

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT
(EXCERPT)
Act 451 of 1994
Part 353
SAND DUNES PROTECTION AND MANAGEMENT**

324.35301 Definitions.

Sec. 35301.

As used in this part:

- (a) “Contour change” includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in part 637.
- (b) “Crest” means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.
- (c) “Critical dune area” means a geographic area designated in the “atlas of critical dune areas” dated February 1989 that was prepared by the department.
- (d) “Department” means the department of environmental quality.
- (e) “Foredune” means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.
- (f) “Model zoning plan” means the model zoning plan provided for in sections 35312 to 35324.
- (g) “Planning commission” means the body or entity within a local government that is responsible for zoning and land use planning for the local unit of government.
- (h) “Restabilization” means restoration of the natural contours of a critical dune to the extent practicable, and the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.
- (i) “Special use project” means any of the following:

- (i) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.
- (ii) A multifamily use of more than 3 acres.
- (iii) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.
- (iv) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.
- (j) “Use” means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in part 637.
- (k) “Zoning ordinance” means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

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324.35302 Legislative findings.

Sec. 35302.

The legislature finds that:

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

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324.35303 Notice to local units of government and property owners; copy of “atlas of critical dune areas”; contents of notice; supplying addresses of property owners.

Sec. 35303.

(1) As soon as practicable following July 5, 1989, the department shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the “atlas of critical dune areas” dated February 1989 and a copy of former Act No. 222 of the Public Acts of 1976 with the notice. By October 1, 1989, the department shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under former Act No. 222 of the Public Acts of 1976.

(b) That a local unit of government may adopt a zoning ordinance that is approved by the department, or, if the local unit of government does not have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35304 Permits for uses in critical dune areas; requirements; zoning ordinances; model zoning plan; special exceptions; permit application forms; assisting local units of government.

Sec. 35304.

(1) A local unit of government that issues permits or the department if it issues permits as provided under subsection (5) shall issue the permits subject to all of the following requirements:

(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 that may be 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) Notice of an application filed under this section shall be sent to a person who makes a written request to the local unit of government for notification of pending applications accompanied by an annual fee established by the local unit of government. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly mail 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 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 mailed, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons that own real property within the local unit of government or an adjacent local unit of government, or that reside within the local unit of government or an adjacent local unit of government, 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 in other publications, if appropriate, to give notice to persons likely to be affected by the proposed use, and by mailing copies of the notice to the persons who have requested notice pursuant to subsection (1) 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. When 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 required by this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides the same or a greater level of protection for critical dune areas and that is approved by the department.

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

(3) 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 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 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 90 days of submittal that the ordinance they submit to the department under this subsection is not in compliance with this part, the local unit of government shall be considered to be approved by the department.

(4) 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.

(5) 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 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.

(6) 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

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324.35305 Hearing; judicial review.

Sec. 35305.

(1) If a person is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in Act No. 306 of the Public Acts of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35306 Lawful use of land or structure.

Sec. 35306.

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

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

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

(4) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by July 5, 1989, are exempt for purposes for which a 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.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35307 Maps.

Sec. 35307.

Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
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324.35308 Prohibited uses; exception.

Sec. 35308.

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

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

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

(2) Uses described in subsection (1) that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
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Popular Name: NREPA

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324.35309 Use permit and inspection fee; disposition of fees; authorization of separate fee; bond.

Sec. 35309.

(1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) The department shall forward all fees it collects under this section to the state treasurer for deposit in the land and water management permit fee fund created in part 301.

(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this part and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under this part.

(5) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the department to file with the local unit of government or the department a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35310 Suspension or revocation of permit; restraining order, injunction, or other appropriate remedy; instituting action; cumulative rights; performance review; determination of noncompliance; response; implementation of model zoning plan; appeal; civil fine; order to pay cost of restabilization; violation as misdemeanor.

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 permit.

