

HOUSE BILL No. 5647

May 17, 2012, Introduced by Reps. Bumstead, Genetski, Wayne Schmidt, Pscholka, Haveman, Foster, O'Brien, MacMaster, Franz, Tyler, Pettalia, McBroom, Rendon, McMillin, Moss, Goike, Damrow, Lyons, Potvin, Huuki and Agema and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 35301, 35302, 35304, 35305, 35306, 35310,
35311, 35312, 35313, 35316, 35317, 35319, 35320, 35321, 35322, and
35323 (MCL 324.35301, 324.35302, 324.35304, 324.35305, 324.35306,
324.35310, 324.35311, 324.35312, 324.35313, 324.35316, 324.35317,
324.35319, 324.35320, 324.35321, 324.35322, and 324.35323),
sections 35301, 35316, and 35317 as amended by 1995 PA 262,
sections 35302, 35305, 35306, 35310, 35311, 35312, 35313, 35319,
35320, 35321, 35322, and 35323 as added by 1995 PA 59, and section
35304 as amended by 2004 PA 325, and by adding sections 35311a and
35311b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35301. As used in this part:

2 (a) "Contour change" includes any grading, filling, digging,

1 or excavating that significantly alters the physical characteristic
2 of a critical dune area, except that which is involved in sand dune
3 mining as defined in part 637.

4 (b) "Crest" means the line at which the first lakeward facing
5 slope of a critical dune ridge breaks to a slope of less than 1-
6 foot vertical rise in a 5-1/2-foot horizontal plane for a distance
7 of at least 20 feet, if the areal extent where this break occurs is
8 greater than 1/10 acre in size.

9 (c) "Critical dune area" means a geographic area designated in
10 the "atlas of critical dune areas" dated February 1989 that was
11 prepared by the department **OF NATURAL RESOURCES**.

12 (d) "Department" means the department of environmental
13 quality.

14 (e) "Foredune" means 1 or more low linear dune ridges that are
15 parallel and adjacent to the shoreline of a Great Lake and are
16 rarely greater than 20 feet in height. The lakeward face of a
17 foredune is often gently sloping and may be vegetated with dune
18 grasses and low shrub vegetation or may have an exposed sand face.

19 (f) "Model zoning plan" means the model zoning plan provided
20 for in sections ~~35312~~**35304 TO 35309 AND 35311A** to 35324.

21 **(G) "PERMIT" MEANS A PERMIT FOR A USE WITHIN A CRITICAL DUNE**
22 **AREA UNDER THIS PART.**

23 **(H)** ~~(g)~~-"Planning commission" means the body or entity within
24 a local government that is responsible for zoning and land use
25 planning for the local unit of government.

26 **(I)** ~~(h)~~-"Restabilization" means restoration of the natural
27 contours of a critical dune to the extent practicable, ~~and the~~

1 restoration of the protective vegetative cover of a critical dune
2 through the establishment of indigenous vegetation, and the
3 placement of snow fencing or other temporary sand trapping measures
4 for the purpose of preventing erosion, drifting, and slumping of
5 sand.

6 (J) ~~(i)~~—"Special use project" means any of the following:

7 (i) A proposed use in a critical dune area for an industrial or
8 commercial purpose regardless of the size of the site.

9 (ii) A multifamily use of more than 3 acres.

10 (iii) A multifamily use of 3 acres or less if the density of use
11 is greater than 4 individual residences per acre.

12 (iv) A proposed use in a critical dune area, regardless of size
13 of the use, that the planning commission, or the department if a
14 local unit of government does not have an approved zoning
15 ordinance, determines would damage or destroy features of
16 archaeological or historical significance.

17 (K) ~~(j)~~—"Use" means a developmental, silvicultural, or
18 recreational activity done or caused to be done by a person that
19 significantly alters the physical characteristic of a critical dune
20 area or a contour change done or caused to be done by a person. Use
21 does not include sand dune mining as defined in part 637.

22 (L) ~~(k)~~—"Zoning ordinance" means an ordinance of a local unit
23 of government that regulates the development of critical dune areas
24 within the local unit of government pursuant to the requirements of
25 this part.

26 Sec. 35302. The legislature finds that:

27 (a) The critical dune areas of this state are a unique,

1 irreplaceable, and fragile resource that provide significant
2 recreational, economic, scientific, geological, scenic, botanical,
3 educational, agricultural, and ecological benefits to the people of
4 this state and to people from other states and countries who visit
5 this resource.

6 ~~—— (b) Local units of government should have the opportunity to~~
7 ~~exercise the primary role in protecting and managing critical dune~~
8 ~~areas in accordance with this part.~~

9 ~~—— (c) The benefits derived from alteration, industrial,~~
10 ~~residential, commercial, agricultural, silvicultural, and the~~
11 ~~recreational use of critical dune areas shall occur only when the~~
12 ~~protection of the environment and the ecology of the critical dune~~
13 ~~areas for the benefit of the present and future generations is~~
14 ~~assured.~~

15 (B) THE PURPOSE OF THIS PART IS TO BALANCE THE BENEFITS OF
16 PROTECTING, PRESERVING, RESTORING, AND ENHANCING THE DIVERSITY,
17 QUALITY, FUNCTIONS, AND VALUES OF THE STATE'S CRITICAL DUNES WITH
18 THE BENEFITS OF ECONOMIC DEVELOPMENT AND MULTIPLE HUMAN USES OF THE
19 CRITICAL DUNES AND THE BENEFITS OF PUBLIC ACCESS TO AND ENJOYMENT
20 OF THE CRITICAL DUNES. TO ACCOMPLISH THIS PURPOSE, THIS PART IS
21 INTENDED TO DO ALL OF THE FOLLOWING:

22 (i) ENSURE AND ENHANCE THE DIVERSITY, QUALITY, FUNCTIONS, AND
23 VALUES OF THE CRITICAL DUNES IN A MANNER THAT IS COMPATIBLE WITH
24 PRIVATE PROPERTY RIGHTS.

25 (ii) ENSURE SOUND MANAGEMENT OF ALL CRITICAL DUNES BY ALLOWING
26 FOR COMPATIBLE ECONOMIC DEVELOPMENT AND MULTIPLE HUMAN USES OF THE
27 CRITICAL DUNES.

1 (iii) COORDINATE AND STREAMLINE GOVERNMENTAL DECISION-MAKING
2 AFFECTING CRITICAL DUNES THROUGH THE USE OF THE MOST COMPREHENSIVE,
3 ACCURATE, AND RELIABLE INFORMATION AND SCIENTIFIC DATA AVAILABLE.

4 Sec. 35304. (1) A PERSON SHALL NOT INITIATE A USE WITHIN A
5 CRITICAL DUNE AREA UNLESS THE PERSON OBTAINS A PERMIT FROM THE
6 local unit of government ~~that issues permits~~ IN WHICH THE CRITICAL
7 DUNE AREA IS LOCATED or the department if ~~it~~ THE DEPARTMENT issues
8 permits as provided under subsection ~~(5) shall issue the permits~~
9 ~~subject to (7)~~. A PERMIT FOR A USE WITHIN A CRITICAL DUNE AREA IS
10 SUBJECT TO all of the following: ~~requirements.~~

11 (a) A person proposing a use within a critical dune area shall
12 file an application with the local unit of government, or with the
13 department if the department is issuing permits under the model
14 zoning plan. The application form shall include information ~~that~~
15 ~~may be necessary~~ to conform with the requirements of this part. If
16 a project proposes the use of more than 1 critical dune area
17 location within a local unit of government, 1 application may be
18 filed for the uses.

