

**BENZIE COUNTY
SOIL EROSION , SEDIMENTATION
AND STORMWATER CONTROL
(SESSC)
ORDINANCE**

Adopted
MDEQ Revisions
AMENDED/APPROVED

OCTOBER 15, 2002
November 23, 2004
FEBRUARY 16, 2005

X.	<u>Stormwater Management Easements</u>	18
XI.	<u>Compliance Assurances</u>	18
	Performance Guarantees	18
	Construction Certification by Licensed Professional	19
	Certification of Compliance	19
XII	<u>Inspections</u>	19
XIII	<u>Stop-Work-Orders and Emergency Actions</u>	20
XIV	<u>Enforcement Action</u>	21
	General Provisions	21
	County Installation of Soil Erosion, Sedimentation, and Stormwater Runoff Control Measures	22
XV	<u>Appeals</u>	23
	Right of Appeal	23
XVI	<u>Severability</u>	23
XVII	<u>Effective Date</u>	23
XVIII	<u>Certification</u>	24

4. To preserve and maximize the natural infiltration, the recharge of groundwater, and maintain subsurface flows which replenish lakes, streams and wetlands.
5. To control stormwater runoff to non-erosive velocities by requiring temporary and permanent soil erosion control measures.
6. To assure that soil erosion, sediment and stormwater control systems are incorporated into site planning at an early stage in the planning and design process.
7. To prevent unnecessary stripping of vegetation and loss of soils, especially adjacent to lakes, streams, watercourses, and wetlands.
8. To prevent construction activities that may cause mass movement, slumping, or erosion of land surfaces.
9. To eliminate the need for costly maintenance and repairs to roads, embankments, ditches, streams, lakes, wetlands, and stormwater control facilities which are the result of inadequate soil erosion and stormwater runoff control.
10. To reduce long-term expenses and remedial projects which are caused by uncontrolled stormwater runoff and soil erosion.
11. To encourage the design and construction of stormwater control systems which serve multiple purposes, including but not limited to flood prevention, water quality protection, wildlife habitat preservation, education, recreation, and wetlands protection.
12. To reduce the detrimental impacts of stormwater flows on downstream communities.
13. To allow for off-site stormwater control facilities and measures if proposals meet the requirements of these regulations.
14. To assure that all stormwater control facilities will be properly designed, constructed, and maintained.
15. To provide for enforcement of this ordinance and penalties for violations.

10. **Commercial use** - All land uses except for one-family and two-family detached dwellings and appurtenant structures. The use of property in connection with or for the purchase, sale, display, or exchange of goods, merchandise, or personal services, as well as the maintenance or operation of business or recreational or amusement enterprises.
11. **Control Plan** - Soil Erosion, Sediment, and Stormwater Control Plan (SESSC Plan).
12. **Conveyance facility** - A surface or subsurface structure or channel which transports stormwater runoff.
13. **County Drain** - Drains established and/or constructed pursuant to the Michigan Drain Code (Act 40 of 1956, as amended).
14. **Depression Storage** - The portion of precipitation trapped in depressions in the ground surface.
15. **Design Standard (or Engineering Design Standard)** - A specification that describes the type of design, location, mode of construction, mode of operation, or other engineering detail for soil erosion, sediment, or stormwater control facilities.
16. **Design Storm** - A rainfall event that has a specific statistical probability of occurring in any given year. For example, a 2 - year design storm is a storm with a 50 percent chance of occurring during the year. Design storm figures are used to calculate the runoff volume and peak discharge rate of a storm event. In order to design a stormwater management facility. A twenty-five (25) year storm for Benzie County is three (3) and a half (3.5) inches in a twenty-four (24) hour period of time.
17. **Detention Basin** - A structure or facility, natural or artificial, which stores stormwater on a temporary basis and releases it at a controlled rate. A detention basin may drain completely after a storm event, or it may be a body of water with a fixed minimum and maximum water elevation between runoff events.
18. **Discharge** - The rate of flow of water through an outlet structure or stream at a given point and time, measured in cubic feet per second (cfs).
19. **Disturbed Area** - An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling.

