

**SUBSTITUTE FOR
SENATE BILL NO. 1130**

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:

1 (a) "Contour change" includes any grading, filling, digging,
2 or excavating that significantly alters the physical characteristic
3 of a critical dune area, except that which is involved in sand dune
4 mining as defined in part 637.

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

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

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

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

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

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

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

27 **(I)** ~~(h)~~—"Restabilization" means restoration of the natural

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

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

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

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

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

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

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

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

27 Sec. 35302. The legislature finds that:

1 (a) The critical dune areas of this state are a unique,
2 irreplaceable, and fragile resource that provide significant
3 recreational, economic, scientific, geological, scenic, botanical,
4 educational, agricultural, and ecological benefits to the people of
5 this state and to people from other states and countries who visit
6 this resource.

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

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

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

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

27 (ii) ENSURE SOUND MANAGEMENT OF ALL CRITICAL DUNES BY ALLOWING

1 FOR COMPATIBLE ECONOMIC DEVELOPMENT AND MULTIPLE HUMAN USES OF THE
2 CRITICAL DUNES.

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

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

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

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

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

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

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

1 **SUBDIVISION (B)** and to the person requesting the hearing.

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

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

18 (G) **SUBJECT TO SECTION 35316, A PERMIT SHALL BE APPROVED**
19 **UNLESS THE LOCAL UNIT OF GOVERNMENT OR THE DEPARTMENT DETERMINES**
20 **THAT THE USE WILL SIGNIFICANTLY DAMAGE THE PUBLIC INTEREST ON THE**
21 **PRIVATELY OWNED LAND, OR, IF THE LAND IS PUBLICLY OWNED, THE PUBLIC**
22 **INTEREST IN THE PUBLICLY OWNED LAND, BY SIGNIFICANT AND**
23 **UNREASONABLE DEPLETION OR DEGRADATION OF ANY OF THE FOLLOWING:**

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

26 (ii) **THE QUALITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL**
27 **UNIT OF GOVERNMENT.**

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

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

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

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

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

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

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

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

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

1 BE PLACED LANDWARD OF THE CREST. THE PORTION OF THE DEVELOPMENT
2 THAT IS LAKEWARD OF THE CREST SHALL BE PLACED IN THE LOCATION THAT
3 HAS THE LEAST IMPACT ON THE CRITICAL DUNE AREA.

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

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

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

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

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

21 (5) ~~(3)~~—As soon as possible following adoption of a zoning
22 ordinance enacted pursuant to this part, the local unit of
23 government shall submit to the department a copy of the ordinance
24 that it determines meets the requirements of this part. If the
25 local unit of government has an existing ordinance that it contends
26 is ~~at least as restrictive as~~ **SUBSTANTIALLY EQUIVALENT TO** the model
27 zoning plan, that ordinance may be submitted to the department at

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

12 (6) ~~(4)~~—A local unit of government may adopt, submit to the
 13 department, and obtain approval of a zoning ordinance based on the
 14 model zoning plan or an equivalent ordinance as provided in this
 15 section by June 30, 1990. If a local unit does not have an approved
 16 ordinance by June 30, 1990, the department shall implement the
 17 model zoning plan for that local unit of government in the same
 18 manner and under the same circumstances as provided in subsection
 19 (1). Notwithstanding any other provision of this part, a local unit
 20 of government may adopt a zoning ordinance at any time, and upon
 21 the approval of the department, that ordinance shall take the place
 22 of the model zoning plan implemented by the department.

23 (7) ~~(5)~~—If a local unit of government in which a proposed use
 24 is to be located does not elect to issue permits or does not
 25 receive **DEPARTMENT** approval of a zoning ordinance that regulates
 26 critical dune areas, the department shall implement the model
 27 zoning plan in the place of the local unit of government and issue

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

4 (8) ~~(6)~~ The department shall assist local units of government
 5 in developing ordinances that meet the requirements of this part.

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

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

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

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

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

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

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

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

26 (B) ALL DISTURBED AREAS SHALL BE IMMEDIATELY STABILIZED AND
27 REVEGETATED WITH NATIVE VEGETATION FOLLOWING COMPLETION OF WORK TO

1 PREVENT EROSION.

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

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

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

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

20 (5) ~~(4)~~—Uses that have received all necessary permits from the
21 state or the local unit of government in which the proposed use is
22 located by July 5, 1989, are exempt for purposes for which a permit
23 is issued from the operation of this part or local ordinances
24 approved under this part. Such uses shall be regulated pursuant to
25 local ordinances in effect by that date.

