

KALAMAZOO COUNTY SOIL EROSION AND SEDIMENTATION
CONTROL ORDINANCE

CHAPTER 1: AUTHORITY

The Kalamazoo County Board of Commissioners adopts this Ordinance pursuant to the provisions Part 91 of the Michigan Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, being Sections 324.9101-324.9123a of the Michigan Compiled Laws.

CHAPTER 2: DEFINITIONS

SECTION 2.01: AGRICULTURAL PRACTICES

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

SECTION 2.02: AUTHORIZED PUBLIC AGENCY

“Authorized Public Agency” means a state agency or an agency of a local unit of government authorized under Section 9110 of the Michigan Natural Resources and Environmental Protection Act, being M.C.L. 324.9110, to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by the Authorized Public Agency.

SECTION 2.03: CERTIFICATE OF COMPLETION

“Certificate of Completion” means a signed, written statement by the Soil Erosion Control Agent that the specific construction and inspections have been performed and that such work complies with the applicable requirements of Part 91 of the Michigan Natural Resources and Environmental Protection Act, the General Rules and this Ordinance.

SECTION 2.04: CONSERVATION DISTRICT

“Conservation District” means a conservation district authorized under Part 93 of the Michigan Natural Resources and Environmental Protection Act, being M.C.L. 324.9301-324.9331.

SECTION 2.05: COUNTY AGENCY

“County Agency” means an office, board, commission, department, or other entity of Kalamazoo County government.

SECTION 2.06: COUNTY ENFORCING AGENCY

“County Enforcing Agency” means a county agency or a conservation district designated by the county board of commissioners under M.C.L. 324.9105

SECTION 2.07: COUNTY PROGRAM or COUNTY’S PROGRAM

“County Program” or “County’s Program” means a soil erosion and sedimentation control program established under M.C.L. 324.9105.

SECTION 2.08: DEPARTMENT

“Department” means the Michigan Department of Environmental Quality.

SECTION 2.09: 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.

SECTION 2.10: EARTH CHANGE PERMIT

“Earth Change Permit” means a permit issued by the Soil Erosion Control Agent to authorize work to be performed under the provisions of Part 91 of the

Michigan Natural Resources and Environmental Protection Act, the General Rules and this Ordinance.

SECTION 2.11: GENERAL RULES

“General Rules” means those rules adopted by the Michigan Department of Environmental Quality pursuant to Part 91 of the Michigan Natural Resources and Environmental Protection Act (being M.C.L. 324.9101 et seq.) and duly filed with the Secretary of State.

SECTION 2.12: GRADING

“Grading” means any stripping, excavating, filling, stockpiling or any combination thereof and shall include the land in its excavated or filled condition.

SECTION 2.13: LOCAL ORDINANCE

“Local Ordinance” means an ordinance enacted by a local unit of government under Part 91 of the Michigan Natural Resources and Environmental Protection Act being M.C.L. 324.9101-324.9123a.

SECTION 2.14: MUNICIPAL ENFORCING AGENCY

“Municipal Enforcing Agency” means an agency designated by a municipality under M.C.L. 324.9106 to enforce a Local Ordinance.

SECTION 2.15: MUNICIPALITY

“Municipality” means any of the following:

- a. A city.
- b. A village.
- c. A charter township.
- d. A general law township that is located in a county with a population of 200,000 or more.

SECTION 2.16: PERMITTEE

“Permittee” means any person or entity to whom an earth Change Permit is issued in accordance with this Ordinance.

SECTION 2.17: 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.

SECTION 2.18: SOIL

“Soil” means the natural medium composed of unconsolidated mineral or organic material on the surface of the land.

SECTION 2.19: SOIL EROSION

“Soil Erosion” means the wearing away of land by the action of wind, water, or gravity; or a combination of wind, water, or gravity.

SECTION 2.20: SOIL EROSION CONTROL AGENT

“Soil Erosion Control Agent” means the Kalamazoo County Drain Commissioner or the Drain Commissioner’s duly authorized, and Michigan Department of Environmental Quality certified, representative.

