

## ***Part C: Soil Erosion and Sedimentation Control Ordinance***

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## SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

An Ordinance to provide for soil erosion and sedimentation control within the boundaries of Livingston County; definitions; application requirements; grading/soil erosion and sedimentation control permits; soil erosion and sedimentation control plans; inspections; building and other permits; penalties; enforcement; construction; severability; and repeal.

### THE PEOPLE OF THE COUNTY OF LIVINGSTON, MICHIGAN, DO ORDAIN:

#### Article 1. Purpose and Authority.

Deeming it advisable in the interest of preventing environmental harm caused by sedimentation and erosion; and to provide for, and as authorized by, the orderly and uniform administration of the soil erosion and sedimentation control provisions of the State of Michigan and in particular, Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended, being Sections 324.9101-324.9123a of the Compiled Laws of 1948 (MSA 13A.9101-13A.9123a), and the Administrative Rules promulgated by the Michigan Department of Environmental Quality ("MDEQ") and in particular, Rule 323.1701 to Rule 323.1714; the County of Livingston, Michigan, does hereby adopt the following Ordinance:

#### Article 2. Ordinance Title.

The title of this Ordinance shall be the Soil Erosion and Sedimentation Control Ordinance.

#### Article 3. Definitions.

**ACCELERATED SOIL EROSION:** the increased loss of the land surface that occurs as a result of human activities.

**ACCEPTABLE EROSION AND SEDIMENT CONTROL PROGRAM:** the activities of a county or local enforcing agency or authorized public agency that are conducted in accordance with the Act and the Rules regarding staff training, developing and reviewing plans, issuing permits, conducting inspections, and initiating compliance and enforcement actions to effectively minimize erosion and off-site sedimentation.

**ACT:** Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.

**ADMINISTRATIVE POLICY:** administrative guidelines to the Ordinance.

**AUTHORIZED LOCAL OFFICIAL:** the Chief Deputy Drain Commissioner or other personnel of Livingston County legally authorized to issue municipal civil infraction citations.

**CHIEF DEPUTY DRAIN COMMISSIONER:** the person designated by the Livingston County Board of Commissioners as one of the persons responsible for enforcing the Act, Rules and this Ordinance in the County.

COUNTY: the County of Livingston, Michigan.

COUNTY AGENCY: an officer, board, commission, department, or other entity of county government.

COUNTY DRAIN: drains established and/or constructed pursuant to the Michigan Drain Code, Act 40 of the Public Acts of 1956, as amended.

COUNTY ENFORCING AGENCY: the Livingston County Drain Commissioner's Office, as designated by the Livingston County Board of Commissioners.

DEPUTY DRAIN COMMISSIONER: a person designated by the Livingston County Board of Commissioners as one of the persons responsible for enforcing the Act, Rules and this Ordinance in the County.

DESIGNATED AGENT: a person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name.

DISTRICT COURT: 53rd Judicial District Court.

DRAIN: a drain that is a County Drain or a Storm Drain, as defined in this section.

DRAIN COMMISSIONER: a person designated by the Livingston County Board of Commissioners as one of the persons responsible for enforcing the Act, Rules and this Ordinance in the County.

DRAIN COMMISSIONER'S OFFICE: the Livingston County Drain Commissioner or his representative.

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. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

LAKE: 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, (one) 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.

LANDOWNER: the person who owns the property or who holds a recorded easement or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of Act No. 368 of the Public Acts of 1925, as amended, who is issued the grading/soil erosion and sedimentation control permit.

MAJOR PROJECTS: earth changes that meet or exceed one (1) acre for commercial, industrial and/or residential subdivision projects. For single family projects, earth changes exceeding 600 square feet which require excavation to a depth of 42 inches or greater below existing grade.

MINOR PROJECTS: earth changes that are less than one (1) acre for commercial, industrial and/or residential subdivision projects. For single family projects, earth

changes that are less than 600 square feet which require excavation to a depth less than 42 inches below existing grade.

**MUNICIPALITY:** a city, village, charter township, or general law township located in a county with a population of 200,000 or more.

**MUNICIPAL CIVIL INFRACTION:** an act or omission that is prohibited by the Act, the Rules and/or this Ordinance, and for which civil sanctions including without limitation, fines, damages, expenses and costs may be ordered as authorized by Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended.

