

HOUSE BILL No. 5859

September 30, 2014, Introduced by Reps. Lamonte, Greimel, Lane, Driskell, Singh, Hovey-Wright, Geiss, Dillon, Faris, Dianda, Brinks, Switalski, Townsend, Schor, Yanez, Kivela, Knezek, Irwin, Clemente, McCann, Slavens, Zemke, Robinson, Santana, Barnett, Haugh, Tlaib, Roberts, Brown, LaVoy, Cochran, Darany, Smiley, Cavanagh, Kandrevas, Kosowski and Oakes and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 35301, 35302, 35304, 35308, 35312, 35313, 35316, 35317, and 35321 (MCL 324.35301, 324.35302, 324.35304, 324.35308, 324.35312, 324.35313, 324.35316, 324.35317, and 324.35321), sections 35301, 35302, 35304, 35312, 35313, 35316, 35317, and 35321 as amended by 2012 PA 297 and section 35308 as added by 1995 PA 59; 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,
3 or excavating that significantly alters the physical characteristic
4 of a critical dune area, ~~except that which is~~ **IF THE ACTIVITY IS**
5 involved in sand dune mining as defined in part 637.

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

6 (c) "Critical dune area" means a geographic area designated in
7 the "atlas of critical dune areas" dated February 1989 ~~that was~~ **AND**
8 prepared by the department of natural resources.

9 (d) "Department" means the department of environmental
10 quality.

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

16 (f) "Model zoning plan" means the model zoning plan provided
17 for in sections 35304 to 35309 and ~~35311a~~ **35311B** to ~~35324~~ **35323**.

18 (g) "Permit" means a permit for a use within a critical dune
19 area under this part.

20 (h) "Planning commission" means the body or entity within a
21 local government that is responsible for zoning and land use
22 planning for the local unit of government.

23 (i) "Restabilization" means restoration of the natural
24 contours of a critical dune to the extent practicable, the
25 restoration of the protective vegetative cover of a critical dune
26 through the establishment of indigenous vegetation, and the
27 placement of snow fencing or other temporary sand trapping measures

1 for the purpose of preventing erosion, drifting, and slumping of
2 sand.

3 (j) "Special use project" means any of the following:

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

6 (ii) A **PROPOSED** multifamily use of more than 3 acres.

7 (iii) A **PROPOSED** multifamily use of 3 acres or less if the
8 density of use is greater than 4 individual residences per acre.

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

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

20 (l) "Zoning ordinance" means an ordinance of a local unit of
21 government that regulates the development of critical dune areas
22 within the local unit of government pursuant to the requirements of
23 this part.

24 Sec. 35302. The legislature finds that:

25 (a) The critical dune areas of this state are a unique,
26 irreplaceable, and fragile resource that provide significant
27 recreational, economic, scientific, geological, scenic, botanical,

1 educational, agricultural, and ecological benefits to the people of
2 this state and to people from other states and countries who visit
3 this resource.

4 **(B) LOCAL UNITS OF GOVERNMENT SHOULD HAVE THE OPPORTUNITY TO**
5 **EXERCISE THE PRIMARY ROLE IN PROTECTING AND MANAGING CRITICAL DUNE**
6 **AREAS IN ACCORDANCE WITH THIS PART.**

7 (C) ~~(b)~~—The purpose of this part is to balance for present and
8 future generations the benefits of protecting, preserving,
9 restoring, and enhancing the diversity, quality, functions, and
10 values of the state's critical dunes with the benefits of economic
11 development and multiple human uses of the critical dunes and the
12 benefits of public access to and enjoyment of the critical dunes.
13 To accomplish this purpose, this part is intended to do all of the
14 following:

15 (i) Ensure and enhance the diversity, quality, functions, and
16 values of the critical dunes in a manner that is compatible with
17 private property rights.

18 (ii) Ensure sound management of all critical dunes by allowing
19 for compatible economic development and multiple human uses of the
20 critical dunes.

21 (iii) Coordinate and streamline governmental decision-making
22 affecting critical dunes through the use of the most comprehensive,
23 accurate, and reliable information and scientific data available.

