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

ORDINANCE

Adopted
MDEQ Revisions
AMENDED/APPROVED

OCTOBER 15, 2002
November 23, 2004
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### BENZIE COUNTY

**SOIL EROSION, SEDIMENTATION, AND STORMWATER CONTROL ORDINANCE**

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

Adopted by resolution of the Board of County Commissioners in accordance with provisions of Part 91, Soil Erosion and Sedimentation Control, of the Michigan Natural Resources and Environmental Protection Act (1994 PA 451), as amended (Part 91), and the Rules promulgated.

PREAMBLE

This Ordinance, adopted by majority vote of the members of the Board of Commissioners elected and serving, Benzie County hereby ordains, the administrative procedures, standards, and enforcement remedies which shall be used by the Benzie County Planning Department in meeting the requirements of Part 91 of Act 451 of 1994, as amended, and the Rules promulgated under Part 91, the Land Division Act, PA 591 of 1996 (formerly the Subdivision Control Act 288 of 1967, as amended), the Michigan Drain Code (P.A. 40 of 1956 as amended), The Condominium Act (1978 PA 59, as amended), and any other applicable Acts.

I. Purpose and Objectives

A. Purpose

The purpose of this Ordinance is to prevent the pollution, impairment, or destruction of a natural resource or the public trust in Benzie County.

B. Objectives

Specific objectives include the following:

1. To prevent accelerated soil erosion and to control sediment and stormwater runoff resulting from earth changes proposed within Benzie County, both during and after construction.

2. To assure that property owners control the volume and rate of stormwater runoff originating from their property so that surface water and groundwater quality is protected, soil erosion and off-site sedimentation minimized, and flooding potential reduced.

3. To preserve natural drainage systems and encourage infiltration, control stormwater runoff, and minimize the need for enclosed, below-grade storm drain systems.
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.
II Definitions

A. The following terms and phrases shall have the meaning given herein, unless the context otherwise requires:

1. Accelerated Soil Erosion - The increased loss of the land surface that occurs as a result of human activities.

2. Agriculture Erosion Control Agreement - A document signed by the Benzie County Conservation District and the agricultural land owner that details steps involved in earth change activities to control erosion and off-site sedimentation.

3. Appeals Board - The Benzie County SESSC Appeals Board comprised of five (5) County residents having expertise in related disciplines, appointed by the Benzie County Board of Commissioners and trained by the MDEQ.

4. Authorized Public Agency (APA) - State, county, or municipal agency designated pursuant to Section 9110 of Part 91 for the purpose of enforcing soil erosion and sediment control requirements with regard to earth changes undertaken by that agency.

5. Benzie County Planning Department - The Planning Department is the SESSC Enforcement Agency designated by the Benzie County Board of Commissioners. The Director and staff report to the Benzie County Planning Commission on matters regarding Planning and Soil Erosion, Sediment, and Stormwater Control.

6. Benzie County Planning Commission - Is the designated planning agency for Benzie County under State Law, (the County Planning Act P.A. 282 of 1945, as amended), created and appointed by the Benzie County Board of Commissioners.

7. Best Management Practice (BMP) - Structural device, measure, facility, or activity which helps to achieve soil erosion, sedimentation and stormwater management control objectives at a designated site.

8. Board of County Commissioners - Benzie County Board of Commissioners, the legislative body for Benzie County.

9. Channel - The portion of a natural stream which conveys normal flows of water, or a ditch or channel excavated for the flow of water.
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.


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 details 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 Beauce 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.
20. **Drain Commissioner** - Benzie County Drain Commissioner or the authorized representative of the Drain Commissioner.

21. **Drainage** - The interception and removal of groundwater or surface water by natural or artificial means.

22. **Drainage Well** - A bed of stone or hole in the ground constructed for the purpose of trapping stormwater for infiltration into the ground.

23. **Downstream** - Lands and waters which receive stormwater runoff and other surface water flows from a designated site. Downstream lands and waters are down gradient from the designated site.

24. **Drainage System** - All facilities, channels, and areas which serve to convey, filter, store, and/or receive stormwater, either on a temporary or permanent basis.


27. **Earth Change** - A human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. The term “earth change”, does not include the practice of plowing and tilling soil for the purpose of crop production.