**MUNICIPAL CIVIL INFRACTIONS BUREAU** (hereinafter referred to as the Municipal Civil Infractions Bureau” or the “Municipal Civil Infractions Violations Bureau”): the Livingston County Municipal Civil Infractions Violations Bureau, as established by the Livingston County Municipal Civil Infraction Ordinance, pursuant to Resolution No. 202-045 of the Livingston County Board of Commissioners.

**MUNICIPAL CIVIL INFRACTION CITATION:** a written complaint or ticket to appear in District Court upon which an authorized local official records the occurrence or existence of one (1) or more violations of the Act, the Rules and/or this Ordinance by the party cited.

**MUNICIPAL CIVIL INFRACTION NOTICE:** a notice, other than a municipal civil infraction citation, directing the landowner to appear at the Municipal Civil Infractions Bureau and to pay the fine prescribed by this Ordinance for the violation of this Ordinance.

**NON-EROSIVE VELOCITY:** a speed of water movement that is not conducive to the development of accelerated soil erosion.

**PERMANENT SOIL EROSION AND SEDIMENTATION CONTROL MEASURES:** control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

**POND:** a natural or artificial body of standing water smaller than a lake, i.e. less than one (1) acre.

**RULES:** the administrative rules promulgated by the Michigan Department of Environmental Quality (MDEQ), pursuant to the Act, being Rules 323.1701 to 323.1714.

**SEDIMENT:** solid particulate matter, including both mineral and organic matter, that has been deposited in water, 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.

**SEDIMENT BASIN:** a naturally occurring or constructed depression used for the sole purpose of capturing sediment during or after an earth change activity.

**SOIL EROSION:** the wearing away of land by the action of wind, water, gravity, or any combination thereof.

**STABILIZATION:** the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.

**STATE:** State of Michigan.

**STORM DRAIN:** a conduit, pipe, natural channel, or human-made structure which serves to transport storm water runoff.

**STORM WATER RETENTION BASIN:** an area which is constructed to capture surface water runoff and which does not discharge directly to a lake or stream through an outlet. Water leaves the basin by infiltration and evaporation.

**STREAM:** a river, creek, or other surface 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, 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.

**TEMPORARY SOIL EROSION AND SEDIMENTATION CONTROL MEASURES:** interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.

**VIOLATION:** an action which is prohibited by the Act, the Rules and/or this Ordinance. A violation shall include any omission or failure to act where the action is required by the Act, the Rules, and/or this Ordinance.

**WATERS OF THE STATE:** the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated by Michigan law and as defined in this Ordinance.

**WETLAND:** land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is any of the following:

(i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river

(ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than five (5) acres in size.

(iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and five (5) acres or less in size if the department of natural resources determines that protection of the area is essential to the preservation of the natural resources of the State from pollution, impairment, or destruction and the department of natural resources has so notified the owner; except this subparagraph may be utilized regardless of wetland size in a county in which subparagraph (ii) is of no effect; except for the purpose of inventorying, at the time.

**Article 4. Assumption and Enforcement of the Act.**

The County hereby assumes responsibility for the administration and enforcement of the Act and the Rules within its political boundaries. This Ordinance incorporates by reference the Rules promulgated under this Act and other matters necessary for the proper enforcement of soil erosion and sedimentation control issues in the County.

**Article 5. Enforcing Agency.**

In accordance with the Act, the Drain Commissioner's Office of the County is hereby designated as the County Enforcing Agency to discharge the responsibilities of the County under the Act and the Rules and this Ordinance.

**Article 6. Grading/Soil Erosion and Sedimentation Control Application For Permit, Waivers, and Soil Erosion and Sedimentation Control Plan Requirements.**

- A. Application Required: An application must be submitted if a grading/soil erosion and sedimentation control permit is required, as set forth in Article 6.C.

Soil erosion and sedimentation control plans as set forth in Article 6.E. shall be included with the applications.

Applications are made through:

Livingston County Drain Commissioner's Office  
Soil Erosion and Sedimentation Control Program  
2300 E. Grand River, Suite 105  
Howell, Michigan 48843-7581

- B. Grading/Soil Erosion and Sedimentation Control Permit Waiver: Earth change activities that are (1) over 500 feet from the waters of the State and (2) that measure under one (1) acre do not require a grading/soil erosion and sedimentation control permit. Individuals conducting earth change activities that do not require a permit will be required to sign an affidavit attesting to the extent of the earth change and its proximity to the waters of the State.

