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A BETTER ENVIRONMENT

THROUGH

SOIL EROSION

AND

SEDIMENTATION CONTROL

PART 91 OF
ACT 451 OF 1994
AS AMENDED

DIVISION OF
LAND & WATER MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

NEWAYGO COUNTY RESOLUTION FOR SOIL EROSION AND SEDIMENTATION CONTROL

A BETTER ENVIRONMENT THROUGH SOIL EROSION AND SEDIMENTATION CONTROL

**COUNTY OF NEWAYGO
RESOLUTION
SOIL EROSION AND SEDIMENTATION CONTROL
PART 91 OF ACT 451 OF 1994, AS AMENDED**

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RESOLUTION FOR PART 91

**SOIL EROSION & SEDIMENTATION CONTROL
OF THE NATURAL RESOURCES &
ENVIRONMENTAL PROTECTION, ACT, 1994 PA 451, AS AMENDED**

I. PURPOSE

The purpose of this Resolution is to prevent Soil Erosion and Sedimentation from non-agricultural development within Newaygo County, by requiring proper provision for water disposal and the protection of soil surfaces during and after construction, in order to promote the safety, public health, convenience and general welfare of the county.

II. DEFINITIONS

Definitions.

Sec. 9101

- (1) "***Agricultural practices***" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.
- (2) "***Authorized Public Agency***" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.
- (3) "***Conservation district***" means a conservation district authorized under part 93.
- (4) "***Consultant***" means either of the following:
 - a. An individual who has a current certificate of training under section 9123.
 - b. A person who employs 1 or more individuals who have current certificates of training under section 9123.
- (5) "***County agency***" means an officer, board, commission, department, or other entity of county government.
- (6) "***County enforcing agency***" means a county agency or a conservation district designated by a county board of commissioners under section 9105.
- (7) "***County program***" or "county's program" means a soil erosion and sedimentation control program established under section 9105.
- (8) "***Department***" means the department of environmental quality.
- (9) "***Earth change***" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
- (10) "***Gardening***" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.
- (11) "***Local ordinance***" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.
- (12) "***Municipal enforcing agency***" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

- (13) “**Municipality**” means any of the following’
- a. A city.
 - b. A village.
 - c. A charter township.
 - d. A general law township that is located in a county with a population of 200,000 or more.
- (14) “**Rules**” means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306. MCL 23.201 to 24.328.
- (15) “**Seawall maintenance**” means an earth change activity landward of the seawall.
- (16) “**Sediment**” means solid particulate matter, including both mineral and organic matter, that is in suspension in water, it being transported, or has been removed from the site or origin by the actions of wind, water, or gravity and has been deposited elsewhere.
- (17) “**Soil erosion**” means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.
- (18) “**State agency**” means a principal state department.
- (19) “**Violation of the part**” or “Violates this part” means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.
- (20) “**Waters of the state**” means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

For the purpose of the Resolution, the following terms are defined:

- a. **CERTIFICATION:** A signed, written statement by the County Drain Commissioner that specific construction, inspections, or tests where required have been performed and such comply with applicable requirements of the Resolution or Regulations adopted pursuant thereto.
- b. **THE COUNTY DRAIN COMMISSIONER:** The Newaygo County Drain Commissioner, or his/her duly authorized representative.
- c. **COUNTY ENFORCING AGENT**” means a county agent or a conservation district designated by a county board of commissioners under section 9105.
- d. **EROSION:** The process by which the ground surface is worn away by action of wind, water, gravity or a combination of both.
- e. **EXCAVATION OR CUT:** Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated, and shall include the conditions resulting there from.
- f. **FLOOD:** A temporary rise in stream level that results in inundation of areas not ordinarily covered by water.
- g. **FLOOD PLAIN:** That area of land adjoining the channel of a river, stream, lake, or other similar body of water, which is subject to inundation by flood.
- h. **HUNDRED YEAR FLOOD PLAIN:** That portion of a flood plain subject to

inundation by a flood having a recurrence frequency of once in one hundred years.

