this Ordinance.
- (d) If the project is authorized to be completed in different phases, the Landowner or Designated Agent may submit a written notice of completion for a project phase and the Soil Erosion Control Agent may issue separate certificates of completion and authorize a proportionate release of an applicable bond or certified check for each completed project phase.

ARTICLE 5 – ENFORCEMENT

5.1 Enforcement Generally. (see, R. 323.1712)

As provided in this Ordinance, the County Enforcing Agency may issue a notice of violation, stop work order, cease and desist order, or citation; may suspend or revoke an Earth Change Permit; and/or may seek injunctive relief, upon its finding that there is a violation of Part 91, the Rules, or this Ordinance, or violation of an issued Earth Change Permit, or an approved SESC Plan.

5.2 Injunction; Inspection & Investigation; Interference. (see, MCL § 324.9113)

- (a) Injunction. Notwithstanding the existence or pursuit of any other remedy, the County Enforcing Agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of Part 91, the Rules or this Ordinance.
- (b) Right of Entry and Inspection. The County Enforcing Agency may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of Part 91, the Rules, or this Ordinance; *provided however* that an investigation or inspection under this subsection shall comply with the U.S. Constitution, and Michigan Constitution of 1963.
- (c) Interference with Administration and Enforcement. No person shall unlawfully hinder, oppose or resist the County Enforcing Agency in the discharge of the administration and enforcement of Part 91, the Rules, or this Ordinance. No person shall remove, mutilate or conceal any notice or placard posted by the County Enforcing Agency except by written permission of the County Enforcing Agency.

5.3 Notice of Violation. (see, MCL §§ 324.9117-324.118)

- (a) If the County Enforcing Agency determines that soil erosion or sedimentation of adjacent properties, the Waters of the State, or a storm drain has or will reasonably occur from land in violation of Part 91, the Rules, or this Ordinance, the County Enforcing Agency may seek to enforce a violation by notifying the Landowner and Designated Agent when applicable of its determination by personal delivery or mail with return receipt requested.
- (b) A notice of violation shall contain a description of the violation and what must be done to remedy the violation and shall specify the date to comply with Part 91, the Rules, or this Ordinance.

5.4 Conformance; Costs; Liens (see, MCL §§ 324.9118-324.9120)

- (a) Within five (5) days after a notice of violation has been issued pursuant to this Article, the Landowner subject to Part 91, the Rules, or this Ordinance, shall implement and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules, and this Ordinance.
- (b) Not sooner than the five (5) days for conformance provided under this Article 5 has elapsed, if the condition of the land, in the opinion of the County Enforcing Agency, may result in or contribute to soil erosion or sedimentation of adjacent property, a Water of the State, or a storm drain inlet under the jurisdiction of the County Drain Commissioner's Office, and necessary control measures are not in place, the County Enforcing Agency, or its designee, may enter upon the land and construct, implement, and maintain said necessary control measures, not exceeding a cost of \$10,000.00 for the cost of the work, materials, labor, and administration without prior written notice having been provided in the notice of violation that an expenditure of more than \$10,000.00 may be made.

- (c) If more than \$10,000.00 is to be expended by the County Enforcing Agency or its designee under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.
- (d) The violator shall reimburse the County Enforcing Agency for all expenses incurred by the County Enforcing Agency under Article 5 of this Ordinance to construct, implement, and maintain necessary control measures to bring land into conformance with Part 91, the Rules or this Ordinance.
- (e) The County Enforcing Agency shall have a lien on the subject property for the expenses incurred under this Article 5 of bringing the land into conformance with Part 91, the Rules or this Ordinance; *provided however* with respect to single-family or multi-family residential property only, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure; and 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, P.A. 206 of 1893, as amended (MCL § 211.1 *et seq.*).

5.5 Civil Infractions; Fines and Penalties; Default (*see*, MCL § 324.9121)

- (a) A person who violates Part 91, the Rules, or this Ordinance is responsible for a municipal civil infraction, and may be issued a citation, and ordered to pay a civil fine of not more than \$2,500.00.
- (b) A person who knowingly violates Part 91, the Rules, or this Ordinance, or knowingly makes a false statement in an application for an Earth Change Permit or in a SESC Plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.
- (c) A person who knowingly violates Part 91, the Rules or this Ordinance after receiving a notice of determination or violation under section 9112 or section 9117 of Part 91 (*see*, MCL §§ 324.9112, 324.9117), or this Ordinance (*see*, Sections 5.2 & 5.3) is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.
- (d) Civil fines collected under this section shall be deposited as follows:
 - 1. If the County Enforcing Agency filed the action under this section, with the County Treasurer into the SESC Fund.
 - 2. If the action was filed jointly by the State and the County Enforcing Agency, the civil fines collected hereunder shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies.
- (e) A default in the payment of a civil fine or costs ordered under this Article, or an installment of the fine or costs may be remedied by any means authorized under the Revised Judicature Act, P.A. 236 of 1961, as amended (MCL §600.101, *et seq.*). The court may order a person who violates Part 91, the Rules, or this Ordinance to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