A grading/soil erosion and sedimentation control permit waiver issued in accordance with this Ordinance does not relieve the landowner, designated agent, or developer of responsibility for controlling erosion and sedimentation. A permit waiver shall not be construed as an exemption from enforcement procedures pursuant to the Act, the Rules or this Ordinance, if the activity caused or resulted in a violation of the Act, the Rules or this Ordinance. A permit waiver shall be available for inspection at the site of the earth change and must be required to be posted on-site and clearly visible from the road.

- C. Grading/Soil Erosion and Sedimentation Control Permit Required

A grading/soil erosion and sedimentation control permit shall be required for a landowner, who contracts for, allows, or engages in an earth change in this County. An application must be submitted and a grading/soil erosion and

sedimentation control permit must be obtained from the Drain Commissioner's Office prior to engaging in the following:

- (1) Commencement of an earth change which disturbs one (1) or more acres of land;
- (2) Engaging an earth change within 500 feet of the waters of the State, unless otherwise exempted in the Act, the Rules or this Ordinance;
- (3) Any other activity not specifically exempted under Articles 6.B. and 6.D.

Permits shall be available for inspection at the site of the earth change and are required to be posted on-site and clearly visible from the road. Any unauthorized work shall be considered a violation of this Ordinance regardless of any later action taken toward compliance. Approved Plans must be available on-site for commercial, industrial, and residential subdivision projects.

A person who 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 as set forth in Article 16.C.

D. Grading/Soil Erosion and Sedimentation Control Application and Permit Not Required

Neither an application, a grading/soil erosion and sedimentation control permit, nor a permit waiver is required for any of the following:

- (1) 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.
- (2) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams.
- (3) 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 Natural Resources and Environmental Protection Act, if the application for a permit to drill and operate under part 615 of the Natural Resources and Environmental Protection Act contains a soil erosion and sedimentation control plan that is approved by the department of environmental quality under part 615 of the Natural Resources and Environmental Protection Act. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multi source commercial hazardous waste disposal well as defined in section 62506a of the Natural Resources and Environmental Protection Act.

- (4) A person engaged in the logging industry, mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops. This exemption from obtaining a permit does not include either a) access roads to and from the site where active mining or logging is taking place or b) ancillary activities associated with logging and mining. Mining does not include the removal of clay, gravel, sand, peat or topsoil; these activities require a soil erosion and sedimentation control permit.

The landowner, designated agent, or contractor shall remain responsible for controlling erosion and sedimentation. A permit exemption shall not be construed as an exemption from enforcement procedures pursuant to the Act, the Rules or this Ordinance, if the activity caused or resulted in a violation of the Act, the Rules or this Ordinance.

E. Soil Erosion and Sedimentation Control Plan Requirements

A person who is required to obtain a grading/soil erosion and sedimentation control permit as set forth in Section C. above shall prepare or have prepared a soil erosion and sedimentation control plan for all projects. The soil erosion and sedimentation control plan shall be prepared under the direction of a professional engineer, certified in Michigan, unless waived in writing by the Drain Commissioner's Office. Plans for major or minor single family permits are not required to be prepared by a professional engineer. The layout shall be drawn to a scale of not more than 1" = 100'. All applications must contain two (2) sets of plans.

The plan shall include, but not be limited to, the following:

- (1) Name, address, and telephone numbers of the landowner, developer, and petitioner, if different;
- (2) Legal description of the affected parcel of land;
- (3) A map or maps at a scale of not more than 100 feet to the inch or as otherwise determined by the Drain Commissioner's Office. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes, streams, or both; predominant land features; and contour intervals or slope description.
- (4) A soil survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- (5) Details for 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.



- (iii) The timing and sequence of each proposed earth change.
- (iv) The location and description of installing and removing all proposed temporary soil erosion and sediment control measures.
- (v) A description and the location of all proposed permanent soil erosion and sediment control measures.
- (vi) A program proposal for the continued maintenance of all permanent soil erosion and sediment control measures 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.

F. Transfer of Grading/Soil Erosion and Sedimentation Control Permit

Upon receipt of a Grading Permit Transfer Application, the Drain Commissioner's Office will perform an inspection of the site. If the site is not in compliance, the request for a transfer will be denied. If the site is in compliance, both the current permittee and the new permittee must complete and sign the Grading Permit Transfer Application. All applicable and outstanding fees must be paid prior to approval of the request.