- i. **GRADING:** Any stripping, excavating, filling, stockpiling, or any combination thereof and shall include the land in its excavated or filled condition.
- j. **GRADING PERMIT:** A permit issued to authorize work to be performed under this Resolution.
- k. **STRIPPING:** Any activity, which removes or significantly disturbs the vegetative surface cover, including clearing, and grubbing operations.
- l. **PERMITTEE:** Any person to whom a permit is issued in accordance with this Resolution.
- m. **SEDIMENT:** Any solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site or origin by air, water or gravity as a product of erosion.
- n. **SOIL:** The natural medium composed of unconsolidated mineral and organic material on the surface of the land.
- o. **WATERCOURSE:** Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, whether continuously or intermittently, and which has a definite channel, bed and banks, and shall include any area immediately adjacent.

III. **COMPLIANCE WITH RESOLUTION REQUIRED FOR SITE PLAN OR PLAT APPROVAL**

No plot plan or plat shall be approved unless said plot plan or plat shall include Soil Erosion and Sediment Control measures consistent with the requirements of this Resolution and related land development regulation.

IV. **COMPLIANCE WITH RESOLUTION REQUIRED FOR OCCUPANCY**

No Certificate of Occupancy for any building will be issued unless the applicant for said Certificate shall have complied substantially with the requirements and shall have substantially completed any Soil Erosion and Sedimentation Control measures contained in any plat or site plan approved for said applicant.

V. **PERMITS AND FEES**

- a. **PERMIT REQUIREMENT:** Except as exempted by Section 14 of this Resolution, no person shall do any grading stripping, excavation or filling, which disturbs one or more acres of land, or if an earth change is within 500 feet of a lake, river, stream, creek, or watercourse, etc. of this county, unless he *has a valid grading permit* issued by the County Drain Commissioner.

- b. **PERMIT APPLICATION:** A separate application shall be required for each grading permit. Plans, specifications, timing schedules and a legal description of the property involved shall be submitted with each application for a grading permit. The County Enforcing Agent may waive the preparation or approval and signature by a Professional Engineer or by an Architect, when the work entails little hazard to the adjacent property and does not include the construction of a fill upon which a structure may be erected.
- c. **APPLICATION DATA REQUIRED:** The plans and specifications accompanying the grading permit application shall contain the following data:
 - 1. A vicinity sketch at the scale of 1" = 200' indicating the site location, as well as the adjacent properties within 500 feet of the side boundaries.
 - 2. A boundary line survey or legal description of the site on which work is to be performed.
 - 3. A plan of the site at the scale of 1" = 100' showing:
 - a. Name, address, and telephone number of the owner, developer and applicant.
 - b. A timing schedule indicating the anticipated starting and completion dates of the development sequence and the time exposure of each.
 - c. A statement of the quantity of the excavation and fill involved.
 - d. Existing topography at a maximum of five (5) foot contour.
 - e. Proposed topography at a maximum of five (5) foot contour.
 - f. Location of any structures or natural features on the site.
 - g. Location of any structures or natural features on the land adjacent.
 - h. Location of any proposed additional structures or development on.
 - i. Elevations, dimensions, location, extent and the slope of all.
 - j. The estimated total cost of the required controls.
 - k. Plans of all drainage provisions, retaining walls, cribbing, plantings, anti-erosion devices or other protective devices to be constructed in connection with, or as a part of the proposed work, together with a map showing the drainage area or the land tributary to the site, and
 - l. Other information or data as may be required by the County Drain of existing soils and rock on the site.
- d. **FEES:** At the time of filing an application for a grading permit, a non-refundable fee of \$40.00 shall be charged for plan review and if the plan is approved, a charge based on the following schedule shall be made for permit with site inspections. Normally three (3) inspections of the site will be made. Permit fee shall be made payable to the County of Newaygo. If approved, the amount of the non-returnable fee shall be applied against the permit fee.