24 Sec. 35304. (1) A person shall not initiate a use within a
25 critical dune area unless the person obtains a permit from the
26 local unit of government in which the critical dune area is located
27 or the department if the department issues permits as provided

1 under subsection (7). ~~A-SUBJECT TO SUBSECTION (7), ALL OF THE~~
2 **FOLLOWING APPLY TO A** permit for a use within a critical dune area:
3 ~~is subject to all of the following:~~

4 (a) A person proposing a use within a critical dune area shall
5 file an application with the local unit of government. ~~, or with~~
6 ~~the department if the department is issuing permits under the model~~
7 ~~zoning plan.~~ The application form shall include information
8 necessary to conform with the requirements of this part. If a
9 project proposes the use of more than 1 critical dune area location
10 within a local unit of government, 1 application ~~may~~ **SHALL** be filed
11 for the uses. **IF A MULTIPHASE DEVELOPMENT IS PLANNED BY THE PERMIT**
12 **APPLICANT, 1 APPLICATION SHALL BE FILED FOR ALL PHASES OF THE**
13 **DEVELOPMENT.**

14 (b) The local unit of government shall provide notice of an
15 application filed under this section to each person who makes a
16 written request to the local unit of government for notification of
17 pending applications. The local unit of government may charge an
18 annual fee for providing ~~this notice.~~ **THE NOTICES.** The local unit
19 of government shall prepare a monthly list of the applications made
20 during the previous month and shall promptly provide copies of the
21 list for the remainder of the calendar year to the persons who have
22 requested notice. In addition, if the department issues permits
23 under this part within a local unit of government **AS PROVIDED UNDER**
24 **SUBSECTION (7),** notice of an application shall also be given to the
25 local conservation district office, the county clerk, the county
26 health department, and the local unit of government in which the
27 property is located. The monthly list shall state the name and

1 address of each applicant, the location of the applicant's project,
 2 and a summary statement of the purpose of the use. The local unit
 3 of government may hold a public hearing on pending applications.

4 (c) The notice shall state that unless a written request is
 5 filed with the local unit of government within 20 days after the
 6 notice is sent, the local unit of government may grant the
 7 application without a public hearing. Upon the written request of 2
 8 or more persons who own real property within 2 miles of the project
 9 **OR WITHIN THE TERRITORY OF THE LOCAL UNIT OF GOVERNMENT**, the local
 10 unit of government shall hold a public hearing ~~pertaining to~~ **ON** a
 11 permit application.

12 (d) At least 10 days' notice of a hearing to be held pursuant
 13 to this section shall be given by ~~publication~~ **ALL OF THE FOLLOWING:**

14 (i) **PUBLICATION** in 1 or more newspapers of general circulation
 15 in the county in which the proposed use is to be located, ~~and by~~
 16 ~~providing~~ **AND IN OTHER PUBLICATIONS, IF APPROPRIATE, TO GIVE NOTICE**
 17 **TO PERSONS LIKELY TO BE AFFECTED BY THE PROPOSED USE.**

18 (ii) **PROVIDING** notice to the persons who have requested notice
 19 pursuant to subdivision (b) and to the person requesting the
 20 hearing.

21 (e) After the filing of an application, the local unit of
 22 government shall grant or deny the permit within 60 days, or within
 23 90 days if a public hearing is held. If a permit is denied, the
 24 local unit of government shall provide to the applicant a concise
 25 written statement of its reasons for denial of the permit, and if
 26 it appears that a minor modification of the application would
 27 result in the granting of the permit, the nature of the

1 modification. ~~shall be stated.~~ In an emergency, the local unit of
 2 government may issue a conditional permit before the expiration of
 3 the 20-day period referred to in subdivision (c).

4 (f) The local unit of government shall base a decision to
 5 grant or deny a permit under this section on the model zoning plan
 6 or on ~~any existing~~ **AN** ordinance ~~that is in effect in~~ **ADOPTED BY** the
 7 local unit of government that provides ~~a substantially equivalent~~
 8 **THE SAME OR A GREATER** level of protection for critical dune areas
 9 and that is approved by the department **AS PROVIDED IN SUBSECTION**
 10 **(6)**.

