

HOUSE BILL NO. 6164

June 01, 2022, Introduced by Reps. Hood, Hope, Glanville, Stone, LaGrand, Tate, Steckloff, Sowerby, Brixie, Kuppa, Neeley and Rabhi and referred to the Committee on Local Government and Municipal Finance.

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), as
amended by 2012 PA 297, and by adding section 35326; 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 involved in sand dune
5 mining as defined in part 637.

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

11 (c) "Critical dune area" means a geographic area designated in
12 the "atlas of critical dune areas" dated February 1989 that was
13 prepared by the department of natural resources.

14 (d) "Department" means the department of ~~environmental~~
15 ~~quality.~~ **environment, Great Lakes, and energy.**

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

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

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

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

28 (i) "Restabilization" means restoration of the natural
29 contours of a critical dune to the extent practicable, 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) "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) "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) "Zoning ordinance" means an ordinance of a local unit of
23 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,
28 irreplaceable, and fragile resource that provide significant
29 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) The purpose of this part is to balance for present and~~
5 ~~future generations the benefits of protecting, preserving,~~
6 ~~restoring, and enhancing the diversity, quality, functions, and~~
7 ~~values of the state's critical dunes with the benefits of economic~~
8 ~~development and multiple human uses of the critical dunes and the~~
9 ~~benefits of public access to and enjoyment of the critical dunes.~~
10 ~~To accomplish this purpose, this part is intended to do all of the~~
11 ~~following:~~

12 ~~(i) Ensure and enhance the diversity, quality, functions, and~~
13 ~~values of the critical dunes in a manner that is compatible with~~
14 ~~private property rights.~~

15 ~~(ii) Ensure sound management of all critical dunes by allowing~~
16 ~~for compatible economic development and multiple human uses of the~~
17 ~~critical dunes.~~

18 ~~(iii) Coordinate and streamline governmental decision-making~~
19 ~~affecting critical dunes through the use of the most comprehensive,~~
20 ~~accurate, and reliable information and scientific data available.~~

21 **(b) Local units of government should have the opportunity to**
22 **exercise the primary role in protecting and managing critical dune**
23 **areas as provided in this part.**

24 **(c) The benefits derived from alteration, industrial,**
25 **residential, commercial, agricultural, silvicultural, or**
26 **recreational use or alternation of critical dune areas shall occur**
27 **only when the protection of the environment and the ecology of the**
28 **critical dune areas for the benefit of the present and future**
29 **generations is assured.**

1 Sec. 35304. (1) A person shall not initiate a use within a
2 critical dune area unless the person obtains a permit from the
3 local unit of government in which the critical dune area is located
4 or the department if the department issues permits as provided
5 under subsection ~~(7)~~—(5). A permit for a use within a critical
6 dune area is subject to all of the following:

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

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

1 statement of the purpose of the use. The local unit of government
2 may hold a public hearing on pending applications.

3 (c) The notice shall state that unless a written request is
4 filed with the local unit of government within 20 days after the
5 notice is sent, the local unit of government may grant the
6 application without a public hearing. Upon the written request of 2
7 or more persons ~~who~~**that** own real property within ~~2 miles of the~~
8 ~~project,~~**the local unit of government or an adjacent local unit of**
9 **government, or who reside within the local unit of government or an**
10 **adjacent local unit of government,** the local unit of government
11 shall hold a public hearing pertaining to a 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 in 1 or more
14 newspapers of general circulation in the county in which the
15 proposed use is to be located, **and in other publications, if**
16 **appropriate to give notice to persons likely to be affected by the**
17 **project,** and by providing notice to the persons who have requested
18 notice pursuant to subdivision (b) and to the person requesting the
19 hearing.

20 (e) After the filing of an application, the local unit of
21 government shall grant or deny the permit within 60 days, or within
22 90 days if a public hearing is held. If a permit is denied, the
23 local unit of government shall provide to the applicant a concise
24 written statement of its reasons for denial of the permit, and if
25 it appears that a minor modification of the application would
26 result in the granting of the permit, the nature of the
27 modification. ~~shall be stated.~~ In an emergency, the local unit of
28 government may issue a conditional permit before the expiration of
29 the 20-day period ~~referred to in~~**under** subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit under this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides ~~a substantially equivalent~~ **the same or a greater** level of protection for critical dune areas and that is approved by the department.