**Article 7. Grading/Soil Erosion and Sedimentation Control Permit Approvals and Performance Guarantees.**

A. Requirements

Prior to commencing any earth change including construction of access roads, driveways, tree and shrub removal, or grading, an application for a grading/soil erosion and sedimentation control permit, as set forth in Article 6, shall be submitted to the Drain Commissioner's Office as required by the Act, the Rules and this Ordinance. The Drain Commissioner's Office shall have thirty (30) calendar days to review the application and issue or deny a grading/soil erosion and sedimentation control permit.

Livingston County Drain Commissioner  
Soil Erosion and Sedimentation Control Program  
2300 E. Grand River, Suite 105  
Howell, MI 48843-7581

Each permit application shall be accompanied by two (2) copies of the proposed soil erosion and sedimentation control plan, prepared under the direction of a professional engineer if applicable, certified in Michigan, unless waived in writing by the Drain Commissioner's Office. For the purposes of assessing the appropriate fee for single family permits, the Drain Commissioner's Office shall make a determination as to whether the project is a major project or minor project. In all cases, any other documentation the Drain

Commissioner's Office may require to make its determination must be submitted. The grading/soil erosion and sedimentation control permit application shall be signed by the landowner and his/her designated agent, if applicable. The cost of the permit shall be determined by resolution by the Livingston County Board of Commissioners, which shall be amended from time to time.

B. Denial of Permit

Grading/soil erosion and sedimentation control permit requests shall be denied where:

- (1) The proposed grading would cause hazards to the public safety and welfare; or
- (2) The application submitted is incomplete;
- (3) The soil erosion and sedimentation resulting from the work, as proposed by the applicant, will damage public or private property; or
- (4) The drainage design does not conform to Livingston County Drain Commissioner Drainage Standards.

C. Performance Guarantees

As a condition for the issuance of a grading/soil erosion and sedimentation control permit for commercial, industrial, or residential subdivision projects, the County is authorized to require the applicant to deposit with the Clerk of the County a performance guarantee in the form of cash, a certified check, or an irrevocable bank letter of credit, as selected by the applicant, or a surety bond acceptable to the County Board of Commissioners, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the County. The performance guarantee will be returned to the applicant when the site is permanently stabilized and has met all requirements set forth in the Act and this Ordinance. Performance guarantees may be required for single family residences.

D. Approval from Other Governmental Agencies

Grading/soil erosion and sedimentation control 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 agencies and/or municipalities. If requirements vary, the most stringent requirements shall be followed.

**Article 8. Grading/Soil Erosion and Sedimentation Control Permit and Soil Erosion and Sedimentation Control Plan Approval Process.**

The Drain Commissioner's Office shall approve, disapprove, or require modification of an application for grading/soil erosion and sedimentation control permit within thirty (30) calendar days following receipt of the application. The review period begins upon the receipt

of a completed application, soil erosion and sedimentation control plan, and payment of fees. The Drain Commissioner's Office shall notify an applicant of approval by first-class mail or in person. If an application is disapproved, the Drain Commissioner's Office shall advise the applicant by first-class mail or in person of its reasons for disapproval and conditions required for approval. The Drain Commissioner's Office shall not notify an applicant of approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A grading/soil erosion and sedimentation control permit given to the applicant either in person or by first-class mail constitutes approval.

Upon a determination that a grading/soil erosion and sedimentation control permit application has met all of the requirements of the Act, the Rules and this Ordinance, the Drain Commissioner's Office shall issue a permit for the proposed earth change.

Single family construction permits are valid for up to two (2) years from date of issuance as determined by the soil erosion and sedimentation control plan. Commercial/industrial/residential subdivision project permits are valid for two (2) years from date of issuance. Permit extensions for Commercial/industrial/residential subdivision projects may be granted from year to year thereafter, as necessary, upon written approval of the Drain Commissioner's Office. Extensions shall only be granted if the site is in compliance with the Act, the Rules and this Ordinance. An inspection shall be conducted prior to the granting of an extension as set forth in Article 10.B. Permit extensions will not be granted to sites that fail the inspection or to sites where the permit has expired.

In all instances, permit extensions shall not be granted until all applicable fees are paid.

