

# Soil Erosion and Sedimentation Control Ordinance

## Ordinance No. 2023-01

An Ordinance to provide for soil erosion and sedimentation control within Alpena County.

THE PEOPLE OF THE COUNTY OF ALPENA, MICHIGAN, DO ORDAIN:

### CHAPTER 1: PURPOSE AND AUTHORITY

The Alpena County Soil Erosion and Sedimentation Control Ordinance is intended to protect the health, safety and welfare of the County residents and the public health, safety and welfare of the community by regulating earth change activities, which can harm the environment through erosion and the unnatural accumulation of sediment. The Alpena County Board of Commissioners adopts this Ordinance pursuant to the provisions Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 91), being 324.9101 *et seq.* of the Michigan Compiled Laws and the Administrative Rules promulgated by the Michigan Department of Environmental Quality.

### CHAPTER 2: DEFINITIONS

The County of Alpena adopts by reference the definitions contained in Part 91 and the Rules unless expressly given a different meaning by this Ordinance. The following definitions shall apply in the interpretation and enforcement of this Ordinance:

**"Accelerated soil erosion"** means the increased loss of the land surface that occurs as a result of human activities.

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

**"Authorized Public Agency"** means a state agency or an agency of a local unit of government authorized by the Department under Section 9110 of Part 91 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

**"Cease and Desist Order"** means an order that stops only that work relative to a project which is causing a violation of this ordinance or Part 91 until said violation is corrected.

**"Certificate of Completion"** means a signed, written statement by the Soil Erosion Control Agent that the specific construction and inspections have been performed and that such work complies with the applicable requirements of Part 91, the Rules, and this Ordinance.

**"Conservation District"** means a conservation district authorized under Part 93, Soil Conservation Districts, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being 324.9301 *et seq.* of the Michigan Compiled Laws.

**"County"** means the County of Alpena, Michigan.

**"County Enforcing Agency"** means the Alpena County Drain Commissioner's Office, known as the "Alpena County Soil Erosion & Sedimentation Department", as designated by the Alpena County Board of Commissioners under Section 9105 of Part 91.

**“Department”** means the Michigan Department of Environment, Great Lakes & Energy (EGLE).

**“Designated Agent”** means a person who has written authorization from the landowner to sign the application and secure an earth change permit in the landowner’s name.

**“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.

**“Earth Change Permit”** or **“Permit”** means a permit issued by the Soil Erosion Control Agent to authorize work to be performed under the provisions of Part 91, the Rules, and this Ordinance.

**“Grading”** means any leveling, stripping, excavating, filling, stockpiling or any combination thereof and shall include the land in its excavated or filled condition.

**“Lake”** means the Great Lakes and all natural and artificial inland lakes or impounds that have definite banks, a bed, visible evidence of 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.

**“Landowner”** means the person who owns or holds a recorded easement on the property or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of Highway Obstructions and Encroachments; use of Highway by Public Utilities, 1925 PA 368, as amended, being 247.183, 247.184, 247.185, and 247.186 of the Michigan Compiled Laws.

**“Municipal Enforcing Agency”** means an agency designated by a municipality under Section 9106 of Part 91 to enforce a Local Ordinance that has been approved by the Department.

**“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.

**“Non-erosive velocity”** means a speed of water movement that is not conducive to the development of accelerated soil erosion.

**“On-Site Authorized Agent”** means the person identified on the permit application by the landowner or the designated agent to be authorized and responsible for making decisions on behalf of the landowner.

**“Part 91”** means Part 91, Soil Erosion and Sedimentation Control, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being 324.9101 *et seq.* of the Michigan Compiled Laws.

**“Permanent Soil Erosion and Sedimentation Control Measures”** means those control measures, which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

**“Rules”** means the rules promulgated pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, being 24.201 to 24.328 of the Michigan Compiled Laws for the administration of Part 91.

**“Sediment”** means solid particulate matter, including both mineral and organic matter, that 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”** means a naturally occurring or constructed depression used for the sole purpose of capturing sediment during and after an earth change activity.

**“Soil Erosion”** means the wearing away of land by the action of wind, water, or gravity; or a combination of wind, water, or gravity.