28. **Environmentally-Sensitive Sites** - Any site with one or more of the following characteristics:

   a. Sites where driveways have been planned with a slope greater than 10 percent (10 feet horizontal to 1 foot vertical).
   b. Sites with K-values that are greater than 0.25. Soils classified in hydrologic Group D in the Benzie County Soil Survey, published by the Natural Resource Conservation Service (NRCS), U.S. Department of Agriculture.
   c. Sites which may cause sedimentation and/or drainage onto adjacent land areas if earth changes occur due to elevation, steep slope, or being an impermeable (Group D soils) soil.
   d. Sites located within twenty-five (25) feet of a protected wetland.
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.
38. **Infiltration Facility** - A structure or area which allows stormwater runoff to gradually seep into the ground, e.g. french drains, seepage pits, infiltration basin, dry well, or perforated pipe.

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

40. **Maintenance Agreement** - A binding agreement between the landowner and Benzie County which sets forth the location and design of best management practices, as well as the terms and requirements for stormwater and soil erosion control facility maintenance recorded with the County Register of Deeds.

41. **For Future Use**

42. **Non-erosive Velocity** - A speed of water movement that is not conducive to the development of accelerated soil erosion.

43. **Off-site Facility** - Stormwater management or soil erosion control facility which is located partially or completely off of the development site.

44. ** Ordinary High Water Mark (OHWM)** - The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself by the configuration of the surface of the soil and vegetation. On an inland lake which has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark. The OHWM for Lake Michigan is 580.5 feet, 1985 IGLD

45. **Outfall** - The point where water flows out from a conduit, drain, or basin.

46. **Outlet** - A stream, grassed waterway, or other facility receiving the permanent or intermittent flow from a basin, drain, or other stormwater management facility.
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).


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.
59. **Site** - Any tract, lot, or parcel of land or combination of tracts, lots or parcels of land proposed for development.

60. **Soil Erosion** - The wearing away of land by the action of wind, water, gravity or a combination thereof.

61. **Soil Erosion, Sediment, and Stormwater Control Facilities and Measures** - Any structure, facility, barrier, berm, vegetative cover, basin, or other measure which serves to control soil erosion, sedimentation and stormwater in accordance with the purposes and standards of this Ordinance.
   
   a. **Temporary measures** - The interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.
   
   b. **Permanent measures** - Control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

62. **SESSC Plan** - Maps and written information for a proposed earth change which describe the way in which soil erosion, sedimentation, and stormwater runoff will be controlled, during and after completion of construction.

63. **SESSC Agent** - Soil erosion, sedimentation, stormwater control agent, responsible for enforcing this SESSC Ordinance and issuing permits.

64. **SESSC Permit** - Signed, written statement issued under this Ordinance authorizing the applicant to engage in specified earth changes.

65. **Stop-Work-Order** - A notice issued by the SESSC Agent to the permittee to require the permittee to cease grading or development activities upon a finding there is a violation of Part 91, the Rules, or of this Ordinance.

66. **Storage Facility** - A basin, structure, or area, either natural or manmade, which is capable of holding stormwater for the purpose of reducing the rate of discharge from the site.

67. **Storm Drain** - A conduit, pipe, natural channel or human-made structure which serves to transport stormwater runoff.
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.
79. **Wetland** - Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life and is commonly referred to as a bog, swamp, or marsh. A wetland will contain a predominance, not just an occurrence, of wetland vegetation, aquatic life, or hydric soil.

80. **Wetland Vegetation** - Plants, that exhibit adaptations to allow, under normal conditions, germination or propagation, and to allow growth with at least their root systems in water or saturated soil.

### III Permit Requirements

#### A. Jurisdiction for Permit Administration

1. The Benzie County Planning Department shall be the SESSC enforcing agency for regulated earth changes proposed within the boundaries of Benzie County.

2. Earth changes carried out by Authorized Public Agencies or under permit from an MEA shall be exempt from this ordinance.

3. An Authorized Public Agency is exempt from this ordinance but shall notify the Planning Department of any proposed earth change which is more extensive than normal maintenance.

4. When earth changes are proposed on sites which are partially included in the jurisdiction of two or more CEA’s and/or MEA’s, permit issuance shall be the responsibility of the Michigan Department of Environmental Quality (MDEQ).

#### B. Regulated Earth Changes

Earth changes requiring a SESSC Permit from the SESSC Agent include the following:

1. All earth changes disturbing one (1) or more acres of land, or any earth change within five hundred (500) feet of the water’s edge of a lake or stream, except as exempted in this Ordinance.