11 (g) Subject to section 35316, a permit shall **NOT** be approved
 12 unless the local unit of government or the department determines
 13 that the use will **NOT** significantly damage the public interest on
 14 the privately owned land, or, if the land is publicly owned, the
 15 public interest in the publicly owned land, by significant and
 16 unreasonable depletion or degradation of any of the following:

17 (i) The diversity of the critical dune areas within the local
 18 unit of government.

19 (ii) The quality of the critical dune areas within the local
 20 unit of government.

21 (iii) The functions of the critical dune areas within the local
 22 unit of government.

23 **(H) IN APPLYING THE STANDARD UNDER SUBDIVISION (G), THE LOCAL**
 24 **UNIT SHALL CONSIDER ALL OF THE FOLLOWING:**

25 **(i) THE CUMULATIVE EFFECTS OF EXISTING AND PROPOSED USES.**

26 **(ii) THE EFFECTS OF THE ENTIRE PROPOSED DEVELOPMENT, INCLUDING**
 27 **ALL OF THE FOLLOWING:**

1 (A) ALL PHASES OF A MULTIPHASE DEVELOPMENT.

2 (B) USES OF ALL LOTS OR PARCELS CREATED UNDER THE LAND
3 DIVISION ACT, 1967 PA 288, MCL 560.101 TO 560.293, OR SITE
4 CONDOMINIUM UNITS CREATED UNDER THE CONDOMINIUM ACT, 1978 PA 59,
5 MCL 559.101 TO 559.276.

6 (C) DRIVEWAYS, PARKING AREAS, TURNAROUND AREAS, AND ROADS.

7 (2) A ZONING ORDINANCE MAY BE MORE RESTRICTIVE OF DEVELOPMENT
8 AND MORE PROTECTIVE OF CRITICAL DUNE AREAS THAN THE MODEL ZONING
9 PLAN.

10 (3) ~~(2)~~The decision of the local unit of government or the
11 department with respect to a permit shall be in writing and shall
12 be based upon evidence that would meet the standards in section 75
13 of the administrative procedures act of 1969, 1969 PA 306, MCL
14 24.275. A decision **GRANTING OR** denying a permit shall document, and
15 any review upholding the decision shall determine, all of the
16 following:

17 (a) ~~That the local unit of government or the department~~
18 **WHETHER THE APPLICANT** has met the burden of proof under subsection
19 (1).

20 (b) That the ~~decision is based upon sufficient~~ **LOCAL UNIT OF**
21 **GOVERNMENT OR THE DEPARTMENT CONSIDERED THE** facts or data **MADE**
22 **AVAILABLE BY THE APPLICANT.**

23 (c) That the decision is the product of reliable scientific
24 principles and methods.

25 (d) That the decision has applied the principles and methods
26 reliably to the facts.

27 (e) That the facts or data upon which the decision is based

1 are recorded in the file.

2 (4) ~~(3)~~—A permit shall not be granted that authorizes
3 construction of a dwelling or other permanent building on the first
4 lakeward facing slope of a critical dune area or foredune except on
5 a lot of record that was recorded prior to July 5, 1989 that does
6 not have sufficient buildable area landward of the crest to
7 construct the dwelling or other permanent building as proposed by
8 the applicant. The proposed construction **UNDER THIS SUBSECTION**, to
9 the greatest extent possible, shall be placed landward of the
10 crest. The portion of the development that is lakeward of the crest
11 shall be placed in the location that has the least impact on the
12 critical dune area.