SECTION 2.21: STATE AGENCY

“State Agency” means a principal state department, including state public universities.

SECTION 2.22: STREAM

“Stream” means a river, creek, or other surface water course which may or may not be serving as a drain as defined in Act No. 40 of the Public Acts of 1956, as

amended, being Section 280.1 et seq. of the Michigan Compiled Laws, and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

SECTION 2.23: WATERS OF THE STATE

“Waters of the state” means the Great Lakes and their connecting waters, inland lakes and streams, as defined in the General Rules promulgated under Part 91 of the Michigan Natural Resources and Environmental Protection Act, being M.C.L. 324.9101-324.9123a, and wetlands regulated under part 303 of the Michigan Natural Resources and Environmental Protection Act being M.C.L. 324.30301-324.30323.

CHAPTER 3: GENERAL PROVISIONS

SECTION 3.01: PURPOSE

The Kalamazoo County Soil Erosion and Sedimentation Control Ordinance is intended to protect the residents of Kalamazoo County and the general public by regulating earth change activities which can injure the environment through erosion and the unnatural accumulation of sediment.

SECTION 3.02: JURISDICTION

The Soil Erosion and Sedimentation Control Agent shall administer and enforce this Ordinance throughout all of Kalamazoo County except within the territorial boundaries of a governmental unit that has adopted an Ordinance pursuant to the provisions of Part 91 of the Michigan Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, being Sections 324.9101-324.9123a of the Michigan Compiled Laws.

SECTION 3.03: RIGHT OF ENTRY AND INSPECTION

Where it is necessary to make an inspection to enforce the provisions of this Ordinance, or where the Soil Erosion Control Agent has reasonable cause to believe that there exists upon a premises a condition which is contrary to or in violation of this Ordinance, the Soil Erosion Control Agent or the Soil Erosion Control Agent's representative is authorized to enter upon the premises at reasonable times to inspect or perform the duties imposed by this Ordinance, provided that if the premises be occupied that credentials be presented to the occupant and entry requested. If such premises be unoccupied, the Soil Erosion Control Agent shall first make reasonable efforts to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the Soil Erosion Control Agent shall have recourse to the remedies provided by law to secure entry.

No person shall unlawfully hinder, oppose or resist the Soil Erosion and Sedimentation Control Agent, or the Agent's authorized representative, in the discharge of the duty and the enforcement of this Ordinance.

SECTION 3.04: INTERFERENCE WITH NOTICES

No person shall remove, mutilate or conceal any notice or placard posted by the Soil Erosion and Sedimentation Control Agent except by written permission of the Soil Erosion and Sedimentation Control Agent.

SECTION 3.05: FEE SCHEDULE

The Kalamazoo County Board of Commissioners shall establish the fees charged for services and permit applications identified in this Ordinance by adopting a Resolution setting forth a written Fee Schedule at a regular or special meeting of the Board of Commissioners. The Kalamazoo County Board of Commissioners may revise the Fee Schedule on an annual basis by adopting a written amendment to the

Fee Schedule at the Board of Commissioners' first regular meeting in the month of August.

SECTION 3.06: VALIDITY

The County of Kalamazoo declares that the requirements and the various chapters, parts, sections, and clauses of this Ordinance are severable. If a court of competent jurisdiction determines that any chapter, part, sentence, paragraph, section or clause is unconstitutional or invalid, the remaining chapters, parts, portions and provisions of this Ordinance shall remain in full force and effect.

SECTION 3.07: EFFECTIVE DATE

This Ordinance shall take effect forty-five (45) days after the Kalamazoo County Board of Commissioners adopts the Ordinance at a regular or special meeting of the Board of Commissioners unless the Michigan Department of Environmental Quality has not approved of this Ordinance on that date. If the Michigan Department of Environmental Quality has not approved of this Ordinance forty-five (45) days after its adoption, then the Ordinance shall take effect ten (10) days after its approval by the Michigan Department of Environmental Quality.