~~(g) Subject to section 35316, a permit shall be approved unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:~~

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

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

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

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

~~(a) That the local unit of government or the department has met the burden of proof under subsection (1).~~

~~(b) That the decision is based upon sufficient facts or data.~~

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

1 ~~(d) That the decision has applied the principles and methods~~
2 ~~reliably to the facts.~~

3 ~~(e) That the facts or data upon which the decision is based~~
4 ~~are recorded in the file.~~

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

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

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

28 ~~(b) Access to the structure shall be from the landward side of~~
29 ~~the dune.~~

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

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

(2) **A zoning ordinance may be more restrictive of development and more protective of critical dune areas than the model zoning plan.**

(3) ~~(5)~~ As soon as possible following adoption of a zoning ordinance, ~~enacted pursuant to this part,~~ the local unit of government shall submit to the department a copy of the ordinance. ~~that it determines meets the requirements of this part.~~ If the local unit of government has an existing ordinance that it contends is ~~substantially equivalent to~~ **at least as restrictive as** the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to ~~assure~~ **ensure** compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department shall **inform the local unit of government of the ways the ordinance is not in compliance and shall** work with the local unit of government to bring the ordinance into compliance. ~~and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient.~~ Unless a local unit of government receives notice, within 180 days after submittal of the ordinance to the department under this subsection, that the ordinance is not in compliance with this part, the ordinance shall be considered to be approved by the department.

(4) ~~(6)~~ A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved 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 (5) ~~(7)~~—If a local unit of government in which a proposed use
 8 is to be located does not elect to issue permits or does not
 9 receive department approval of a zoning ordinance that regulates
 10 critical dune areas, the department shall implement the model
 11 zoning plan in the place of the local unit of government and issue
 12 special exceptions in the same circumstances as provided in this
 13 part for the issuance of variances by local units of government,
 14 and issue permits pursuant to subsection (1) and part 13.

15 (6) ~~(8)~~—The department shall assist local units of government
 16 in developing ordinances that meet the requirements of this part.

17 Sec. 35305. (1) If ~~an applicant for a permit or a special~~
 18 ~~exception or the owner of the property immediately adjacent to the~~
 19 ~~proposed use~~ **a person** is aggrieved by a decision of the department
 20 in regard to the issuance or denial of a permit or special
 21 exception under this part, the ~~applicant or owner~~ **person** may
 22 request a formal hearing on the matter. ~~involved.~~ The hearing shall
 23 be conducted by the department as a contested case hearing in the
 24 manner provided for in the administrative procedures act of 1969,
 25 1969 PA 306, MCL 24.201 to 24.328.

26 (2) Following the hearing provided for under subsection (1), a
 27 decision of the department in regard to the issuance or denial of a
 28 permit or special exception under this part is subject to judicial
 29 review as provided for in the administrative procedures act of

1 1969, 1969 PA 306, MCL 24.201 to 24.328.

2 Sec. 35306. (1) The lawful use of land or a structure, as
 3 existing and lawful within a critical dune area at the time the
 4 department implements the model zoning plan for a local unit of
 5 government, may be continued although the use of that land or
 6 structure does not conform to the model zoning plan. The
 7 continuance, completion, restoration, reconstruction, extension, or
 8 substitution of existing nonconforming uses of land or a structure
 9 may continue upon reasonable terms that are consistent, to the
 10 extent possible, with the applicable zoning provisions of the local
 11 unit of government in which the use is located.

12 (2) The **existing**, lawful use of land or a structure ~~as~~
 13 ~~existing and lawful~~ within a local unit of government that has a
 14 zoning ordinance approved by the department, may **be**, but is not
 15 required by this part to ~~be~~, continued subject to the ~~law~~
 16 **provisions of the Michigan zoning enabling act, 2006 PA 110, MCL**
 17 **125.3101 to 125.3702**, pertaining to existing uses ~~within the act~~
 18 ~~that enables that local unit of government to zone~~ and the
 19 applicable zoning provisions of the local unit of government.

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

24 ~~(4) A use needed to maintain, repair, or replace existing~~
 25 ~~utility lines, pipelines, or other utility facilities within a~~
 26 ~~critical dune area that were in existence on July 5, 1989, or were~~
 27 ~~constructed in accordance with a permit under this part, is exempt~~
 28 ~~for purposes for which the permit was issued from the operation of~~
 29 ~~this part or a local ordinance approved under this part if the~~

1 maintenance, repair, or replacement is completed in compliance with
2 all of the following:

3 (a) Vehicles shall not be driven on slopes greater than 1-foot
4 vertical rise in a 3-foot horizontal plane.