13 (5) ~~(4)~~—Except as provided in subsection ~~(3)~~, ~~(4)~~, a permit
14 shall provide that a use that is a structure shall be constructed
15 behind the crest of the first landward ridge of a critical dune
16 area that is not a foredune. However, if construction occurs within
17 100 feet measured landward from the crest of the first landward
18 ridge that is not a foredune, the use shall meet all of the
19 following requirements:

20 (a) The structure and access to the structure shall be in
21 accordance with a site plan prepared for the site by a registered
22 professional architect or a licensed professional engineer and the
23 site plan shall provide for the disposal of storm waters without
24 serious soil erosion and without sedimentation of any stream or
25 other body of water.

26 (b) Access to the structure shall be from the landward side of
27 the dune.

1 (c) The dune shall be restabilized with indigenous vegetation.

2 (d) The crest of the dune shall not be reduced in elevation.

3 (6) ~~(5)~~ **A LOCAL UNIT OF GOVERNMENT MAY AT ANY TIME ADOPT A**
 4 **ZONING ORDINANCE AS DESCRIBED IN SUBSECTION (1) (F)**. As soon as
 5 possible following adoption of ~~a~~ **THE** zoning ordinance, ~~enacted~~
 6 ~~pursuant to this part,~~ the local unit of government shall submit to
 7 the department a copy of the ordinance. ~~that it determines meets~~
 8 ~~the requirements of this part.~~ If the local unit of government has
 9 an existing ordinance that it contends ~~is substantially equivalent~~
 10 ~~to~~ **PROVIDES A LEVEL OF PROTECTION THE SAME AS OR GREATER THAN** the
 11 model zoning plan, that ordinance may be submitted to the
 12 department at any time. The department shall review zoning
 13 ordinances submitted under this section to ~~assure~~ **ENSURE** compliance
 14 with this part. If the department finds that an ordinance is not in
 15 compliance with this part, the department shall work with the local
 16 unit of government to bring the ordinance into compliance and
 17 inform the local unit of the failure to comply and in what ways the
 18 submitted ordinance is deficient. Unless a local unit of government
 19 receives notice, within 180 days after submittal of the ordinance
 20 to the department under this subsection, that the ordinance is not
 21 in compliance with this part, the ordinance shall be considered to
 22 be approved by the department.

23 ~~—— (6) A local unit of government may adopt, submit to the~~
 24 ~~department, and obtain approval of a zoning ordinance based on the~~
 25 ~~model zoning plan or an equivalent ordinance as provided in this~~
 26 ~~section by June 30, 1990. If a local unit does not have an approved~~
 27 ~~ordinance by June 30, 1990, the department shall implement the~~

1 ~~model zoning plan for that local unit of government in the same~~
2 ~~manner and under the same circumstances as provided in subsection~~
3 ~~(1). Notwithstanding any other provision of this part, a local unit~~
4 ~~of government may adopt a zoning ordinance at any time, and upon~~
5 ~~the approval of the department, that ordinance shall take the place~~
6 ~~of the model zoning plan implemented by the department.~~

7 (7) If a local unit of government in which a proposed use is
8 to be located does not elect to issue permits or does not receive
9 department approval of a zoning ordinance that regulates critical
10 dune areas, the department shall implement the model zoning plan in
11 the place of the local unit of government and issue special
12 exceptions in the same circumstances as provided in this part for
13 the issuance of variances by local units of government, and issue
14 permits pursuant to subsection (1) and part 13.

15 (8) The department shall assist local units of government in
16 developing ordinances that meet the requirements of this part.

17 Sec. 35308. (1) Except as provided in subsection (2), the
18 following uses shall be prohibited in a critical dune area:

19 (a) A surface drilling operation that is utilized for ~~the~~
20 ~~purpose of~~ exploring for or producing hydrocarbons or natural brine
21 or for the disposal of the waste or by-products of the operation.

22 (b) Production facilities regulated under parts 615 and 625.

23 **(C) A ROAD UNLESS THE ROAD PROVIDES ACCESS TO A BUILDING IN**
24 **THE CRITICAL DUNE AREA THAT IS NOT OTHERWISE ACCESSIBLE BY ROAD.**

25 (2) Uses described in subsection (1) that are lawfully in
26 existence at a site on July 5, 1989 may be continued. The
27 continuance, completion, restoration, reconstruction, extension, or

1 substitution of those existing uses shall be permitted upon
2 reasonable terms prescribed by the department.

