

MUSKEGON COUNTY BOARD OF COMMISSIONERS
MUSKEGON COUNTY, MICHIGAN

AGENDA

FULL BOARD

Hall of Justice

990 Terrace, Muskegon, MI

November 8, 2011 - 3:30 PM

Kenneth Mahoney, Chair
I. John Snider, II, Vice-Chair

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Approval of Meeting Minutes of October 25, 2011
7. Public Comment (on an agenda item)
8. Communication/Information
 - Wexford County: Resolution in Support of Statutory Exemption For Stormwater Runoff From Logging Roads
9. Committee Reports
 - A. Courts & Public Safety Committee (Page 5)
 - B. Human Resources Committee (Pages 6 & 7)
 - C. Ways & Means Committee (Pages 8 & 9)

Public Comment

Persons may address the Commission during the time set aside for Public Comment or at any time by suspension of the rules. All persons must address the commission and state their name for the record. Comments shall be limited to **two (2) minutes** for each participant, unless time is extended prior to the public comment period by a vote of a majority of the commission.

Full Board
Agenda
November 8, 2011

10. Chairman's Report/Committee Liaison Reports
 - A. Proclamation Declaring November, 2011 National Hospice and Palliative Care Month
 - B. Department of Human Services Board Appointment
11. Administrator's Report
 - A. Authorize Adoption of Proposed Soil Erosion & Sedimentation Control Ordinance and Rescind Board Resolution Under Which the Department of Public Works Currently Operates the Soil Erosion & Sedimentation Control Permitting Function
 - B. Accept the Grand Funds from the Department of Justice to Allow the Sheriff to Purchase Bulletproof Vests
12. Old Business
13. New Business
14. Public Comment (on a new topic)
15. Adjournment

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE MUSKEGON COUNTY BOARD OF COMMISSIONERS AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

The County of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting upon 24-hours notice to the County of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the County of Muskegon by writing or calling: Administration, 990 Terrace Street, Muskegon, MI 49442 (231) 724-6520

Minutes of a regular meeting of the Wexford County Board of Commissioners, held at the Wexford County Courthouse, 437 E. Division St., Cadillac, Michigan on the nineteenth day of October 2011, at 6:00 p.m.

PRESENT: Jerry Bullock, Pam Dahlstrom, Gideon Mitchell, Alan Devereaux, Gary Taylor, Terry Oliver, Da. O'Riley, and Leslie D. Housler;
ABSENT: Thomas Akers

The following preamble and resolution were offered by Commissioner Taylor and supported by Commissioner O'Riley.

RESOLUTION NO. 11-23
RESOLUTION SUPPORTING A STATUTORY EXEMPTION FOR STORMWATER RUNOFF FROM LOGGING ROADS

WHEREAS, on August 17, 2010 the United States Court of Appeals for the Ninth Circuit held that a National Pollution Discharge Elimination System (NPDES) permit is required for stormwater runoff from logging roads; and

WHEREAS, the Clean Water Act (CWA) requires a National Pollution Discharge Elimination System (NPDES) permit for the discharge of any pollutant to any navigable water (AKA "water of the U.S.") from any point source. Since 1973, rules promulgated by the Environmental Protection Agency ("EPA") have distinguished between point source and non-point source pollution in the CWA. Non-point source pollution, which is not defined in the CWA, includes any source of water pollution not characterized as a point source discharge; and

WHEREAS, included in the CWA rules is the so-called Silvicultural Rule found at 40 C.F.R. § 122.27(b)(1), which has remained substantially in its current form since 1976. The Silvicultural Rule specifically defines timber "harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff" to be "non point source silvicultural activities," and thus, excluded from NPDES permitting requirements; and

WHEREAS, the Ninth Circuit disagreed with the Silvicultural Rule, holding that stormwater runoff that is collected and channeled in a system of ditches and culverts before being discharged into streams and rivers constitutes a point source, and that EPA lacks authority to promulgate a rule to the contrary. The Ninth Circuit stated that Congress has a history of providing specific statutory exemptions for certain categories of discharges. The court went on to say that federal courts have invalidated EPA regulations that provided similar regulatory exemptions; and

WHEREAS, the Court's decision has potentially sweeping implications. If broadly read, this opinion would require NPDES permits for every road in the country that is served by ditches or culverts that eventually discharge to natural surface waters and that is not already regulated by the CWA; and

WHEREAS, the court's opinion also leaves many critical questions unanswered. Even if the opinion were limited to logging roads, what constitutes a logging road? Contrary to the court's assumptions of fact, many forest roads, including the roads at issue in this case, are not dedicated just to logging. They are used for a variety of purposes, both public and private, beyond just logging. If this is the case, who is responsible for obtaining these required permits? The court did not address whether the permit obligation rests with the owner of the roads or every entity that transports logs on the roads, or even those using the roads to access the forest for recreation. This Adopted Policy is consistent with current NACo policy that states that stormwater from all roads, gutters and ditches should not be considered a "water of the U.S." under the CWA; and

WHEREAS, if rural county owned roads, such as logging or forest roads, require federal NPDES permits, this will be an unfunded mandate and preemption on county governments.

