

**Kent County Soil Erosion and Sedimentation Control Ordinance
Ordinance No. 12-13-07-123**

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Kent County

Soil Erosion and Sedimentation Control Ordinance

Preamble

An Ordinance to provide for the administration of a soil erosion and sedimentation control program for those areas within Kent County except for those of the county where a Part 91 Municipal Enforcement Agency program or Authorized Public Agency program is in effect, in order to encourage and regulate the proper use and protection of natural resources, to provide for administration and enforcement, to establish civil penalties for violations, and to provide for reimbursement of costs incurred by the County Enforcing Agency pursuant to this Ordinance and to Part 91, Act 451 of 1994, as amended.

Whereas, after careful study of the proposed Soil Erosion and Sedimentation Control (SESC) Ordinance, the Kent County Road Commission has recommended adoption of the Ordinance to the Kent County Board of Commissioners.

Therefore, pursuant to the authority set forth in MCL 46.11(j) and MCL 324.9105(3), the Board of Commissioners of the County of Kent, Michigan, ordains:

Article 1. Short Title

This Ordinance shall be known, and may be cited, as the “Kent County Soil Erosion and Sedimentation Control Ordinance.” All Articles, Sections, and other topical headings are for reference only and shall not be construed to be part of this Ordinance.

Article 2. Authority, Purpose, and Adoption of Rules

2.1. Authority

The Kent County SESC Ordinance is adopted under authority of Part 91 of the Natural Resources and Environmental Protection Act, being Public Act 451 of 1994, as amended (Part 91), (MCL 324.9101 through 324.9123a), within its political boundaries, except for those areas of the county where a SESC Municipal Enforcement Agency program or Authorized Public Agency program is in effect.

2.2. Purpose

The purpose of this Ordinance is to control soil erosion and off-site sedimentation within Kent County by providing for the administration and enforcement of the Kent County SESC Ordinance. All earth change activities under authority of Part 91 shall be in conformance with this Ordinance. No person shall maintain or undertake an earth change governed by this Ordinance, except in compliance with this Ordinance, and pursuant to a SESC permit issued by the County Enforcing Agency if required.

2.3. Incorporation of Rules

The rules promulgated under Part 91 (R323.1701 through 323.1714), as amended from time to time, hereinafter referred to as “Rules” are incorporated into this ordinance by reference. Said rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the Office of the County Clerk and the County Enforcing Agency.

Article 3. Administration and Enforcement

3.1. County Enforcing Agency

The Kent County Road Commission is the County Enforcing Agency responsible for administering and enforcing this ordinance within its political boundaries, except for those areas of the county where a SESC Municipal Enforcement Agency program or Authorized Public Agency program is in effect.

3.2. Relief from Personal Responsibility

The County Enforcing Agency, or any other county employee or officer charged with duties and responsibilities pursuant to this Ordinance, while acting within the scope of their authority, are hereby relieved from all personal liability for damages to persons or property resulting from the exercise or discharge of their duties. Any civil or criminal action brought against an officer or employee of the county, while acting within the scope of authority granted under this Ordinance, may be defended by the legal representative of the County until final termination of proceedings. If a judgment for damages is awarded against the above mentioned officers or employees as a result of a civil action for personal injury or property damage caused while acting within the scope of the individual’s employment or while acting within the scope of authority of this Ordinance, the County of Kent may pay, or compromise, the judgment.

3.3. Duties of the County Enforcing Agency

It shall be the responsibility of the County Enforcing Agency to enforce the provisions of this Ordinance, and in doing so, to perform the following duties:

3.3.1. Review SESC applications and plans: Applications for permits required by this Ordinance shall be submitted to the County Enforcing Agency on the forms provided by the County Enforcing Agency and shall contain all required and/or necessary information to allow the County Enforcing Agency to evaluate the application. The County Enforcing Agency is not required to evaluate incomplete applications or applications submitted without the required or necessary information or supporting documentation. SESC applications and plans will be reviewed in accordance with the rules defined under 5.1.

3.3.2. Issue Permits and Certificates: The County Enforcing Agency shall issue SESC Permits and Notices of Completion when applicable provisions of this Ordinance have been fulfilled.

3.3.3. Maintain Records: Records for active SESC permits shall be available for public inspection during regular business hours. Upon written request, copies of

documents may be furnished at cost to any person consistent with policy of the Board of Commissioners.

3.3.4. Mitigation: The County Enforcing Agency may, but is not required to, conduct such activity as is deemed necessary to remove an immediate threat to environmental resources, property or public safety under Part 91, MCL 324.9119.