3 Sec. 35312. (1) ~~A~~**AFTER CONSULTING WITH THE LOCAL CONSERVATION**
4 **DISTRICT, A** local unit of government that has 1 or more critical
5 dune areas within its jurisdiction may formulate a zoning ordinance
6 pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL
7 125.3101 to 125.3702, **TO REGULATE CRITICAL DUNE AREAS.**

8 (2) A zoning ordinance shall consist of all of the provisions
9 of the model zoning plan or comparable provisions that provide
10 ~~substantially equivalent~~**THE SAME OR A GREATER LEVEL OF** protection
11 of critical dune areas as the model zoning plan. ~~but shall not be~~
12 ~~more restrictive than the model zoning plan or the standard of~~
13 ~~review for permits or variances prescribed in the model zoning~~
14 ~~plan.~~

15 (3) A local unit of government may by an affirmative vote of
16 its governing body following a public hearing regulate additional
17 lands as critical dune areas under this part as considered
18 appropriate by the planning commission if the lands are determined
19 by the local unit of government to be essential to the hydrology,
20 ecology, topography, or integrity of a critical dune area. A local
21 unit of government shall provide within its zoning ordinance for
22 the protection of lands that are within 250 feet of a critical dune
23 area, if those lands are determined by the local unit of government
24 to be essential to the hydrology, ecology, topography, or integrity
25 of a critical dune area.

26 (4) If a local unit of government does not have an approved
27 zoning ordinance, the department may regulate additional lands

1 described in subsection (3). However, the lands added by the
2 department shall not extend more than 250 feet from the landward
3 boundary of a critical dune area, unless, following a public
4 hearing, an affirmative vote of the governing body of the local
5 unit of government authorizes a further extension. If the director
6 determines that the mapping of a critical dune area designated in
7 the "atlas of critical dune areas" dated February 1989 was
8 inaccurate, the department may regulate additional lands. However,
9 the lands added by the department shall not extend more than 250
10 feet from the landward boundary of a critical dune area.

11 Sec. 35313. (1) A zoning ordinance **UNDER SECTION 35312** shall
12 require that all applications for permits for the use of a critical
13 dune area include in writing all of the following:

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

18 (b) That a proposed sewage treatment or disposal system on the
19 site has been approved by the county health department or the
20 department.

21 (c) Assurances that the cutting and removing of trees and
22 other vegetation will be performed according to the **INSTRUCTIONS OR**
23 **PLANS OF THE LOCAL CONSERVATION DISTRICT. THESE INSTRUCTIONS OR**
24 **PLANS MAY INCLUDE APPLICABLE SILVICULTURAL PRACTICES AS DESCRIBED**
25 **IN "forestry management guidelines for Michigan" prepared by the**
26 **society of American foresters in 1987 as revised in 2010. and ~~THE~~**
27 **INSTRUCTIONS OR PLANS** may include a program to provide mitigation

1 for the removal of trees or vegetation by providing assurances that
2 the applicant will plant on the site more trees and other
3 vegetation than were removed by the proposed use.

4 (d) A site plan that contains data required by the planning
5 commission concerning the physical development of the site and
6 extent of disruption of the site by the proposed development. **THE**
7 **PLANNING COMMISSION MAY CONSULT WITH THE LOCAL CONSERVATION**
8 **DISTRICT IN DETERMINING THE REQUIRED DATA.**

9 (2) A local unit of government or the department ~~shall not~~ **MAY**
10 require an environmental site assessment ~~or~~ **AS PART OF A PERMIT**
11 **APPLICATION BUT SHALL NOT REQUIRE AN** environmental impact statement
12 ~~as part of a permit application~~ except for a special use project.