**“Soil Erosion Control Agent”** means a person who has a certificate of training in soil erosion and sedimentation control from the Department and that is appointed by the Alpena County Drain Commissioner to perform the responsibilities for administering and enforcing Part 91, the Rules, and this Ordinance.

**“Stabilization”** means 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 Agency”** means a principal state department or a state public university.

**“Stop Work Order”** means an order that stops all work on a project until any and all violations of Part 91, the Rules and this Ordinance are corrected, except for remedial measures to correct the violation.

**“Storm Water Retention Basin”** means 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”** means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in The Drain Code of 1956, 1956 PA 40, as amended, being 280.1 *et seq.* of the Michigan Compiled Laws, 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”** means interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.

**“Violation of Part 91”** or **“Violates Part 91”** means a violation of Part 91, the Rules, or this Ordinance, or a permit issued under Part 91 or this Ordinance.

**“Waters of the State”** means the Great Lakes and their connecting waters, inland lakes and streams, as defined in the Rules, and wetlands regulated under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being 324.30301 *et seq.* of the Michigan Compiled Laws.

### **CHAPTER 3: GENERAL PROVISIONS**

Section 3.1 County Enforcing Agency

The Alpena County Soil Erosion & Sedimentation Department is hereby designated as the County Enforcing Agency responsible for administering and enforcing Part 91, the Rules, and this Ordinance.

Section 3.2 Jurisdiction

The Alpena County Soil Erosion & Sedimentation Department shall administer and enforce this Ordinance throughout the County except within the territorial boundaries of a governmental unit that has adopted an Ordinance and has been designated by the Department as a Municipal Enforcing Agency pursuant to Section 9106 of Part 91 or has been designated by the Department as an Authorized Public Agency pursuant to Section 9110 of Part 91.

Section 3.3 Rules Adopted

The County hereby adopts by reference and incorporates into this Ordinance as if fully set forth herein the Rules adopted by the Department pursuant to Part 91 and duly filed with the Secretary of State. Said rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the Alpena County Soil Erosion & Sedimentation Department.

Section 3.4 Fee Schedule

All fees for administering and enforcing this Ordinance shall be paid to the County in accordance with a Fee Schedule determined by resolution of the County Board of Commissioners. The County Board of Commissioners may revise the Fee Schedule by adopting a written amendment to the Fee Schedule from time to time.

All fees shall be doubled if work starts without a permit.

Section 3.5 Severability (Section 324.9122)

If any provision of Part 91, the Rules, or this Ordinance is declared by a court of competent jurisdictions to be invalid, the invalid provision shall not affect the remaining provisions of Part 91, the Rules, or this Ordinance that can be given effect without the invalid provision. The validity of Part 91, the Rules, or this Ordinance as a whole or in part shall not be affected, other than the provision invalidated.

Section 3.6 Other Regulations Repealed

All other County Codes, Ordinances and Regulations and parts of Codes, Ordinances and Regulations, which are inconsistent or conflict with the provisions of this Ordinance, are hereby repealed.

Section 3.7 More Restrictive Provisions

To the extent that any provisions or requirements of this Ordinance are more restrictive than, or are in addition to, the provisions or requirements of Part 91 or the Rules, this Ordinance shall control.

**CHAPTER 4: BUILDING PERMITS** (see R 323.1711)

Section 4.1 A local agency or general law township that issues building permits shall notify the Alpena County Soil Erosion & Sedimentation Department immediately upon receipt of a building permit application that includes activities requiring an earth change permit identified in subsection 5.1 of this Ordinance.

Section 4.2 A local agency or general law township shall not issue a building permit to a person engaged in an earth change if the change requires a permit under Part 91, the Rules or this Ordinance until the Alpena County Soil Erosion & Sedimentation Department has issued the Earth Change Permit.

**CHAPTER 5: EARTH CHANGE PERMIT REQUIREMENTS**

Section 5.1 Activities Requiring an Earth Change Permit (see Section 324.9116 and R 323.1704)

(a) A landowner or Designated Agent who contracts for, allows, or engages in an earth change in this County shall obtain an Earth Change Permit in the landowner's name from the Alpena County Soil Erosion & Sedimentation Department, unless exempted in section 5.2 of this Ordinance, before commencing an earth change which:

1. Disturbs one or more acres of land; or
2. Is located within 500 feet of the Waters of the State regardless of the amount of land disturbed.