BE IT RESOLVED, the Wexford County Board of Commissioners supports legislation that enacts into law the Silvicultural Rule.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be sent to Governor Snyder, Representative Huizenga, Senators Levin and Stabenow, Senator Booher and Representative Potvin, and also to the boards of County Commissioners of the other counties of the state, who we urge to join us in supporting legislation that enacts into law the Silvicultural Rule.

A ROLL CALL VOTE WAS TAKEN AS FOLLOWS


AYES: Oliver, Bullock, Dahlstrom, Mitchell, Devereaux,
O'Riley, and Housler;

NAYS: None

RESOLUTION DECLARED ADOPTED.



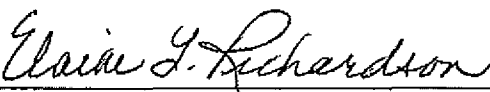
Leslie Housler, Chairman, Wexford County Board of Commissioners



Elaine L. Richardson, County Clerk

STATE OF MICHIGAN)
)ss.
COUNTY OF WEXFORD)

I hereby certify that the forgoing is a true and complete copy of the Resolution 11-23 adopted by the County Board of Commissioners of Wexford County at a regular meeting held on October 19, 2011, and I further certify that public notice of such meeting was given as provided by law.



Elaine L. Richardson, County Clerk

The Courts/Public Safety Committee met on November 1, 2011, it was recommended and I move:

- CPS11/11 - 40 To approve the extension of the Agreement between the County of Muskegon, Juvenile Transition Center, and Whitehall Public Schools to provide for the delivery of services to the residents of the Muskegon County Juvenile Transition Center for the 2011-12 academic year and the 2012 summer school program and authorize the Board Chair to sign the agreement.

- CPS11/11 - 41 To authorize the reclassification of Youth Specialist - Call In positions N10001 and N10003 to Shift Supervisor - Hourly positions with each budgeted at 20 hours per week and reclassification of the full-time Clerk II position G20021 to Secretary (FT).

The Human Resources Committee met on November 1, 2011, it was recommended and I move:

- HR11/11 - 83 To authorize Community Mental Health to approve the extension of Fiscal Year 2010/2011 vendor/provider contracts for up to ninety (90) days for those vendors/providers who have not completed Fiscal Year 2011/2012 rate negotiations or submitted Network re-applications.
- HR11/11 - 84 To authorize Community Mental Health Services to sign contracts with those service vendors/providers who have submitted written agreements to continue service provision at the current Fiscal Year 2010/2011 rates for the time period effective October 1, 2011 through September 30, 2012.
- HR11/11 - 85 To accept the proposed rate changes by Wedgwood Christian Services effective October 1, 2011 through September 30, 2012.
- HR11/11 - 86 To authorize the Community Mental Health (CMH) Chief Operating Officer to sign the Fiscal Year 2012 contract between CMH of Muskegon County and the Michigan Department of Community Health for the block grant funds for the PATH project effective October 1, 2011 through September 30, 2012 in the amount of \$68,775.00.
- HR11/11 - 87 To authorize Community Mental Health to make a one-time payment to Pioneer Resources in the amount of Sixteen Thousand, Three Hundred and Eighty-Two Dollars and Eight Cents (\$16,382.08) to cover the start-up costs of staff recruitment and training needed to implement the new programming required for the Marcoux Home as well as some of the costs incurred due to the delay of the issuance of the license by the State of Michigan.
- HR11/11 - 88 To authorize the Community Mental Health Chief Operating Officer to sign the Fiscal Year 2012 contract between Community Mental Health of Muskegon County and the Michigan Department of Community Health for block grant funds for Services to Adults with Serious Mental Illness and Children with Serious Emotional Disturbance in the amount of \$172,829.00.
- HR11/11 - 89 To authorize the Community Mental Health Chief Operating Officer to sign a contract with the Michigan Department of Community Health for the System Improvements and Services for Children with Serious Emotional Disturbance and Uninsured Adults with Serious Mental Illness for FY 2012 in the amount of \$212,071.00.
- HR11/11 - 90 To approve the transfer of six Community Mental Health (CMH) positions from the Court Collaboration Program (Org #7043) to the collaborative program between CMH, Family Court, True North and BRAINS called the MC3 Program (Org #7052).

HR11/11 - 91

To authorize Public Health to enter into an agreement with Access Health, Inc., in the amount of \$243,100, for the delivery of health care related services for indigent and low-income residents of Muskegon County for the 2011-2012 fiscal year. Further move to authorize the Board Chairman and the Public Health Director to sign the associated agreement.