SECTION 3.08: REPEAL OF OTHER REGULATIONS

Subject to the provisions of Section 3.09 of this Ordinance, all other County Codes, Ordinances and Regulations and parts of Codes, Ordinances and Regulations, which conflict with the provisions of this Ordinance are repealed. This Ordinance also repeals and replaces the "Soil Erosion and Sedimentation Control Resolution" adopted by the Kalamazoo County Board of Commissioners on December 17, 1974, and amended on August 19, 1997.

SECTION 3.09: INJUNCTIVE PROCEEDING

Notwithstanding the existence or pursuit of any other remedy, the Soil Erosion and Sedimentation Control Agent may maintain an action in a court of competent jurisdiction for the entry of an injunction or other process against any person to restrain, prevent, or correct violations of this Ordinance.

SECTION 3.10: ADOPTION OF THE GENERAL RULES

The County hereby incorporates the “General Rules” in this Ordinance and adopts those “General Rules” by this reference. “General Rules” means those rules adopted by the Michigan Department of Environmental Quality pursuant to Part 91 of the Michigan Natural Resources and Environmental Protection Act (being M.C.L. 324.9101 et seq.) and duly filed with the Secretary of State.

CHAPTER 4: BUILDING PERMITS

SECTION 4.01: A local agency or general law township that issues building permits shall notify the county or local enforcing agency immediately upon receipt of an application for a building permit that requires an earth change which disturbs 1 or more acres or which is located within 500 feet of a lake or stream.

SECTION 4.02: A local agency or general law township shall not issue a building permit to a person engaged in an earth change if the change requires a permit under Part 91 of the Michigan Natural Resources and Environmental Protection Act, or this Ordinance, until the County or local enforcing agency has issued the required state-prescribed permit for the earth change.

CHAPTER 5: EARTH CHANGE PERMITS

SECTION 5.01 Activities Which Require Earth Change Permits

A land owner or designated agent who contracts for, allows, or engages in, an earth change in this County shall obtain an Earth Change Permit prior to commencement of an earth change which:

- a. disturbs one or more acres of land; and/or
- b. occurs within 500 feet of the water's edge of a lake or stream.

A designated agent may secure the Earth Change Permit, but the Earth Change Permit must be in the name of the land owner.

SECTION 5.02: Activities Which Do Not Require Earth Change Permits

- a. Earth Change Permits are not required for the following activities:
 - 1. A beach nourishment project permitted under part 325 of Act No. 451 of the Public Acts of 1994, being M.C.L. 324.32501 et seq..
 - 2. Normal road and driveway maintenance, such as grading or leveling, that does not increase 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. Earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615 of the Michigan Natural Resources and Environmental Protection Act (Part 615), 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. Provided however, that those earth changes shall conform to the same

standards as required for a permit under this Ordinance. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section M.C.L. 324.62506a.

5. Earth changes that take place within 500 feet of a lake, river, or stream, if the land owner provides the Soil Erosion Control Agent with a signed affidavit that:
 - i. The activity involves the disturbance of less than 225 square feet of soil; and,
 - ii. The site of the earth change is stabilized within twenty-four (24) hours of the completion of the Earth Change and The earth change will not contribute sediment to lakes or streams.

6. Metallic mineral mining activity regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions approved by the Michigan Department of Environmental Quality under part 631 of the Michigan Natural Resources and Environmental Protection Act does not require an Earth Change permit under this Ordinance.

7. A person engaged in the logging industry; the mining industry, except for the removal of clay, gravel, sand, peat or topsoil; or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain an Earth Change permit under this Ordinance. Provided, however, that all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this ordinance. The exemption

from obtaining a permit under this subsection does not apply to either of the following:

- i. Access roads to and from the site where active mining or logging is taking place.
 - ii. Ancillary activities associated with logging and mining.
8. Projects undertaken by agencies that have been designated an "Authorized Public Agency" by the Department of Environmental Quality, however the Authorized Public Agency must notify the Soil Erosion Control Agent of each proposed earth change.
- b. While an Earth Change Permit is not required for the activities described in this Section, a person who owns land on which such earth change activities occur shall implement and maintain soil erosion and sedimentation control measures that effectively reduce soil erosion or sedimentation from the land on which the earth change(s) has been made. Further, if the exempted activity causes or results in a violation of this Ordinance, Part 91 of the Michigan Natural Resources and Environmental Protection Act, or the General Rules, the land owner will be subject to the penalties established for a violation of this ordinance, Part 91 of the Michigan Natural Resources and Environmental Protection Act, or the General Rules.