(b) If an earth change is under the jurisdiction of two or more municipal or county enforcing agencies, an earth change permit from the Alpena County Soil Erosion & Sedimentation Department is required for the activities under the jurisdiction of this Ordinance.

(c) If a Soil Erosion Control Agent serves a notice of determination in person or by certified mail, with return receipt requested, to a person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of adjacent properties or Waters of the State, the landowner shall obtain an earth change permit and implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made (see Section 324.9116).

(d) An earth change activity that does not require an Earth Change Permit under Part 91, the Rules or this ordinance is not exempt from enforcement procedures under Part 91, the Rules or this Ordinance, if the activity

exempted results in soil erosion and off-site sedimentation of adjacent properties or the waters of the state (see R 323.1704 (2)).

Section 5.2 Permit Exemptions and Waivers (see R 323.1705 and Section 324.9115)

(a) An Earth Change Permit is not required for the following:

1. A beach nourishment project permitted under Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being MCL 324.32501 *et seq.* of the Michigan Compiled Laws.
2. 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, streams, drains or regulated wetlands.
3. An earth change of a minor nature that is stabilized within twenty-four (24) hours of the initial disturbance and that will not contribute sediment to lakes, streams, drains, or regulated wetlands.
4. Plowing or tilling of land for the purpose of crop production or the harvesting of crops.
5. Earth changes associated with the logging or mining industry. However, all earth changes associated with these activities shall conform to the same standards as if they required an Earth Change Permit under Part 91, the Rules or this Ordinance. The exemption from obtaining a permit under this subsection does not apply to the following:
  - a. Access roads to and from the site where active logging or mining is taking place.
  - b. Ancillary activities associated with logging or mining.
  - c. The removal of clay, gravel, sand, peat or topsoil.
6. 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, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451 being MCL 324.61501 *et seq.*, provided the permit application to drill and operate contains a Soil Erosion and Sedimentation Control Plan that is approved by the Department under Part 615. However, those earth changes shall conform to the same standards as required for an Earth Change Permit under Part 91, the Rules, and this Ordinance.
7. Earth changes associated with a metallic mineral mining activity regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions approved by the Department under Part 631, Reclamation of Mining Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being MCL 324.63101 *et seq.*

8. Projects undertaken by Authorized Public Agencies; however, the Authorized Public Agency must notify the Alpena County Soil Erosion & Sedimentation Department of each proposed earth change.
- (b) The Alpena County Soil Erosion & Sedimentation Department may grant a permit waiver for an earth change located within 500 feet of the Waters of the State or within 500 feet of a storm drain inlet after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and the earth change will not contribute sediment to the Waters of the State.
  - (c) The landowner, where such exempt earth change activities occur, shall plan, implement and maintain acceptable soil erosion and sedimentation control measures that meet the same standards as if they required a permit under Part 91, the Rules and this Ordinance. Furthermore, the exemptions provided in this Section shall not be construed as an exemption from enforcement proceeding under Part 91, the Rules, or this Ordinance if the activities so exempt cause or result in soil erosion or off-site sedimentation. Once those proceedings commence, a permit shall be required before work may resume.

Section 5.3 Permit Application; Designated Agent; Meeting with Soil Erosion Control Agent  
(see R 323.1706)

- (a) A landowner or Designated Agent shall submit an Earth Change Permit Application to the Alpena County Soil Erosion & Sedimentation Department. Copies of the Permit Application containing state prescribed information are available from the Alpena County Soil Erosion & Sedimentation Department on the County of Alpena website or by contacting the Department directly.
- (b) The permit application shall be signed and dated by the landowner or Designated Agent. If the landowner is a corporation, include the name and title of the authorized corporate representative.
- (c) If a Designated Agent is signing the application for the landowner, the landowner shall either also sign the application or provide a letter authorizing the Designated Agent to act on his/her behalf including authority for the Designated Agent to designate an On-Site Authorized Agent.
- (d) The Earth Change Permit Application shall be accompanied by a Soil Erosion and Sedimentation Control Plan, the required fees and any other documents that the Soil Erosion Control Agent may require.
- (e) The landowner or Designated Agent shall meet with the Soil Erosion Control Agent, if requested, to ensure that the Soil Erosion and Sedimentation Control Plan meets the provisions of this Ordinance.