19 (b) ~~Notice~~ THE LOCAL UNIT OF GOVERNMENT SHALL PROVIDE NOTICE
20 of an application filed under this section ~~shall be sent to a~~ EACH
21 person who makes a written request to the local unit of government
22 for notification of pending applications. ~~accompanied by~~ THE LOCAL
23 UNIT OF GOVERNMENT MAY CHARGE an annual fee ~~established by the~~
24 ~~local unit of government~~ FOR PROVIDING THIS NOTICE. The local unit
25 of government shall prepare a monthly list of the applications made
26 during the previous month and shall promptly ~~mail~~ PROVIDE copies of
27 the list for the remainder of the calendar year to the persons who

1 have requested notice. In addition, if the department issues
 2 permits under this part within a local unit of government, notice
 3 of an application shall **ALSO** be given to the local conservation
 4 district office, the county clerk, the county health department,
 5 and the local unit of government in which the property is located.
 6 The monthly list shall state the name and address of each
 7 applicant, the location of the applicant's project, and a summary
 8 statement of the purpose of the use. The local unit of government
 9 may hold a public hearing on pending applications.

10 (c) The notice shall state that unless a written request is
 11 filed with the local unit of government within 20 days after the
 12 notice is ~~mailed~~ **SENT**, the local unit of government may grant the
 13 application without a public hearing. Upon the written request of 2
 14 5 or more persons ~~that~~ **WHO** own real property within ~~the local unit~~
 15 ~~of government or an adjacent local unit of government, or that~~
 16 ~~reside within the local unit of government or an adjacent local~~
 17 ~~unit of government~~ **1 MILE OF THE PROJECT**, the local unit of
 18 government shall hold a public hearing pertaining to a permit
 19 application.

20 (d) At least 10 days' notice of a hearing to be held pursuant
 21 to this section shall be given by publication in 1 or more
 22 newspapers of general circulation in the county in which the
 23 proposed use is to be located, ~~and in other publications, if~~
 24 ~~appropriate, to give notice to persons likely to be affected by the~~
 25 ~~proposed use, and by mailing copies of the~~ **PROVIDING** notice to the
 26 persons who have requested notice pursuant to ~~subsection (1)~~
 27 **SUBDIVISION (B)** and to the person requesting the hearing.

1 (e) After the filing of an application, the local unit of
2 government shall grant or deny the permit within 60 days, or within
3 90 days if a public hearing is held. ~~When~~ **IF** a permit is denied,
4 the local unit of government shall provide to the applicant a
5 concise written statement of its reasons for denial of the permit,
6 and if it appears that a minor modification of the application
7 would result in the granting of the permit, the nature of the
8 modification shall be stated. In an emergency, the local unit of
9 government may issue a conditional permit before the expiration of
10 the 20-day period referred to in subdivision (c).

11 (f) The local unit of government shall base a decision to
12 grant or deny a permit ~~required by~~ **UNDER** this section on the model
13 zoning plan or on any existing ordinance that is in effect in the
14 local unit of government that provides ~~the same or a greater~~ **A**
15 **SUBSTANTIALLY EQUIVALENT** level of protection for critical dune
16 areas and that is approved by the department.

17 **(G) SUBJECT TO SECTION 35316, A PERMIT SHALL BE APPROVED**
18 **UNLESS THE LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT DETERMINES**
19 **THAT IT IS MORE LIKELY THAN NOT THAT THE ACTUAL HARM TO THE**
20 **ENVIRONMENT RESULTING FROM THE USE WILL SIGNIFICANTLY DAMAGE THE**
21 **PUBLIC INTEREST ON THE PRIVATELY OWNED LAND, OR, IF THE LAND IS**
22 **PUBLICLY OWNED, THE PUBLIC INTEREST IN THE PUBLICLY OWNED LAND, BY**
23 **SIGNIFICANT AND UNREASONABLE DEPLETION OR DEGRADATION OF ANY OF THE**
24 **FOLLOWING:**

25 (i) **THE DIVERSITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL**
26 **UNIT OF GOVERNMENT.**

27 (ii) **THE QUALITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL**

1 UNIT OF GOVERNMENT.

2 (iii) THE FUNCTIONS OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
3 UNIT OF GOVERNMENT.

4 ~~—— (2) A local unit of government zoning ordinance regulating~~
5 ~~critical dune areas may be more restrictive of development and more~~
6 ~~protective of critical dune areas than the model zoning plan.~~

7 (2) THE DECISION OF THE LOCAL UNIT OF GOVERNMENT OR THE
8 DEPARTMENT WITH RESPECT TO A PERMIT SHALL BE IN WRITING AND SHALL
9 BE BASED UPON EVIDENCE THAT WOULD MEET THE STANDARDS IN SECTION 75
10 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
11 24.275. A DECISION DENYING A PERMIT SHALL DOCUMENT, AND ANY REVIEW
12 UPHOLDING THE DECISION SHALL DETERMINE, ALL OF THE FOLLOWING:

13 (A) THAT THE LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT HAS
14 MET THE BURDEN OF PROOF UNDER SUBSECTION (1).

15 (B) THAT THE DECISION IS BASED UPON SUFFICIENT FACTS OR DATA.

16 (C) THAT THE DECISION IS THE PRODUCT OF RELIABLE SCIENTIFIC
17 PRINCIPLES AND METHODS.

18 (D) THAT THE DECISION HAS APPLIED THE PRINCIPLES AND METHODS
19 RELIABLY TO THE FACTS.

20 (E) THAT THE FACTS OR DATA UPON WHICH THE DECISION IS BASED
21 ARE RECORDED IN THE FILE.

22 (3) A PERMIT SHALL NOT BE GRANTED THAT AUTHORIZES CONSTRUCTION
23 OF A DWELLING OR OTHER PERMANENT BUILDING ON THE FIRST LAKEWARD
24 FACING SLOPE OF A CRITICAL DUNE AREA OR FOREDUNE EXCEPT ON A LOT OF
25 RECORD THAT WAS RECORDED PRIOR TO JULY 5, 1989 THAT DOES NOT HAVE
26 SUFFICIENT BUILDABLE AREA LANDWARD OF THE CREST TO CONSTRUCT THE
27 DWELLING OR OTHER PERMANENT USE AS PROPOSED BY THE APPLICANT. THE

1 PROPOSED CONSTRUCTION, TO THE GREATEST EXTENT POSSIBLE, SHALL BE
2 PLACED LANDWARD OF THE CREST. THE PORTION OF THE DEVELOPMENT THAT
3 IS LAKEWARD OF THE CREST SHALL BE PLACED IN THE LOCATION THAT HAS
4 THE LEAST IMPACT ON THE CRITICAL DUNE AREA.

5 (4) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERMIT SHALL
6 PROVIDE THAT A USE THAT IS A STRUCTURE SHALL BE CONSTRUCTED BEHIND
7 THE CREST OF THE FIRST LANDWARD RIDGE OF A CRITICAL DUNE AREA THAT
8 IS NOT A FOREDUNE. HOWEVER, IF CONSTRUCTION OCCURS WITHIN 100 FEET
9 MEASURED LANDWARD FROM THE CREST OF THE FIRST LANDWARD RIDGE THAT
10 IS NOT A FOREDUNE, THE USE SHALL MEET ALL OF THE FOLLOWING
11 REQUIREMENTS:

12 (A) THE STRUCTURE AND ACCESS TO THE STRUCTURE SHALL BE IN
13 ACCORDANCE WITH PLANS PREPARED FOR THE SITE BY A REGISTERED
14 PROFESSIONAL ARCHITECT OR A LICENSED PROFESSIONAL ENGINEER AND THE
15 PLANS SHALL PROVIDE FOR THE DISPOSAL OF STORM WATERS WITHOUT
16 SERIOUS SOIL EROSION AND WITHOUT SEDIMENTATION OF ANY STREAM OR
17 OTHER BODY OF WATER.

18 (B) ACCESS TO THE STRUCTURE SHALL BE FROM THE LANDWARD SIDE OF
19 THE DUNE.

20 (C) THE DUNE SHALL BE RESTABILIZED WITH INDIGENOUS VEGETATION.

