

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.35304 Permit for use in critical dune area; requirements; decision of local unit of government; limitations; ordinance; model zoning plan; special exceptions; assisting local units of government.

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

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

(b) The local unit of government shall provide notice of an application filed under this section to each person who makes a written request to the local unit of government for notification of pending applications. The local unit of government may charge an annual fee for providing this notice. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly provide copies of the list for the remainder of the calendar year to the persons who have requested notice. In addition, if the department issues permits under this part within a local unit of government, notice of an application shall also be given to the local conservation district office, the county clerk, the county health department, and the local unit of government in which the property is located. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is sent, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons who own real property within 2 miles of the project, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and by providing notice to the persons who have requested notice pursuant to subdivision (b) and to the person requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. If a permit is denied, the local unit of government shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in 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 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.
- (d) That the decision has applied the principles and methods reliably to the facts.
- (e) That the facts or data upon which the decision is based are recorded in the file.

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

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

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

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

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

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

(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 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 compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department 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.

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

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