SCHEDULE OF FEES

TRANSPORTATION OF FACILITIES

Including streets, highways, railroads, airports, and mass transit facilities, except normal maintenance procedures.

Up to one (1) mile.....\$250.00
Each additional mile
or fraction thereof.....\$100.00

And additional expenses such as engineering review if County Enforcing Agent deems necessary.

UTILITIES

Including but not limited to common carrier pipelines, gas, phone, electric and cable TV.

Up to one (1) mile.....\$200.00
Each additional mile
or fraction thereof.....\$ 75.00

-or-

Up to one (1) acre.....\$150.00
Each additional acre
or fraction thereof.....\$ 50.00

SUBDIVISIONS & PLAT DEVELOPMENT

Including Mobile Home Parks and Multiple Housing Units.

Up to one (1) acre.....\$250.00
Each additional acre
or fraction thereof.....\$100.00

And additional expenses such as engineering review if Enforcing Agent deems necessary.

INDUSTRIAL & COMMERCIAL

Except normal maintenance procedures

Up to one (1) acre.....\$250.00
Each additional acre
or fraction thereof.....\$100.00

And additional expenses such as engineering review if County Enforcing Agent deems necessary.

SERVICE FACILITIES

Including but not limited to Sanitary Land Fills and Schools.

Up to one (1) acre.....\$250.00
or fraction thereof.....\$100.00

And additional expenses such as engineering review if County Enforcing Agent deems necessary.

RECREATIONAL FACILITIES

Including but not limited to Golf Courses, Ski Slopes, Campgrounds, Parks or Trails, except normal maintenance procedures.

Up to one (1) acre.....\$300.00
Each additional acre
or fraction thereof.....\$125.00

And additional expenses such as engineering review if County Enforcing Agent deems necessary.

WATER IMPOUNDMENTS (PONDS)

Including any impoundment with an outlet. Up to 1000 cubic yards.....\$150.00
 Each additional 1000 c.y. or fraction thereof.....\$ 30.00

DRAINAGE DITCHES

First mile or fraction thereof.....\$ 75.00
 Each additional mile or fraction thereof.....\$ 30.00

FILL PERMIT

From 0 to 499 cubic yards.....\$ 75.00
 From 500 to 1000 cubic yards.....\$250.00
 Each additional 100 c.y. or fraction thereof..\$ 20.00

CREEK OR DRAIN CROSSING

Up to 8 foot bottom and 100 cubic yards of fill.....\$ 75.00

SINGLE AND TWO FAMILY DWELLINGS

Except those exempt.....\$ 50.00

LIMITED DISTURBANCE PERMIT

Minimum.....\$ 40.00

Normal tiling, planting and harvesting or agricultural and horticultural crops are.....EXEMPT

***NOTE:** Farmers working under agreement with the Soil Conservation Service areEXEMPT provided they comply with the regulations of *Part 91 of Act 451 of 1994*, as amended.

Logging & Mining operationsEXEMPT

****However, all earth changes associated with these activities are not:**

- a. Access roads to and from logging and mining operations.
- b. Ancillary activities associated with logging and mining.
- c. Mining of clay, gravel, sand, peat, or topsoil.

Plan Review Fee (Soil Erosion).....\$ 40.00

Site Review Fee per occurrence, payable upon billing by County Enforcing Agent.....\$ 40.00

****CONTRACTORS working without a permit will be charged as follows:**

First Offense.....\$200.00

Second Offense.....\$400.00

(This fine will be doubled each time they are found working without a Soil Erosion & Sedimentation Control Permit.)

Third Offense.....\$800.00

Those working without a permit will also be charged a double permit fee.

Effective 04-26-88
 Revised 03-01-95
 Revised 02-13-02
 Revised 08/13/03

VI. BOND REQUIREMENT

A grading permit shall not be issued for grading involving the movement of more than 1000 cubic yards of soil unless the Permittee shall first post with the County Enforcing Agent, a bond executed by the owner and a corporate surety with authority to do business in this state as a surety.