21 (D) THE CREST OF THE DUNE SHALL NOT BE REDUCED IN ELEVATION.

22 (5) ~~(3)~~ As soon as possible following adoption of a zoning
23 ordinance enacted pursuant to this part, the local unit of
24 government shall submit to the department a copy of the ordinance
25 that it determines meets the requirements of this part. If the
26 local unit of government has an existing ordinance that it contends
27 is ~~at least as restrictive as~~ **SUBSTANTIALLY EQUIVALENT TO** the model

1 zoning plan, that ordinance may be submitted to the department at
 2 any time. The department shall review zoning ordinances submitted
 3 under this section to assure compliance with this part. If the
 4 department finds that an ordinance is not in compliance with this
 5 part, the department shall work with the local unit of government
 6 to bring the ordinance into compliance and inform the local unit of
 7 the failure to comply and in what ways the submitted ordinance is
 8 deficient. Unless a local unit of government receives notice,
 9 within ~~90-180 days of~~ **AFTER** submittal ~~that~~ **OF** the ordinance ~~they~~
 10 ~~submit~~ to the department under this subsection, **THAT THE ORDINANCE**
 11 is not in compliance with this part, the ~~local unit of government~~
 12 **ORDINANCE** shall be considered to be approved by the department.

13 (6) ~~(4)~~ A local unit of government may adopt, submit to the
 14 department, and obtain approval of a zoning ordinance based on the
 15 model zoning plan or an equivalent ordinance as provided in this
 16 section by June 30, 1990. If a local unit does not have an approved
 17 ordinance by June 30, 1990, the department shall implement the
 18 model zoning plan for that local unit of government in the same
 19 manner and under the same circumstances as provided in subsection
 20 (1). Notwithstanding any other provision of this part, a local unit
 21 of government may adopt a zoning ordinance at any time, and upon
 22 the approval of the department, that ordinance shall take the place
 23 of the model zoning plan implemented by the department.

24 (7) ~~(5)~~ If a local unit of government in which a proposed use
 25 is to be located does not elect to issue permits or does not
 26 receive **DEPARTMENT** approval of a zoning ordinance that regulates
 27 critical dune areas, the department shall implement the model

1 zoning plan in the place of the local unit of government and issue
 2 special exceptions in the same circumstances as provided in this
 3 part for the issuance of variances by local units of government,
 4 and issue permits pursuant to subsection (1) and part 13.

5 (8) ~~(6)~~—The department shall assist local units of government
 6 in developing ordinances that meet the requirements of this part.

7 Sec. 35305. (1) If ~~a person~~ **AN APPLICANT FOR A PERMIT OR A**
 8 **SPECIAL EXCEPTION OR THE OWNER OF THE PROPERTY IMMEDIATELY ADJACENT**
 9 **TO THE PROPOSED USE** is aggrieved by a decision of the department in
 10 regard to the issuance or denial of a permit or special exception
 11 under this part, the ~~person~~ **APPLICANT OR OWNER** may request a formal
 12 hearing on the matter involved. The hearing shall be conducted by
 13 the department as a contested case hearing in the manner provided
 14 for in the administrative procedures act of 1969, ~~Act No. 306 of~~
 15 ~~the Public Acts of 1969, being sections 24.201 to 24.328 of the~~
 16 ~~Michigan Compiled Laws.~~ **1969 PA 306, MCL 24.201 TO 24.328.**

17 (2) Following the hearing provided for under subsection (1), a
 18 decision of the department in regard to the issuance or denial of a
 19 permit or special exception under this part is subject to judicial
 20 review as provided for in ~~Act No. 306 of the Public Acts of~~
 21 ~~1969.~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL**
 22 **24.201 TO 24.328.**

23 Sec. 35306. (1) The lawful use of land or a structure, as
 24 existing and lawful within a critical dune area at the time the
 25 department implements the model zoning plan for a local unit of
 26 government, may be continued although the use of that land or
 27 structure does not conform to the model zoning plan. The

1 continuance, completion, restoration, reconstruction, extension, or
2 substitution of existing nonconforming uses of land or a structure
3 may continue upon reasonable terms that are consistent, to the
4 extent possible, with the applicable zoning provisions of the local
5 unit of government in which the use is located.

6 (2) The lawful use of land or a structure, as existing and
7 lawful within a local unit of government that has a zoning
8 ordinance approved by the department, may, but is not required by
9 this part to, be continued subject to the law pertaining to
10 existing uses within the act that enables that local unit of
11 government to zone and the applicable zoning provisions of the
12 local unit of government.

13 (3) A use needed to obtain or maintain a permit or license
14 that is required by law to continue operating an electric utility
15 generating facility that is in existence on July 5, 1989 shall not
16 be precluded under this part.

17 (4) A USE NEEDED TO MAINTAIN, REPAIR, OR REPLACE EXISTING
18 UTILITY LINES, PIPELINES, OR OTHER UTILITY FACILITIES WITHIN A
19 CRITICAL DUNE AREA THAT WERE IN EXISTENCE ON JULY 5, 1989, OR WERE
20 CONSTRUCTED IN ACCORDANCE WITH A PERMIT UNDER THIS PART, IS EXEMPT
21 FOR PURPOSES FOR WHICH THE PERMIT WAS ISSUED FROM THE OPERATION OF
22 THIS PART OR A LOCAL ORDINANCE APPROVED UNDER THIS PART IF THE
23 MAINTENANCE, REPAIR, OR REPLACEMENT IS COMPLETED IN COMPLIANCE WITH
24 ALL OF THE FOLLOWING:

25 (A) VEHICLES SHALL NOT BE DRIVEN ON SLOPES GREATER THAN 1-FOOT
26 VERTICAL RISE IN A 3-FOOT HORIZONTAL PLANE.

27 (B) ALL DISTURBED AREAS SHALL BE IMMEDIATELY STABILIZED AND

1 REVEGETATED WITH NATIVE VEGETATION FOLLOWING COMPLETION OF WORK TO
2 PREVENT EROSION.

3 (C) ANY REMOVAL OF WOODY VEGETATION SHALL BE DONE IN A MANNER
4 TO ASSURE THAT ANY ADVERSE EFFECT ON THE DUNE WILL BE MINIMIZED AND
5 WILL NOT SIGNIFICANTLY ALTER THE PHYSICAL CHARACTERISTICS OR
6 STABILITY OF THE DUNE.

7 (D) TO ACCOMPLISH REPLACEMENT OF A UTILITY POLE, THE NEW POLE
8 SHALL BE PLACED ADJACENT TO THE EXISTING POLE, AND THE EXISTING
9 POLE SHALL BE REMOVED BY CUTTING AT GROUND LEVEL.

10 (E) IN THE CASE OF REPAIR OF UNDERGROUND UTILITY WIRES, THE
11 REPAIR SHALL BE LIMITED TO THE MINIMAL EXCAVATION NECESSARY TO
12 REPLACE THE WIRES BY PLOWING, SMALL TRENCH EXCAVATION, OR
13 DIRECTIONAL BORING. REPLACEMENT OF WIRES ON SLOPES STEEPER THAN 1-
14 FOOT VERTICAL RISE IN A 4-FOOT HORIZONTAL PLANE SHALL BE LIMITED TO
15 INSTALLATION BY PLOWING OR DIRECTIONAL BORING ONLY.

16 (F) IN THE CASE OF REPAIR OR REPLACEMENT OF UNDERGROUND
17 PIPELINES, DIRECTIONAL BORING SHALL BE UTILIZED, AND IF EXCAVATION
18 IS NECESSARY TO ACCESS AND BORE THE PIPELINE, THE EXCAVATION AREA
19 SHALL BE LOCATED ON SLOPES 1-FOOT VERTICAL RISE IN A 4-FOOT
20 HORIZONTAL PLANE OR LESS.