26 Sec. 35310. (1) If the department finds that a person is not
27 in compliance with the model zoning plan if the department is

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

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

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

1 local unit of government has ~~30~~60 days to respond to the
 2 department. If the department determines that the local unit of
 3 government has not made sufficient changes to its ordinance
 4 administration or otherwise explained its actions, the department
 5 may withdraw the approval of the local ordinance and implement the
 6 model zoning plan within that local unit of government. If a local
 7 unit disagrees with an action of the department to withdraw
 8 approval of the local ordinance, it may appeal that action pursuant
 9 to the administrative procedures act of 1969, ~~Act No. 306 of the~~
 10 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
 11 ~~Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328,~~ in the
 12 manner provided in that act for contested cases.

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

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

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

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

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

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

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

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

1 AND PREPARED FOR THE SITE BY A REGISTERED PROFESSIONAL ARCHITECT OR
2 LICENSED PROFESSIONAL ENGINEER. THE SITE PLAN SHALL INCLUDE (i)
3 STORM WATER DRAINAGE THAT PROVIDES FOR DISPOSAL OF STORM WATER
4 WITHOUT SERIOUS EROSION, (ii) METHODS FOR CONTROLLING EROSION FROM
5 WIND AND WATER, AND (iii) RESTABILIZATION, BY DESIGN ELEMENTS
6 INCLUDING VEGETATION, CUT-AND-FILL, BRIDGES, TRAVERSES, AND SUCH
7 OTHER 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 A SITE PLAN SUBMITTED WITH THE PERMIT APPLICATION AND PREPARED
12 FOR THE SITE BY A LICENSED PROFESSIONAL ENGINEER. THE SITE PLAN
13 SHALL INCLUDE (i) STORM WATER DRAINAGE THAT PROVIDES FOR DISPOSAL OF
14 STORM WATER WITHOUT SERIOUS EROSION, (ii) METHODS FOR CONTROLLING
15 EROSION FROM WIND AND WATER, AND (iii) RESTABILIZATION, BY DESIGN
16 ELEMENTS INCLUDING VEGETATION, CUT-AND-FILL, BRIDGES, TRAVERSES,
17 AND SUCH OTHER ELEMENTS AS ARE REQUIRED IN THE JUDGMENT OF THE
18 ENGINEER TO MEET THESE REQUIREMENTS. THE ENGINEER SHALL CERTIFY
19 UNDER SEAL THAT THE ACCESSIBILITY MEASURES ARE NOT LIKELY TO
20 INCREASE EROSION OR 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.

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

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

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

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

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

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

(3) A local unit of government may **BY AN AFFIRMATIVE VOTE OF ITS GOVERNING BODY FOLLOWING A PUBLIC HEARING** regulate additional lands as critical dune areas under this part as considered 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~~ **A SITE**
 10 **PLAN** prepared for the site by a registered professional architect
 11 or a licensed professional engineer and the ~~plans provide~~ **SITE PLAN**
 12 **PROVIDES** for the disposal of storm waters without serious soil
 13 erosion and without sedimentation of any stream or other body of
 14 water. ~~Prior to approval of the plan, the planning commission shall~~
 15 ~~consult with the local soil 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 THE USE**
22 **WILL SIGNIFICANTLY DAMAGE THE PUBLIC INTEREST ON THE PRIVATELY**
23 **OWNED LAND, OR, IF THE LAND IS PUBLICLY OWNED, THE PUBLIC INTEREST**
24 **IN THE PUBLICLY OWNED LAND, BY SIGNIFICANT AND UNREASONABLE**
25 **DEPLETION OR DEGRADATION OF ANY OF THE FOLLOWING:**

26 (A) THE DIVERSITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
27 UNIT OF GOVERNMENT.

1 (B) THE QUALITY OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
2 UNIT OF GOVERNMENT.

3 (C) THE FUNCTIONS OF THE CRITICAL DUNE AREAS WITHIN THE LOCAL
4 UNIT OF GOVERNMENT.