#### **Article 9. Permit Availability.**

Grading/soil erosion and sedimentation control permits issued by the Drain Commissioner's Office, pursuant to the Act, the Rules and this Ordinance, shall be available for inspection at the site of the earth change and are required to be posted on-site and clearly visible from the road. The soil erosion and sedimentation control plan shall also be available at the site.

#### **Article 10. Inspections and Reporting Requirements.**

##### **A. Inspections Prior to Commencement of Project**

A preliminary review may be required by the Drain Commissioners Office between the applicant, contractor(s), and the Drain Commissioner's Office on-site to review the grading/soil erosion and sedimentation control permit and/or plan responsibilities and requirements. Site-specific requirements for soil erosion and sedimentation control shall be determined and added to the permit as special conditions to the permit when issued. Temporary soil erosion and sedimentation controls shall be installed prior to, or upon commencement of, the earth changes. The applicant shall contact the Drain Commissioner's Office no later than two (2) business days prior to commencing work so that a site inspection may be performed. If the site passes the inspection, the Drain Commissioner's Office shall recommend that the County Building Department issue a Building Permit, if necessary.

B. Inspections During and Upon Completion of Project and for Permit Extensions

The Drain Commissioner's Office may enter at all reasonable times upon any property to conduct an on-site inspection to ensure compliance with the Act, the Rules or this Ordinance. Such inspections may take place before, during, and after any earth change activity whether or not an application has been made or a grading/soil erosion and sedimentation control permit has been issued. The cost of the inspections and re-inspections due to violations shall be paid to Livingston County in accordance with a fee schedule determined by resolution by the Livingston County Board of Commissioners, which shall be amended from time to time.

If, upon inspection, existing site conditions are found to be in conflict with an approved permit or plan, a cease and desist order may be issued, as set forth in Article 13, an injunction may be issued as set forth in Article 14, and/or the landowner and/or designated agent cited for a municipal civil infraction violation as set forth in Article 16. No earth moving shall be done unless authorized for the purpose of erosion and sedimentation control until revised plans have been submitted, reviewed, approved, and the grading/soil erosion and sedimentation control permit or plan has been modified.

When ready to close a grading/soil erosion and sedimentation control permit, the applicant shall request a final inspection for permit closure. Final inspections are performed only during the growing season, as defined in the Michigan Department of Transportation Seeding Standards, which is from April 15 to October 15. If the applicant does not request a final inspection, the Drain Commissioner's Office may conduct a final inspection within thirty (30) days before or after the expiration of the permit but cannot close until between April 15 and October 15, with the exception of the single family permit which can be finalized during this period, if the site is stabilized.

The following requirements must be met for closure of grading/soil erosion and sedimentation control permits, unless otherwise indicated:

- (1) All disturbed areas are permanently stabilized in a manner to prevent soil movement or loss from erosive forces such as rain, ice, gravity, wind, and human activities.
- (2) Any temporary controls have been removed.
- (3) The applicant's professional engineer has submitted a letter certifying the site is completed and stabilized per the approved soil erosion and sedimentation control plan. This requirement is not applicable for single family permits.
- (4) All permanent erosion control measures are in place and maintained.
- (5) The Drain Commissioner's Office has received an as-built plan at the same scale as the original plan which shows all improvements and final grades. The plan must be sealed by a registered professional engineer in the State of Michigan, and must contain as-built elevations of all

surface and subsurface drainage structures. Sufficient as-built topography of detention or retention basins must be provided to demonstrate that the storm water management basins contain the volumes indicated in the approved plan. This requirement is not applicable for single family permits.

To obtain a grading/soil erosion and sedimentation control permit extension, the permit holder, or designated representative, shall request the Drain Commissioner's Office to inspect the site. The inspection shall be conducted prior to the second year anniversary of the permit or prior to the close of the growing season preceding the expiration of the permit. No extensions will be granted if the site fails the inspection, i.e., if not in compliance with the soil erosion and sedimentation control plan, as set forth in Article 8. If the site is in violation of the Act, Rules or this Ordinance, enforcement proceedings will commence.

C. Reporting Requirements

A National Pollution Discharge Elimination System ("NPDES") permit holder shall submit a copy of MDEQ-required storm water operational reports to the Drain Commissioner's Office upon request.

