

ORDINANCE NO. 33
PENINSULA TOWNSHIP
STORM WATER CONTROL ORDINANCE

Description of Purpose and Nature:

AN ORDINANCE TO PROVIDE FOR STORM WATER MANAGEMENT PRACTICES AND REVIEW OF STORM WATER MANAGEMENT PLANS IN CONFORMANCE WITH STANDARDS ADOPTED BY THE GRAND TRAVERSE COUNTY DRAIN COMMISSIONER.

Peninsula Township, Grand Traverse County, Michigan Ordains:

Section 1. Applicability. Except as otherwise provided in this Ordinance, any earth changes, as defined as in Part 91, 1994 PA 451, being MCL 324.9101(9), as amended, that meet any of the following criteria require a Storm Water Runoff Control Permit:

- A. Disturb 1 or more acres of land
- B. Within 500 feet of the ordinary high water mark of a lake or stream
- C. Commercial use development
- D. Mobile home park or manufactured home development
- E. Multiple family residential development or P.U.D.
- F. Site condominium or condominium developments as defined by Act 59 of the Public Acts of 1978, as amended
- G. Platted subdivision development
- H. Private roads which access 3 or more development parcels

Section 2. Design Standards. "Design standards" as used in this ordinance means the Uniform Storm Water Control Design and Installation Standards for Municipalities in Grand Traverse County, which are attached and made a part of this ordinance as Appendix A.

Section 3. Enforcement Agent. The Grand Traverse County Drain Commissioner is authorized as the primary enforcement agent for Peninsula Township ("Township") for carrying out this ordinance, and may designate such agents, as the Drain Commissioner deems necessary to carry out the purposes

of this ordinance. In addition, the Township, is also authorized to act as enforcement agent, and retains the discretion to enforce this Ordinance by the Township's Ordinance Enforcement Officer if, in the Township's discretion, exigent or other appropriate circumstances require the Township to enforce this Ordinance.

Section 4. Earth Change Permit.

A) **Application.** Permit applications shall be submitted to the enforcement agent. Copies of the permit application form shall be made available by the enforcement agent. Application for a permit and issuance of the permit shall be made prior to the start of any earth change requiring a permit under this ordinance. Submission of an application for permit shall constitute consent by the property owner for the enforcement agent or his designated representative to enter upon the property for purposes of inspections attendant to the application. The application shall contain, at a minimum, all of the following:

- 1) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the enforcement agent, including a legal description and site location sketch that includes the proximity of any proposed earth change to lakes, streams, and or wetlands; predominant land features; and contour intervals or slope description and all applicable set backs.
- 2) A soils survey or a written description of the soil types of the exposed land areas contemplated for the earth change.
- 3) A description and the location of the physical limits of each proposed earth change.
- 4) The location of all lakes, streams, and wetlands partially or completely contained within the boundaries of the site or within 50 feet of the site boundary.
- 5) A description and the location of all existing and proposed on-site storm water management and dewatering facilities.
- 6) The timing and sequence of each proposed earth change.
- 7) The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures.
- 8) A description and the location of all proposed permanent storm water control measures or devices.

- 9) The enforcement agent may require, as defined in Section 1, that the storm water runoff control plan be prepared by a State of Michigan licensed landscape architect, architect, land surveyor or professional engineer. If the enforcement agent also requires an additional professional consultant (engineer and/or attorney) to review the plans submitted, all review costs shall be paid for by the developer
- 10) The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Options include:
 - a) Property owner
 - b) Homeowner's association, provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements
 - c) Grand Traverse County Drain Commissioner, in accordance with the Michigan Drain Code, Public Act 40 of 1956, as amended, if the storm water conveyance facilities are within a designated Drain District.

B) Sequential Application.