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

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

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

14 (C) THAT THE DECISION IS THE PRODUCT OF RELIABLE SCIENTIFIC
15 PRINCIPLES AND METHODS.

16 (D) THAT THE DECISION HAS APPLIED THE PRINCIPLES AND METHODS
17 RELIABLY TO THE FACTS.

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

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

23 (4) ~~(a)~~ A variance shall not be granted from a setback
24 requirement provided for under the model zoning plan or an
25 equivalent zoning ordinance **APPROVED UNDER SECTION 35034** enacted
26 pursuant to this part unless the property for which the variance is
27 requested is 1 of the following:

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

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

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

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

22 (5) ~~(2)~~—Each local unit of government that has issued a
 23 variance for a use other than a special use project during the
 24 previous 12 months shall file an annual report with the department
 25 indicating variances that have been granted by the local unit of
 26 government during that period.

27 (6) ~~(3)~~—Upon receipt of an application for a special exception

1 under the model zoning plan, the department shall forward a copy of
2 the application and all supporting documentation to the local unit
3 of government having jurisdiction over the proposed location. The
4 local unit of government shall have 60 days to review **AND COMMENT**
5 **ON** the proposed special exception. The department shall not make a
6 decision on a special exception under the model zoning plan until
7 either the local unit of government has commented on the proposed
8 special exception or has waived its opportunity to review the
9 special exception. The local unit of government may waive its
10 opportunity to ~~consider~~**REVIEW** the application at any time within
11 60 days after receipt of the application and supporting
12 documentation by notifying the department in writing. **THE LOCAL**
13 **UNIT OF GOVERNMENT ALSO WAIVES ITS OPPORTUNITY TO REVIEW THE**
14 **APPLICATION IF IT FAILS TO ACT AS AUTHORIZED IN THIS SUBSECTION**
15 **WITHIN 60 DAYS.** If the local unit of government waives its
16 opportunity to review the application, ~~or fails to act as~~
17 ~~authorized in this section within 60 days,~~ the local unit of
18 government also waives its opportunity to oppose the decision by
19 the department to issue a special exception. If the local unit of
20 government opposes the issuance of the special exception, the local
21 unit of government shall notify the department, in writing, of its
22 opposition within the 60-day notice period. If the local unit of
23 government opposes the issuance of the special exception, the
24 department shall not issue a special exception. The local unit of
25 government may also consider whether a practical difficulty will
26 occur to the owner of the property if the special exception is not
27 granted by the department and may make a recommendation to the

1 department within the 60-day notice period. The department shall
2 base its determination of whether a practical difficulty exists on
3 information provided by the local unit of government and other
4 pertinent information.

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

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

10 (b) A description of the applicant's proprietary interest in
11 the site.

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

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

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

20 (f) The general location and approximate dimensions of
21 proposed structures.

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

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

26 (i) Approximate location and type of proposed drainage, water,
27 and sewage facilities.

1 (j) Legal description of property.

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

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

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

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

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

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

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

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

23 (e) Six copies and 1 reproducible transparency of a schematic
24 use plan of the proposed use showing the general location of the
25 proposed use and major existing physical and natural features on
26 the site, including, but not limited to, watercourses, rock
27 outcropping, wetlands, and wooded areas.

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

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

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

8 (i) The general location and approximate dimensions of
9 proposed structures.

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

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

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

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

18 (n) A legal description of the property.

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

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

24 (q) A soil review giving a short descriptive summary of the
25 soil types found on the site and whether the soil permits the use
26 of septic tanks or requires central sewer. The review may be based
27 on the "unified soil classification system" as adopted by the

1 United States government corps of engineers and bureau of
2 reclamation, dated January 1952, or the national cooperative soil
3 survey classification system, and the standards for the development
4 prospects that have been offered for each portion of the site.

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

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

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

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

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

25 (ii) The design shall include trash collection devices when
26 handling street and parking drainage to contain solid waste and
27 trash.

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

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

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

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

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

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

Sec. 35322. Prior to issuing a permit allowing a special use project within a critical dune area, a local unit of government shall submit the special use project application and plan and the proposed decision of the local unit of government to the department. The department shall have ~~60~~ **30** days to review the plan and may affirm, modify, or reverse the proposed decision of the

1 local unit of government.

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

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