

WASHTENAW COUNTY
GRADING/SOIL EROSION AND SEDIMENTATION CONTROL
ORDINANCE



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ARTICLE I

A. Purpose

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

B. Rules Adopted

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

C. Authority

This ordinance is adopted under the authority granted by Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, being Sections 324.9101 to 324.9123 of the Michigan Compiled Laws Annotated.

D. Designated County Enforcing Agency

The Washtenaw County Soil Erosion and Sedimentation Control Division will be the designated enforcing agency for the County.

E. Objectives

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

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

ARTICLE II

A. Language

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

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

B. Definitions

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

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

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

Authorized Public Agency– a state agency or an agency of a local unit of government authorized by section 324.9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

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

Board of Commissioners– Washtenaw County Board of Commissioners.

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

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

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

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

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

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

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

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

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

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

Local Agency– City, Village, or Township.

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

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

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

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

Municipal Enforcing Agency – an agency designated by a municipality under section 9106 of Part 91 to enforce a local ordinance.

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

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

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

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

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

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

Site– lot or parcel of land or combination of contiguous lots or parcels proposed for development or activity undergoing earth moving.

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

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

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

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

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

Vegetative Cover– grasses, shrubs, trees, and other vegetation which holds and stabilizes soils.

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

ARTICLE III

A. Grading Permits

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

- Earth changes within 500 feet of a surface water's edge and disturbing more than 225 square feet

- Earth changes (including spoils from grading activities) that disturb one (1) or more acres
- Access roads to logging and mining operations
- Ancillary activities associated with logging and mining
- The removal of clay, gravel, sand, peat, or topsoil
- Installation of new ponds or alterations to existing ponds, regardless of size or proximity to surface water
- Transportation facilities, including streets, highways, railroads, airports, common carrier pipelines and mass transit facilities

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

B. Grading Waivers

A Grading Waiver will be required for:

- Earth changes that are over 500 feet from all surface water that disturb less than one (1) acre
- Earth changes within 500 feet of surface water, disturbing less than 225 square feet, and not contributing sediment to surface water

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

C. Exemptions

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

- Earth changes of a minimal nature that are stabilized within 24 hours of the initial earth disturbance
- Plowing and tilling of fields for the purpose of crop production
- Work performed by an Authorized Public Agency (as defined)
- Activities permitted by Municipal Enforcing Agencies
- Grading and leveling of existing roads that does not increase the width or length of the road and will not contribute sediment to lakes or streams

- Logging and mining
- Borings, percolation tests and decks that are stabilized within 24 hours of the initial earth change and disturb less than 225 square feet
- Oil and gas exploration and development

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

D. Approval from Other Governmental Agencies

If a Grading Permit is required, a local agency shall not issue a building permit without the applicant first obtaining a Grading Permit. Grading Permits and waivers issued in accordance with this Ordinance do not relieve the owner of responsibility for obtaining all other necessary permits or approvals from federal, state, county and/or local agencies. If requirements vary, the most stringent requirements shall be followed.

ARTICLE IV

A. Grading Permit Process

All applications for Grading Permits and Waivers are made through:

WASHTENAW COUNTY
Soil Erosion and Sedimentation Control (SESC) Division
705 N. Zeeb Rd.
P.O. Box 8645
Ann Arbor, MI 48107-8645

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

B. Permit Approval

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

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

C. Denial of Permit

Grading Permits shall not be issued where:

- The proposed grading would cause hazards to the public safety and welfare; or
- The work as proposed by the applicant will damage any public or private property or interfere with any existing stream in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any stream or create an unreasonable hazard to persons or property; or
- The land area for which grading is proposed is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazards to persons or property
- Work has not been approved by the local agency

D. Permit Expiration

Grading permits, except those issued for the removal of clay, gravel, sand, peat or topsoil do not expire. Permits will be considered active until final approval from the Soil Erosion and Sedimentation Control Division is given. Grading permits for the removal of clay, gravel, sand, peat or topsoil are good for one year.

E. Permit Revocation

A Grading Permit may be revoked for any of the following reasons:

- Violation of any condition of the permit
- Misrepresentation or failure to disclose relevant facts in the application or plans submitted
- Authorized work is abandoned or suspended for a period of one (1) year

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

ARTICLE V

A. Grading Plans

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

Major Projects

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

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

Minor Projects

- Site location map showing the site and all adjacent properties and proximity to all surface water within 500 feet at a scale no more than 1 inch = 200 feet. If not within 500 feet of surface water, a statement of such must be provided.
 - Location of predominate features including all proposed and existing structures and vegetation on-site and extending 50 feet beyond property lines

- Soil information of site
 - Grade/slope information of site
 - Areas delineated on plan that are to be disturbed
 - On-site drainage facilities
 - Location and types of temporary erosion and sediment control measures including installation and removal
 - Type and location of proposed permanent soil erosion and sediment control measures and details
- Statement of continued maintenance of all permanent erosion and sediment control facilities including designation of party responsible for maintenance
 - Timing and sequence schedule indicating dates for the following:
 - Temporary control measures installed
 - Gravel construction access drive installed
 - Land clearing
 - Final grade/seed
 - Permanent control measures installed and functioning
 - Temporary control measures removed

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

B. Plan Modification

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

C. Standards for Erosion and Sedimentation Control Measures

All grading plans shall include provisions for temporary and permanent erosion and sedimentation control measures and shall be implemented and maintained in accordance with the standards and specifications of the product manufacturer or those in accordance with, but not limited to, the minimum control measures contained in the most recent versions of the State of Michigan's "Guidebook of Best Management Practices for Michigan Watersheds", Oakland County's "Erosion Control Manual" and "Washtenaw County Conservation District Standards and Specifications for Soil Erosion and Sedimentation Control". All earth changes shall limit exposed areas of any disturbed land for the shortest possible time as determined by the Washtenaw County Soil Erosion and Sedimentation Control Division. 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. All disturbed areas shall be stabilized within five (5) days of final grading.

ARTICLE VI

Inspections

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

If upon inspection, existing site conditions are found to be in conflict with Part 91, this ordinance or an approved Grading Permit or plan, a stop work order may be issued. No earth moving shall be done until all violations have been addressed, and/or until revised plans have been submitted, reviewed, approved, and the Grading Permit or plan modified.

ARTICLE VII

Fees

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

ARTICLE VIII

A. Performance Guarantees

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

B. Resource Remediation Fees

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

Resource Remediation Fee satisfies the applicant's requirement for posting a performance guarantee.

C. Notice of Noncompliance

If the County SESC Division determines that soil erosion or sedimentation of adjacent properties or waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or this ordinance, the County SESC Division may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply.

ARTICLE IX

Remedies and Penalties

- (1) A person who violates Part 91 or this ordinance is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.
- (2) A person who knowingly violates Part 91 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 of not more than \$10,000.00 for each day of violation.
- (3) A person who knowingly violates Part 91 or this ordinance after receiving a notice of determination under section 9112 or 9117 of Part 91 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.
- (4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:
 - (a) If a county enforcing agency filed the action under this section, with the county.
 - (b) If an action was filed jointly by the state and a county enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies.
- (5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.
- (6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

ARTICLE X

Right of Appeals

The right of an appeal or the authority to interpret this Ordinance shall be provided by the Washtenaw County Soil Erosion and Sedimentation Control Board of Appeals. All

requests for an appeal of any action related to this Ordinance must be filed within fourteen (14) days of that action. All requests shall be made in writing and include the article number and reason for the appeal.

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

ARTICLE XI

Effective Date

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