1. If a development on a site is so large or complex that a storm water control plan encompassing all phases of the project cannot reasonably be prepared prior to initial ground breaking, then an application for a permit for successive major incremental earth change activities may be allowed.
2. Requests for sequential applications shall be approved by the enforcement agent prior to submittal of the initial permit application. 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 approval. Second, detailed plans for sections of the total project shall be submitted for review and approval upon the request of the enforcement agent.
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 by the enforcement agent prior to construction.

- C) Permit Application Review.** Concurrent with and pursuant to the Grand Traverse County Soil Erosion Control Ordinance #25, the enforcement agent shall approve, approve with conditions, or deny an application after the completed application is submitted together with all required plans and fees. The enforcement agent shall reject any application which is incomplete.

- D) **Approval – Certification Not Required.** Approval shall be granted if the storm water control plan meets the requirements set forth in the design standards and the requirements of this ordinance.
- E) **Approval – Certification Required.** For any site requiring that a storm water control plan be prepared by a State of Michigan registered professional, the enforcement agent shall grant approval if the storm water control plan meets the requirements set forth in the design standards and upon receipt by the enforcement agent of a letter from the registered professional certifying that the storm water control plan meets all of the requirements of the design standards.
- F) **Approval with Conditions.** If the application is approved with conditions, the enforcement agent must state in writing the conditions upon which approval is based.
- G) **Denial.** The enforcement agent shall notify the applicant in writing if the application is denied and the reasons for the denial.
- H) **Permit Expiration.** All permits approved by the enforcement agent shall expire upon the occurrence of project completion date provided on the application or 1 year, which ever occurs first. The enforcement agent may extend the permit for a period not to exceed one year upon good cause shown by the landowner or permit applicant. The enforcement agent may charge an additional fee to cover the cost of continued inspections, the amount of which is specified in the current permit and review fee schedule, in effect for the Grand Traverse County Drain Commissioner's Office and may be amended by the County concurrent with and pursuant to the Grand Traverse County Soil Erosion Control Ordinance #25. All fees are to cover administrative expenses of processing the storm water control permit and the soil erosion control permit including inspections and monitoring of projects.
- I) **Permit Revocation or Suspension.** A permit issued under this ordinance may be revoked or suspended by the enforcement agent for any of the following reasons:
- 1) A violation of a condition of the permit
 - 2) Misrepresentation or failure to fully disclose relevant facts in the application
 - 3) A change in condition that requires a temporary or permanent change in the activity

- 4) Authorized work is abandoned or suspended for a period of six months or more.
- 5) A non-approved waiver of the buffers and setbacks established in the design standards.

Notification of a revocation or suspension shall be made in writing. The notice will specify the reason(s) for the revocation or suspension and the time for an appeal of the revocation or suspension.

Section 5. Storm Water Management Easements. All easements that are necessary to implement the approved drainage plan and to otherwise comply with this ordinance in form and substance shall be recorded with the Grand Traverse County Register of Deeds prior to issuance of a permit by the enforcement agent. The easements shall assure access for proper inspection and maintenance of storm water runoff facilities and shall provide adequate emergency overland flow-ways.

Section 6. Performance Guarantees. As a condition of issuance of a permit, the enforcement agent may require the applicant to deposit cash, a certified check, or an irrevocable letter of credit acceptable to the enforcement agent in an amount sufficient to assure the installation and completion of the storm water control plan. Irrevocable letters of credit, if used as a performance guarantee, shall extend for a minimum of one year with the option of renewal. The required security shall be held in the office of the enforcement agent, and shall be released only upon final inspection and approval of the storm water control systems.

Section 7. Final Inspection and Approval or Denial of Completed Storm Water Control Measures or Devices. Upon completion of a storm water control plan, the property owner, applicant, or other authorized representative of the property owner shall notify the enforcement agent. The enforcement agent shall conduct a final inspection within 10 days after being notified of the completion. The enforcement agent shall either approve or not approve the completed storm water control measures and devices on a form prepared by the enforcing agent within 30 days following inspection. If changes occur to the original plan during the course of construction, the enforcement agent may require final "as built" drawings before making a final inspection or in making a determination as to final approval or denial of the installed storm water control plan

A. Approval – Certification Not Required. Approval shall be granted if the storm water control measures as completed meet the requirements set forth in the storm water control plan.