21 (5) ~~(4)~~—Uses that have received all necessary permits from the
22 state or the local unit of government in which the proposed use is
23 located by July 5, 1989, are exempt for purposes for which a permit
24 is issued from the operation of this part or local ordinances
25 approved under this part. Such uses shall be regulated pursuant to
26 local ordinances in effect by that date.

27 Sec. 35310. (1) If the department finds that a person is not

1 in compliance with the model zoning plan if the department is
2 implementing the plan, or if the department is involved in the
3 modification or reversal of a decision regarding a special use
4 project as provided in section 35322, the department may suspend or
5 revoke the permit.

6 (2) At the request of the department, ~~or a person,~~ the
7 attorney general may institute an action for a restraining order or
8 injunction or other appropriate remedy to prevent or preclude a
9 violation of the model zoning plan if the department is
10 implementing the provisions of the plan or if the department is
11 involved in the modification or reversal of a decision regarding a
12 special use project as provided in section 35322. At the request of
13 ~~a member of the governing body of a local unit of government, or a~~
14 ~~person,~~ the county prosecutor may institute an action for a
15 restraining order or injunction or other proper remedy to prevent a
16 violation of a zoning ordinance approved under this part. This
17 shall be in addition to the rights provided in part 17, and as
18 otherwise provided by law. An action under this subsection
19 instituted by the attorney general may be instituted in the circuit
20 court for the county of Ingham or in the county in which the
21 defendant is located, resides, or is doing business.

22 (3) The department shall periodically review the performance
23 of all local units of government that have ordinances approved
24 under this part. If the department determines that the local unit
25 of government is not administering the ordinance in conformance
26 with this part, the department shall notify the local unit of
27 government in writing of its determination, including specific

1 reasons why the local unit of government is not in compliance. The
2 local unit of government has 30 days to respond to the department.
3 If the department determines that the local unit of government has
4 not made sufficient changes to its ordinance administration or
5 otherwise explained its actions, the department may withdraw the
6 approval of the local ordinance and implement the model zoning plan
7 within that local unit of government. If a local unit disagrees
8 with an action of the department to withdraw approval of the local
9 ordinance, it may appeal that action pursuant to the administrative
10 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
11 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws 1969~~
12 **PA 306, MCL 24.201 TO 24.328**, in the manner provided in that act
13 for contested cases.

14 (4) In addition to any other relief provided by this section,
15 the court may impose on a person who violates this part, or a
16 permit, a civil fine of not more than \$5,000.00 for each day of
17 violation, or may order a violator to pay the full cost of
18 restabilization of a critical dune area or other natural resource
19 that is damaged or destroyed as a result of a violation, or both.

20 (5) A person who violates this part, or a person who violates
21 a permit issued under this part, is guilty of a misdemeanor,
22 punishable by a fine of not more than \$5,000.00 per day for each
23 day of violation.

24 Sec. 35311. ~~By May 23, 1995,~~ **BEGINNING WITH THE EFFECTIVE DATE**
25 **OF THE 2012 ACT THAT AMENDED THIS SECTION AND ONCE EVERY 10 YEARS**
26 **THEREAFTER**, the department shall appoint a team of qualified
27 ecologists, who may be employed by the department or may be persons

1 with whom the department enters into contracts, ~~who shall~~ **TO** review
2 "the atlas of critical dune areas" dated February 1989. The review
3 team shall evaluate the accuracy of the designations of critical
4 dune areas within the atlas and shall recommend to the legislature
5 any changes to the atlas or underlying criteria revisions to the
6 atlas that would provide more precise protection to the targeted
7 resource. ~~In addition, the review team shall recommend whether the~~
8 ~~slope criteria in section 35330(1)(a) and (b) are appropriate and~~
9 ~~supported by the best available technical data and whether~~
10 ~~stairways and driveways in critical dune areas should be subject to~~
11 ~~the same criteria as other constructed uses.~~

12 **SEC. 35311A. (1) NOTWITHSTANDING SECTION 35316 OR ANY OTHER**
13 **PROVISION OF THIS PART, THE CONSTRUCTION, IMPROVEMENT, AND**
14 **MAINTENANCE OF A DRIVEWAY SHALL BE PERMITTED FOR ANY DWELLING OR**
15 **OTHER PERMANENT BUILDING ALLOWED IN A CRITICAL DUNE AREA, INCLUDING**
16 **A DWELLING OR OTHER PERMANENT BUILDING APPROVED UNDER THIS PART OR**
17 **A LAWFUL NONCONFORMING USE, SUBJECT ONLY TO APPLICABLE PERMIT**
18 **REQUIREMENTS UNDER SECTIONS 35312 THROUGH 35325 AND THE FOLLOWING:**

19 **(A) A DRIVEWAY SHALL BE PERMITTED EITHER TO THE PRINCIPAL**
20 **BUILDING OR, IN THE SOLE DISCRETION OF THE APPLICANT TO AN**
21 **ACCESSORY BUILDING, UNDER THE PROVISIONS OF THIS SECTION.**
22 **ADDITIONAL DRIVEWAYS, IF ANY, SHALL MEET THE APPLICABLE**
23 **REQUIREMENTS FOR ANY OTHER USE UNDER THIS PART. THE DEVELOPMENT OF**
24 **A PLAN FOR A DRIVEWAY SHOULD INCLUDE CONSIDERATION OF THE USE OF**
25 **RETAINING WALLS, BRIDGES, OR SIMILAR MEASURES, IF FEASIBLE, TO**
26 **MINIMIZE THE IMPACT OF THE DRIVEWAY, PARKING, AND TURNAROUND AREAS,**
27 **AND THE CONSIDERATION OF ALTERNATIVE LOCATIONS ON THE SAME LOT OF**

1 RECORD.

2 (B) DRIVEWAYS ON SLOPES STEEPER THAN A 1-FOOT VERTICAL RISE IN
3 A 4-FOOT HORIZONTAL PLANE, BUT NOT STEEPER THAN A 1-FOOT RISE IN A
4 3-FOOT HORIZONTAL PLANE, SHALL BE IN ACCORDANCE WITH PLANS
5 SUBMITTED WITH THE PERMIT APPLICATION AND PREPARED FOR THE SITE BY
6 A REGISTERED PROFESSIONAL ARCHITECT OR LICENSED PROFESSIONAL
7 ENGINEER. THE PLANS SHALL INCLUDE (i) STORM WATER DRAINAGE THAT
8 PROVIDES FOR DISPOSAL OF STORM WATER WITHOUT SERIOUS EROSION, (ii)
9 METHODS FOR CONTROLLING EROSION FROM WIND AND WATER, AND (iii)
10 RESTABILIZATION, BY DESIGN ELEMENTS INCLUDING VEGETATION, CUT-AND-
11 FILL, BRIDGES, TRAVERSES, AND SUCH OTHER ELEMENTS AS ARE REQUIRED
12 IN THE JUDGMENT OF THE ARCHITECT OR ENGINEER TO MEET THESE
13 REQUIREMENTS.

14 (C) DRIVEWAYS ON SLOPES STEEPER THAN A 1-FOOT VERTICAL RISE IN
15 A 3-FOOT HORIZONTAL PLANE SHALL BE IN ACCORDANCE WITH PLANS
16 SUBMITTED WITH THE PERMIT APPLICATION AND PREPARED FOR THE SITE BY
17 A LICENSED PROFESSIONAL ENGINEER. THE PLANS SHALL INCLUDE (i) STORM
18 WATER DRAINAGE THAT PROVIDES FOR DISPOSAL OF STORM WATER WITHOUT
19 SERIOUS EROSION, (ii) METHODS FOR CONTROLLING EROSION FROM WIND AND
20 WATER, AND (iii) RESTABILIZATION, BY DESIGN ELEMENTS INCLUDING
21 VEGETATION, CUT-AND-FILL, BRIDGES, TRAVERSES, AND SUCH OTHER
22 ELEMENTS AS ARE REQUIRED IN THE JUDGMENT OF THE ENGINEER TO MEET
23 THESE REQUIREMENTS. THE ENGINEER SHALL CERTIFY UNDER SEAL THAT THE
24 DRIVEWAY IS NOT LIKELY TO INCREASE EROSION OR DECREASE STABILITY.

