

Act No. 147
Public Acts of 1989
Approved by the Governor
July 5, 1989
Filed with the Secretary of State
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**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senators Binsfeld, Cruce, Gast, Shinkle, Sederburg, Fessler, Posthumus, Irwin, Carl, Dillingham, Nichols, Geake, DeGrow, DiNello, Barcia, Geo. Hart, Faxon, Cropsey, Welborn, N. Smith and O'Brien

ENROLLED SENATE BILL No. 179

AN ACT to amend Act No. 222 of the Public Acts of 1976, entitled "An act to provide for study, protection, management, and reclamation of Great Lakes sand dunes; to prescribe powers and duties of the department of natural resources; to prescribe fees for the administration and enforcement of this act; and to provide penalties," as amended, being sections 281.651 to 281.664 of the Michigan Compiled Laws, by adding chapter 4; and to repeal certain parts of the act on a specific date.

The People of the State of Michigan enact:

Section 1. Act No. 222 of the Public Acts of 1976, as amended, being sections 281.651 to 281.664 of the Michigan Compiled Laws, is amended by adding chapter 4 to read as follows:

CHAPTER 4. MODEL ZONING PLAN

Sec. 30. As used in this chapter:

(a) "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 18% for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

(b) "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.

(c) "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.

(d) "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.

Sec. 31. (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 act 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.

Sec. 32. 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 the soil erosion and sedimentation control act of 1972, Act No. 347 of the Public Acts of 1972, being sections 282.101 to 282.125 of the Michigan Compiled Laws, finds that the project is in compliance with Act No. 347 of the Public Acts of 1972 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 on the site 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 37 for a special use project. An environmental impact statement pursuant to section 38 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. 33. (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 provisions of the model zoning plan.

Sec. 34. 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 the shorelands protection and management act of 1970, Act No. 245 of the Public Acts of 1970, being sections 281.631 to 281.644 of the Michigan Compiled Laws.

Sec. 35. (1) Unless a variance is granted pursuant to section 36, a zoning ordinance shall not permit the following uses in a critical dune area:

(a) A structure on a slope within a critical dune area that is 18% to 25% unless the structure is 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 is greater than 25%.
- (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.
 - (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 provisions of 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.

Sec. 36. (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 an unreasonable hardship will occur to the owner of the property if the variance or special exception is not granted. A variance or a special exception shall also be subject to the following limitations:

- (a) A variance shall not be granted from a setback requirement 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 the effective date of this section and that becomes nonconforming due to the operation of this act or a zoning ordinance.
 - (ii) A lot legally created after the effective date of this section 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 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 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 12% on a nonconforming lot of record that is recorded prior to the effective date of this chapter 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.

Sec. 37. The zoning ordinance shall provide that if an environmental assessment is required under section 32(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.

Sec. 38. If an environmental impact statement is required under section 32(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 outcroppings, 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 in order 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 shall be 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, and windbreaks and other similar barriers.

Sec. 39. A zoning ordinance shall provide that in reviewing a site plan required under section 32(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.

Sec. 40. 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.

Sec. 41. 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 act or a zoning ordinance under this act 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.

Sec. 42. 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.

Sec. 43. The commission 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 its environment 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.

Sec. 44. (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 chapter 3 and this chapter.

(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 chapter.

Section 2. This amendatory act shall not take effect unless House Bill No. 4296 of the 85th Legislature is enacted into law.

Section 3. Sections 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of Act No. 222 of the Public Acts of 1976, being sections 281.680, 281.681, 281.682, 281.683, 281.684, 281.685, 281.686, 281.687, 281.688, 281.689, 281.690, 281.691, 281.692, 281.693, and 281.694 of the Michigan Compiled Laws, are repealed effective June 15, 1995.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.