- e. Other sites identified by local units of government as having a high potential or history for environmental degradation and flooding as a result of soil erosion or stormwater runoff on-site or off-site.
29. **Erosion** - See "soil erosion" definition.
 30. **Excess Runoff** - Surface runoff that cannot be accommodated by the natural or planned drainage systems.
 31. **Extended Detention Basin** - Detention basin designed to provide substantial removal of suspended solids and particulates, typically achieved by holding stormwater for twenty-four (24) hours or more.
 32. **Flood** - An overflow of surface water onto lands not normally covered by water. Floods have these essential characteristics: The inundation of land is temporary and results from unusually heavy precipitation; the land is inundated by overflow from a lake, pond, stream, and/or wetland; or is flooded by natural runoff.
 33. **Flood Plain** - The area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal channel. For mapping purposes, flood plains are designated according to the frequency of the flood event, such as the 100-year Flood plain or 500-year Flood plain.
 34. **Grading** - Any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.
 35. **Impervious Area** - Impermeable surfaces, such as roofs, paved driveways, parking areas, or roads which prevent the infiltration of water into the soil.
 36. **Industrial Use** - Any manufacturing, fabrication, assembly, printing, or improvement of articles or merchandise; warehousing, wholesaling, or storage of goods, vehicles, or materials; research and medical laboratories; mining and activities related to mineral extraction and processing; and other business enterprises not classified as commercial.
 37. **Infiltration** - The downward movement or seepage of water from the surface to the subsoil and/or groundwater. The infiltration rate is expressed in terms of inches per hour.

47. **Peak Rate of Discharge (peak flow)** - The maximum calculated rate of stormwater flow at a given point in a channel, watercourse, or conduit resulting from a predetermined frequency storm, measured in cubic feet per second (cfs).
48. **Permit - Soil Erosion, Sedimentation, and Stormwater Control Permit (SESSC Permit).**
49. **Person** - Any individual, firm, partnership, association, public or private corporation, company, organization or legal entity of any kind, including governmental agencies.
50. **Pollution** - Degradation of water quality, preventing the use of water for some specific purpose, caused by a natural or human-made substance.
51. **Pond** - A permanent or temporary body or impoundment of open water which is less than one (1) acre in size.
52. **Protected Wetland** - A wetland which meets one or more of the following criteria: (1) a wetland which is within five hundred (500) feet of a lake or stream, or (2) a wetland within one-thousand (1000) feet of Lake Michigan, or are subject to regulation by the MDEQ in accordance with Part 303, 1994 PA 451, as amended.
53. **Receiving Body of Water** - Any lake, pond, stream, wetland, or groundwater into which stormwater runoff is directed.
54. **Regional Detention Basin** - A basin to detain water flow from a number of development sites or a small watershed.
55. **Retention Basin** - A wet or dry stormwater holding area, either natural or manmade, which does not have an outlet to adjoining watercourses or wetlands other than an emergency spillway.
56. **Runoff** - Stormwater runoff.
57. **Sediment** - Solid particulate matter, 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 the process of soil erosion.
58. **Sedimentation** - The process or action of depositing sediment.

68. **Storm Frequency** - The average period of time during which a storm of a given duration and intensity can be expected to be equaled or exceeded.
69. **Stormwater Control Facilities and Measures** - Any facility, structure, channel, area, or vegetative cover, or measure which serves to control stormwater runoff in accordance with the purposes and standards of these regulations.
70. **Stormwater Runoff** - Waters from rains falling within a tributary drainage basin, flowing over the surface of the ground or collected in channels, watercourses, or conduits, measured in depth of inches.
71. **Stream** - A river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act 4561 of 1994, as amended, being MCL280.1 et. seq., and which has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.
72. **Stream Bank** - The usual boundaries, not the flood boundaries, of a stream channel.
73. **Stripping** - Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
74. **Swale** - Low-lying drainway with natural grass or other vegetation, or a paved or armored (i.e. rip-rap) area with gradual slopes which transports stormwater, either on-site or off-site.
75. **Vegetative Cover** - Grasses, shrubs, trees, and other vegetation which hold and stabilize soils.
76. **Water Quality Standards** - Minimum standards established by the Water Division of the MDEQ for water quality protection.
77. **Watercourse** - Any natural or human-made waterway, drainage way, drain, river, stream, diversion, ditch, gully, swale, or ravine having a definite direction or course, either continuously or intermittently flowing.
78. **Watershed** - A land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water, point along a watercourse, control structure, or basin.

3. Industrial or commercial use development sites, regardless of size, location, or environmental sensitivity.
4. All subdivision developments as defined by section 102 of Act 288, P.A. 1967, as amended, regardless of size, location, or environmental sensitivity.
5. All Developments permitted under 1996 PA 591 (Land Division Act) or 1978 PA 59 (Condominium Act).

C. Identification of Environmentally-Sensitive sites

1. Property owners are ultimately responsible for knowing whether their sites are environmentally-sensitive as defined in this Ordinance.
2. Township, village, city, and/or county agencies may request assistance from the SESSC Agent in identifying environmentally-sensitive sites.