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

16 (a) A structure and access to the structure on a slope within
17 a critical dune area that has a slope that measures from a 1-foot
18 vertical rise in a 4-foot horizontal plane to ~~less~~ **NOT STEEPER** than
19 a 1-foot vertical rise in a 3-foot horizontal plane, unless the
20 structure and access to the structure are in accordance with a site
21 plan prepared for the site by a registered professional architect
22 or a licensed professional engineer and the site plan provides for
23 the disposal of storm waters without serious soil erosion and
24 without sedimentation of any stream or other body of water. **BEFORE**
25 **APPROVING THE SITE PLAN, THE PLANNING COMMISSION SHALL CONSULT WITH**
26 **THE LOCAL CONSERVATION DISTRICT.**

27 (b) A use on a slope within a critical dune area that has a

1 slope steeper than a 1-foot vertical rise in a 3-foot horizontal
2 plane.

3 (c) A use involving a contour change if the local unit of
4 government or the department determines that it is more likely than
5 not to increase erosion or decrease stability.

6 (d) Silvicultural practices, as described in the "forest
7 management guidelines for Michigan", prepared by the society of
8 American foresters as revised in 2010, if the local unit of
9 government or the department determines that they are more likely
10 than not to increase erosion or decrease stability.

11 (e) A use that involves a vegetation removal if the local unit
12 of government or the department determines that it is more likely
13 than not to increase erosion or decrease stability.

14 (2) If the local unit of government is not certain of the
15 degree of slope on a property for which a use permit is sought, the
16 local unit may require that the applicant supply contour maps of
17 the site with 5-foot intervals at or near any proposed structure or
18 roadway **OR CONSULT WITH THE LOCAL CONSERVATION DISTRICT REGARDING**
19 **THE DEGREE OF SLOPE.**

20 (3) The department shall develop guidelines to describe the
21 method by which the department and local units of government
22 measure slopes to implement the requirements of the zoning
23 ordinance or the model zoning plan.

24 (4) If a person is ordered by the department, or by a local
25 unit of government that is enforcing a zoning ordinance authorized
26 under this part, to restore a critical dune area that has been
27 degraded by that person, the department or local unit of government

1 shall establish a procedure by which the restoration of the
 2 critical dune area is monitored to ~~assure~~**ENSURE** that the
 3 restoration is completed in a satisfactory manner.

4 Sec. 35317. (1) A local unit of government may issue variances
 5 under a zoning ordinance, or the department may issue special
 6 exceptions under the model zoning plan if a local unit of
 7 government does not have an approved zoning ordinance. ~~if a~~
 8 ~~practical difficulty will occur to the owner of the property if the~~
 9 ~~variance or special exception is not granted.~~ In determining
 10 whether a practical difficulty will occur if a variance or special
 11 exception is not granted, primary consideration shall be given to
 12 ~~assuring~~**ENSURING** that human health and safety are protected by the
 13 determination and that the determination complies with applicable
 14 local zoning, other state laws, and federal law. ~~if a~~**A VARIANCE OR**
 15 **SPECIAL EXCEPTION SHALL NOT BE GRANTED UNLESS THE LOCAL UNIT OF**
 16 **GOVERNMENT OR THE DEPARTMENT DETERMINES BOTH OF THE FOLLOWING:**

17 (A) ~~A~~ practical difficulty will occur to the owner of the
 18 property if the variance or special exception is not granted. ~~a~~
 19 ~~variance or special exception shall be granted under this section~~
 20 ~~unless the local unit of government or the department determines~~
 21 ~~that the~~

22 (B) **THE** use will **NOT** significantly damage the public interest
 23 on the privately owned land, or, if the land is publicly owned, the
 24 public interest in the publicly owned land, by significant and
 25 unreasonable depletion or degradation of any of the following:

26 (i) ~~(a)~~The diversity of the critical dune areas within the
 27 local unit of government.

1 (ii) ~~(b)~~—The quality of the critical dune areas within the
2 local unit of government.

3 (iii) ~~(c)~~—The functions of the critical dune areas within the
4 local 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
9 **GRANTING OR** denying a variance or special exception shall document,
10 and any review upholding the decision shall determine, all of the
11 following:

12 (a) ~~That the local unit of government or the department~~
13 **WHETHER THE APPLICANT** has met the burden of proof under subsection
14 (1).