The Ways and Means Committee met on November 3, 2011, it was recommended, and I move:

- WM11/11 - 146 To approve payment of the accounts payable of \$17,940,739.65 covering the period of October 8, 2011 through October 28, 2011, as presented by the County Clerk.
- WM11/11 - 147 To authorize the Finance & Management Services Director to coordinate the RFP process for consulting services related to the Enterprise Content Management System Project.
- WM11/11 - 148 To authorize Administration to enter into contract negotiations with BS&A Software (lowest bid vendor) and exercise Phase VI of the Plante Moran Agreement in an amount not to exceed \$144,000.
- WM11/11 - 149 To reclassify positions #X02003 & X06901 to Senior Accountant with a salary level of NX280 (\$47,172.32 - \$59,789.60) effective November 8, 2011.
- WM11/11 - 150 To accept the grant from the Michigan State Housing Development Authority in the amount of \$300,000 for a two year period and to authorize the Chairman of the County Board of Commissioners to sign the grant agreement as well as a contract with the Muskegon County Land Bank Authority to provide fifteen (15) hours of staff time per week, or at the rate of \$16,000 per year for a two year period.
- WM11/11 - 151 To accept funding from the Fremont Area Foundation under the Ice Mountain Environmental Stewardship in the amount of \$50,000 and authorize the Vice-Chairman of the Board of Commissioners to sign the grant agreement and the Memorandum of Understanding with the West Michigan Shoreline Regional Development Commission.
- WM11/11 - 152 To award the Energy Conservation Apprentice Readiness (ECAR) Program training services contract to Muskegon Community College in the amount of approximately (\$25,150.00) and the case management contract to Orchard View Schools in the amount of approximately (\$46,830.00).
- WM11/11 - 153 To authorize staff to solicit proposals for the design, purchase and installation of a retrofit to approximately 86 lights at Heritage Landing with costs being paid partially by a \$35,877 grant from the Michigan Energy Office and partially by local match funds from the Public Improvement Fund 4130-4130 and to establish a project fund for this project.

- WM11/11 - 154 To approve additional costs to the CMH Peck Street Clubhouse renovation project (RFB-11-1867) in the amount of \$130,762 to Muskegon Quality Builders for Bulletins #3 and #4 bringing the total construction contract to \$362,652 and \$3,510 to Hooker-DeJong's architectural contract bringing the design contract total to \$23,210 with costs being paid from CMH funds 2220 (\$3,510) 4930 (\$250,000) and 4140 (\$112,652).
- WM11/11 - 155 To authorize staff to request qualifications for consulting services in association with the development of the Muskegon County Organizational Sustainability Plan, baseline metrics, policies and objectives and other related documents as necessary to compete the County Sustainability Planning portion of the Community Pollution Prevention grant activities with all costs being paid from the grant proceeds.
- WM11/11 - 156 To authorize a Tribute in honor of Mayor Henry Roesler, Jr., for his years of service to the community.

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Full Board		BUDGETED <input type="checkbox"/>	NON-BUDGETED <input type="checkbox"/>	PARTIALLY BUDGETED <input type="checkbox"/>
REQUESTING DEPARTMENT Public Works		COMMITTEE DATE November 8, 2011		REQUESTOR SIGNATURE <i>[Signature]</i>
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
<p>At the October 2011 Public Works Board meeting, staff presented language for a proposed Soil Erosion & Sedimentation Control Ordinance. The Public Works Board approved the language with a change to the wording of Section 4.5.3 to specify a time period for returning surety money to the permittee. The wording change has been made to Section 4.5.3 and the revised ordinance language is presented here for the Board's consideration. The Public Works Board and staff recommend approval and adoption of the proposed Soil Erosion & Sedimentation Control Ordinance.</p>				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
<p>I move to adopt the proposed Soil Erosion & Sedimentation Control Ordinance as recommended by the Board of Public Works to become effective 30 days after the date of adoption and to rescind the Board Resolution under which the Department of Public Works currently operates the Soil Erosion & Sedimentation Control permitting function.</p>				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
<u>HUMAN RESOURCES ANALYSIS:</u>		<u>FINANCE & MANAGEMENT ANALYSIS:</u> <i>Recommended Approval</i> <i>[Signature]</i>		
<u>CORPORATE COUNSEL ANALYSIS:</u> Concur T. Williams		<u>ADMINISTRATOR RECOMMENDATION:</u> <i>approval</i> <i>BBH</i>		
AGENDA DATE: <i>11/8/11</i>	AGENDA NO.:	BOARD DATE:	PAGE NO.	