5 (b) All disturbed areas shall be immediately stabilized and
6 revegetated with native vegetation following completion of work to
7 prevent erosion.

8 (c) Any removal of woody vegetation shall be done in a manner
9 to assure that any adverse effect on the dune will be minimized and
10 will not significantly alter the physical characteristics or
11 stability of the dune.

12 (d) To accomplish replacement of a utility pole, the new pole
13 shall be placed adjacent to the existing pole, and the existing
14 pole shall be removed by cutting at ground level.

15 (e) In the case of repair of underground utility wires, the
16 repair shall be limited to the minimal excavation necessary to
17 replace the wires by plowing, small trench excavation, or
18 directional boring. Replacement of wires on slopes steeper than 1-
19 foot vertical rise in a 4-foot horizontal plane shall be limited to
20 installation by plowing or directional boring only.

21 (f) In the case of repair or replacement of underground
22 pipelines, directional boring shall be utilized, and if excavation
23 is necessary to access and bore the pipeline, the excavation area
24 shall be located on slopes 1-foot vertical rise in a 4-foot
25 horizontal plane or less.

26 (4) ~~(5)~~ Uses that have received all necessary permits from the
27 **this** state or the local unit of government in which the proposed
28 use is located by July 5, 1989, are exempt for purposes for which a
29 permit is issued from the operation of this part or local

ordinances approved under this part. Such uses shall be regulated pursuant to local ordinances in effect by that date.

Sec. 35310. (1) If the department finds that a person is not in compliance with the model zoning plan if the department is implementing the plan, or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322, the department may suspend or revoke ~~the~~ **a permit or the use.**

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

(3) The department shall periodically review the performance of ~~all each~~ local ~~units~~ **unit** of government that ~~have ordinances~~ **has a zoning ordinance** approved under this part. If the department determines that the local unit of government is not administering

1 the ordinance in conformance with this part, the department shall
 2 notify the local unit of government in writing of its
 3 determination, including specific reasons why the local unit of
 4 government is not in compliance. The local unit of government has
 5 ~~60~~30 days to respond to the department. If the department
 6 determines that the local unit of government has not made
 7 sufficient changes to its ordinance administration or otherwise
 8 explained its actions, the department may withdraw the approval of
 9 the local ordinance and implement the model zoning plan within that
 10 local unit of government. If a local unit disagrees with an action
 11 of the department to withdraw approval of the local ordinance, it
 12 may appeal that action pursuant to the administrative procedures
 13 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the manner
 14 provided in that act for contested cases.

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

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

25 Sec. 35311. ~~(1) Beginning with the effective date of the 2012~~
 26 ~~act that amended this section and once every 10 years thereafter,~~
 27 **By 120 days after the effective date of the amendatory act that**
 28 **added subsection (3),** the department ~~may~~**shall** appoint a team of
 29 qualified ecologists, who may be employed by the department or may

1 be persons with whom the department enters into contracts, to
 2 review "the atlas of critical dune areas" dated February 1989.

3 (2) The review team shall evaluate the accuracy of the
 4 designations of critical dune areas within the atlas and shall
 5 recommend to the legislature any changes to the atlas or underlying
 6 criteria revisions to the atlas that would provide more precise
 7 protection to the targeted resource.

8 (3) In addition, the review team shall recommend whether
 9 stairways and driveways in critical dune areas should be subject to
 10 the same criteria as other constructed uses.

11 Sec. 35312. (1) ~~A~~ **After consulting with the local conservation**
 12 **district,** a local unit of government that has 1 or more critical
 13 dune areas within its jurisdiction may formulate a zoning ordinance
 14 pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL
 15 125.3101 to 125.3702.

16 (2) A zoning ordinance shall consist of all of the provisions
 17 of the model zoning plan or comparable provisions that ~~provide~~
 18 ~~substantially equivalent protection~~ **are at least as protective** of
 19 critical dune areas as the model zoning plan. ~~but shall not be more~~
 20 ~~restrictive than the model zoning plan or the standard of review~~
 21 ~~for permits or variances prescribed in the model zoning plan.~~

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

1 area, if those lands are determined by the local unit of government
2 to be essential to the hydrology, ecology, topography, or integrity
3 of a critical dune area.

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

16 Sec. 35313. ~~(1)~~ A zoning ordinance shall require that all
17 applications for permits for the use of a critical dune area
18 include in writing all of the following:

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

23 (b) That a proposed sewage treatment or disposal system on the
24 site has been approved by the county health department or the
25 department.