3.3.5. Prepare Invoices and Record Liens: Invoices for mitigation expense shall be mailed by certified mail to the owner(s) of the land on which the violation occurred. Pursuant to MCL 324.9120, property liens against the land in violation shall be recorded at the Kent County Register of Deeds for all invoices remaining unpaid thirty (30) days after mailing. The owner of the land shall be responsible for all costs associated with the recording and subsequent release of a lien.

3.3.6. Legal Remedy: The County Enforcing Agency shall have all legal remedies available under Part 91, the Rules, and this Ordinance which include but are not limited to the issuance of a Notice of Violation, a Cease and Desist Order, and/or a municipal civil infraction citation to the property owner, contractor, or individual who is not the property owner and who violates this ordinance. The County Enforcing Agency may also take other legal action deemed appropriate against an individual or the owner of a property in violation.

3.3.7. Official Copies: The County Enforcing Agency shall maintain one official copy of this Ordinance, which shall be available for public inspection during regular office hours.

3.3.8. Inspections: The County Enforcing Agency is empowered to conduct inspections of property in order to properly carry out the enforcement of this Ordinance.

3.3.9. Document Retention: Permits, plans and associated documents for all projects, permitted under this ordinance, may be disposed of two years after the project is completed.

3.4. Interpretation.

The County Enforcing Agency shall have full authority to make interpretations as to the scope and applicability of this Ordinance, including but not limited to determinations of violations, acceptability of plans and sureties, necessity for mitigation, and substantial completion. All such determinations by the County Enforcing Agency are considered final.

3.5. Fees, Fines and Sureties

3.5.1. Fees and Fines

The County Enforcing Agency shall periodically adopt a schedule of fees and fines to cover the cost of administration and enforcement of this Ordinance.

Adjustment of the schedule of fees and fines will not invalidate other provisions of this Ordinance.

3.5.2. Sureties

Financial surety in a form acceptable to the County Enforcing Agency may be required as a condition of a SESC Permit. The amount required may be periodically adjusted by the County Enforcing Agency in conjunction with scheduled review of other administrative fees. Surety is required for all commercial SESC permits.

3.5.3. Return of Surety

Unused portion of sureties shall be returned upon successful completion of a permitted activity and issuance of the Notice of Completion by the County Enforcing Agency.

Article 4. Definitions

4.1. Definitions

The County hereby adopts by reference the definitions contained in Part 91 and the Rules. In addition, the following definitions shall apply in the interpretation and enforcement of this ordinance:

4.1.1 Cease and Desist Order. An order that stops the earth work on a project due to a violation of this Ordinance or Part 91 until said violation is corrected.

4.1.2. County Enforcing Agency (CEA). An agency designated by the Kent County Board of Commissioners pursuant to Part 91 to be responsible for the administration and enforcement of Part 91 and this ordinance.

4.1.3. Enforcing Agent. A person designated by the County Enforcing Agency to carry out Part 91 and the provisions of this ordinance.

4.1.4. Kent County Road Commission. The County Agency responsible for administration and enforcement of this ordinance in the name of the County of Kent, and including agents acting on behalf of or appointed by the Kent County Road Commission for administration and enforcement of this Ordinance.

4.1.5. Mitigation. Actions taken by the County Enforcing Agency to temporarily or permanently bring a parcel of land into compliance with this ordinance.

4.1.6. Notice of Completion. A final site inspection report will be issued by the County Enforcing Agency, indicating that specific construction has been completed, inspected and found to be in compliance with all aspects of this Ordinance and Part 91.

4.1.7. Notice of Intent to File Lien. Written notice to the owner of a property of intent to file a property lien to secure repayment of mitigation expense, including

legal expense associated with a particular mitigation effort. Outstanding liens on property will be collected according to Article 7.

4.1.8. Notice of Intent to Mitigate. Notice to the owner of a property in violation of this Ordinance of intent to conduct mitigation to bring the site into compliance with this Ordinance and Part 91.

4.1.9. Notice of Taking Action. Legal notice to the owner of a property in violation of this Ordinance of action already taken to remove an immediate threat to natural resources, property or public safety.

4.1.10. Notice of Violation (NOV). Written notice to the owner of a property that activity at that site is in violation of this Ordinance and Part 91. The Notice of Violation shall contain a description of the violation, what must be done to remedy the violation, and the time frame in which such corrective action must be taken.

4.1.11. Part 91. Part 91, Soil Erosion and Sedimentation Control of the Natural Resource and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended.