25 (2) TEMPORARY CONSTRUCTION ACCESS FOR ALL CONSTRUCTION,
26 INCLUDING NEW CONSTRUCTION, RENOVATION, REPAIRS, REBUILDING, OR
27 REPLACEMENT, AND REPAIR, IMPROVEMENT, OR REPLACEMENT OF SEPTIC

1 TANKS AND SYSTEMS, SHALL BE ALLOWED FOR ANY USE ALLOWED IN A
2 CRITICAL DUNE AREA FOR WHICH A DRIVEWAY IS NOT ALREADY INSTALLED BY
3 THE OWNER, SUBJECT ONLY TO THE REQUIREMENTS THAT THE TEMPORARY
4 ACCESS SHALL NOT INVOLVE A CONTOUR CHANGE OR VEGETATION REMOVAL
5 THAT INCREASES EROSION OR DECREASES STABILITY EXCEPT AS CAN BE
6 RESTABILIZED UPON COMPLETION OF THE CONSTRUCTION. THE TEMPORARY
7 ACCESS SHALL BE MAINTAINED IN STABLE CONDITION, AND RESTABILIZATION
8 SHALL BE COMMENCED PROMPTLY UPON COMPLETION OF THE CONSTRUCTION.

9 (3) AS USED IN THIS SECTION, "DRIVEWAY" MEANS A PRIVATELY
10 OWNED, CONSTRUCTED, AND MAINTAINED VEHICULAR ACCESS FROM A ROAD OR
11 EASEMENT SERVING THE PROPERTY TO THE PRINCIPAL BUILDING OR
12 ACCESSORY BUILDINGS, THAT IS PAVED, GRAVELED, OR OTHERWISE IMPROVED
13 FOR VEHICULAR ACCESS, 16 FEET WIDE OR NARROWER IN THE SOLE
14 DISCRETION OF THE APPLICANT OR OWNER, AND MAY INCLUDE, IN THE SOLE
15 DISCRETION OF THE APPLICANT OR OWNER, A SHARED DRIVEWAY.

16 SEC. 35311B. (1) NOTWITHSTANDING SECTION 35316 OR ANY OTHER
17 PROVISION OF THIS PART, AT THE REQUEST OF THE APPLICANT, THE
18 CONSTRUCTION, IMPROVEMENT, AND MAINTENANCE OF ACCESSIBILITY
19 MEASURES SHALL BE PERMITTED FOR ANY DWELLING OR OTHER PERMANENT
20 BUILDING ALLOWED IN A CRITICAL DUNE AREA, INCLUDING A DWELLING OR
21 OTHER PERMANENT BUILDING APPROVED UNDER THIS PART OR A LAWFUL
22 NONCONFORMING USE, SUBJECT ONLY TO APPLICABLE PERMIT REQUIREMENTS
23 UNDER SECTIONS 35312 THROUGH 35325 AND THE FOLLOWING:

24 (A) ACCESSIBILITY MEASURES ON SLOPES STEEPER THAN A 1-FOOT
25 VERTICAL RISE IN A 4-FOOT HORIZONTAL PLANE, BUT NOT STEEPER THAN A
26 1-FOOT VERTICAL RISE IN A 3-FOOT HORIZONTAL PLANE, SHALL BE IN
27 ACCORDANCE WITH PLANS SUBMITTED WITH THE PERMIT APPLICATION AND

1 PREPARED FOR THE SITE BY A REGISTERED PROFESSIONAL ARCHITECT OR
2 LICENSED PROFESSIONAL ENGINEER. THE PLANS SHALL INCLUDE (i) STORM
3 WATER DRAINAGE THAT PROVIDES FOR DISPOSAL OF STORM WATER WITHOUT
4 SERIOUS EROSION, (ii) METHODS FOR CONTROLLING EROSION FROM WIND AND
5 WATER, AND (iii) RESTABILIZATION, BY DESIGN ELEMENTS INCLUDING
6 VEGETATION, CUT-AND-FILL, BRIDGES, TRAVERSES, AND SUCH OTHER
7 ELEMENTS AS ARE REQUIRED IN THE JUDGMENT OF THE ARCHITECT OR
8 ENGINEER TO MEET THESE REQUIREMENTS.

9 (B) ACCESSIBILITY MEASURES ON SLOPES STEEPER THAN A 1-FOOT
10 VERTICAL RISE IN A 3-FOOT HORIZONTAL PLANE SHALL BE IN ACCORDANCE
11 WITH PLANS SUBMITTED WITH THE PERMIT APPLICATION AND PREPARED FOR
12 THE SITE BY A LICENSED PROFESSIONAL ENGINEER. THE PLANS SHALL
13 INCLUDE (i) STORM WATER DRAINAGE THAT PROVIDES FOR DISPOSAL OF STORM
14 WATER WITHOUT SERIOUS EROSION, (ii) METHODS FOR CONTROLLING EROSION
15 FROM WIND AND WATER, AND (iii) RESTABILIZATION, BY DESIGN ELEMENTS
16 INCLUDING VEGETATION, CUT-AND-FILL, BRIDGES, TRAVERSES, AND SUCH
17 OTHER ELEMENTS AS ARE REQUIRED IN THE JUDGMENT OF THE ENGINEER TO
18 MEET THESE REQUIREMENTS. THE ENGINEER SHALL CERTIFY UNDER SEAL THAT
19 THE ACCESSIBILITY MEASURES ARE NOT LIKELY TO INCREASE EROSION OR
20 DECREASE STABILITY.

21 (2) AS USED IN THIS SECTION, "ACCESSIBILITY MEASURES" MEANS A
22 CIRCULATION PATH AND AT LEAST 1 ENTRANCE ON A CIRCULATION PATH
23 COMPLYING WITH AMERICAN NATIONAL STANDARDS INSTITUTE CHAPTER 4
24 STANDARDS FOR ACCESSIBLE ROUTES, FROM A ROAD OR EASEMENT SERVING
25 THE PROPERTY, AND, AT THE OPTION OF THE APPLICANT, FROM A SIDEWALK,
26 A DRIVEWAY, OR A GARAGE. AS USED IN THIS SECTION, ACCESSIBILITY
27 MEASURES DO NOT INCLUDE DRIVEWAYS.

1 (3) FOR THE PURPOSES OF THIS SECTION, THE CHOICE OF COMPONENTS
2 FOR AN ACCESSIBLE ROUTE UNDER AMERICAN NATIONAL STANDARDS INSTITUTE
3 STANDARD 402.2 SHALL BE AT THE OPTION OF THE APPLICANT.