- (f) In addition to a fine assessed under this Article, a person who violates Part 91, the Rules, or this Ordinance may be liable to the State of Michigan for damages for injury to, destruction of, or loss of natural resources resulting from the violation.

ARTICLE 6 – APPEAL PROCEDURES

- 6.1 Compliance Required During Appeal Process.** In order to protect the waters of the state and otherwise satisfy Part 91 and the Rules, an appeal of a decision of the Soil Erosion Control Agent, or County Enforcing Agency as described below does not stay, extend, void or otherwise limit the Landowner’s obligation to comply with Part 91, the Rules, or this Ordinance.
- 6.2 Appeal Step 1; Informal Hearing.** If the Landowner, On-Site Authorized Agent, or Designated Agent is aggrieved by the Soil Erosion Control Agent, or County Enforcing Agency’s decision to deny, revoke, or suspend a permit, a written appeal including the reason for the appeal referencing applicable sections of the Ordinance; a photocopy of any written action; and the required fees may be filed with the County Enforcing Agency within ten (10) calendar days of that decision. If an appeal is filed, an informal hearing with the County Enforcing Agency will be scheduled within ten (10) calendar days from the date of filing the appeal, or within a reasonable time mutually agreed to by the parties. The informal hearing with the County Enforcing Agency will allow the Landowner, On-Site Authorized Agent, or Designated Agent opportunity to submit additional information or re-emphasize previously submitted information. The County Enforcing Agency may issue an opinion at the conclusion of the informal hearing, or may take the matter under advisement. If an immediate decision is not made, within ten (10) calendar days of the informal hearing, the County Enforcing Agency shall forward a decision in writing to the Landowner, or Designated Agent in person or by first class mail. No fee will be charged for a Step 1 appeal.
- 6.3 Appeal Step 2; Formal Hearing.** Where satisfactory resolution is not achieved as a result of the informal hearing (Step 1), the Landowner, On-Site Authorized Agent, or Designated Agent, may, within ten (10) calendar days of the County Enforcing Agency’s Step 1 decision, submit to the County Enforcing Agency a written request for a formal hearing. Upon timely receipt of the notice of appeal, the County Enforcing Agency will submit the record on appeal to the SESC Board of Review. The SESC Board of Review will convene upon request and notice of a formal hearing from the County Enforcing Agency as provided in this section. Board of Review appeal hearings will generally occur at the conclusion of any regularly scheduled Board of Public Works meeting. The County Enforcing Agency will provide written notice to the appealing party(ies) of the date and time scheduled for the Board of Review appeal hearing. The appealing party(ies) and County Enforcing Agency shall each have an opportunity to present their position to the Board of Review during the hearing. An appeal fee will be charged to the appealing party(ies) for a Step 2 appeal.
- 6.4 Standard of Review.** The SESC Board of Review shall sustain the decision of the County Enforcing Agency unless the Board of Review finds, by clear and convincing evidence that the decision:
 - (a) Was based upon a mistake(s) of fact or law and that the correction of that mistake(s) leads to a different result; or

(b) Constitutes an abuse of discretion and no factual or legal argument provides any support for the County Enforcing Agency's position

6.5 Final Decision. At the conclusion of the Board of Review appeal hearing, the Board of Review may issue an immediate decision, or take the matter under advisement. If an immediate decision is not made, within thirty (30) calendar days of the Board of Review appeal hearing, the Board of Review shall forward a final decision in writing to any appealing party(ies). The decision of the SESC Board of Review shall be final and binding upon the County Enforcing Agency, Landowner, On-Site Authorized Agent, Designated Agent, and any other appealing party.

ARTICLE 7 – EFFECTIVE DATE

This Ordinance shall take effect upon review and approval of the MDEQ pursuant to Section 9105 of Part 91 (MCL § 324.9105), and when notice of adoption is published in a newspaper of general circulation within the County. All active permits and bonds issued prior to adoption of revisions of this Ordinance shall remain in effect and shall be subject to provisions of this Ordinance.

Adopted by the Berrien County Board of Commissioners 09/05/2015
Amended by the Berrien County Board of Commissioners 03/15/2018