4.1.12. Permittee. The landowner whose property the earth change is being conducted on.

4.1.13. SESC. Abbreviation for “Soil Erosion and Sedimentation Control”.

4.1.14. Stabilization. The proper placement, grading and/or covering of soil or land surface to insure resistance to soil erosion, sliding or other earth movement.

4.1.15. Stop Work Order. An order that stops all work on a project until any and all violations of this Ordinance or Part 91 are corrected, except for remedial measures to correct the violation.

4.1.16. Waters of the state. The Great Lakes and their connecting waters, inland lakes, streams and wetlands defined under Part 303 as amended.

4.1.16.1. "Lake" means the Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, 1 acre. "Lake" does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water.

4.1.16.2. "Stream" means a river, creek, or other surface watercourse which may or may not be serving as a drain, as defined in the drain code, 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.

Article 5. Application, Plan, and Permit

5.1. Application

A person shall not maintain or undertake an earth change governed by this Ordinance, except in compliance with Part 91 and this Ordinance. The SESC Permit Application form and SESC Permit form shall contain all information required by Part 91 and this Ordinance. An Application, together with instructive information as deemed appropriate, shall be provided at no cost to each applicant by the County Enforcing Agency. The County Enforcing Agency shall approve or deny an application for a SESC permit within 30 days after the filing of a complete application for a SESC permit and the payment of the appropriate fees and sureties.

5.2. SESC Plan

A person shall prepare a soil erosion and sedimentation control plan for any earth change identified under 5.3.1. A person shall design the plan to effectively reduce accelerated soil erosion and sedimentation and shall identify factors that may contribute to soil erosion or sedimentation, or both. The plan shall include, but not be limited to, all of the following:

- 5.2.1. 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. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes, streams, regulated wetlands, or all; predominant land features; and contour intervals or slope description.
- 5.2.2. A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- 5.2.3. Details for proposed earth changes, including all of the following:
 - 5.2.3.1. A description and the location of the physical limits of each proposed earth change.
 - 5.2.3.2. A description and the location of all existing and proposed on-site drainage and dewatering facilities.
 - 5.2.3.3. The timing and sequence of each proposed earth change.
 - 5.2.3.4. The location and description for installing and removing all proposed temporary soil erosion and sediment control measures.
 - 5.2.3.5. A description and location of all proposed permanent soil erosion and sediment control measures.

5.2.3.6. A program proposal for the continued maintenance of all permanent soil erosion and sediment control measure that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

5.3. Permit

5.3.1. Permits Required: A landowner or designated agent who contracts for, allows, or engages in, an earth change within the jurisdiction of the County Enforcing Agency shall obtain a SESC Permit from the County Enforcing Agency before commencing an earth change which disturbs 1 or more acres of land or which is within 500 feet of the water's edge of a lake or stream defined under 4.1.16, unless exempted in 5.3.2.

An earth change activity that does not require a permit under 5.3.2 of this Ordinance is not exempt from enforcement procedures under part 91 or this Ordinance, if the activity exempted by 5.3.2 of this Ordinance causes or results in a violation of part 91 or this Ordinance.

5.3.2. Permit Exemptions: All SESC permit exemptions are detailed in sections 9115 and 9115a of Part 91, and Rule 323.1705.

5.3.3. Permit Expiration, Extension, and Termination

5.3.3.1 Expiration: SESC Permits shall expire on the date indicated on the permit. The holder of a valid permit must request an extension of coverage, if necessary, at least 10 business days prior to expiration date. Any such request must be accompanied by all applicable extension fees, if any.

5.3.3.2 Construction Not Begun: A SESC Permit will automatically terminate if construction has not commenced within six (6) months of the date of issuance.

5.3.3.3 Application after termination: A new plan and application, with fees, are required to obtain a SESC Permit for any site where a permit has been terminated for any reason.

5.3.4. Permit Suspension, Revocation and Reinstatement: A SESC permit issued under this Ordinance may be revoked or suspended at the discretion of the County Enforcing Agency and may not be the basis for any further work on a project until the permit is reinstated by the County Enforcing Agency following a determination that the reasons for the suspension or revocation have been resolved to the satisfaction of the County Enforcing Agency. Once one of the factors outlined below is established by the County Enforcing Agency, the decision whether to suspend or revoke a permit shall be within the discretion of

the County Enforcing Agency. A SESC permit may be suspended or revoked for any of the following reasons:

5.3.4.1. A violation of a condition of the SESC Permit, including the approved SESC plan.

5.3.4.2. Misrepresentation or failure to fully disclose relevant facts in the application or plan.

5.3.4.3. A change in land ownership without written notification to County Enforcing Agency.

5.3.4.4. Permitted work already in progress is abandoned or suspended for a period of six months.

Article 6. Enforcement

6.1. Enforcement

This Ordinance shall be enforced by the County Enforcing Agency. The County Enforcing Agency may use any enforcement method or technique allowed by Part 91 including but not limited to the issuance of NOV that may or may not allow for time to correct the violation prior to any further or additional enforcement actions, citations, civil infractions, stop work orders, cease and desist orders, or may suspend or revoke a SESC Permit upon finding that there is a violation of Part 91 or this Ordinance, and may pursue such legal action as may be necessary to correct a violation including but not limited to seeking an injunction to restrain or prevent violations of this Ordinance or Part 91.