15 (b) That the ~~decision is based upon sufficient~~ **LOCAL UNIT OF**
16 **GOVERNMENT OR THE DEPARTMENT CONSIDERED THE** facts or data **MADE**
17 **AVAILABLE BY THE APPLICANT.**

18 (c) That the decision is the product of reliable scientific
19 principles and methods.

20 (d) That the decision has applied the principles and methods
21 reliably to the facts.

22 (e) That the facts or data upon which the decision is based
23 are recorded in the file.

24 (3) A local unit of government or the department ~~shall not~~ **MAY**
25 require an environmental site assessment ~~or environmental impact~~
26 ~~statement~~ for a variance **BUT SHALL NOT REQUIRE AN ENVIRONMENTAL**
27 **IMPACT STATEMENT** except for a special use project.

1 (4) A variance shall not be granted from a setback requirement
2 provided for under the model zoning plan or ~~an equivalent~~ **A** zoning
3 ordinance approved under section ~~35034~~ ~~enacted pursuant to this~~
4 ~~part~~ **35304** unless the property for which the variance is requested
5 is 1 of the following:

6 (a) A nonconforming lot of record that is recorded prior to
7 July 5, 1989, and that becomes nonconforming ~~due to~~ **BECAUSE OF** the
8 operation of this part or a zoning ordinance.

9 (b) A lot legally created after July 5, 1989 that later
10 becomes nonconforming ~~due to~~ **BECAUSE OF** natural shoreline erosion.

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

17 (5) Each local unit of government that has issued a variance
18 for a use other than a special use project during the previous 12
19 months shall file an annual report with the department indicating
20 variances that have been granted by the local unit of government
21 during that period.

22 (6) Upon receipt of an application for a special exception
23 under the model zoning plan, the department shall forward a copy of
24 the application and all supporting documentation to the local unit
25 of government having jurisdiction over the proposed location. The
26 local unit of government shall have 60 days to review and comment
27 on the proposed special exception. The department shall not make a

1 decision on **AN APPLICATION FOR** a special exception under the model
2 zoning plan until ~~either~~ the local unit of government has commented
3 on ~~the proposed special exception~~ or has waived its opportunity to
4 review the ~~special exception~~. **APPLICATION.** The local unit of
5 government may waive its opportunity to review the application at
6 any time within 60 days after receipt of the application and
7 supporting documentation by notifying the department in writing.
8 The local unit of government also waives its opportunity to review
9 the application if it fails to act as authorized in this subsection
10 within 60 days. If the local unit of government waives its
11 opportunity to review the application, the local unit of government
12 also waives its opportunity to oppose the decision by the
13 department to issue a special exception. If the local unit of
14 government opposes the issuance of the special exception, the local
15 unit of government shall notify the department, in writing, of its
16 opposition within the 60-day notice period. If the local unit of
17 government opposes the issuance of the special exception, the
18 department shall not issue a special exception. The local unit of
19 government may also consider whether a practical difficulty will
20 occur to the owner of the property if the special exception is not
21 granted by the department and may make a recommendation to the
22 department within the 60-day notice period. The department shall
23 base its determination of whether a practical difficulty exists on
24 information provided by the local unit of government and other
25 pertinent information.

26 Sec. 35321. A zoning ordinance shall provide that, in
27 reviewing a site plan required under section 35313(1)(d), the

1 planning commission shall do both of the following:

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

5 **(B) DETERMINE WHETHER THE ADVICE OR ASSISTANCE OF THE LOCAL**
6 **CONSERVATION DISTRICT WILL BE HELPFUL IN REVIEWING A SITE PLAN.**

7 (C) ~~(b)~~ Recommend alterations of a proposed development to
8 minimize adverse effects anticipated if the development is approved
9 and to ~~assure~~ **ENSURE** compliance with all applicable state and local
10 requirements.

11 Enacting section 1. Section 35311a of the natural resources
12 and environmental protection act, 1994 PA 451, MCL 324.35311a, is
13 repealed.