D. Permit Application Submittal

1. All applications for SESSC Permits shall include two copies of the proposed SESSC Plan unless more copies are requested by the SESSC Agent. Copies of the permit application form shall be made available by the Benzie County SESSC Agent.
2. Permit applications shall be submitted to the Benzie County SESSC Agent.
3. Application for a permit shall be made prior to the start of any earth change including construction of access roads, driveways, tree and shrub removal, or grading. Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of this Ordinance regardless of any later actions taken toward compliance. Soil test borings, vegetative cutting for land surveys, and percolation tests shall not be considered a start of work under these regulations.
4. The application review period begins upon receipt of a complete application including appropriate fees.

E. Sequential Applications (Phased Projects)

- a. A violation of a condition of the permit.
- b. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or SESSC Plan.
- c. A change in a condition that requires a temporary or permanent change in the activity.

H. Administrative Fee Schedule

- 1. Permit fees will be charged to fund administering the SESSC management program, including site plan permit review, site inspection costs and permit administration costs.
- 2. The fee schedule may be proposed by the Benzie County Planning Department and approved by the County Board of Commissioners and if approved will become part of the County Fee Schedule.

I. Penalties for initiating Earth Change Activities without a Permit

Any earth change activities without a valid permit or in violation of a permit of permit conditions shall be considered a violation of this Ordinance and subject to fines and other penalties as provided in this Ordinance.

IV. Issuance of Building Permits

A township, city, village or county agency which issues building permits, shall not issue a building permit for a project involving an earth change subject to permit requirements under this Ordinance, until a SESSC Permit has been issued by the SESSC Agent.

V. Other Permits and Approvals of Other Government Agencies

- A. 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.
- B. If requirements of federal, state, county, and local officials vary, the most stringent requirements shall be followed.

VI. Soil Erosion, Sedimentation and Stormwater Control Plan (SESSC Plan)

A SESSC Plan shall be prepared for any earth change subject to permit requirements. The plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during construction, and after construction is completed.

5. A description and the location of all existing and proposed on-site Stormwater management facilities and measures.
6. The timing and sequence of each proposed earth change.
7. A description and the location of all proposed temporary soil erosion control facilities and measures.
8. A description and the location of all proposed permanent soil erosion control facilities and measures.
9. Stormwater runoff calculations and retention/infiltration area sizing.
10. A program for the continued maintenance of all permanent soil erosion, sedimentation, and stormwater runoff control facilities and measures as listed in Section IX
11. Other information which the SESSC Agent requires to review the impact of the proposed earth change in relationship to the standards and requirements of this Ordinance.

VII General Standards for Approval of SESSC Plans

- A. The SESSC Agent shall approve or disapprove SESSC permit applications and plans in accordance with the attached published SESSC program guidelines.
- B. All earth changes subject to review under the requirements of this Ordinance shall be designed, constructed, and maintained to provide for the control of storm waters and to protect water quality.
- C. Measurers required for soil erosion, sediment, and stormwater runoff control shall take into consideration natural features, proximity of the site to lakes, streams, and protected wetlands, extent of impervious surfaces, potential for soil erosion and flooding, and the size of the site.
- D. Stormwater conveyance, storage, and infiltration facilities shall be designed to provide for non-erosive velocities of stormwater runoff.
- E. Alterations to natural drainage patterns shall not create downstream flooding or sedimentation.

- A. All SESSC facilities and measures shall be maintained in accordance with permit conditions.
- B. The person responsible for compliance with requirements of the SESSC Plan and permit shall be indicated on the permit, and may include, but is not limited to:
 - 1. The owner of the property.
 - 2. Property owners association or other nonprofit organization, provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements.
 - 3. The Benzie County Planning Director or Drain Commissioner, in accordance with provisions of the Michigan Drain Code (Public Act 40 of 1956, as amended).
 - 4. The SESSC Agent in accordance with provisions of this ordinance.
- C. Maintenance agreements shall specify responsibilities for financing maintenance and emergency repairs, including but not limited to the procedures specified in Section XIII and XIV of this Ordinance.
- D. The SESSC Agent will make the final decision of what maintenance option is appropriate in a given situation. Natural features, proximity of sites to lakes, streams and protected wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision.