4 Sec. 35312. (1) ~~After consulting with the local soil~~
5 ~~conservation district, a~~ A local unit of government that has 1 or
6 more critical dune areas within its jurisdiction may formulate a
7 zoning ordinance pursuant to the ~~following~~ **MICHIGAN ZONING ENABLING**
8 **ACT, 2006 PA 110, MCL 125.3101 TO 125.3702.**

9 ~~(a) A county may zone as provided in the county rural zoning~~
10 ~~enabling act, Act No. 183 of the Public Acts of 1943, being~~
11 ~~sections 125.201 to 125.232 of the Michigan Compiled Laws.~~

12 ~~(b) A city or village may zone as provided in Act No. 207 of~~
13 ~~the Public Acts of 1921, being sections 125.581 to 125.592 of the~~
14 ~~Michigan Compiled Laws.~~

15 ~~(c) A township may zone as provided in the township rural~~
16 ~~zoning act, Act No. 184 of the Public Acts of 1943, being sections~~
17 ~~125.271 to 125.301 of the Michigan Compiled Laws.~~

18 (2) A zoning ordinance shall consist of all of the provisions
19 of the model zoning plan or comparable provisions that ~~are at least~~
20 ~~as protective~~ **PROVIDE SUBSTANTIALLY EQUIVALENT PROTECTION** of
21 critical dune areas as the model zoning plan **BUT SHALL NOT BE MORE**
22 **RESTRICTIVE THAN THE MODEL ZONING PLAN OR THE STANDARD OF REVIEW**
23 **FOR PERMITS OR VARIANCES PRESCRIBED IN THE MODEL ZONING PLAN.**

24 (3) A local unit of government may **BY AN AFFIRMATIVE VOTE OF**
25 **ITS GOVERNING BODY FOLLOWING A PUBLIC HEARING** regulate additional
26 lands as critical dune areas under this part as considered
27 appropriate by the planning commission if the lands are determined

1 by the local unit of government to be essential to the hydrology,
2 ecology, topography, or integrity of a critical dune area. A local
3 unit of government shall provide within its zoning ordinance for
4 the protection of lands that are within 250 feet of a critical dune
5 area, if those lands are determined by the local unit of government
6 to be essential to the hydrology, ecology, topography, or integrity
7 of a critical dune area.

8 (4) If a local unit of government does not have an approved
9 zoning ordinance, the department may regulate additional lands
10 described in subsection (3). However, the lands added by the
11 department shall not extend more than 250 feet from the landward
12 boundary of a critical dune area, unless, **FOLLOWING A PUBLIC**
13 **HEARING, AN AFFIRMATIVE VOTE OF** the governing body of the local
14 unit of government authorizes ~~such an~~ **A FURTHER** extension. **IF THE**
15 **DIRECTOR DETERMINES THAT THE MAPPING OF A CRITICAL DUNE AREA**
16 **DESIGNATED IN THE "ATLAS OF CRITICAL DUNE AREAS" DATED FEBRUARY**
17 **1989 WAS INACCURATE, THE DEPARTMENT MAY REGULATE ADDITIONAL LANDS.**
18 **HOWEVER, THE LANDS ADDED BY THE DEPARTMENT SHALL NOT EXTEND MORE**
19 **THAN 250 FEET FROM THE LANDWARD BOUNDARY OF A CRITICAL DUNE AREA.**

20 Sec. 35313. (1) A zoning ordinance shall require that all
21 applications for permits for the use of a critical dune area
22 include in writing **ALL OF THE FOLLOWING:**

23 (a) That the county enforcing agency designated pursuant to
24 part 91 finds that the project is in compliance with part 91 and
25 any applicable soil erosion and sedimentation control ordinance
26 that is in effect in the local unit of government.

27 (b) That a proposed sewage treatment or disposal system on the

1 site has been approved by the county health department or the
2 department.

3 (c) Assurances that the cutting and removing of trees and
4 other vegetation will be performed according to the ~~instructions or~~
5 ~~plans of the local soil conservation district. These instructions~~
6 ~~or plans may include all applicable silvicultural practices as~~
7 ~~described in the "voluntary" forestry management guidelines for~~
8 Michigan" prepared by the society of American foresters in 1987 **AS**
9 **REVISED IN 2010** . ~~The instructions or plans AND~~ may include a
10 program to provide mitigation for the removal of trees or
11 vegetation by providing assurances that the applicant will plant on
12 the site more trees and other vegetation than were removed by the
13 proposed use.

14 (d) Except as otherwise provided in subdivision (e), a site
15 plan that contains data required by the planning commission
16 concerning the physical development of the site and extent of
17 disruption of the site by the proposed development. ~~The planning~~
18 ~~commission may consult with the soil conservation district in~~
19 ~~determining the required data.~~

20 ~~—— (e) An environmental assessment that comports with section~~
21 ~~35319 for a special use project. An environmental impact statement~~
22 ~~pursuant to section 35320 may be required if the additional~~
23 ~~information is considered necessary or helpful in reaching a~~
24 ~~decision on a permit application for a special use project.~~

25 (2) A LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT SHALL NOT
26 REQUIRE AN ENVIRONMENTAL SITE ASSESSMENT OR ENVIRONMENTAL IMPACT
27 STATEMENT AS PART OF A PERMIT APPLICATION EXCEPT FOR A SPECIAL USE

1 **PROJECT.**

2 Sec. 35316. (1) Unless a variance is granted pursuant to
 3 section 35317, a zoning ordinance shall not permit the following
 4 uses in a critical dune area:

5 (a) A structure and access to the structure on a slope within
 6 a critical dune area that has a slope that measures from a 1-foot
 7 vertical rise in a 4-foot horizontal plane to less than a 1-foot
 8 vertical rise in a 3-foot horizontal plane, unless the structure
 9 and access to the structure are in accordance with plans prepared
 10 for the site by a registered professional architect or a licensed
 11 professional engineer and the plans provide for the disposal of
 12 storm waters without serious soil erosion and without sedimentation
 13 of any stream or other body of water. ~~Prior to approval of the~~
 14 ~~plan, the planning commission shall consult with the local soil~~
 15 ~~conservation district.~~

16 (b) A use on a slope within a critical dune area that has a
 17 slope steeper than a 1-foot vertical rise in a 3-foot horizontal
 18 plane.

19 ~~—— (c) A use that is a structure that is not in compliance with~~
 20 ~~subsection (2).~~

21 (C) ~~(d)~~ A use involving a contour change **IF THE LOCAL UNIT OF**
 22 **GOVERNMENT OR THE DEPARTMENT DETERMINES** that **IT** is **MORE** likely **THAN**
 23 **NOT** to increase erosion ~~, OR decrease stability. , or is more~~
 24 ~~extensive than required to implement a use for which a permit is~~
 25 ~~requested.~~

26 (D) ~~(e)~~ Silvicultural practices, as described in the
 27 ~~"voluntary"~~ forest management guidelines for Michigan", prepared by

1 the society of American foresters ~~in 1987~~ **AS REVISED IN 2010**, IF
 2 **THE LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT DETERMINES** that **THEY**
 3 are **MORE** likely **THAN NOT** to increase erosion ~~, OR decrease~~
 4 stability. ~~, or are more extensive than required to implement a use~~
 5 ~~for which a permit is requested.~~

6 (E) ~~(f)~~ A use that involves a vegetation removal **IF THE LOCAL**
 7 **UNIT OF GOVERNMENT OR THE DEPARTMENT DETERMINES** that **IT** is **MORE**
 8 likely **THAN NOT** to increase erosion ~~, OR decrease stability. , or~~
 9 ~~is more extensive than required to implement a use for which a~~
 10 ~~permit is requested.~~

11 ~~—— (g) A use that is not in the public interest. In determining~~
 12 ~~whether a proposed use is in the public interest, the local unit of~~
 13 ~~government shall consider both of the following:~~

14 ~~—— (i) The availability of feasible and prudent alternative~~
 15 ~~locations or methods, or both, to accomplish the benefits expected~~
 16 ~~from the use. If a proposed use is 1 single family dwelling on a~~
 17 ~~lot of record owned by the applicant, consideration of feasible and~~
 18 ~~prudent alternative locations shall be limited to the lot of record~~
 19 ~~on which the use is proposed. A lot of record shall not be created~~
 20 ~~strictly for the purpose of avoiding consideration of alternative~~
 21 ~~locations under this subparagraph.~~

22 ~~—— (ii) The impact that is expected to occur to the critical dune~~
 23 ~~area, and the extent to which the impact may be minimized.~~

24 ~~—— (2) A use that is a structure shall be constructed behind the~~
 25 ~~crest of the first landward ridge of a critical dune area that is~~
 26 ~~not a foredune. However, if construction occurs within 100 feet~~
 27 ~~measured landward from the crest of the first landward ridge that~~

~~is not a foredune, the applicant shall demonstrate that the proposed use meets all of the following requirements:~~

~~—— (a) The use will not destabilize the critical dune area.~~

~~—— (b) Contour changes and vegetative removal are limited to that essential to siting the structure and access to the structure.~~

~~—— (c) Access to the structure is from the landward side of the dune.~~

~~—— (d) The dune is restabilized with indigenous vegetation.~~

~~—— (e) Construction techniques and methods are employed that mitigate the impact on the dune.~~

~~—— (f) The crest of the dune is not reduced in elevation.~~

~~—— (g) If the department is implementing the model zoning plan, the use meets all other applicable requirements of the zoning ordinance or the model zoning plan.~~

(2) ~~(3)~~ If the local unit of government is not certain of the degree of slope on a property for which a use permit is sought, the local unit may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway. ~~or consult with the local soil conservation district regarding the degree of slope.~~

(3) ~~(4)~~ Within 60 days after the effective date of this section, ~~the~~ **THE** department shall develop guidelines to describe the method by which the department and local units of government measure slopes to implement the requirements of the zoning ordinance or the model zoning plan.