SECTION 5.03 Application for Permit; Pre-Permitting Meeting with Soil Erosion Control Agent

- a. Before commencing any earth change activity which requires an Earth Change Permit, the land owner, or the land owner's designated agent, shall submit an Earth Change Permit application to the Soil Erosion Control Agent.

- b. The land owner, or the land owner's authorized agent, shall, if requested by the Soil Erosion Control Agent, meet with the Soil Erosion Control Agent to ensure that the applicant's Soil Erosion and Sedimentation Control Plan complies with the provisions of this Ordinance.
- c. An authorized public agency is exempt from obtaining a permit from the Soil Control Agent, but the authorized public agency shall notify the Soil Control Agent of each proposed earth change.
- d. The Earth Change Permit application shall be accompanied by a Soil Erosion and Sedimentation Control Plan, the required application fees and any other documents which the Soil Erosion Control Agent may require.

SECTION 5.04 Soil Erosion and Sedimentation Control Plan; Contents

A soil erosion and sedimentation control plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during an earth change and shall identify factors which may contribute to soil erosion or sedimentation or both. The plan shall include, but is not limited to the following:

- a. A location sketch, at a scale of not more than 200 feet to the inch, of the site location and the proximity of any proposed earth change to lakes or streams or the waters of the state.
- b. A boundary survey or legal description of the site.
- c. Name, address and telephone number of the land owner, and developer, applicant or authorized agent.
- d. A plan of the site of a scale of not more than 100 feet to the inch or as otherwise determined by the Soil Erosion Control Agent, showing existing topography at four foot, or less, contour intervals, and also proposed topography at two foot, or

less, contour intervals. Single family home construction projects, or similar projects in size and shape, 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 in order to effectuate the provisions of this Ordinance.

- e. A soil survey map or detailed written description of the soil types of the exposed land area contemplated for the earth change.
- f. Details of the proposed earth change including:
 - 1. A description and the location of the physical limits of each existing and proposed earth changes.
 - 2. A description and the location of all existing and proposed on-site drainage facilities.
 - 3. A completed Timing Sequence Schedule, on a form approved by the Soil Erosion Control Agent, for each proposed earth change.
 - 4. A description, the estimated costs and the location of the physical limits of each proposed temporary soil erosion control measures.
 - 5. A description, the estimated costs and the location of all proposed permanent soil erosion and sedimentation control measures.
 - 6. A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control facilities which remain after project completion, including the designation of the person responsible for the land on which the permanent soil

erosion control measures are located. Maintenance responsibility shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

- g. Any other information required by the Soil Erosion Control Agent.

SECTION 5.05 Minimum Design Standards for Soil Erosion And Sedimentation Control Measures and Facilities

The temporary and permanent soil erosion and sedimentation control measures and facilities shown in the Soil Erosion and Sedimentation Control Plan shall be designed, constructed, completed and maintained so as to comply with all of the following provisions:

- a. Limit the exposed area of any disturbed land for the shortest possible period of time as determined by the Soil Erosion Control Agent.
- b. Remove sediments caused by accelerated soil erosion from the runoff water before it leaves the site of the earth change.
- c. Temporary or permanent facilities designed and constructed for the conveyance of water around, through or from, the earth change area shall limit the water flow to a non-erosive velocity.
- d. Temporary soil erosion control measures and facilities shall be installed before or upon commencement of the earth change activity and maintained in accordance with the standards and specifications of the product manufacturer, the local conservation district, the Michigan Department of Environmental Quality, the Michigan Department of Transportation and this Ordinance. Temporary soil erosion control facilities shall be removed after permanent soil erosion measures have been implemented. All earth change areas shall be graded and stabilized with permanent soil erosion control

measures to conform with current standards and specifications of the Kalamazoo Conservation District.