X. Stormwater Management Easements

- A. Stormwater management easements shall be provided by the property owner if necessary for: (1) access for facility inspections and maintenance, or (2) preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event. The purpose of the easement shall be specified in the maintenance agreement signed by the property owner.
- B. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the SESSC Agent and the Drain Commissioner.
- C. Easements shall be recorded with the Benzie County Register of Deeds prior to issuance of a permit by the SESSC Agent.

XI. Compliance Assurances

- A. The SESSC Agent, or authorized representatives of the SESSC Agent, may enter at reasonable times upon any property to conduct on-site inspections. Such inspections may take place before, during and after any earth change activity for which a permit has been issued.
- B. If site conditions are found not to be in compliance as stated in the application and SESSC Plan, no earth disrupting work shall be undertaken until a revised plan has been submitted and a revised permit issued.
- C. Requests for major revisions to an SESSC Plan or Permit must be submitted to, and approved by, the Benzie County Planning Department in writing before being implemented. The permit amendments shall be conveyed to the applicant/owner and filed. Only emergency measures may be authorized or implemented prior to written approval.

XIII Stop-Work-Orders and Emergency Actions

- A. If necessary to assure compliance with the permit requirements, standards, and other provisions of this Ordinance and the Rules, or to protect public health, safety and welfare, the SESSC Agent may issue a stop-work order for the purpose of preventing or minimizing accelerated soil erosion, off-site sedimentation, stormwater runoff, or other conditions posing imminent and substantial danger to public health, safety, welfare, or natural resources.
- B. If necessary to protect public safety or water resources, including, lakes, streams, protected wetlands, and other receiving bodies of water, the SESSC Agent may initiate emergency action to abate imminent and substantial danger and risk, subject to Section XIV B of this Ordinance.
- C. Except as otherwise provided through maintenance agreements, the property owner may be held responsible for reimbursing Benzie County for all costs incurred as a result of emergency action, including administrative costs, provided that a finding is made that the property owner violated provisions of this Ordinance, a permit, or an approved maintenance agreement, subject to Section XIV B of this Ordinance.
- D. The Stop Work Order, when issued shall require all specified earth change activities to be stopped. A copy of the Stop Work Order shall immediately be submitted to other state and local agencies with regulatory jurisdiction.
- E. If the SESSC Agent determines that soil erosion, and sedimentation of the waters of this State has or will reasonably occur from an earth change on a parcel of land

- a. Failure to comply is a violation of this Part and may be subject to municipal civil infraction, and may be ordered to pay a civil fine of not more than twenty five hundred (\$2,500.00) dollars for each day of violation.
- b. Person(s) who knowingly violate this Ordinance, or knowingly make false statements in their application, may be responsible for payment of a civil fine of not more than ten thousand (\$10,000.00) dollars for each day of violation.
- c. Person(s) who knowingly violate this Ordinance after receiving notice of determination of a violation may be responsible for payment of a fine of not more than twenty five thousand (\$25,000) dollars for each day of violation.

B County Installation of Soil Erosion and Stormwater Runoff Control Measures

1. Where a lack of compliance and a violation of the SESSC Permit and Ordinance causes off-site sedimentation and if the necessary provisions for the correction of a violation are not successfully implemented within five (5) calendar days after the notice of violation is made by certified mail, or by personal service. The required soil erosion control or stormwater runoff control measures or facilities may be implemented or maintained by the Benzie County Planning Department and/or a hired consultant or contractor, at the property owner's expense.
2. The Benzie County Planning Commission shall not expend more than ten thousand (\$10,000.00) dollars for the cost of work, materials, or labor without prior 5-day notice to the property owner. If more than ten thousand (\$10,000.00) dollars is to be expended under this section, the work shall not begin until at least ten (10) days after the notice of violation has been mailed or personal service is made, unless emergency action is required to prevent irreparable damage.
3. All expenses incurred by the Benzie County Planning Commission to construct and maintain measures and facilities to bring the site into compliance shall be reimbursed by the property owner. The County may impose a lien for the expenses incurred. For single-family or multiple-family residential properties, the lien shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. For other types of property, the lien for such expenses shall be collected and

XVIII Certification

I, Dawn Olney, as Clerk to the Benzie County Board of Commissioners, do hereby certify that this Benzie County Soil Erosion, Sedimentation, and Stormwater Control Ordinance was duly adopted by the Benzie County Board of Commissioners at a regular meeting of said Board at which a quorum was present, the 16th day of February, 2005.



Dawn Olney, Benzie County Clerk

D:\DATA\DAVID\MY DOCUMENTS\MY FILES\SOILEROSION\SECSW ORDA\Final\Final Final Approved\Final Rev SESSC Ord 12 14
04.wpd November 23, 2004