2. Earth changes on environmentally-sensitive residential sites.
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)
1. On projects which are so large or complex that a plan encompassing all phases of the project cannot reasonably be prepared prior to initial groundbreaking, application for permits on successive major incremental earth change activities may be allowed. Requests for sequential applications shall be approved by the SESSC Agent at the time of submittal of the original permit application.

2. Approval of sequential applications shall take place in two phases. First, the overall conceptual plan for the entire development shall be submitted for review and preliminary approval. Second, detailed plans for sections of the total project may be submitted for review and final approval and issuance of a permit.

3. All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered. Each phase of the project must be reviewed and permitted prior to construction.

F. Permit Approval or Disapproval

1. If the SESSC Agent determines that the proposed SESSC plan is complete and complies with the standards of the Rules and of this Ordinance, a permit shall be issued within thirty (30) days specifying the work approved. If the proposed plan does not comply with these standards, the applicant shall be notified that the plan needs to be modified or will be denied.

2. If an application is disapproved, then the enforcing agency shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval.

3. If necessary, and as a condition of approval or re-application, the SESSC Agent may request additional information from the applicant.

G. Permit Expiration or Revocation

1. Permits shall terminate automatically if construction has not commenced within one year of the date of issuance. The permit holder may request up to a one (1) year extension if there are valid reasons to support such an extension.

2. Any permit issued by the SESSC Agent under this Ordinance may be suspended or revoked after a finding of a violation of Part 91, or this Ordinance, for any of the following causes:
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.
If there are severe development limitations in regards to the existing site characteristics, the SESSC Agent may require that a residential or environmentally sensitive site plan be prepared by one or more of the following registered professionals: civil engineer, land surveyor, architect, and/or landscape architect.

A. Other Land Uses, and Site Plans for Earth Changes, (See Sec. III-B).

The submitted site plans shall show the following:

1. A map or maps at a scale of not more than two hundred (200) feet to the inch or as otherwise determined by the SESSC Agent, including a legal description and site location sketch which includes the proximity of any proposed earth change to lakes or streams or both; predominant land features; and contour intervals or slope description.

2. A soils survey or written description of the soil types of the exposed land area contemplated for the earth change.

3. A description and the location of the physical limits of each proposed earth change as follows:
   a. A description and the location of the physical limits of each proposed earth change.
   b. A description and the location of all existing and proposed on-site drainage and dewatering facilities.
   c. The timing and sequence of each proposed earth change.
   d. The location and description for installing and removing all proposed temporary soil erosion, sedimentation, and stormwater control structures.
   e. A location and description of all proposed permanent soil erosion, sediment control and stormwater control measures or devices.
   f. A program proposal for the continued maintenance of all permanent soil erosion, stormwater, and sediment control measures or devices that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

4. Location of all lakes, streams, and protected wetlands partially or completely contained within the boundaries of the site or within five hundred (500 feet) of the earth change.
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 stormwaters and to protect water quality.

C. Measures 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.
F. When a proposed earth change is located in an area where a Watershed Plan has been approved by the County Board of Commissioners, the standards for stormwater detention and retention volumes, discharge rates, and stormwater facility locations specified in the approved Watershed Plan shall be deemed to meet the requirements of this Ordinance.

VIII Off-Site Stormwater Control

A. Waiver Options

1. In lieu of on-site stormwater facilities and measures, the use of off-site stormwater control facilities and measures, together with on-site soil erosion control, may be proposed. In such cases, the applicant shall request a waiver of the requirements for on-site stormwater runoff control. The waiver request shall be submitted to the SESSC Agent with a permit application and a SESSC Plan, including information specified in Section VI of this Ordinance. This waiver option does not allow for changes in requirements for on-site soil erosion control.

B. Shared Off-Site Stormwater Control Facilities

1. Off-site stormwater control areas may be shared between two or more property owners or developments, provided that maintenance agreements have been approved by the SESSC Agent and easements have been obtained and recorded.

2. Stormwater management easements are required for all areas used for off-site stormwater control unless an exception has been granted by the SESSC Agent and Drain Commissioner. Easements shall be recorded with the Benzie County Register of Deeds prior to approval of the final development plan by the SESSC Agent.