**Article 11. Building Permits.**

A township, city, village, or any county agency which issues building permits shall notify the Drain Commissioner's Office upon receipt of an application for a building permit that requires an earth change which disturbs one (1) or more acres or which is located within 500 feet of the waters of the State under the Act, the Rules and this Ordinance. A township, city, village, or any county agency shall not issue the building permit to a person engaged in an earth change if the change requires a permit under the Act, the Rules or this Ordinance until the Drain Commissioner's Office has issued the required state-prescribed permit for the earth change. In the event that a grading/soil erosion and sedimentation control permit is revoked by the Drain Commissioner's Office, the applicable township, city, village, and/or county agency that issues building permits shall be requested to place a "hold" on any permits, approvals, inspections or legal exchanges of property until the site is brought into compliance.

**Article 12. Permits Issued by County and State Agencies.**

Approvals under this Ordinance shall not relieve a property owner of the need to obtain other permits or approvals from federal, state, county, and local agencies. When requested by the Drain Commissioner's Office, the recipient of a grading/soil erosion and sedimentation control permit shall provide the Drain Commissioner's Office with copies of required permits from Livingston County Health Department, Livingston County Road Commission, Livingston County Building Department, and/or state agencies including but not limited to the Michigan Department of Environmental Quality (MDEQ).

**Article 13. Notice of Soil Erosion and Sedimentation Violations.**

If the Drain Commissioner's Office determines that soil erosion or sedimentation of adjacent properties or the waters of the State has or will reasonably occur from land in

violation of the Act, the Rules or this Ordinance, the Drain Commissioner's Office may seek to enforce the violation by notifying the person who owns the land, by mail with return receipt requested, of its determination to cease and desist all activities. The notice shall contain a description of the violation and what must be done to remedy the violation. The landowner shall have five (5) calendar days from the mailing date in which to implement and maintain soil erosion and sedimentation control measures in conformance with the Act, the Rules and this Ordinance.

If the landowner has not corrected the condition on the land within five (5) calendar days, the Drain Commissioner's Office may proceed accordingly. In its discretion, if no action has been taken within five (5) calendar days by the landowner, the Drain Commissioner's Office may send notice to the landowner that the grading/soil erosion and sedimentation control permit will be revoked in five (5) calendar days if the violation is not corrected. Revocation of the permit shall affect other contingent permits.

Concurrently or alternatively, the Drain Commissioner's Office may enter upon the land to construct, implement, and maintain soil erosion and sedimentation control measures in conformance with the Act, the Rules and this Ordinance. The Drain Commissioner's Office shall not expend more than \$10,000.00 for the cost of the work, materials, or labor without prior written notice to the person who owns the land that the expenditure of more than \$10,000.00 may be made.

A person who fails to cease and desist the activities after receiving notice of the violation may be ordered to pay a civil fine at rates set forth in Article 16.D.

The County shall have a lien for the expenses incurred to bring the land into conformance with the Act, the Rules and this Ordinance. With respect to single-family or multi-family residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure, pursuant to the Act. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act being Act 206 of the Public Act of 1893, as amended.

#### **Article 14. Injunctions.**

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

#### **Article 15. Designation of Violations of the Act, the Rules or this Ordinance, Enforced by Livingston County, as Municipal Civil Infractions.**

- A. Pursuant to the authority set forth in the Act, any violation of the Act, the Rules and this Ordinance, which are enforceable by Livingston County, or any exception granted thereunder, shall be a municipal civil infraction. A violation includes any act which is prohibited or made or declared to be unlawful or an offense, and any omission or failure to act where the act is required by the Act, the Rules or this Ordinance.

- B. The sanction for any violation of the Act, the Rules or this Ordinance, which is a municipal civil infraction, shall be a civil fine as provided herein, plus any cost, damages, expenses and other sanctions, as authorized under Chapter 87 of 1961 PA 236, as amended, and other applicable laws.
- C. The Livingston County Drain Commissioner, deputies of the Livingston County Sheriff's Office, and other persons specifically designated by this Ordinance, are the County officials authorized to issue municipal civil infraction citations and municipal civil infraction violation notices for violations of the Act, the Rules and this Ordinance.
- D. Each day that a violation exists constitutes a separate infraction.

**Article 16. Adoption of a Schedule of Fines for Violations of the Act, the Rules and this Ordinance, as Enforced by Livingston County.**

A. Fines to be Established by County Board Resolution

The County Board of Commissioners shall by Resolution adopt a schedule of fines for violations of the Act, the Rules and this Ordinance, which may be amended by subsequent Resolution. The initial schedule of fines is set forth in Sections B - E, below for both municipal civil infraction citations and municipal civil infraction violation notices.