(4) ~~(5)~~ If a person is ordered by the department, or by a local unit of government that is enforcing a zoning ordinance

1 authorized under this part, to restore a critical dune area that
2 has been degraded by that person, the department or local unit of
3 government shall establish a procedure by which the restoration of
4 the critical dune area is monitored to assure that the restoration
5 is completed in a satisfactory manner.

6 Sec. 35317. (1) A local unit of government may issue variances
7 under a zoning ordinance, or the department may issue special
8 exceptions under the model zoning plan if a local unit of
9 government does not have an approved zoning ordinance, if a
10 practical difficulty will occur to the owner of the property if the
11 variance or special exception is not granted. In determining
12 whether a practical difficulty will occur if a variance or special
13 exception is not granted, primary consideration shall be given to
14 assuring that human health and safety are protected by the
15 determination and that the determination complies with applicable
16 local zoning, other state laws, and federal law. ~~A variance or a~~
17 ~~special exception is also subject to the following limitations: IF~~

18 **A PRACTICAL DIFFICULTY WILL OCCUR TO THE OWNER OF THE PROPERTY IF**
19 **THE VARIANCE OR SPECIAL EXCEPTION IS NOT GRANTED, A VARIANCE OR**
20 **SPECIAL EXCEPTION SHALL BE GRANTED UNDER THIS SECTION UNLESS THE**
21 **LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT DETERMINES THAT IT IS**
22 **MORE LIKELY THAN NOT THAT THE ACTUAL HARM TO THE ENVIRONMENT**
23 **RESULTING FROM THE USE WILL SIGNIFICANTLY DAMAGE THE PUBLIC**
24 **INTEREST ON THE PRIVATELY OWNED LAND, OR, IF THE LAND IS PUBLICLY**
25 **OWNED, THE PUBLIC INTEREST IN THE PUBLICLY OWNED LAND, BY**
26 **SIGNIFICANT AND UNREASONABLE DEPLETION OR DEGRADATION OF ANY OF THE**
27 **FOLLOWING:**

1 (A) THE DIVERSITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
2 UNIT OF GOVERNMENT.

3 (B) THE QUALITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
4 UNIT OF GOVERNMENT.

5 (C) THE FUNCTIONS OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
6 UNIT OF GOVERNMENT.

7 (2) THE DECISION OF THE LOCAL UNIT OF GOVERNMENT OR THE
8 DEPARTMENT SHALL BE IN WRITING AND SHALL BE BASED UPON EVIDENCE
9 THAT WOULD MEET THE STANDARDS IN SECTION 75 OF THE ADMINISTRATIVE
10 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.275. A DECISION DENYING
11 A VARIANCE OR SPECIAL EXCEPTION SHALL DOCUMENT, AND ANY REVIEW
12 UPHOLDING THE DECISION SHALL DETERMINE, ALL OF THE FOLLOWING:

13 (A) THAT THE LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT HAS
14 MET THE BURDEN OF PROOF UNDER SUBSECTION (1).

15 (B) THAT THE DECISION IS BASED UPON SUFFICIENT FACTS OR DATA.

16 (C) THAT THE DECISION IS THE PRODUCT OF RELIABLE SCIENTIFIC
17 PRINCIPLES AND METHODS.

18 (D) THAT THE DECISION HAS APPLIED THE PRINCIPLES AND METHODS
19 RELIABLY TO THE FACTS.

20 (E) THAT THE FACTS OR DATA UPON WHICH THE DECISION IS BASED
21 ARE RECORDED IN THE FILE.

22 (3) A LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT SHALL NOT
23 REQUIRE AN ENVIRONMENTAL SITE ASSESSMENT OR ENVIRONMENTAL IMPACT
24 STATEMENT FOR A VARIANCE EXCEPT FOR A SPECIAL USE PROJECT.

25 (4) ~~(a)~~ A variance shall not be granted from a setback
26 requirement provided for under the model zoning plan or an
27 equivalent zoning ordinance APPROVED UNDER SECTION 35034 enacted

1 pursuant to this part unless the property for which the variance is
2 requested is 1 of the following:

3 (A) ~~(i)~~—A nonconforming lot of record that is recorded prior to
4 July 5, 1989, and that becomes nonconforming due to the operation
5 of this part or a zoning ordinance.

6 (B) ~~(ii)~~—A lot legally created after July 5, 1989 that later
7 becomes nonconforming due to natural shoreline erosion.

8 (C) ~~(iii)~~—Property on which the base of the first landward
9 critical dune of at least 20 feet in height that is not a foredune
10 is located at least 500 feet inland from the first foredune crest
11 or line of vegetation on the property. However, the setback shall
12 be a minimum of 200 feet measured from the foredune crest or line
13 of vegetation.

14 ~~—— (b) A variance or special exception shall not be granted that~~
15 ~~authorizes construction of a dwelling or other permanent building~~
16 ~~on the first lakeward facing slope of a critical dune area or a~~
17 ~~foredune. However, a variance or special exception may be granted~~
18 ~~if the proposed construction is near the base of the lakeward~~
19 ~~facing slope of the critical dune on a slope of less than 1 foot~~
20 ~~vertical rise in an 8 foot horizontal plane on a nonconforming lot~~
21 ~~of record that is recorded prior to July 5, 1989 that has borders~~
22 ~~that lie entirely on the first lakeward facing slope of the~~
23 ~~critical dune area that is not a foredune.~~

24 (5) ~~(2)~~—Each local unit of government that has issued a
25 variance for a use other than a special use project during the
26 previous 12 months shall file an annual report with the department
27 indicating variances that have been granted by the local unit of

1 government during that period.

2 (6) ~~(3)~~—Upon receipt of an application for a special exception
3 under the model zoning plan, the department shall forward a copy of
4 the application and all supporting documentation to the local unit
5 of government having jurisdiction over the proposed location. The
6 local unit of government shall have ~~60~~30 days to review **AND**

7 **COMMENT ON** the proposed special exception. The department shall not
8 make a decision on a special exception under the model zoning plan
9 until either the local unit of government has commented on the
10 proposed special exception or has waived its opportunity to review
11 the special exception. The local unit of government may waive its
12 opportunity to ~~consider~~**REVIEW** the application at any time within
13 ~~60~~30 days after receipt of the application and supporting

14 documentation by notifying the department in writing. **THE LOCAL**
15 **UNIT OF GOVERNMENT ALSO WAIVES ITS OPPORTUNITY TO REVIEW THE**
16 **APPLICATION IF IT FAILS TO ACT AS AUTHORIZED IN THIS SUBSECTION**

17 **WITHIN 30 DAYS.** If the local unit of government waives its
18 opportunity to review the application, ~~or fails to act as~~
19 ~~authorized in this section within 60 days,~~ the local unit of
20 government also waives its opportunity to oppose the decision by
21 the department to issue a special exception. If the local unit of
22 government opposes the issuance of the special exception, the local
23 unit of government shall notify the department, in writing, of its
24 opposition within the ~~60 day~~**30-DAY** notice period. If the local
25 unit of government opposes the issuance of the special exception,
26 the department shall not issue a special exception. The local unit
27 of government may also consider whether a practical difficulty will

1 occur to the owner of the property if the special exception is not
2 granted by the department and may make a recommendation to the
3 department within the ~~60-day~~ **30-DAY** notice period. The department
4 shall base its determination of whether a practical difficulty
5 exists on information provided by the local unit of government and
6 other pertinent information.