PLAN REVIEW & PERMIT FEES WITH INSPECTIONS

A.	<u>SINGLE FAMILY RESIDENCE CONSTRUCTION PROJECTS</u>	
	Plan Review & Permit Fee	\$160
	Written Assurance / Waiver Form (if permit not required)	\$25
B.	<u>MINOR LIMITED DISTURBANCE PROJECTS (1000 square feet or less of disturbance)</u>	
	Plan Review & Permit Fee	\$75
C.	<u>LAND DEVELOPMENT</u> (subdivisions, multi-family residential, industrial, recreational, service facilities, cut & fill, demolition & restoration)	
	Plan Review & Permit Fee - Up to 1 acre of disturbance	\$225
	Each additional acre or fraction thereof	\$50
D.	<u>TRANSPORTATION FACILITIES</u> (streets, highways, railroads, airports.)	
	Plan Review & Permit Fee - Up to 1 mile of project length	\$225
	Each additional 1 mile section or fraction thereof	\$100
E.	<u>UTILITIES</u> (underground pipelines & cables, etc.)	
	Plan Review & Permit Fee - Up to 1 mile of project length	\$225
	Each additional 1 mile section or fraction thereof	\$100
F.	<u>WATER IMPOUNDMENTS & WATERWAY CONSTRUCTION & IMPROVEMENTS</u>	
	Plan Review & Permit Fee - Up to 1 acre of earth disturbance	\$125
	Each additional 1/2 acre or fraction thereof	\$50
G.	<u>SAND & GRAVEL MINING</u>	
	Plan Review & Permit Fee - Up to 1 acre of earth disturbance	\$200
	Each additional acre or fraction thereof	\$10
H.	<u>CONVERSION OF LAND TO CROPLAND</u>	
	Plan Review & Permit Fee - Up to 5 acres of earth disturbance	\$125
	Each additional acre or fraction thereof	\$10

NOTES:

1. The Muskegon County Department of Public Works reserves the right to adjust upwards the minimum permit fees established above, if in the opinion of the Department, listed fees are not adequate to provide services to a given Permittee.
2. Construction operations found in violation of the ordinance will be charged twice the calculated fee.
3. Projects requiring extra inspection due to lack of implementation of the approved plans, including maintenance of the erosion controls, will be charged directly for time and materials to achieve compliance.
4. Non-residential projects over 5 acres of disturbance will require assurance of compliance bond in the form of a certified check or irrevocable bank letter at a rate of \$1000 per acre of disturbance.
5. Make checks payable to: Muskegon County Department of Public Works. Cash is accepted. Credit cards are accepted but additional fees apply.
6. Conversion to cropland fee schedule only applicable if earth disturbance is for purpose of immediate conversion of land for crop production; subject to Department approval.

MUSKEGON COUNTY

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Preamble

An Ordinance to provide for the administration of a soil erosion and sedimentation control program for those areas within Muskegon County except for those of the county where a Part 91 Municipal Enforcement Agency program or Authorized Public Agency program is in effect, in order to encourage and regulate the proper use and protection of natural resources, to provide for administration and enforcement, to establish civil penalties for violations, and to provide for reimbursement of costs incurred by the County Enforcing Agency pursuant to this Ordinance and to Part 91, Act 451 of 1994, as amended.

Whereas, after careful study of the proposed Soil Erosion and Sedimentation Control (SESC) Ordinance, the Muskegon County Board of Public Works has recommended adoption of the Ordinance to the Muskegon County Board of Commissioners.

Therefore, pursuant to the authority set forth in MCL 46.11(j) and MCL 324.9105(3), the Board of Commissioners of the County of Muskegon, Michigan, ordains:

Article 1. Short Title

This Ordinance shall be known, and may be cited, as the "Muskegon County Soil Erosion and Sedimentation Control Ordinance." All Articles, Sections, and other topical headings are for reference only and shall not be construed to be part of this Ordinance.

Article 2. Authority, Purpose, and Adoption of Rules

2.1. Authority

The Muskegon County SESC Ordinance is adopted under authority of Part 91, SESC, of the Natural Resources and Environmental Protection Act, being Public Act 451 of 1994, as amended (Part 91), (MCL 324.9101 through 324.9123a), within its political boundaries, except for those areas of the county where a SESC Municipal Enforcement Agency program or Authorized Public Agency program is in effect.

2.2. Purpose

The purpose of this Ordinance is to control soil erosion and off-site sedimentation within Muskegon County by providing for the administration and enforcement of the Muskegon County SESC Ordinance. All earth change activities under authority of Part 91 shall be in conformance with this Ordinance. No person, corporation, or governmental entity shall maintain or undertake an earth change governed by this Ordinance, except in compliance with this Ordinance, and pursuant to a SESC permit issued by the County Enforcing Agency if required.

2.3. Incorporation of Rules

The rules promulgated under Part 91 (R323.1701 through 323.1714), as amended from time to time, hereinafter referred to as "Rules" are incorporated into this ordinance by reference. Said rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the Office of the County Clerk and the County Enforcing Agency.