Section 5.4 Soil Erosion and Sedimentation Control Plan; Contents (See R 323.1703)

A Soil Erosion and Sedimentation Control Plan shall be designed 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 be drawn to a standard engineering scale on sheets not exceeding 24 inches by 36 inches in size and include, but is not limited to, all of the following:

- (a) A site location sketch showing the landowner's property boundaries and all Waters of the State and major roads within 500 feet of the property boundary.
- (b) A boundary survey or legal description of the site.
- (c) Name, address, and telephone number of the landowner and also the Designated Agent if the landowner is not completing the application.
- (d) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the Alpena County Soil Erosion & Sedimentation Department. The maps shall include: property boundaries; proximity of proposed earth change activities to Waters of the State; predominate land features including structures and vegetation on-site and extending 50 feet beyond property boundaries; and existing and proposed topographical contour intervals or slope descriptions extending 50 feet beyond property boundaries. The Alpena County Soil Erosion & Sedimentation Department shall determine the required contour information necessary to effectuate the provision of this ordinance. Single family home construction projects, or similar projects in size, may submit written information concerning the slope of the project area instead of a topographical sketch or map unless the Alpena County Soil Erosion & Sedimentation Department determines, in writing, that a topographical sketch or map is needed.
- (e) A soils survey or a detailed written description of the soil types of the exposed land area contemplated for the earth change.
- (f) Details for the proposed earth changes including all of the following:
  - 1. A description and the location of the physical limits of each proposed earth change.
  - 2. A description and the location of all existing and proposed on-site drainage and dewatering facilities including downspouts from eaves troughs and storm and sump leads or discharge points for single family residential sites, if applicable.
  - 3. The timing and sequence of each proposed earth change on a form approved by the Alpena County Soil Erosion & Sedimentation Department.
  - 4. A description, the location, and estimated costs of all proposed temporary soil erosion and sedimentation control measures along with a schedule for installing and removing each temporary control measure.
  - 5. The location, a description, and the estimated costs of all proposed permanent soil erosion and sedimentation control measures and facilities along with the schedule for the installation and maintenance of all control measures and facilities.
  - 6. A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures and facilities that remain after project completion, including the designation of the landowner responsible for their maintenance. Maintenance responsibilities shall



become a part of any sales or exchange agreement on which the permanent soil erosion control measures and facilities are located.

(g) Any other information required by the Soil Erosion Control Agent

#### Section 5.5

Earth change requirements: time; sediment removal; design installation, and removal of temporary or permanent control measures; Standards and Specifications (see R 323.1708 and 1709 and 1710).

- (a) A person shall design, construct, and complete an earth change in a manner that limits the exposed area of any disturbed land for the shortest possible period of time as determined by the Soil Erosion Control Agent.
- (b) A person shall remove sediments caused by accelerated soil erosion from runoff waters before it leaves the site of the earth change.
- (c) A person shall design a temporary or permanent control measure that is designed and constructed for the conveyance of water around, through or from, the earth change area to limit the water flow to a non-erosive velocity.
- (d) A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. Temporary soil erosion and sedimentation control measures shall be removed after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures pursuant to approved plans and under approved standards and specifications as prescribed by subsection 5.5 (f) below.
- (e) A person shall complete permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area as approved in the timing sequence schedule but no later than 5 calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.
- (f) A person shall install and maintain temporary and permanent control measures in accordance with the standards and specifications of all of the following:
  - 1. The product manufacturer,
  - 2. The local conservation district,
  - 3. The Department,
  - 4. The Michigan Department of Transportation and
  - 5. Those formally adopted by the Alpena County Soil Erosion & Sedimentation Department.

- (g) If a conflict exists between standards and specifications referenced in this section, then the Soil Erosion Control Agent shall determine which specifications are appropriate for the project.