- e. Permanent soil erosion control measures and facilities shall be installed and maintained in accordance with the standards and specifications of the product manufacturer, the local conservation district, the Michigan Department of Environmental Quality, the Michigan Department of Transportation and this Ordinance. Permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area shall be completed within 5 calendar days after final grading or completion of the final earth change, or as indicated in the approved Timing Sequence Chart. When it is not possible to permanently stabilize a disturbed area after an earth change has been completed or where significant earth change activity ceases, temporary soil erosion control measures shall continue to be maintained and shall be maintained until permanent measures are in place.

SECTION 5.06

Application Review and Permit Procedures

- a. The Soil Erosion Control Agent shall approve, disapprove or require modification of an application for an Earth Change Permit within 30 calendar days following the receipt of the application. If disapproved the applicant shall be advised of all of the reasons for disapproval and conditions required for approval. Notification of approval or disapproval shall be made in writing through certified mail or by personally serving the notification upon the applicant and obtaining the applicant's signed receipt for the notification.
- b. If a permit applicant has met all the requirements of the General Rules, the Michigan Natural Resources and Environmental Protection Act and this Ordinance, the Soil Erosion Control Agent

shall issue a permit for the proposed earth change.

- c. The Soil Erosion Control Agent shall issue the Earth Change Permit on a form which contains state prescribed information.
- d. The Permittee shall keep the Earth Change Permit at the site of the earth change and shall make the Permit easily available for inspection at all times.

SECTION 5.07 Denial of Permit

The Soil Erosion Control Agent shall not issue an Earth Change Permit where:

- a. The proposed work would cause uncontrolled soil erosion and/or sedimentation; or
- b. The work proposed by the applicant will interfere with an existing drainage course in such a manner as to cause damage to any adjacent property; or
- c. The land area for which the work is proposed is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to persons or property; or
- d. The Earth Change Permit application is incomplete or does not comply with the provisions of this Ordinance.

SECTION 5.08 Modification of Earth Change Permit

The Soil Erosion Control Agent may permit modifications to an Earth Change Permit or the approved Soil Erosion and Sedimentation Control plan upon receiving a written application from the Permittee. The Permittee shall include all relevant necessary sustaining reports and supporting documentation with

the modification application. No work in connection with any proposed modification shall take place without the approval of the Soil Erosion Control Agent.

SECTION 5.09 Extension of Time

- a. If the Permittee is unable to complete the earth change work within the specified time in the Earth Change Permit, or if no time is specified then within one year of date the Soil Erosion Control Agent issued the Earth Change Permit, the Permittee may request an extension of time to complete the earth change work.
- b. The Permittee must submit the written application for an extension of time to the Soil Erosion Control Agent at least 10 days prior to the expiration date of the specified time in the Earth Change Permit. The Permittee shall include all relevant necessary sustaining reports, supporting documentation, and fees with the extension application.
- c. If the Soil Erosion Control Agent grants additional time for the completion of the earth change work, the Soil Erosion Control Agent shall issue a written extension which specifies a new completion date.
- d. An extension does not release the owner or the surety on 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.

SECTION 5.10 Responsibility of the Permittee

During earth change work operations the Permittee shall be responsible for carrying out the proposed work in accordance with the approved Soil Erosion and Sedimentation Control plan and in compliance with all the requirements of the permit, Part 91 of the Michigan Natural Resources and Environmental Protection Act being M.C.L. 324.9101 et seq., the General Rules and this Ordinance.