Article 3. Definitions

3.1. Definitions. The County hereby adopts by reference the definitions contained in Part 91 and the Rules. In addition, the following definitions shall apply in the interpretation and enforcement of this ordinance:

- 3.1.1. Cease and Desist Order. An order that stops the earth work on a project due to a violation of this Ordinance or Part 91 until said violation is corrected.
- 3.1.2. County Enforcing Agency (CEA). An agency designated by the Muskegon County Board of Commissioners pursuant to Part 91 to be responsible for the administration and enforcement of Part 91 and this Ordinance.
- 3.1.3. 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. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
- 3.1.4. Enforcing Agent. A person designated by the County Enforcing Agency to carry out Part 91 and the provisions of this Ordinance.
- 3.1.5. Muskegon County Department of Public Works. The County Agency responsible for administration and enforcement of this ordinance in the name of the County of Muskegon, and including agents acting on behalf of or appointed by the Muskegon County Department of Public Works for administration and enforcement of this Ordinance.
- 3.1.6. Mitigation. Actions taken by the County Enforcing Agency to temporarily or permanently bring a parcel of land into compliance with this Ordinance and Part 91.
- 3.1.7. Notice of Completion. Upon satisfactory execution of the approved plans, permit conditions and other requirements imposed under this Ordinance, the landowner shall provide notice of completion to the County Enforcing Agency.
- 3.1.8. Notice of Intent to File Lien. Written notice to the owner of a property of intent to file a property lien to secure repayment of mitigation expense, including legal expense associated with a particular mitigation effort. Outstanding liens on property will be collected according to Article 7. Notice will be provided by certified mail with return confirmation.
- 3.1.9. Notice of Intent to Mitigate. Notice to the owner of a property in violation of this Ordinance of intent to conduct mitigation to bring the site into compliance with this Ordinance and Part 91. Notice will be provided by certified mail with return confirmation.

- 3.1.10. **Notice of Taking Action.** Legal notice to the owner of a property in violation of this Ordinance of action already taken to remove an immediate threat to natural resources, property or public safety. Notice will be provided by certified mail with return confirmation.
- 3.1.11. **Notice of Violation.** Written notice to the owner of a property that activity at that site is in violation of this Ordinance and Part 91. The Notice of Violation shall contain a description of the violation, what must be done to remedy the violation, and the time frame in which such corrective action must be taken. Notice will be provided by certified mail with return confirmation.
- 3.1.12. **Part 91.** Part 91, Soil Erosion and Sedimentation Control of the Natural Resource and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended.
- 3.1.13. **Permittee.** The landowner whose property the earth change is being conducted on.
- 3.1.14. **SESC.** Abbreviation for "Soil Erosion and Sedimentation Control."
- 3.1.15. **Stabilization.** The proper placement, grading and/or covering of soil or land surface to insure resistance to soil erosion, sliding or other earth movement.
- 3.1.16. **Waters of the state.** The Great Lakes and their connecting waters, inland lakes, streams and regulated wetlands defined under Part 303 as amended.
- 3.1.16.1. "Lake" means 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 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.
- 3.1.16.2. "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, 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.
- 3.1.17. **Wetland.** "Wetland" means 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, and which is any of the following:
- (i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
- (ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.
- (iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area is essential to the preservation of the natural resources of the state from

pollution, impairment, or destruction and the department has so notified the owner.

Article 4. Administration and Enforcement

4.1. County Enforcing Agency

The Muskegon County Department of Public Works is the County Enforcing Agency responsible for administering and enforcing this ordinance within its political boundaries, except for those areas of the county where a SESC Municipal Enforcement Agency program or Authorized Public Agency program is in effect.

4.2. Relief from Personal Responsibility

The County Enforcing Agency, or any other county employee or officer charged with duties and responsibilities pursuant to this Ordinance, while acting within the scope of their authority, are hereby relieved from all personal liability for damages to persons or property resulting from the exercise or discharge of their duties. Any civil or criminal action brought against an officer or employee of the county, while acting within the scope of authority granted under this Ordinance, may be defended by the legal representative of the County until final termination of proceedings. If a judgment for damages is awarded against the above mentioned officers or employees as a result of a civil action for personal injury or property damage caused while acting within the scope of the individual's employment or while acting within the scope of authority of this Ordinance, the County of Muskegon may pay, or compromise, the judgment.