Section 5.6 Application Review and Permit Procedures (see Section 324.9112 and R 323.1707)

- (a) The Soil Erosion Control Agent shall approve, disapprove, or require modification to an application for a permit within 30 calendar days after the filing of a complete application for permit. A complete application includes the completed application, plans, and required fees. The Soil Erosion Control Agent shall notify an applicant of approval by first-class mail. If an application is disapproved, then the Soil Erosion Control Agent shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval. The Soil Erosion Control Agent need 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 permit given to the applicant either in person or by first-class mail constitutes approval.
- (b) Upon determination that a permit applicant has met all the requirements of Part 91, the Rules, and this Ordinance, the Soil Erosion Control Agent shall issue a permit for the proposed earth change on a form that contains State prescribed information as well as that prescribed by the Alpena County Soil Erosion & Sedimentation Department.

Section 5.7 Permit Application Disapproval

The Soil Erosion Control Agent shall disapprove an Earth Change Permit application where:

- (a) The proposed work would cause uncontrolled soil erosion and/or off-site sedimentation; or
- (b) The work proposed by the applicant will interfere with an existing drainage course in such a manner as to cause damage to any adjacent property; or
- (c) The land area for which the work 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 Earth Change Permit application is incomplete or does not comply with the provisions of Part 91, the Rules or this Ordinance.

Section 5.8 Permit Modification; Permit Revocation or Suspension

- (a) The Soil Erosion Control Agent may provide written authorization for modifications to an Earth Change Permit or the approved Soil Erosion and Sedimentation Control Plan upon receiving a request from the landowner or On-Site Authorized Agent. No work in connection with any proposed modification shall take place without the written approval of the Soil Erosion Control Agent. The Soil Erosion Control Agent may require new fees if the scope of the earth change activity has changed.

- (b) Any permit issued under this Ordinance may be revoked or suspended for any of the following reasons:
1. A violation of the condition of the permit.
  2. Misrepresentation or failure to fully disclose relevant facts in the application or in the Soil Erosion and Sedimentation Control Plan.
  3. A change in a condition that requires a temporary or permanent change in the activity.
  4. Authorized work is abandoned or suspended for a period of (6) six months.
  5. Notice will be given to the permit holder of revocation or suspension of the permit in person or by certified mail. If the permit has been revoked for any reason, a new earth change permit application accompanied by new plans and fees would be required for any earth change activities.

Section 5.9 Permit Expiration; Extension of Time

- (a) Earth Change Permits shall expire automatically upon the project completion date specified in the permit. If a project completion date is not specified then the permit shall expire one year from the permit issuance date. The duration of an Earth Change Permit shall not exceed a period of two (2) years. Permits shall automatically expire if construction has not commenced within one year of the date of issuance. An extension of permit fee will be assessed at the time of issuance, per the fee schedule adopted annually.
- (b) If the landowner is unable to complete the earth change activities prior to the permit expiration date, the landowner or Designated Agent may request an extension of time provided the request is made in writing at least 10 days prior to the permit expiration date. The request shall include all relevant necessary sustaining reports, supporting documentation, and fees.
- (c) If an extension of time is granted, the Soil Erosion Control Agent shall issue a written extension, which specifies a revised permit expiration date, not to exceed one (1) year.
- (d) An extension does not release the owner or the surety on a bond, or the person furnishing an irrevocable letter credit, or a person furnishing a cash bond, or a person furnishing a certificate of self-insurance from their responsibilities and/or liabilities thereunder.

Section 5.10 Earth Change Requirements Generally (see R 323.1702 and R 323.1707 (4))

A person, the landowner, and the On-Site Authorized Agent engaged in an earth change shall:

- (a) Conduct the earth change in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.

- (b) Plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with Part 91, the Rules and this Ordinance, which effectively reduce accelerated soil erosion and off-site sedimentation.
- (c) Carry out the earth change activities in accordance with an approved Soil Erosion and Sedimentation Control Plan and in compliance with all the requirements of the Earth Change Permit, Part 91, the Rules, and this Ordinance.
- (d) The Earth Change Permit must be posted on-site and clearly visible from the road. The Soil Erosion and Sedimentation Control Plan must be available for inspection at the site of the earth change at all times.