(2) At the request of the department or a 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 a 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 in addition to the rights 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 local units of government that have ordinances approved under this part. If the department determines that the local unit of government is not administering the ordinance in conformance with this part, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government has 30 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the department may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, in the manner provided in that act for contested cases.

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35311 Review of “atlas of critical dune areas”; appointment and duties of review team.

Sec. 35311.

By May 23, 1995, the department shall appoint a team of qualified ecologists who may be employed by the department or may be persons with whom the department enters into contracts who shall review “the atlas of critical dune areas” dated February 1989. The review team shall evaluate the accuracy of the designations of critical dune areas within the atlas and shall recommend to the legislature any changes to the atlas or underlying

criteria revisions to the atlas that would provide more precise protection to the targeted resource. In addition, the review team shall recommend whether the slope criteria in section 35330(1)(a) and (b) are appropriate and supported by the best available technical data and whether stairways and driveways in critical dune areas should be subject to the same criteria as other constructed uses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35312 Zoning ordinance; formulation procedure; mandatory provisions; regulation of additional lands.

Sec. 35312.

(1) After consulting with the local soil conservation district, a local unit of government that has 1 or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the following:

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

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

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

(2) A zoning ordinance shall consist of all of the provisions of the model zoning plan or comparable provisions that are at least as protective of critical dune areas as the model zoning plan.

(3) A local unit of government may regulate additional lands as critical dune areas under this part as considered appropriate by the planning commission if the lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area. A local unit of government shall provide within its zoning ordinance for the protection of lands that are within 250 feet of a critical dune area, if those lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area.

(4) If a local unit of government does not have an approved zoning ordinance, the department may regulate additional lands described in subsection (3). However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area, unless the governing body of the local unit of government authorizes such an extension.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35313 Zoning ordinance; requirements for applications for permits for use of critical dune area.

Sec. 35313.

A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing:

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

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

(c) Assurances that the cutting and removing of trees and other vegetation will be performed according to the instructions or plans of the local soil conservation district. These instructions or plans may include all applicable silvicultural practices as described in the “voluntary forestry management guidelines for Michigan” prepared by the society of American foresters in 1987. 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) Except as otherwise provided in subdivision (e), 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. The planning commission may consult with the soil conservation district in determining the required data.

(e) An environmental assessment that comports with section 35319 for a special use project. 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.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35314 Zoning ordinance; provisions; review of subdivision development.

Sec. 35314.

(1) A zoning ordinance shall provide for all of the following:

(a) Lot size, width, density, and front and side setbacks.

(b) Storm water drainage that provides for disposal of drainage water without serious erosion.

(c) Methods for controlling erosion from wind and water.

(d) Restabilization.

(2) Each zoning ordinance shall provide that a use that proposes a subdivision development shall be reviewed by the local unit of government to assure compliance with all of the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35315 Zoning ordinance; prohibited uses in critical dune area.

Sec. 35315.

A zoning ordinance shall not permit either of the following uses in a critical dune area:

(a) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.

(b) A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

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324.35316 Zoning ordinances; additional prohibited uses in critical dune area; variance; structures; contour maps; guidelines; restoration.

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 with plans prepared for the site by a registered professional architect or a licensed professional engineer and the plans provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water. Prior to approval of the plan, the planning commission shall consult with the local soil conservation district.

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

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

(d) A use involving a contour change that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(e) Silvicultural practices, as described in the “voluntary forest management guidelines for Michigan”, prepared by the society of American foresters in 1987, that are likely to increase erosion, decrease stability, or are more extensive than required to implement a use for which a permit is requested.

(f) A use that involves a vegetation removal that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

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

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

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

(2) 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 applicant shall demonstrate that the proposed use meets all of the following requirements:

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

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

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

(d) The dune is restabilized with indigenous vegetation.

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

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

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

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

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

(5) If a person is ordered by the department, or by a local unit of government that is enforcing a zoning ordinance authorized under this part, to restore a critical dune area that has been degraded by that person, the department or local unit of government shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996

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324.35317 Variances; special exceptions; limitations; annual report; determination of unreasonable hardship; review and comment; notice of opposition; determination of practical difficulty.