4.3. Duties of the County Enforcing Agency

It shall be the responsibility of the County Enforcing Agency to enforce the provisions of this Ordinance, and in doing so, to perform the following duties:

- 4.3.1. Review SESC applications and plans:** Applications for permits required by this Ordinance shall be submitted to the County Enforcing Agency on the forms provided by the County Enforcing Agency and shall contain all required and/or necessary information to allow the County Enforcing Agency to evaluate the application. The County Enforcing Agency is not required to evaluate incomplete applications or applications submitted without the required or necessary information or supporting documentation. SESC applications and plans will be reviewed in accordance with the rules defined under 5.1.
- 4.3.2. Issue Permits and Certificates:** The County Enforcing Agency shall issue SESC Permits when applicable provisions of this Ordinance have been fulfilled.
- 4.3.3. Maintain Records:** Records for active SESC permits shall be available for public inspection during regular business hours. Upon written request, copies of documents may be furnished at cost to any person consistent with policy of the Board of Commissioners.
- 4.3.4. Mitigation:** The County Enforcing Agency may, but is not required to, conduct such activity as is deemed necessary to remove an immediate threat to environmental resources, property or public safety under Part 91, MCL 324.9119.

- 4.3.5. **Prepare Invoices and Record Liens:** Invoices for mitigation expense shall be mailed by certified mail to the owner(s) of the land on which the violation occurred. Pursuant to MCL 324.9120, property liens against the land in violation shall be recorded at the Muskegon County Register of Deeds for all invoices remaining unpaid thirty (30) days after mailing. The owner of the land shall be responsible for all costs associated with the recording and subsequent release of a lien.
- 4.3.6. **Legal Remedy:** The County Enforcing Agency shall have all legal remedies available under Part 91, the Rules, and this Ordinance which include, but are not limited, to the issuance of a Notice of Violation, a Cease and Desist Order, and/or a municipal civil infraction citation to the property owner, contractor, or individual who is not the property owner and who violates this Ordinance. The County Enforcing Agency may also take other legal action deemed appropriate against an individual or the owner of a property in violation.
- 4.3.7. **Official Copies:** The County Enforcing Agency shall maintain one official copy of this Ordinance, which shall be available for public inspection during regular office hours.
- 4.3.8. **Inspections:** The County Enforcing Agency is empowered to conduct inspections of property in order to properly carry out the enforcement of this Ordinance.
- 4.3.9. **Document Retention:** Permits, plans and associated documents for all projects, permitted under this ordinance, may be disposed of two years after the project is completed.

4.4. Interpretation

The County Enforcing Agency shall have full authority to make interpretations as to the scope and applicability of this Ordinance, including but not limited to determinations of violations, acceptability of plans and sureties, necessity for mitigation, and substantial completion. All such determinations by the County Enforcing Agency are considered final.

4.5. Fees, Fines and Sureties

- 4.5.1. **Fees and Fines.** The County Enforcing Agency shall periodically adopt a schedule of fees and fines to cover the cost of administration and enforcement of this Ordinance. Adjustment of the schedule of fees and fines will not invalidate other provisions of this Ordinance. All permit fees shall be doubled if work starts without a permit.
- 4.5.2. **Sureties.** Financial surety in a form acceptable to the County Enforcing Agency may be required as a condition of a SESC Permit. Surety is required for all commercial SESC permits with disturbances of 3 acres or more. At the permittee's choosing, the surety shall be in the form of cash, certified check or irrevocable bank letter of credit in forms acceptable to the County Enforcing Agency.
- 4.5.3. **Return of Surety.** Unused portion of sureties shall be returned within sixty (60) days of the completion of an activity subject to permit requirements under this Ordinance.

Article 5. Application, Plan, and Permit

5.1. Application

A person, corporation, or governmental entity shall not maintain or undertake an earth change governed by this Ordinance, except in compliance with Part 91 and this Ordinance. The SESC Permit Application form and SESC Permit form shall contain all information required by Part 91 and this Ordinance. An Application, together with instructive information as deemed appropriate, shall be provided at no cost to each applicant by the County Enforcing Agency. The County Enforcing Agency shall approve or deny an application for a SESC permit within 30 days after the filing of a complete application for a SESC permit and the payment of the appropriate fees and sureties.

5.2. SESC Plan

A person shall prepare a soil erosion and sedimentation control plan for any earth change identified under 5.3.1. A person shall design the plan 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 include, but not be limited to, all of the following:

- 5.2.1. A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the County Enforcing Agency. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes, streams, regulated wetlands, or all; predominant land features; and contour intervals or slope description.
- 5.2.2. A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- 5.2.3. Details for proposed earth changes, including all of the following:
 - 5.2.3.1. A description and the location of the physical limits of each proposed earth change.
 - 5.2.3.2. A description and the location of all existing and proposed on-site drainage and dewatering facilities.
 - 5.2.3.3. The timing and sequence of each proposed earth change.
 - 5.2.3.4. The location and description for installing and removing all proposed temporary soil erosion and sediment control measures.
 - 5.2.3.5. A description and location of all proposed permanent soil erosion and sediment control measures.
 - 5.2.3.6. A proposal for the continued maintenance of all permanent soil erosion and sediment control measure 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.