**CHAPTER 6: EARTH CHANGE PERMIT; BOND REQUIREMENTS** (see 324.9108)

Section 6.1 Surety Bond; Cash Bond; Irrevocable Letter of Credit

- (a) The Soil Erosion Control Agent, may as a condition for the issuance of a permit, require the landowner to post a cash bond or an irrevocable letter of credit with the Alpena County Soil Erosion & Sedimentation Department in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the Alpena County Soil Erosion & Sedimentation Department. In lieu of a cash bond or an irrevocable letter of credit, the landowner may file a surety bond in the amount of 125% of the amount sufficient to assure the installation and completion of such protective or corrective measures with the Alpena County Soil Erosion & Sedimentation Department. The surety bond shall be executed by the landowner and a corporate surety who has authority to do business in this state as a surety.
- (b) The surety bond shall be in a form approved by the County Corporate Counsel, or the Corporate Counsel's duly authorized agent, and shall be issued to the County Soil Erosion and Sedimentation Control Fund.
- (c) A surety bond, cash bond or irrevocable letter of credit, shall include and be made on the conditions that the landowner shall comply with all of the provisions of Part 91, the Rules and this Ordinance; all terms and conditions of the permit; and that the landowner shall complete all work contemplated under the permit within the time limit specified in the permit.

In the event that the landowner fails to comply with the terms and conditions of the Earth Change Permit; or fails to comply with the provisions of Part 91, the Rules, or this Ordinance; or fails to implement the approved Soil Erosion and Sedimentation Control Plan, the Soil Erosion Control Agent may order such work as necessary to provide for effective soil erosion and sediment control. The landowner and the surety executing the bond or person issuing the irrevocable letter of credit or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses, including legal, that the Alpena County Soil Erosion & Sedimentation Department incurs in causing any and all work to be done to comply with the provisions of Part 91, the Rules, or this Ordinance. In the case of a cash bond, the Soil Erosion Control Agent shall authorize the Alpena County Soil Erosion & Sedimentation Department to refund any

unused portion to the person who posted the bond.

- (d) The Alpena County Soil Erosion & Sedimentation Department may establish a list of pre-qualified contractors for use in ordering work required under subsection 6.1 (d).

## **CHAPTER 7: NOTICE OF COMPLETION; CERTIFICATE OF COMPLETION**

Upon satisfactory execution of the approved plans and permit conditions and other requirements imposed under this Ordinance, the landowner shall file a written notice of completion with the Soil Erosion Control Agent. If the landowner has posted a cash bond or an irrevocable letter of credit the Soil Erosion Control Agent shall make a final inspection within thirty (30) days of receiving the notice of completion and shall issue a certificate or letter of completion and release of bond if the landowner has satisfactorily complied with the plan, permit conditions and this ordinance. If the project is to be completed in different phases, the landowner may submit a written notice of completion for a project phase and the Soil Erosion Control Agent may issue separate certificates of completion and authorize a proportionate release of a cash bond for each completed project phase.

## **CHAPTER 8: ENFORCEMENT; NOTICE OF DETERMINATION; COMPLIANCE TIME; VIOLATIONS AND PENALTIES**

### **Section 8.1** Enforcement (see R 323.1712)

The County Drain Commissioner, Deputy County Drain Commissioner, or Soil Erosion Control Agents may issue a municipal civil infraction citation, Stop Work Order, Cease and Desist Order, or revoke a permit upon its findings that there is a violation of Part 91, the Rules, or this Ordinance, or a finding that there is a violation of a permit or an approved Soil Erosion and Sedimentation Control Plan.

### **Section 8.2** Notice of Determination: (see 324.9117)

If the Alpena County Soil Erosion & Sedimentation Department 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 Part 91, the Rules or this Ordinance, the Alpena County Soil Erosion & Sedimentation Department may seek to enforce a violation by notifying the landowner through a notice of determination served in person or by certified mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with Part 91, the Rules and this Ordinance.

### **Section 8.3** Compliance; Time (see 324.9118)

Within 5 days after a notice of violation has been issued under Section 8.2 of this Ordinance, a person who owns land subject to Part 91, the Rules, or this Ordinance shall implement and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules, or this Ordinance.