The bond shall be in a form approved by the County Attorney, in favor of the County of Newaygo and in the amount of the estimated cost of the work necessary for Soil Erosion and Sedimentation Control. The bond shall include penalty provisions for failure to complete the work on schedule as specified on the grading permit.

Every bond shall be made on the conditions that the Permittee shall comply with all of the provisions of this Resolution and all of the terms and conditions of the grading permit, and shall complete all of the work contemplated under the grading permit within the time limit specified in the permit. If no time limit is specified, the project shall be completed within 180 days after the date of the issuance of the grading permit.

VII. **EXTENSION OF TIME**

If the Permittee is unable to complete the work within the specified time he may, at least 10 days prior to the expiration of the permit, present in writing to the County Enforcing Agent, a request for an extension. In the event such an extension is warranted, the County Enforcing Agent may grant additional time for the completion, but no such extension shall release the Owner or the Surety on the bond.

VIII. **FAILURE TO COMPLETE WORK**

In the event of failure to complete the work or failure to comply with all the requirements, conditions, and terms of the permit, the County Enforcing Agent may order such work as necessary to eliminate danger to persons or property and to leave the site in a safe condition, or he may order the work authorized by the permit to be completed. The Permittee and the Surety executing the bond shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County in causing any and all such work to be done.

IX. **DENIAL OF PERMIT**

Grading permits will not be issued where:

- a. The proposed grading would cause hazards to the public safety and welfare; or
- b. The work as proposed by the applicant will damage any public or private property or interfere with any existing drainage course 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 waterway or create an unreasonable hazard to persons or property; or
- c. The land area for which the 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 hazard to persons or property, or
- d. The land area for which the grading is proposed may lie within the one hundred (100) year flood plain of any stream or watercourse (not specifically designated and

delineated by the County as an area subject to flood hazard,) unless a hydrologic report, prepared by a Professional Engineer, is submitted to the Department of Natural Resources for their review and approval.

X. **MODIFICATION OF APPROVED PLANS**

All modifications of the approved grading plans must be submitted to the County Enforcing Agent for approval. All necessary sustaining reports shall be submitted with any proposal to modify the approved grading plan. No grading work in connection with any proposed modification shall be permitted without the approval of the County Enforcing Agent.

XI. **RESPONSIBILITY OF THE PERMITTEE**

During grading operations the Permittee shall be responsible for:

- a. The prevention of damage to any public utilities or services within the limits of grading and along any routes of travel of the equipment.
- b. The prevention of damage to adjacent property. No person shall grade on land so close to the property line as to endanger any adjoining public street, sidewalk, alley or any public or private property without supporting and protecting such property from settling, cracking, or other damage which might result.
- c. Carry out the proposed work in accordance with the approved plans in compliance with all the requirements of the permit and this Resolution.
- d. The prompt removal of all soil, miscellaneous debris or other materials, dumped or otherwise deposited on public streets, sidewalks or other public thoroughfares during transit to and from the construction, where such spillage constitutes a public nuisance or hazard.

XII. **MAINTENANCE REQUIRED**

Persons carrying out soil erosion and sediment control measures under this Resolution and all subsequent owners of property concerning which such measures have been taken, shall maintain all permanent anti-erosion devices, retaining walls, structures, plantings and other protective measures.

XIII. **MINIMUM DESIGN STANDARDS FOR EROSION AND SEDIMENT CONTROL**

All grading plans and specifications, including extensions of previously approved plans, shall include provisions for erosion and sediment control in accordance with, but not limited to, the standards contained in the *Standards and Specifications for Soil Erosion and Sedimentation Control* published by the Newaygo County Soil Conservation District. (Call SCD at 231-924-2060 for a copy of this booklet). Copies of said Standards and Specifications shall be available for inspection in the office of the Newaygo County Drain Commissioner.