C. Applicable Standards

1. General Standards specified in Section VII of this Ordinance shall be used in reviewing proposed SESSC Plans for off-site stormwater facilities and measures.

IX Maintenance
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. Performance Guarantees

1. Applicants proposing major developments, such as subdivision plats, road construction projects, etc., or other developments identified by the SESSC Agent as being an environmentally sensitive site, such as having steep slopes, or otherwise having a high potential for soil erosion, may be required to post a cash bond, irrevocable letter of credit, or other acceptable form of performance assurance, in an amount determined by the Benzie County Planning Commission.

2. Letters of credit, if used as a performance guarantee, shall extend for a minimum of one year with the option of renewal, or for the expected duration of the project. Letters of credit will be returned to the applicant when the site is certified to be complete by the licensed professional who designed the site plan and the site is completely stabilized to meet requirements set forth by the Benzie County Planning Commission.

B. Construction Certification by Licensed Professional

For any sites that required a professional site plan, a certification letter shall be submitted after soil erosion and stormwater runoff control facilities have been installed to confirm that construction has been completed in accordance with the approved SESSC Plan. This certification letter can be prepared by one of the following licensed professionals: civil engineer, architect, and/or landscape architect unless it was specified by the SESSC Agent or the Benzie County Planning Commission that a civil engineer prepare the plan.

If substantial changes are needed during the course of construction, the SESSC Agent may authorize plan alterations and then require final “as built” drawings for final approval of the site work.

C. Certification of Compliance

Upon receipt and approval of the certification letter and after final inspection, the SESSC Agent shall issue a certificate of compliance to the property owner.

XII Inspections
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.

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.

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
in violation of this Ordinance or Rules, the SESSC Agent may seek to enforce this Ordinance by notifying the land owner by certified mail, with return receipt requested, of its determination. The notice shall contain a description of specific soil and sedimentation control measures that, if implemented by the land owner, would bring the landowner into compliance with this Ordinance and the Rules and would prevent soil erosion and sedimentation of the waters of the State.

F. A person who owns land subject to this ordinance shall implement and maintain soil erosion, sediment, and stormwater runoff control measures in conformance with this Ordinance within five (5) days after the notice of violation has been given as specified in Section E above.

XIV. Enforcement Action

A. General Provisions

1. All earth changes in Benzie County, including earth changes exempt from permit requirements, are subject to the enforcement provisions and penalties of this Ordinance and Part 91.

2. 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 the waters of the state or to adjacent property shall 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.

3. The SESSC Agent shall notify the Michigan Department of Environmental Quality (MDEQ) of all violations of Part 91, or Rules, as well as violations of this Ordinance, including violations attributable to an earth change created by an Authorized Public Agency.

4. Each act of violation, and every day upon which any violation shall occur or continues to occur after the initial five (5) day notice of violation has passed, shall constitute a separate offense.

5. A person who has not complied with this Ordinance within five (5) days of notice, or who, after notice, refuses to implement and/or maintain soil erosion control and stormwater runoff control measures and facilities in conformance with these regulations shall be subject to a fine and/or ninety (90) days in jail, or both, plus the cost of prosecution.

6. Civil Fines:
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
treated in the same manner as provided for property tax liens under Act 206 of 1893.

4. A person who has not complied with Section XIV A.2. and who, after notice, refuses to implement and maintain soil erosion, sedimentation, and stormwater runoff control measures in conformance with this ordinance shall be subject to a civil fine of not more than twenty five thousand ($25,000.00) dollars per each day of violation. A fine collected under this section shall be paid to the Benzie County Treasurer as Planning Department generated funds. A default in the payment of a civil fine or costs ordered under this Ordinance or an installment of the fine or costs may be remedied by any means authorized under the revised Judicature Act of 1961, PA 236, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

XV. **Appeals**

A. **Right of Appeal**

1. Any person(s) aggrieved by the action or inaction of the Benzie County Planning Department or SESSC Agent related to this Ordinance may appeal to the Benzie County SESSC Appeals Board.

2. The affected County or Township Zoning Board of Appeals will have jurisdiction to hear dimensional variance requests when a zoning variance is concurrently considered.

XVI. **Severability**

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

XVII. **Effective Date**

The ordinance shall take effect thirty (30) days after publication according to statute.

Date: February 16, 2005

[Signature]
Donald Howard, Chairperson,
Benzie County Board of Commissioners
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