26 (c) Assurances that the cutting and removing of trees and
27 other vegetation will be performed according to the **instructions or**
28 **plans of the local conservation district. The instructions or plans**
29 **may include all applicable silvicultural practices as described in**

~~"forestry management guidelines"~~**Forest Management Guidelines** for Michigan" prepared by the ~~society of American foresters in 1987~~**Michigan Society of American Foresters**, as revised in 2010. ~~and The instructions or plans~~ may include a program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

(d) ~~A-Unless subdivision (e) applies, a~~ site plan that contains data required by the planning commission concerning the physical development of the site and extent of disruption of the site by the proposed development.

~~(2) A local unit of government or the department shall not require an environmental site assessment or environmental impact statement as part of a permit application except for a special use project.~~**The planning commission may consult with the soil conservation district in determining the required data.**

(e) For a special use project, an environmental assessment that complies with section 35319. An environmental impact statement pursuant to section 35320 may be required if the additional information is considered necessary or helpful in reaching a decision on a permit application for a special use project.

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

(a) A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure ~~are in accordance~~**comply** with a site

1 plan prepared for the site by a registered professional architect
 2 or a licensed professional engineer and the ~~site~~-plan provides for
 3 the disposal of storm waters without serious soil erosion and
 4 without sedimentation of any stream or other body of water. **Before**
 5 **approving the plan, the planning commission shall consult with the**
 6 **local conservation district.**

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

10 (c) **A use that is a structure that is not in compliance with**
 11 **subsection (2).**

12 (d) ~~(e)~~-A use involving a contour change ~~if the local unit of~~
 13 ~~government or the department determines that it is more likely than~~
 14 ~~not that is likely~~ to increase erosion or decrease stability **or**
 15 **that is more extensive than required to implement a use for which a**
 16 **permit is requested.**

17 (e) ~~(d)~~-Silvicultural practices, as described in the ~~"forest~~
 18 ~~management guidelines~~ **"Forest Management Guidelines** for Michigan",
 19 prepared by the ~~society of American foresters~~ **Michigan Society of**
 20 **American Foresters**, as revised in 2010, ~~if the local unit of~~
 21 ~~government or the department determines that they are more likely~~
 22 ~~than not that are likely~~ to increase erosion or decrease stability
 23 **or that are more extensive than required to implement a use for**
 24 **which a permit is requested.**

25 (f) ~~(e)~~-A use that involves a vegetation removal ~~if the local~~
 26 ~~unit of government or the department determines that it is more~~
 27 ~~likely than not that is likely~~ to increase erosion or decrease
 28 stability **or that is more extensive than required to implement a**
 29 **use for which a permit is requested.**

1 (g) A use that is not in the public interest. In determining
2 whether a proposed use is in the public interest, the local unit of
3 government shall consider both of the following:

4 (i) The availability of feasible and prudent alternative
5 locations or methods, or both, to accomplish the benefits expected
6 from the use. If a proposed use is 1 single-family dwelling on a
7 lot of record owned by the applicant, consideration of feasible and
8 prudent alternative locations shall be limited to the lot of record
9 on which the use is proposed. A lot of record shall not be created
10 strictly for the purpose of avoiding consideration of alternative
11 locations under this subparagraph.

12 (ii) The impact that is expected to occur to the critical dune
13 area, and the extent to which the impact may be minimized.

14 (2) A use that is a structure shall be constructed behind the
15 crest of the first landward ridge of a critical dune area that is
16 not a foredune. However, if construction occurs within 100 feet
17 measured landward from the crest of the first landward ridge that
18 is not a foredune, the applicant shall demonstrate that the
19 proposed use meets all of the following requirements:

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

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

23 (c) Access to the structure is from the landward side of the
24 dune.

25 (d) The dune is restabilized with indigenous vegetation.

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

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

29 (g) If the department is implementing the model zoning plan,

1 the use meets all other applicable requirements of the zoning
2 ordinance or the model zoning plan.

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

9 (4) ~~(3)~~—The department shall develop guidelines to describe
10 the method by which the department and local units of government
11 measure slopes to implement the requirements of ~~the zoning~~
12 ~~ordinance~~**ordinances** or the model zoning plan.