6.2. Municipal Civil Infractions; Authorized Enforcement Officials; Violation Bureau

6.2.1. Municipal Civil Infractions.

Violation of this Ordinance shall be a municipal civil infraction, as authorized under Chapter 87 of 1961 PA 236, as amended, and other applicable laws. A violation includes any act that is prohibited or made or declared to be unlawful, and any omission or failure to act where the act is required by this Ordinance. Each day that a violation exists constitutes a separate infraction.

6.2.2. Authorized Enforcement Officials.

Kent County Road Commission Weighmaster Officers, Kent County SESC Enforcing Agents, and deputies of the Kent County Sheriff's Office are authorized to issue notice of violations, cease and desist orders, stop work orders, and municipal infractions for violations of this Ordinance.

6.2.3. Municipal Civil Infractions Violations Bureau.

The Municipal Civil Infractions Violations Bureau, for disposition of violation notices issued under this Ordinance, shall be located at the Kent County Road Commission, 1500 Scribner Avenue, NW, Grand Rapids, MI 49504.

6.3. Violations and Penalties; Injunction

6.3.1. A person who violates this Ordinance or any NOV, cease and desist order, or stop work order issued under this Ordinance, is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not less than \$250.00, and not more than \$2,500.00, plus all costs of enforcement including court costs and attorney fees for each infraction.

6.3.2. A person who knowingly makes a false statement in an Application or in a SESC plan is responsible for a civil fine of up to \$10,000.00 for each day of violation, plus costs of enforcement including court costs and attorney fees.

6.3.3. A person who knowingly continues to violate this Ordinance after receiving a NOV is responsible for payment of a civil fine of not less than \$2,500.00 nor more than \$25,000.00 for each day the violation continues to exist, plus costs of enforcement including court costs and attorney fees.

6.3.4. A default in payment of a civil fine or costs ordered under this section may be remedied by any means authorized under the Revised Judicature Act of 1961, being sections 600.101 to 600.9948 of the Michigan Compiled Laws as amended.

6.3.5. In addition to any fines and costs assessed under this section, a person who violates this Ordinance is liable to the State of Michigan for any damages for injury to, destruction of, or loss of natural resources resulting from the violation.

6.3.6. Notwithstanding the existence or pursuit of any other remedy, the County may maintain an action in a court of competent jurisdiction for monetary damages and may request an injunction or other process against a person to restrain or prevent violations of this Ordinance.

6.4. Enforcement Costs and Fines

6.4.1. Costs of Enforcement.

The County Enforcing Agency shall maintain a record of all expenses relative to the enforcement of this Ordinance. Costs of Enforcement specifically include but are not limited to all investigative costs, court costs (including witness fees), and legal or attorney fees.

6.4.2. Fines.

Fines levied and paid pursuant to legal action undertaken by the County Enforcing Agency shall be deposited with the County, and shall be used for enforcement of this Ordinance. Landowners, individuals and contractors undertaking an earth change in violation of this Ordinance or Part 91 are subject to the penalties prescribed herein.

Article 7. Reimbursement for Expense

7.1. Reports

It shall be the duty of the County Enforcing Agency to report to the Board of Commissioners, no later than the last Wednesday in September of each year, all unpaid property liens filed in conjunction with this Ordinance.

7.2. Assessment

It shall be the duty of the County Treasurer to place on the winter tax statement of each property for which there is an amount outstanding the full amount of the outstanding lien.

Article 8. Severability.

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Article 9. Repeal

All ordinances in conflict are repealed only to the extent necessary to give this Ordinance full force and effect.

Article 10. Savings Clause

This Ordinance shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Ordinance takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent if this Ordinance had not been adopted.

Article 11. Effective Date _____ 2007

This Ordinance shall take effect 30 days following its acceptance by the Kent County Board of Commissioners and shall be published in a newspaper of general circulation in Kent County. This ordinance is also subject to MDEQ approval.