B. Fines for Municipal Civil Infraction Citations

- (1) For the first citation, except as otherwise provided in this Ordinance, a landowner or designated agent who violates the Act, the Rules or this Ordinance and is found responsible at the district court for a municipal civil infraction citation, shall pay a civil fine of \$1,000.00 for the first violation cited and an additional \$1,000.00 for each additional violation listed within the citation, up to but not to exceed \$2,500.00. In addition to such fines, the Defendant shall pay such costs and damages and expenses as may be set by the District Court, as authorized by Section 8727 of Act No. 236 of the Public Acts of 1961, as amended, and shall be liable to the State for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The District Court may order a person who violates the Act, the Rules and the Ordinance to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.
- (2) For repeat citations issued to a Defendant who admits or is found by the District Court to have committed repeated violations of the Act, the Rules and this Ordinance, except as otherwise provided in this Ordinance, the civil infraction fine shall be \$1,750.00 for each repeat violation. As used in this section, "repeat violations" means a second violation of the same requirement or provision (i) committed by the Defendant within any one (1) year period, and (ii) for which the Defendant admits responsibility or is determined to be responsible. In addition to such fines, the Defendant shall pay such costs and damages and expenses as may be set by the District Court, as authorized by

Section 8727 of Act No. 236 of the Public Acts of 1961, as amended, and shall be liable to the State for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The District Court may order a person who violates the Act, the Rules and this Ordinance to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

C. Fines for False Statements in an Application for a Permit or Soil Erosion and Sedimentation Control Plan.

A landowner, or designated agent, who knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan, as set forth in Article 6, is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of the violation.

D. Fines for Violations of Notice of Soil Erosion and Sedimentation Control Violations.

A landowner, or designated agent, who knowingly violates the Act, the Rules or this Ordinance after receiving notice to cease and desist all activities, as set forth in Article 13, 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 the violation.

E. Fines for Municipal Civil Infraction Violation Notices

A landowner or designated agent who, as a result of violating any provision of the Act, the Rules or this Ordinance, except as otherwise provided in this Ordinance, receives a municipal civil infraction violation notice, and who accepts admission of responsibility, shall pay an initial civil fine at the Municipal Civil Infractions Bureau of \$250.00.

- (1) In the case of another offense within one (1) year of the date of the initial infraction, the civil fine shall be \$500.00.
- (2) In the case of another offense within one year of the date of the second offense, the civil fine shall be \$1,000.00. (This shall be known as the third offense.) All subsequent offenses shall be subject to a civil fine of \$1,000.00.
- (3) If an admission of responsibility is not made and the civil fine prescribed by this Ordinance for the violation is not paid at the Municipal Civil Infractions Bureau, a municipal civil infraction citation may be filed with the District Court in accordance with State law.

**Article 17. Establishment of Municipal Civil Infractions Violations Bureau for Disposition of Violations of the Act, the Rules or this Ordinance, and enforced by Livingston County.**

The Municipal Civil Infractions Violations Bureau, for disposition of violation notices issued under the Act, the Rules, and this Ordinance, shall be located at the Livingston County Drain Commissioners Officer, 2300 East Grand River Ave., Howell, MI 48843.



**Article 18. Fees.**

All costs and fees shall be paid to Livingston County in accordance with a fee schedule determined by resolution by the Livingston County Board of Commissioners, copy attached, which shall be amended from time to time.

**Article 19. Administrative Policies.**

Administrative polices are available to assist individuals in complying with soil erosion control measures in accordance with the Act, the Rules and this Ordinance.

**Article 20. Construction.**

When not inconsistent with the context, words used in the present tense include the future. Words in the singular include the plural and words in the plural include the singular. Masculine shall include a feminine and neuter. The word "shall" is always mandatory and not merely directive. Words or terms not defined herein shall be interpreted as defined in statutes, regulations, or codes to which they apply or if not so defined shall be defined in the manner of their common meaning. Headings shall be deemed for convenience and shall not limit the scope of any section of this Ordinance.

**Article 21. Severability.**

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

**Article 22. Repeal.**

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**Article 23. Savings Clause.**

This Ordinance does not affect rights and duties matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**Article 24. Effective Date of Ordinance.**

This Ordinance shall take effect when notice of its adoption is published in a newspaper of general circulation in the County.