5.3. Permit

5.3.1. Permits Required: A landowner or designated agent who contracts for, allows, or engages in, an earth change within the jurisdiction of the County Enforcing Agency shall obtain a SESC Permit from the County Enforcing Agency before commencing an earth change which disturbs 1 or more acres of land or which is within 500 feet of the water's edge of a lake or stream defined under 4.1.16, unless exempted in 5.3.2.

An earth change activity that does not require a permit under 5.3.2 of this Ordinance is not exempt from enforcement procedures under part 91 or this Ordinance, if the activity exempted by 5.3.2 of this Ordinance causes or results in a violation of part 91 or this Ordinance.

5.3.2. Permit Exemptions: All SESC permit exemptions are detailed in sections 9115 and 9115a of Part 91, and Rule 323.1705.

5.3.3. Permit Expiration, Extension, and Termination:

5.3.3.1 Expiration: SESC Permits shall expire on the date indicated on the permit.

5.3.3.2 Extension: The holder of a valid permit must request an extension of coverage, if necessary, no later than ten (10) days prior to the expiration date. Any such request must be in writing and must be accompanied by all supporting documentation and applicable extension fees, if any. The maximum allowable time extension will be one (1) year from the original expiration date. An extension does not release the owner or the surety on a bond, or the person furnishing an irrevocable letter of credit, or a person furnishing a cash bond from their responsibilities and/or liabilities thereunder.

5.3.3.3 Construction Not Begun: SESC Permit coverage will automatically terminate if construction has not commenced within one (1) year of the date of issuance. A new plan and application, with fees, are required to obtain a SESC Permit for any site where a permit has been terminated for any reason.

5.3.3.4 Application After Termination: A new plan and application, with fees, are required to obtain a SESC permit for any site where a permit has been terminated for any reason.

5.3.4. Permit Suspension, Revocation and Reinstatement: A SESC permit issued under this Ordinance may be revoked or suspended at the discretion of the County Enforcing Agency and may not be the basis for any further work on a project until the permit is reinstated by the County Enforcing Agency following a determination that the reasons for the suspension or revocation have been resolved to the satisfaction of the County Enforcing Agency. Once one of the factors outlined below is established by the County Enforcing Agency, the decision whether to suspend or revoke a permit shall be within the discretion of the County Enforcing Agency. A SESC permit may be suspended or revoked for any of the following reasons:

5.3.4.1. A violation of a condition of the SESC Permit, including the approved SESC plan.

- 5.3.4.2. Misrepresentation or failure to fully disclose relevant facts in the application or plan.
- 5.3.4.3. A change in land ownership without written notification to the County Enforcing Agency.
- 5.3.4.4. Permitted work already in progress is abandoned or suspended for a period beyond the permit expiration date.

5.3.5. **Permit Transfers:** Whenever a property changes ownership, the permit and all responsibilities including conditions of issuance, fees, fines, and penalties owed, shall be transferred to the new landowner. Transfer of the permit shall be made by completing a form provided by the County Enforcing Agency, with signature of the new landowner, and then submitting the completed form to the County Enforcing Agency. The fee for the transfer shall be as listed on the schedule of fees.

Article 6. Enforcement

6.1. Enforcement

This Ordinance shall be enforced by the County Enforcing Agency. The County Enforcing Agency may use any enforcement method or technique allowed by Part 91, including but not limited to the issuance of a Notice of Violation, that may or may not allow for time to correct the violation prior to any further or additional enforcement actions, citations, civil infractions, cease and desist orders, or may revoke a SESC Permit upon finding that there is a violation of Part 91 or this Ordinance, and may pursue such legal action as may be necessary to correct a violation including but not limited to seeking an injunction to restrain or prevent violations of the Ordinance or Part 91.

6.2. Municipal Civil Infractions; Authorized Enforcement Officials; Violation Bureau

6.2.1. **Municipal Civil Infractions.** Violation of this Ordinance shall be a municipal civil infraction, as authorized under Chapter 87 of 1961 PA 236, as amended, and other applicable laws. A violation includes any act that is prohibited or made or declared to be unlawful, and any omission or failure to act where the act is required by this Ordinance. Each day that a violation exists constitutes a separate infraction.

6.2.2. **Authorized Enforcement Officials.** Muskegon County SESC Enforcing Agents and deputies of the Muskegon County Sheriff's Office are authorized to issue municipal civil infraction citations for violations of this Ordinance. Muskegon County SESC Enforcing Agents are authorized to issue notice of violations and cease and desist orders.

6.2.3. **Municipal Civil Infractions Violations Bureau.** The Municipal Civil Infractions Violations Bureau, for disposition of violation notices issued under this Ordinance, shall be located at the Muskegon County Department of Public Works, 131 E. Apple Ave., Muskegon, MI 49442.