13 (5) ~~(4)~~—If a person is ordered by the department, or by a
14 local unit of government that is enforcing ~~a~~**an approved** zoning
15 ordinance, ~~authorized under this part,~~ to restore a critical dune
16 area that has been degraded by that person, the department or local
17 unit of government shall establish a procedure by which the
18 restoration of the critical dune area is monitored to assure that
19 the restoration is completed in a satisfactory manner.

20 Sec. 35317. (1) A local unit of government may issue variances
21 under a zoning ordinance, or the department may issue special
22 exceptions under the model zoning plan if a local unit of
23 government does not have an approved zoning ordinance, if a
24 practical difficulty will occur to the owner of the property if the
25 variance or special exception is not granted. In determining
26 whether a practical difficulty will occur if a variance or special
27 exception is not granted, primary consideration shall be given to
28 assuring that human health and safety are protected by the
29 determination and that the determination complies with applicable

1 local zoning, other state laws, and federal law. ~~If a practical~~
2 ~~difficulty will occur to the owner of the property if the variance~~
3 ~~or special exception is not granted, a variance or special~~
4 ~~exception shall be granted under this section unless the local unit~~
5 ~~of government or the department determines that the use will~~
6 ~~significantly damage the public interest on the privately owned~~
7 ~~land, or, if the land is publicly owned, the public interest in the~~
8 ~~publicly owned land, by significant and unreasonable depletion or~~
9 ~~degradation of any of the following:~~

10 ~~(a) The diversity of the critical dune areas within the local~~
11 ~~unit of government.~~

12 ~~(b) The quality of the critical dune areas within the local~~
13 ~~unit of government.~~

14 ~~(c) The functions of the critical dune areas within the local~~
15 ~~unit of government.~~

16 ~~(2) The decision of the local unit of government or the~~
17 ~~department shall be in writing and shall be based upon evidence~~
18 ~~that would meet the standards in section 75 of the administrative~~
19 ~~procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying~~
20 ~~a variance or special exception shall document, and any review~~
21 ~~upholding the decision shall determine, all of the following:~~

22 ~~(a) That the local unit of government or the department has~~
23 ~~met the burden of proof under subsection (1).~~

24 ~~(b) That the decision is based upon sufficient facts or data.~~

25 ~~(c) That the decision is the product of reliable scientific~~
26 ~~principles and methods.~~

27 ~~(d) That the decision has applied the principles and methods~~
28 ~~reliably to the facts.~~

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

1 ~~are recorded in the file.~~

2 ~~(3) A local unit of government or the department shall not~~
 3 ~~require an environmental site assessment or environmental impact~~
 4 ~~statement for a variance except for a special use project.~~**A**

5 **variance or a special exception is also subject to the following**
 6 **limitations:**

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

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

15 **(ii)** ~~(b)~~A lot legally created after July 5, 1989 that later
 16 becomes nonconforming due to natural shoreline erosion.

17 **(iii)** ~~(c)~~Property on which the base of the first landward
 18 critical dune of at least 20 feet in height that is not a foredune
 19 is located at least 500 feet inland from the first foredune crest
 20 or line of vegetation on the property. However, the setback shall
 21 be a minimum of 200 feet measured from the foredune crest or line
 22 of vegetation.

23 **(b) A variance or special exception that authorizes**
 24 **construction of a dwelling or other permanent building on the first**
 25 **lakeward facing slope of a critical dune area or a foredune shall**
 26 **not be granted. However, a variance or special exception may be**
 27 **granted if the proposed construction is near the base of the**
 28 **lakeward facing slope of the critical dune on a slope of less than**
 29 **1-foot vertical rise in an 8-foot horizontal plane on a**

1 nonconforming lot of record that is recorded before July 5, 1989
2 that has borders that lie entirely on the first lakeward facing
3 slope of the critical dune area that is not a foredune.

4 (2) ~~(5)~~—Each local unit of government that has issued a
5 variance for a use other than a special use project during the
6 previous 12 months shall file an annual report with the department
7 indicating variances that have been granted by the local unit of
8 government during that period.