CHAPTER 6: EARTH CHANGE PERMIT; BOND REQUIREMENTS

SECTION 6.01 Surety Bond; Cash Bond; Irrevocable Letter of Credit

- a. The Soil Erosion Control Agent, may as a condition for issuing an Earth Change Permit, require the Permittee to post a cash bond or an irrevocable letter of credit in an amount equal to 100% of the estimated cost of the necessary soil erosion and sedimentation controls with Soil Erosion Control Agent. In lieu of a cash bond or an irrevocable letter of credit, the Earth Change Permit applicant may file a surety bond in the amount of 125% of the estimated cost of the necessary soil erosion and sedimentation controls with the Soil Erosion Control Agent. The surety bond shall be executed by the land owner and a corporate surety with authority to do business in this state as a surety.
- b. The surety bond shall be in a form approved by the County Corporation Counsel, or the Corporation Counsel's duly authorized agent, and shall be issued to the County.
- c. A surety bond, cash bond or irrevocable letter of credit, shall include and be made on, the conditions that the Permittee shall comply with all of the provisions of this Ordinance; all terms and conditions of the permit; and that the Permittee shall complete all work contemplated under the permit within the time limit specified in the permit. If no time limit is specified the project shall be completed within one year of the date of the issuance of the permit.
- d. In the event that the Permittee fails to comply with the terms and conditions of the Earth Change Permit; or fails to comply with the provisions of this Ordinance; or fails to implement the approved soil erosion and sedimentation control, the Soil Erosion Control Agent may order

such work as necessary to provide for effective soil erosion and sediment control. The Permittee and the surety executing the bond or person issuing the irrevocable letter of credit, or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that the County incurs in causing any and all work to be done to comply with this Ordinance. In the case of a cash bond, the Soil Erosion Control Agent shall refund any unused portion to the person who posted the bond.

CHAPTER 7: CERTIFICATE OF COMPLETION

SECTION 7.01 Upon satisfactory execution of all proposed earth change plans and other requirements imposed under this Ordinance, the Permittee shall file a written notice of completion with the Soil Erosion Control Agent. The Soil Erosion Control Agent shall make a final inspection within thirty (30) days of receiving the notice of completion and shall issue a certificate or letter of completion and release of bond if the Permittee has satisfactorily executed all proposed earth change plans and other requirements. If the project is to be completed in different phases, the Soil Erosion Control Agent may issue separate certificates of completion and authorize a proportionate release of a cash bond for each completed phase of the project.

CHAPTER 8: BOARD OF APPEALS; APPELLATE PROCEDURE

SECTION 8.01: Board of Appeals

a. The County Board of Commissioners shall appoint a Soil Erosion and Sedimentation Control Board of Appeals. The Board of Appeals shall be composed of not less than three (3) persons and not more than (5) persons. The County Board of Commissioners shall establish the precise number of members of

the Board of Appeals through the adoption of a Resolution.

- b. The County Board of Commissioners may change the precise number of members of the Board of Appeals on an annual basis.
- c. Terms shall be for three (3) years. When members are first appointed, the appointments may be for less than three (3) years to provide for staggered terms.
- d. The members of the Board of Appeals shall select a chairperson from among themselves and shall adopt By-Laws which establish the method of conducting appeals.
- e. Each member of the Board of Appeals must possess a valid and current Soil Erosion and Sedimentation Control Training Certificate from the Michigan Department of Environmental Quality.

SECTION 8.02: Appeal

Any Earth Change Permit Applicant, Earth Change Permit holder (e.g. a Permittee) and/or the authorized agent of an Earth Change Permit holder who disagrees with a decision of the Soil Erosion Control Agent or the Soil Erosion Control Agent's designated representative in administering this Ordinance, may take an appeal from the decision by requesting that the decision be reviewed by the Board of Appeals. A request for a review before the Board of Appeals must be submitted to the County Corporate Counsel's office, in writing, and within thirty-five (35) days of the date of the Soil Erosion Control Agent's or the Soil Erosion Control Agent's designated representative's decision. The request for a review must contain a photocopy of the written decision and any fee required by the Board of Commissioners.

SECTION 8.03: Hearings; Scheduling; Notice

- a. The Corporate Counsel shall schedule a hearing before the Board of Appeals to

start within twenty-one (21) days after the receipt of the hearing request.

- b. Hearings shall be open to the public and notice of such shall be posted in the principal office of the Soil Erosion Control Agent and the County Clerk at least 24 hours before the scheduled hearing. Such notice shall include the date, time, and location of hearing.