B. Approval – Certification Required. For any site requiring that a storm water control plan be prepared by a registered professional, the

enforcement agent shall grant approval if the storm water control measures as completed meet the requirements set forth in the storm water control plan and upon receipt by the enforcement agent of a letter from a licensed professional civil engineer certifying that all storm water measures have been completed in accordance with the storm water control plan.

C. Denial. The enforcement agent shall notify the applicant in writing if the request for closure of the permit is denied and the reasons for the denial.

Section 8. Maintenance.

A) Routine Maintenance

- 1) All storm water control plans shall be maintained according to the measures outlined in the design standards, and as approved in the permit.
- 2) The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Options include
 - a) Property owner
 - b) Homeowner's association, provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements
 - c) Grand Traverse County Drain Commissioner, in accordance with the Michigan Drain Code, Public Act 40 of 1956, as amended, if the storm water conveyance facilities are within a designated Drain District.
- 3) Maintenance agreements shall specify responsibilities for financing maintenance and shall be recorded with the Register of Deeds before the permit can be closed.

B) Non-Routine Maintenance. Non-routine maintenance includes maintenance activities that are expensive but infrequent, such as pond dredging or major repairs to storm water structures.

- 1) Non-routine maintenance shall be performed on an as needed basis based on information gathered during regular inspections.
- 2) If non-routine maintenance activities are not completed in a timely manner or as specified in the approved plan, the Grand Traverse

County Drain Commissioner may complete the necessary maintenance at the owner's/operator's expense.

C) Maintenance Inspections

- 1) The person(s) or organization(s) responsible for maintenance shall inspect storm water control systems on a regular basis, as outlined in the plan.
- 2) Authorized representatives of the enforcement agent may enter at reasonable times to conduct on-site inspections or routine maintenance.
- 3) For storm water control systems maintained by the property owner or homeowner's association, inspection and maintenance reports shall be filed with the enforcement agent as provided in the plan.
- 4) Authorized representatives of the enforcement agent may conduct inspections to confirm the information in the reports filed under section c.

Section 9. Fees. All fees shall be paid to Grand Traverse County in accordance with the current permit and review fee schedule, in effect for the Grand Traverse County Drain Commissioner's Office and may be amended by the County concurrent with and pursuant to the Grand Traverse County Soil Erosion Control Ordinance #25. All fees are to cover administrative expenses of processing the storm water control permit and the soil erosion control permit including inspections and monitoring of projects.

Section 10. Enforcement.

A. Violations. It shall be a violation of this ordinance to do any of the following:

- 1.To make an earth change without first obtaining a permit as required by this ordinance
- 2.To provide false or misleading information in an application for permit
- 3.To fail to follow approved storm water control plan
- 4.To fail to maintain a storm water control measure or device in accordance with an approved storm water control plan

B. Notice of violation. Whenever there is a failure to comply with the provisions of this ordinance, the enforcement agent shall notify the

applicant/owner that he/she has five calendar days from the receipt of the notice to temporarily correct the violation and 30 days from receipt of the notice to permanently correct the violation. The enforcement agent for good cause demonstrated by the permittee may make reasonable extensions. Notice shall be made by certified mail, return receipt requested.

C. Enforcement Actions. Should the applicant/owner fail to take the corrective actions specified in the notice of violation, the enforcement agent may take any or all of the following actions:

- 1) Issue or cause to be issued a municipal civil infraction
- 2) Take whatever remedial actions are necessary and assert a lien on the subject property in an amount equal to the costs of remedial actions. The lien shall be enforced in the manner provided or authorized by law for the enforcement of common law liens on personal property. The lien shall be recorded with the Grand Traverse County Register of Deeds and shall incur legal interest from the date of recording. The imposition of any penalty shall not exempt the offender from compliance with the provisions of this ordinance, including assessment of a lien on the property.