### **Section 8.4** Entry upon Land; Construction; Implementation, and Maintenance of Soil Erosion and Sedimentation Control Measures; Cost (see 324.9119)

Not sooner than 5 days after notice of violation has been served in person or mailed under Section 8.2 of this Ordinance, if the condition of the land, in the opinion of the Alpena County Soil Erosion & Sedimentation Department, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the Waters of the State, and if soil erosion and sedimentation control measures in conformance with Part 91, the Rules, and this Ordinance are not in place, the Alpena County Soil Erosion & Sedimentation Department, or its designee, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules, and this Ordinance. However, the Alpena County Soil Erosion & Sedimentation Department shall not expend more than \$10,000 for the cost of the work, materials, labor, and administration without prior written notice in the Notice of Determination provided in Section 8.2 of this Ordinance to the landowner that the expenditure of more than \$10,000 may be made. If more than \$10,000 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed by certified mail with return receipt requested.

Section 8.5 Reimbursement of Alpena County Soil Erosion & Sedimentation Department Expenses; Lien for Expenses; (see 324.9120)

All expenses, including legal, incurred by the Alpena County Soil Erosion & Sedimentation Department under Section 8.4 of this ordinance to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into compliance with Part 91, the Rules, and this Ordinance shall be reimbursed to the Alpena County Soil Erosion & Sedimentation Department by the landowner.

The Alpena County Soil Erosion & Sedimentation Department shall have a lien on the property for the expenses incurred under Section 8.4 of this Ordinance of bringing the land into conformance with Part 91, the Rules, or this Ordinance. However, 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. 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, 1893 PA 206, being 211.1 to 211.157 of the Michigan Compiled Laws.

Section 8.6 Violations; Penalties (Section 324.9121)

- (a) A person who violates Part 91, the Rules or this Ordinance, is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00. All persons that receive municipal civil infraction citations shall have thirty (30) days to pay the fine to the Alpena County Drain Commissioner's Office or appeal the citation in accordance with subsection 10.2 of this Ordinance. If the County Drain Commissioner upholds the decision of the Soil Erosion Control Agent the fine shall be due within thirty (30) days of the municipal civil infraction citation date.

A person who knowingly violates Part 91, the Rules or this Ordinance or knowingly makes a false statement in an application for a permit or in a Soil Erosion and Sedimentation Control Plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.

- (b) A person who knowingly violates Part 91, the Rules or this Ordinance after receiving a notice of determination under Section 8.1 or 8.2 is responsible for payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of the violation.
- (c) Civil fines collected under subsection (a) shall be deposited into the Soil Erosion and Sedimentation Control Fund. Civil fines collected under subsections (b) or (c) that are payable to the County shall be deposited into the County General Fund.
- (d) A default in payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the Revised Judicature Act of 1961, 1961 PA 236, as amended, being section 600.101 *et esq.* of the Michigan Compiled Laws.
- (e) In addition to a fine assessed under this section, a person who violates Part 91, the Rules, or this Ordinance is liable to the State of Michigan for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.
- (f) Lessees, contractors, or other individuals undertaking an earth change, as well as the landowner and On-Site Authorized Agent, are liable for civil penalties prescribed in Section 8.6.

**CHAPTER 9: INJUNCTION; INSPECTION AND INVESTIGATION; INTERFERENCE WITH ADMINISTRATON AND ENFORCEMENT.**

Section 9.1 Injunction

Notwithstanding the existence or pursuit of any other remedy, the Department or the County 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 of Part 91, the rules or this Ordinance.

Section 9.2 Right of Entry and Inspection:

An agent appointed by the Department or the Alpena County Soil Erosion & Sedimentation Department 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 of Part 91, the Rules, or this Ordinance.

Section 9.3 Interference with Administration and Enforcement:

No person shall unlawfully hinder, oppose or resist the Soil Erosion Control Agent in the discharge of the administration and enforcement of Part 91, the Rules, or this Ordinance. No person shall remove, mutilate or conceal any notice or placard posted by the Soil Erosion Control Agent except by written permission of the Soil Erosion Control Agent.

**CHAPTER 10: APPEAL PROCEDURES**

Section 10.1 Appeal of Permit Decision; Informal Hearing

If the landowner or Designated Agent is aggrieved by a permit decision made by the Soil Erosion Control Agent, a written appeal including the reason for the appeal referencing applicable sections of the Ordinance; a photocopy of any written action; and the required fees may be filed with the County Drain Commissioner within 14 calendar days of that decision. If an appeal is filed, an informal hearing will be scheduled within 14 calendar days from the date of the filing.