SECTION 8.04: Hearings; Notification

The Corporate Counsel's Office shall serve a Notice of Hearing on all interested parties at least five (5) business days before the scheduled date of the Hearing. The Notice shall include:

- a. A statement of the date, hour, place and nature of the Hearing.
- b. A reference to the particular section(s) of the Ordinance which will be addressed at the hearing.
- c. A short, plain and detailed statement of the matters or violations asserted by the Soil Erosion Control Agent, if applicable. If the Soil Erosion Control Agent cannot provide a detailed statement at the time the first notice is sent to the Respondent, the Soil Erosion Control Agent shall provide a general statement of the issues involved. If the Soil Erosion Control Agent initially provides a general statement, a detailed statement shall be provided as soon as practical.

SECTION 8.05: Decision of the Board of Appeals; Standard of Review

- a. The Board shall issue an oral or written decision within a reasonable and practical amount of time, but in no event, shall it issue an opinion later than twenty-one (21) days after the completion of the Hearing. The Board shall

announce its final decision to all parties at a meeting open to the public.

- b. The Board shall sustain the decision of the Soil Erosion Control Agent unless the Board finds, by clear and convincing evidence that:
 - i. The Soil Erosion Control Agent's decision was based upon a mistake(s) of fact and that the correction of that mistake(s) leads to a different result; or,
 - ii. The Soil Erosion Control Agent's decision was based upon a mistake(s) of law and that the correction of that mistake(s) leads to a different result; or,
 - iii. The Soil Erosion Control Agent's decision constitutes an abuse of discretion and no factual or legal argument provides any support for the position taken by the Soil Erosion Control Agent.
- c. All Board of Appeals decisions, whether oral or written, must include a brief recap of testimony and evidence presented to the Board and the Board's finding of facts. The decision of the Board of Appeals shall be binding upon the Soil Erosion Control Agent and the Applicant unless reversed or modified by a court of competent jurisdiction.

SECTION 8.06: Preparation of an Official Record

The Corporate Counsel's Office shall prepare an official record of all hearings which shall include the following:

- a. Notices, inspection reports, correspondence and conversations.
- b. Questions and offers of proof made during the hearing and the objections and rulings thereon.
- c. Evidence presented.

- d. Matters officially noticed by the Board except matters so obvious that a statement of them would serve no useful purpose.
- e. Proposed findings of fact if they were requested by the Board.
- f. Any decisions, opinions, orders, or findings of fact.

SECTION 8.07: Appeal to Circuit Court

Any party who disagrees with the decision of the Board of Appeals may appeal that decision to the appropriate Circuit Court. Said appeal must be taken within twenty-one (21) days of the entry of the Board of Appeals' decision.

CHAPTER 9: VIOLATIONS; PENALTY

SECTION 9.01 A person who violates this Ordinance is responsible for either of the following:

- a.** If the action is brought by the County or a municipal enforcing agency of a local unit of government that has enacted an ordinance under Part 91 of the Michigan Natural Resources and Environmental Protection Act that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00
- b.** If the action is brought by the state or a County enforcing agency of a County that has not enacted an ordinance under Part 91 of the Michigan Natural Resources and Environmental Protection Act that provides a penalty for violations, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00

SECTION 9.02 A person who knowingly violates any of the provisions of Part 91 of the Michigan Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, being Sections 324.9101-324.9123a of the Michigan Compiled Laws after having received a written notice of determination through registered or certified mail of the existence of the violation and being directed to correct the violation within a specified time, 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.

SECTION 9.03 Any person who knowingly violates any of the provisions of Part 91 of the Michigan Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, being Sections 324.9101-324.9123a of the Michigan Compiled Laws, or knowingly makes a false statement in an application for a Permit, or knowingly makes a false statement in a soil erosion and a sedimentation control plan, is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.

This Ordinance shall take effect on the 2nd day of July, 2002

COUNTY OF KALAMAZOO

Lorenze Wenke

Lorenze Wenke
Chairperson, Kalamazoo County
Board of Commissioners

Date: 7-2-02

Timothy A. Snow

Timothy A. Snow
County Clerk/Register

Date: 7-2-02