7 Sec. 35319. The zoning ordinance shall provide that if an
8 environmental assessment is required under section ~~35313(e)~~ **35313**,
9 that assessment shall include the following information concerning
10 the site of the proposed use:

11 (a) The name and address of the applicant.

12 (b) A description of the applicant's proprietary interest in
13 the site.

14 (c) The name, address, and professional qualifications of the
15 person preparing the environmental assessment and his or her
16 opinion as to whether the proposed development of the site is
17 consistent with protecting features of environmental sensitivity
18 and archaeological or historical significance that may be located
19 on the site.

20 (d) The description and purpose of the proposed use.

21 (e) The location of existing utilities and drainageways.

22 (f) The general location and approximate dimensions of
23 proposed structures.

24 (g) Major proposed change of land forms such as new lakes,
25 terracing, or excavating.

26 (h) Sketches showing the scale, character, and relationship of
27 structures, streets or driveways, and open space.

1 (i) Approximate location and type of proposed drainage, water,
2 and sewage facilities.

3 (j) Legal description of property.

4 (k) A physical description of the site, including its dominant
5 characteristics, its vegetative character, its present use, and
6 other relevant information.

7 (l) A natural hazards review consisting of a list of natural
8 hazards such as periodic flooding, poor soil bearing conditions,
9 and any other hazards peculiar to the site.

10 (m) An erosion review showing how erosion control will be
11 achieved and illustrating plans or programs that may be required by
12 any existing soil erosion and sedimentation ordinance.

13 Sec. 35320. If an environmental impact statement is required
14 under section ~~35313(e)~~ **35313** prior to permitting a proposed use, a
15 zoning ordinance may require that the statement include all of the
16 following:

17 (a) The name and address of the applicant.

18 (b) A description of the applicant's proprietary interest in
19 the site of the proposed use.

20 (c) The name, address, and professional qualifications of the
21 proposed professional design team members, including the
22 designation of the person responsible for the preparation of the
23 environmental impact statement.

24 (d) The description and purpose of the proposed use.

25 (e) Six copies and 1 reproducible transparency of a schematic
26 use plan of the proposed use showing the general location of the
27 proposed use and major existing physical and natural features on

1 the site, including, but not limited to, watercourses, rock
2 outcropping, wetlands, and wooded areas.

3 (f) The location of the existing utilities and drainageways.

4 (g) The location and notation of public streets, parks, and
5 railroad and utility rights-of-way within or adjacent to the
6 proposed use.

7 (h) The general location and dimensions of proposed streets,
8 driveways, sidewalks, pedestrian ways, trails, off-street parking,
9 and loading areas.

10 (i) The general location and approximate dimensions of
11 proposed structures.

12 (j) Major proposed change of land forms such as new lakes,
13 terracing, or excavating.

14 (k) Approximate existing and proposed contours and drainage
15 patterns, showing at least 5-foot contour intervals.

16 (l) Sketches showing the scale, character, and relationship of
17 structures, streets or driveways, and open space.

18 (m) Approximate location and type of proposed drainage, water
19 and sewage treatment and disposal facilities.

20 (n) A legal description of the property.

21 (o) An aerial photo and contour map showing the development
22 site in relation to the surrounding area.

23 (p) A description of the physical site, including its dominant
24 characteristics, its vegetative character, its present use, and
25 other relevant information.

26 (q) A soil review giving a short descriptive summary of the
27 soil types found on the site and whether the soil permits the use

1 of septic tanks or requires central sewer. The review may be based
2 on the "unified soil classification system" as adopted by the
3 United States government corps of engineers and bureau of
4 reclamation, dated January 1952, or the national cooperative soil
5 survey classification system, and the standards for the development
6 prospects that have been offered for each portion of the site.

7 (r) A natural hazards review consisting of a list of natural
8 hazards such as periodic flooding, poor soil bearing conditions,
9 and any other hazards peculiar to the site.

10 (s) A substrata review including a descriptive summary of the
11 various geologic bedrock formations underlying the site, including
12 the identification of known aquifers, the approximate depths of the
13 aquifers, and, if being tapped for use, the principal uses to be
14 made of these waters, including irrigation, domestic water supply,
15 and industrial usage.

16 (t) An erosion review showing how erosion control will be
17 achieved and illustrating plans or programs that may be required by
18 any existing soil erosion and sedimentation ordinance.

19 (u) At a minimum, plans for compliance with all of the
20 following standards ~~shall be required for~~ **THE** construction and
21 postconstruction periods:

22 (i) Surface drainage designs and structures are erosion-proof
23 through control of the direction, volume, and velocities of
24 drainage patterns. These patterns shall promote natural vegetation
25 growth that are included in the design so that drainage waters may
26 be impeded in their flow and percolation encouraged.

27 (ii) The design shall include trash collection devices when

1 handling street and parking drainage to contain solid waste and
2 trash.

3 (iii) Watercourse designs, control volumes, and velocities of
4 water to prevent bottom and bank erosion. In particular, changes of
5 direction shall guard against undercutting of banks.

6 (iv) If vegetation has been removed or has not been able to
7 ~~occur~~ **ESTABLISH** on surface areas such as infill zones, it is the
8 duty of the developer to stabilize and control the impacted surface
9 areas to prevent wind erosion and the blowing of surface material
10 through the planting of grasses, windbreaks, and other similar
11 barriers.

12 Sec. 35321. A zoning ordinance shall provide that, in
13 reviewing a site plan required under section ~~35313(d)~~, **35313(1)(D)**,
14 the planning commission shall do ~~all~~ **BOTH** of the following:

15 (a) Determine whether the requirements of the zoning ordinance
16 have been met and whether the plan is consistent with existing
17 laws.

18 ~~— (b) Determine whether the advice or assistance of the soil~~
19 ~~conservation district will be helpful in reviewing a site plan.~~

20 **(B)** ~~(c)~~ Recommend alterations of a proposed development to
21 minimize adverse effects anticipated if the development is approved
22 and to assure compliance with all applicable state and local
23 requirements.

24 Sec. 35322. Prior to issuing a permit allowing a special use
25 project within a critical dune area, a local unit of government
26 shall submit the special use project application and plan and the
27 proposed decision of the local unit of government to the

1 department. The department shall have ~~60~~30 days to review the plan
2 and may affirm, modify, or reverse the proposed decision of the
3 local unit of government.

4 Sec. 35323. A structure or use located in a critical dune area
5 that is destroyed by fire, other than arson for which the owner is
6 found to be responsible, or an act of nature, except for erosion,
7 is exempt from the operation of this part or a zoning ordinance
8 under this part for the purpose of rebuilding or replacing the
9 structure or use, if the structure or use was lawful at the time it
10 was constructed or commenced. ~~and the structure~~ **A REPLACEMENT**
11 **STRUCTURE AND ITS USE MAY DIFFER FROM THAT WHICH WAS DESTROYED IF**
12 **IT** does not exceed in size or scope that which was destroyed. ~~and~~
13 ~~does not vary from its prior use.~~

14 Enacting section 1. Section 35326 of natural resources and
15 environmental protection act, 1994 PA 451, MCL 324.35326, is
16 repealed.