The informal hearing will allow the landowner or Designated Agent opportunity to submit additional information or re-emphasize previously submitted data. The County Drain Commissioner will then review the information and take under advisement any other comments received before making a final decision within twenty-one (21) days of the informal hearing, and forward this final decision to the landowner or designated agent in person or by first class mail.

Section 10.2 Appeal of Notice of Violation; Informal Hearing

If the landowner or On-Site Authorized Agent is aggrieved by a compliance and enforcement action made by the Soil Erosion Control Agent pursuant to Section 8.2 of this Ordinance, a written appeal including the reason for the appeal referencing applicable sections of the Ordinance; a photocopy of any written action; and the required fees may be filed with the County Drain Commissioner within 24 hours of receiving a notice of violation. If an appeal is filed, an informal hearing will be scheduled within three (3) calendar days of the date of the filing.

The informal hearing will allow the landowner or On-Site Authorized Agent opportunity to submit additional information or re-emphasize previously submitted data. The County Drain Commissioner will then review the information and take under advisement any other information received before making a final decision within two (2) days of the informal hearing, and forward this final decision to the landowner or On-Site Authorized Agent in person or by certified mail, return receipt requested.

Section 10.3 County Drain Commissioner's Decisions; Standard of Review

(a) The County Drain Commissioner shall sustain the decision of the Soil Erosion Control Agent unless the Commissioner finds, by clear and convincing evidence that The Soil Erosion Control Agent's decision:

1. Was based upon a mistake(s) of fact and that the correction of that mistake(s) leads to a different result; or,
2. Was based upon a mistake(s) of law and that the correction of that mistake(s) leads to a different result; or,
3. Constitutes an abuse of discretion and no factual or legal argument provides any support for the Soil Erosion Control Agent's position.

(b) All decisions, whether oral or written, must include a brief recap of testimony and evidence presented. The decision of the County Drain Commissioner shall be binding upon the Soil Erosion Control Agent and the landowner,



Designated Agent and/or On-Site Authorized Agent.

**CHAPTER 11** Soil Erosion and Sedimentation Control Fund

Section 11.1 The Soil Erosion and Sedimentation Control Fund is created within the county treasury.

Section 11.2 The county treasurer may receive money or other assets from any source for deposit into the Soil Erosion and Sedimentation Control Fund. The county treasurer shall direct the investment of the Soil Erosion and Sedimentation Control Fund. The county treasurer shall credit to the Soil Erosion and Sedimentation Control Fund interest and earnings from fund investments. The county treasury may transfer money from the Soil Erosion and Sedimentation Control Fund to the General Fund by resolution of the County Board of Commissioners.

Section 11.3 All fees, cash bonds, money received from an irrevocable letter of credit or a certificate of self-insurance, and reimbursements for expenses incurred by the Alpena Soil Erosion & Sedimentation Department made payable to the County with regard to Part 91, the Rules or this Ordinance shall be deposited by the county treasurer into the Soil Erosion and Sedimentation Control Fund.

Section 11.4 Money in the Soil Erosion and Sedimentation Control Fund at the close of the fiscal year shall remain in the fund and shall not lapse to the county general fund.

Section 11.5 The Alpena County Soil Erosion & Sedimentation Department shall expend money from the fund only to administer and enforce Part 91, the Rules or this Ordinance.

**CHAPTER 12: EFFECTIVE DATE**

This Ordinance shall take effect upon approval by the department and when notice of its adoption is published in a newspaper of general circulation in the County. All active permits issued prior to adoption of said Ordinance and bonds shall remain in effect and shall be subject to provisions of this Ordinance.

The undersigned do hereby certify that the above and foregoing Ordinance, known as the Soil Erosion and Sedimentation Control Ordinance, Ordinance No. 2003-04 of the County of Alpena, Michigan, was introduced at a regular meeting of the County Board of Commissioners, held on June xx, 2023, and was thereafter passed at a regular meeting on June xx, 2023.

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Bill Peterson, Chairperson  
Alpena County Board of Commissioners

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Date

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Keri Bertrand, Clerk  
Alpena County Clerk

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Date

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