9 (3) ~~(6)~~—Upon receipt of an application for a special exception
10 under the model zoning plan, the department shall forward a copy of
11 the application and all supporting documentation to the local unit
12 of government having jurisdiction over the proposed location. The
13 local unit of government ~~shall have~~ **has** 60 days to review and
14 comment on the proposed special exception. The department shall not
15 make a decision on a special exception under the model zoning plan
16 until either the local unit of government has commented on the
17 proposed special exception or has waived its opportunity to review
18 the special exception. The local unit of government may waive its
19 opportunity to review the application at any time within 60 days
20 after receipt of the application and supporting documentation by
21 notifying the department in writing. The local unit of government
22 also waives its opportunity to review the application if it fails
23 to act as authorized in this subsection within 60 days. If the
24 local unit of government waives its opportunity to review the
25 application, the local unit of government also waives its
26 opportunity to oppose the decision by the department to issue a
27 special exception. If the local unit of government opposes the
28 issuance of the special exception, the local unit of government
29 shall notify the department, in writing, of its opposition within

the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether a practical difficulty will occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its determination of whether a practical difficulty exists on information provided by the local unit of government and other pertinent information.

Sec. 35319. The zoning ordinance shall provide that if an environmental assessment is required under section 35313, that assessment shall include the following information concerning the site of the proposed use:

(a) The name and address of the applicant.

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

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

(d) ~~The~~**A** description and **the** purpose of the proposed use.

(e) The location of existing utilities and drainageways.

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

(g) Major proposed ~~change~~**changes** of land forms, such as new lakes, terracing, or excavating.

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

3 (i) Approximate location and type of proposed drainage, water,
4 and sewage facilities.

5 (j) ~~Legal~~ **A legal** description of **the** property.

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

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

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

15 Sec. 35320. If an environmental impact statement is required
16 under section 35313 prior to permitting a proposed use, a zoning
17 ordinance may require that the statement include all of the
18 following:

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

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

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

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

27 (e) Six copies and 1 reproducible transparency of a schematic
28 use plan of the proposed use showing the general location of the
29 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~~**changes** of land forms, such as new
13 lakes, 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~~**The approximate** location and type of proposed
19 drainage, water and sewage treatment and disposal facilities.

20 (n) A legal description of the property.

21 (o) An aerial ~~photo~~**photograph** and contour map showing the
22 development 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
28 of septic tanks or requires central sewer. The review may be based
29 on the ~~"unified soil classification system"~~**"Unified Soil**

Classification System" as adopted by the United States ~~government~~
~~corps of engineers and bureau of reclamation,~~ **Army Corps of**
Engineers and the Bureau of Reclamation, dated January 1952, or the
~~national cooperative soil survey~~ **National Cooperative Soil Survey**
classification system, and the standards for the development
prospects that have been offered for each portion of the site.

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

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

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

(u) At a minimum, ~~a site plan~~ **plans** for compliance with all of
the following standards for the construction and postconstruction
periods:

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

(ii) The design shall include trash collection devices when
handling street and parking drainage to contain solid waste and
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 establish on surface areas such as infill zones, ~~it is the duty of~~ the developer ~~to~~ **shall** 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(1)(d)~~, **35313**, the planning commission shall do ~~both~~ **all** 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 conservation district under part 93 will be helpful in reviewing a site plan.

(c) ~~(b)~~ Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to ~~assure~~ **ensure** 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 30~~ **has 60** days to review the plan and may affirm, modify, or reverse the proposed decision of the local unit of government.

1 Sec. 35323. ~~A~~**If a** structure or use located in a critical dune
 2 area ~~that is~~ destroyed by fire, other than arson for which the
 3 owner is found to be responsible, or an act of nature, except for
 4 erosion, **the rebuilding or replacement of the structure or use** is
 5 exempt from ~~the operation of~~ this part or a zoning ordinance ~~under~~
 6 ~~this part for the purpose of rebuilding or replacing the structure~~
 7 ~~or use,~~ if **all of the following apply:**

8 **(a) The** structure or use was lawful at the time it was
 9 constructed or commenced. ~~A replacement structure and its use may~~
 10 ~~differ from that which was destroyed if it~~

11 **(b) The structure** does not exceed in size or scope that which
 12 was destroyed.

13 **(c) The structure** does not vary from its prior use.

14 Sec. 35326. (1) The legislature shall appropriate to the
 15 department of agriculture and rural development, the department of
 16 environment, Great Lakes, and energy, and the department of
 17 attorney general sufficient funds to ensure the full implementation
 18 and enforcement of this part.

19 (2) Appropriations to the department of agriculture and rural
 20 development shall be sufficient to ensure adequate funding for the
 21 conservation districts under part 93 to fulfill their
 22 responsibilities under this part.

23 Enacting section 1. Sections 35311a and 35311b of the natural
 24 resources and environmental protection act, 1994 PA 451, MCL
 25 324.35311a and 324.35311b, are repealed.