XIV. **VARIANCES AND EXCEPTIONS**

- a. No permits shall be required for the following:

1. Agricultural use of land-normal plowing and tiling for crop production.
 2. A sidewalk or driveway authorized by a valid permit
 3. Logging and mining are exempt, except all earth changes associated with these activities shall require a permit:
 - a. Access roads to and from logging and mining sites.
 - b. Ancillary activities associated with logging and mining.
 - c. Mining does not include the removal of clay, gravel, sand, peat, or topsoil.
 4. Earth changes associated with metallic mineral mining that have an approved SESC plan and regulated under Part 631, Reclamation of Mining Lands, of the NREPA.
 5. Earth change activities associated with oil and gas exploration or development that have approved SESC plan and regulated under Part 615, Supervisor of Wells, of the NREPA.
 6. An "Authorized Public Agency," but they shall notify the County Drain Commissioner of each proposed earth change.
 5. See other exemptions and waivers under 323.1705 (Rule 1705).
- b. Where it is alleged that there is error or mis-interpretation in any order, requirements, decisions, grant or refusal made by the County Drain Commissioner, the local courts shall have the power to hear specific applications and may amend or change such order, requirements, decisions, grant or refusal so that it is in harmony with the general purpose and intent of the requirements.

XV. **INSPECTION AND ENFORCEMENT**

A violation of Part 91 is no longer a misdemeanor. A violator may be subject to a state or municipal civil infraction of up to \$2,500.00 or may be ordered to pay a civil fine up to \$25,000.00 for each day or violation. In addition the court may order the violator to pay for natural resource damages and restore all impacted areas. (Sec. 9121)

If the County Enforcing Agent finds that the permittee has not complied with the Soil Erosion and Sedimentation Control Act, its General Rule and Resolution for Soil Erosion and Sedimentation Control and that his work does not conform to the permit issued, the County Enforcing Agent shall issue a cease and desist order and shall revoke the permit. The permittee shall be notified by certified mail, of the description of the violation and remedies and a specific time to comply, that he will have 5 days in which to respond and unless the requirements of the Soil Erosion and Sedimentation Control Act, its General Rules and the Resolution are met, he shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred by the County in causing any and all work to be done to comply with the Regulations.

324.9113

- (1) The county enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations.

(2) An agent appointed by a county enforcing agency may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation.

324.9119

Five (5) days after notice of violation, if in the opinion of the county enforcing agency, conditions of the land may result in or contribute to soil erosion or sedimentation of adjacent properties or the waters of the state, and if the soil erosion and sedimentation control measures are not in conformance, the county enforcing agency or a designee may enter upon the land and construct, implement and maintain soil erosion measures. Not more than \$10,000.00 can be expended in materials, labor, and administration without prior written notice to the property owner.

324.9120

(1) All expenses incurred by the county enforcing agency to bring the land into conformance shall be reimbursed to the county enforcing agency by the person who owns the land.

(2) The county enforcing agency shall have a lien for expenses incurred for bringing land into conformance placed on the property which shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. The lien for such expense shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

The requirements of this Resolution shall be enforced by the County Drain Commissioner, who shall inspect the work and shall require adequate inspection and compaction by a soil testing agency, approved by the County Drain Commissioner, unless it is determined that such inspection requirements may be waived due to the non-hazardous nature of the grading. The days and times for taking applications, issuing permits, and making inspections shall be determined by the County Drain Commissioner.

Upon satisfactory execution of all approved grading plans and other requirements, the County Drain Commissioner shall issue a Certification of Completion.

Whereas *Part 91 of act 451 of 1994, as amended*, was passed by the State Legislature, this law is adopted and all of its rules are included in this Resolution.

This Resolution (#08-022-03) was adopted by the Newaygo County Board of Commissioners on the 13th day of August, 2003. To take immediate effect.