D. Emergency Actions. When emergency actions are necessary to moderate a nuisance, to protect the public safety, health, and welfare, and/or to prevent the loss of life, injury, or damage to property, the enforcement agent is authorized to carry out or arrange for all such emergency actions, and to enforce penalties and/or liens as described herein.

E. Cease & Desist Orders. The enforcement agent may issue a cease and desist order or revoke a permit upon the determination that there is a violation of this ordinance. A cease and desist order, when issued, shall require all earth change activities to stop immediately.

F. Injunctive Relief. Notwithstanding any other remedy available under this ordinance, the enforcement agent may maintain an action in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this ordinance.

G. Fines & Penalties.

1. A violation of this ordinance is a municipal civil infraction punishable by a fine not exceeding \$500.00 per day of violation.
2. A knowing violation of this ordinance or interference with the enforcement of this ordinance by the enforcement agent or any person duly authorized to carry out the purposes of this ordinance is a misdemeanor punishable by imprisonment for up to 90 days, and/or a fine of up to \$500.00 or both.

3. An action for the violation of this ordinance shall be instituted in the 86th District Court for Grand Traverse County. Fines and costs imposed or assessed in such an action shall be distributed in accordance with section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379.

Section 11. Waiver. The enforcement agent responding to a specific earth change as provided for in Section 3 may waive certain requirements specified in the ordinance upon being provided with demonstrable evidence of special circumstances warranting waiver, but only upon finding that both of the following requirements are met:

- A) The application of the ordinance provisions will present or cause practical difficulties for a development or development site; provided, however, that practical difficulties shall not include the need for the developer to incur additional reasonable expenses in order to comply with the ordinance; and
- B) The granting of the relief requested will not substantially prevent nor result in less effective management of storm water runoff.

Section 12. Appeals. Any person aggrieved by the action or inaction of the enforcement agent related to this ordinance may appeal to the Grand Traverse County Construction Code Board of Appeals. All requests for appeal shall be filed in writing within 30 days of the action or inaction appealed from and includes the basis of the appeal. In considering any such appeal, the Board may grant a variance from the terms of this ordinance so as to provide relief, in whole or in part, from the action being appealed, but only upon finding that both of the following requirements are met:

- A) The application of the ordinance provisions being appealed will present or cause practical difficulties for a development or development site; provided, however, that practical difficulties shall not include the need for the developer to incur additional reasonable expenses in order to comply with the ordinance; and
- B) The granting of the relief requested will not substantially prevent nor result in less effective management of storm water runoff

The filing of an appeal does not preclude other remedies available to either party, nor does it act as a stay of any order from the enforcement agent for the installation of measures or controls to reduce or eliminate storm water runoff pending the outcome of the appeal.

Section 13. Separate Causes of Action. Nothing in this ordinance impairs or precludes a separate cause of action provided by statute or common law for conduct prohibited herein.

Section 14. Other Ordinances. This ordinance shall be in addition to other ordinances of Peninsula Township and shall not be deemed to repeal or replace other ordinances or parts of other ordinances except to the extent that such repeal is specifically provided for in this ordinance. This ordinance is intended to work in conjunction with the Grand Traverse County Soil Erosion and Sedimentation Control Ordinance #25, other state, and federal laws affecting water and quality.

Section 15. Notice. Notice means delivery by first class mail unless otherwise specified in this ordinance.

Section 16. Severability. The provisions of this ordinance are severable and if any part is declared void or unenforceable by a court of competent jurisdiction, the remaining parts shall remain in force.

Section 17. Effective Date. This ordinance shall take effect on June 1, 2007 or 30 days after publication, whichever occurs later.