6.3. Violations and Penalties; Injunction

- 6.3.1. A person who violates this Ordinance or any Notice of Violation or cease and desist order issued under this Ordinance is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not less than \$150.00, and not more than \$2,500.00, plus all costs of enforcement.
- 6.3.2. A person who knowingly makes a false statement in an Application or in a SESC plan is responsible for a civil fine of up to \$10,000.00 for each day of violation, plus all costs of enforcement.
- 6.3.3. A person who knowingly continues to violate this Ordinance after receiving a Notice of Violation is responsible for payment of a civil fine of not less than \$2,500.00 nor more than \$25,000.00 for each day the violation continues to exist, plus all costs of enforcement.
- 6.3.4. A default in payment of a civil fine or costs ordered under this section may be remedied by any means authorized under the Revised Judicature Act of 1961, 1961 PA 236, being sections 600.101 to 600.9948 of the Michigan Compiled Laws as amended.
- 6.3.5. In addition to any fines and costs assessed under this section, a person who violates this Ordinance is liable to the State of Michigan for any damages for injury to, destruction of, or loss of natural resources resulting from the violation.
- 6.3.6. Notwithstanding the existence or pursuit of any other remedy, the County may maintain an action in a court of competent jurisdiction for monetary damages and may request an injunction or other process against a person to restrain or prevent violations of this Ordinance.

6.4. Enforcement Costs and Fines

- 6.4.1. **Costs of Enforcement.** The County Enforcing Agency shall maintain a record of all expenses relative to the enforcement of this Ordinance. Costs of Enforcement specifically include but are not limited to all investigative costs, court costs (including witness fees), and legal or attorney fees.
- 6.4.2. **Fines.** Fines levied and paid pursuant to legal action undertaken by the County Enforcing Agency shall be deposited with the County, and shall be used for enforcement of this Ordinance. Landowners, authorized agents, on-site responsible persons, contractors and other individuals undertaking an earth change in violation of this Ordinance or Part 91 are subject to the penalties prescribed herein.
- 6.4.3. **Payment.** All persons that receive municipal civil infraction violation notices shall have thirty (30) days to pay the fine to the Muskegon County Department of Public Works office. If responsibility is denied or the fine is unpaid after thirty (30) days, a municipal civil infraction citation shall be filed with the District Court for resolution pursuant to Chapter 87 of the Revised Judicature Act, MCL 600.8701 *et seq.* Either party may request a formal hearing before a judge.

Article 7. Reimbursement for Expense

- 7.1. Reports. It shall be the duty of the County Enforcing Agency to report to the Board of Commissioners, no later than the last Wednesday in September of each year, all unpaid property liens filed in conjunction with this Ordinance.
- 7.2. Assessment. It shall be the duty of the County Treasurer to place on the winter tax statement of each property for which there is an amount outstanding the full amount of the outstanding lien.

Article 8. Severability.

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Article 9. Repeal

All ordinances in conflict are repealed only to the extent necessary to give this Ordinance full force and effect.

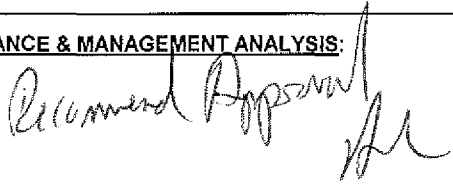

Article 10. Savings Clause

This Ordinance shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Ordinance takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent if this Ordinance had not been adopted.

Article 11. Effective Date _____2011

This Ordinance shall take effect 30 days following its acceptance by the Muskegon County Board of Commissioners and shall be published in a newspaper of general circulation in Muskegon County. This ordinance is also subject to MDEQ approval.

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Full Board	BUDGETED NON-BUDGETED PARTIALLY BUDGETED x		
REQUESTING DEPARTMENT Sheriff	COMMITTEE DATE 11/8/2011	REQUESTOR SIGNATURE Dean Roesler	
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)			
Approval is requested to accept funding from the Bullet Proof Vest Partnership program of the Department of Justice in the amount of \$592.81 for the purchase of bulletproof vests. The Department of Justice will contribute 50% of the costs of the bulletproof vests with the Sheriff's Office contributing the 50% match from forfeiture funds. Two vests will be purchased at a cost of \$1,185.62. The grant is based on a five-year replacement cycle. The Sheriff's Office will contribute \$592.81 from the forfeiture fund, 2671-0311.			
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)			
I move to accept the grant funds from the Department of Justice to allow the Sheriff to purchase two (2) bulletproof vests using the Sheriff's forfeiture fund for 50% of the cost of the vests.			
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)			
<u>HUMAN RESOURCES ANALYSIS:</u>	<u>FINANCE & MANAGEMENT ANALYSIS:</u> 		
<u>CORPORATE COUNSEL ANALYSIS:</u>	<u>ADMINISTRATOR RECOMMENDATION:</u> 		
AGENDA DATE: 11/8/11	AGENDA NO.:	BOARD DATE:	PAGE NO.