Sec. 35317.

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

(a) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

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

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

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

(b) A variance or special exception 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 a foredune. However, a variance or special exception may be granted if the proposed construction is near the base of the lakeward facing slope of the critical dune on a slope of less than 1-foot vertical rise in an 8-foot horizontal plane on a nonconforming lot of record that is recorded prior to July 5, 1989 that has borders that lie entirely on the first lakeward facing slope of the critical dune area that is not a foredune.

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

(3) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to consider the application at any time within 60 days after receipt of the application and supporting documentation by notifying the department in writing. If the local unit of government waives its opportunity to review the application, or fails to act as authorized in this section within 60 days, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government opposes the issuance of the special exception, the local unit of government 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.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996

Popular Name: Act 451

Popular Name: NREPA

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324.35318 Request for revaluation to determine fair market value.

Sec. 35318.

If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35319 Environmental assessment; contents.

Sec. 35319.

The zoning ordinance shall provide that if an environmental assessment is required under section 35313(e), 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 description and 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 of land forms such as new lakes, terracing, or excavating.
- (h) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- (i) Approximate location and type of proposed drainage, water, and sewage facilities.
- (j) Legal description of property.
- (k) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(l) 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.

(m) 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.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35320 Environmental impact statement; contents.

Sec. 35320.

If an environmental impact statement is required under section 35313(e) prior to permitting a proposed use, a zoning ordinance may require that the statement include all of the following:

- (a) The name and address of the applicant.
- (b) A description of the applicant's proprietary interest in the site of the proposed use.
- (c) The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
- (d) The description and purpose of the proposed use.
- (e) Six copies and 1 reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
- (f) The location of the existing utilities and drainageways.
- (g) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
- (h) The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.

- (i) The general location and approximate dimensions of proposed structures.
- (j) Major proposed change of land forms such as new lakes, terracing, or excavating.
- (k) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.
- (l) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- (m) Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- (n) A legal description of the property.
- (o) An aerial photo and contour map showing the development site in relation to the surrounding area.
- (p) A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- (q) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the “unified soil classification system” as adopted by the United States government corps of engineers and bureau of reclamation, dated January 1952, or the 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, plans for compliance with all of the following standards shall be required for 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 occur on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35321 Review of site plan; duties of planning commission.

Sec. 35321.

A zoning ordinance shall provide that, in reviewing a site plan required under section 35313(d), the planning commission shall do 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 soil conservation district will be helpful in reviewing a site plan.

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35322 Special use project application, plan, and proposed decision; review; action.

Sec. 35322.

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35323 Destruction of structure or use; exemption.

Sec. 35323.

A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this part or a zoning ordinance under this part for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced and the structure does not exceed in size or scope that which was destroyed and does not vary from its prior use.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35324 Management of federally owned and state owned land.

Sec. 35324.

Federally owned land, to the extent allowable by law, and state owned land within critical dune areas shall be managed by the federal or state government, respectively, in a manner that is consistent with the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35325 Purchase of lands or interests in lands; purpose.

Sec. 35325.

The department or local units of government may purchase lands or interests in lands from a willing seller in critical dune areas for the purpose of maintaining or improving the critical dune areas and the environment of the critical dune areas in conformance with the zoning ordinance, or the model zoning plan if the local unit of government does not have an approved zoning ordinance. Interests that may be purchased may include easements designed to provide for the preservation of critical dune areas and to limit or eliminate development in critical dune areas.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

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324.35326 Appropriation; purpose; sufficiency.

Sec. 35326.

(1) The legislature shall appropriate to the departments of agriculture, natural resources, and the attorney general sufficient funds to assure the full implementation and enforcement of this part.

(2) Appropriations to the department of agriculture shall be sufficient to assure adequate funding for the soil conservation districts to fulfill their responsibilities under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA