Michigan. Coastal Zone Management Program
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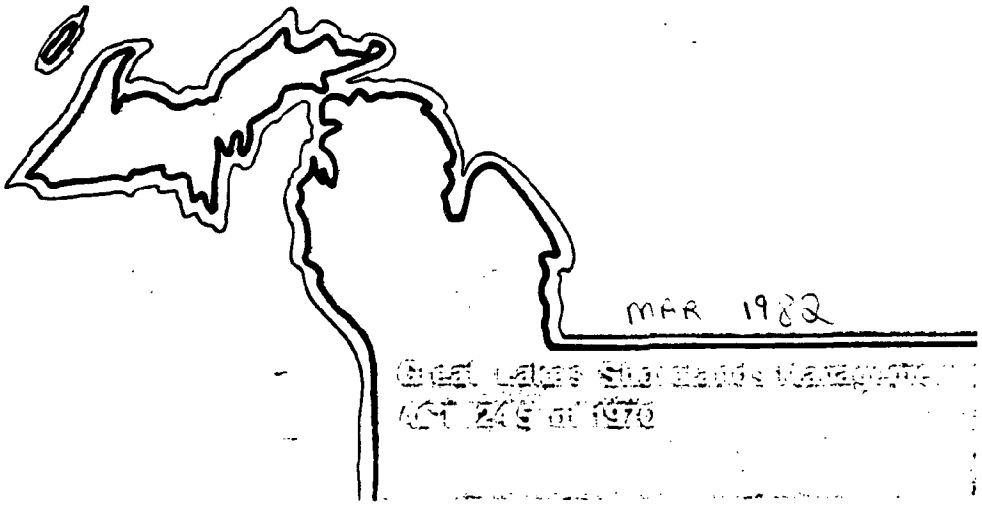
THE SHORELANDS PROTECTION AND MANAGEMENT ACT

. . . . . for the protection of life, property, and natural resources.



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Great Lakes Shorelands Management
Act 245 of 1970

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ACT 245 of 1970
GREAT LAKES SHORELANDS MANAGEMENT

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THE SHORELANDS PROTECTION AND MANAGEMENT ACT

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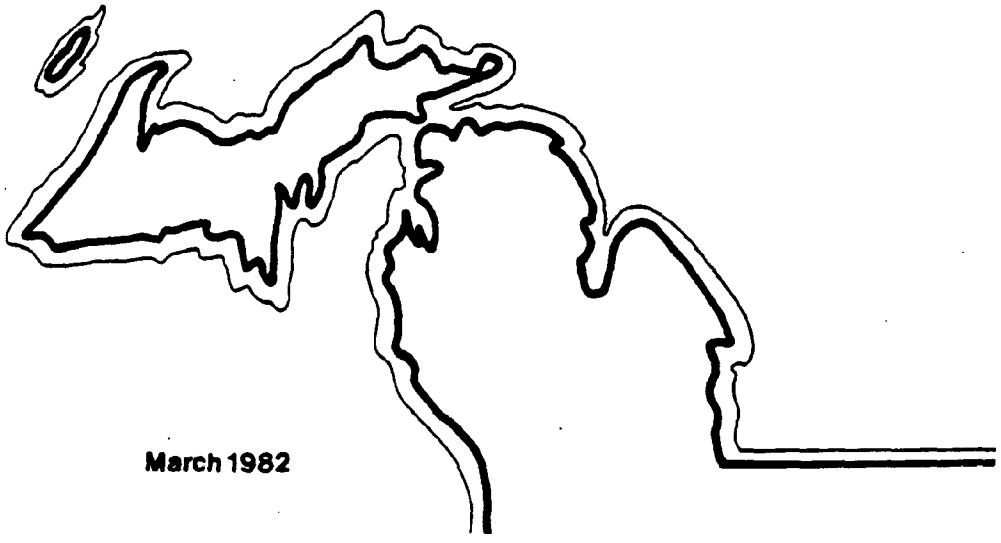

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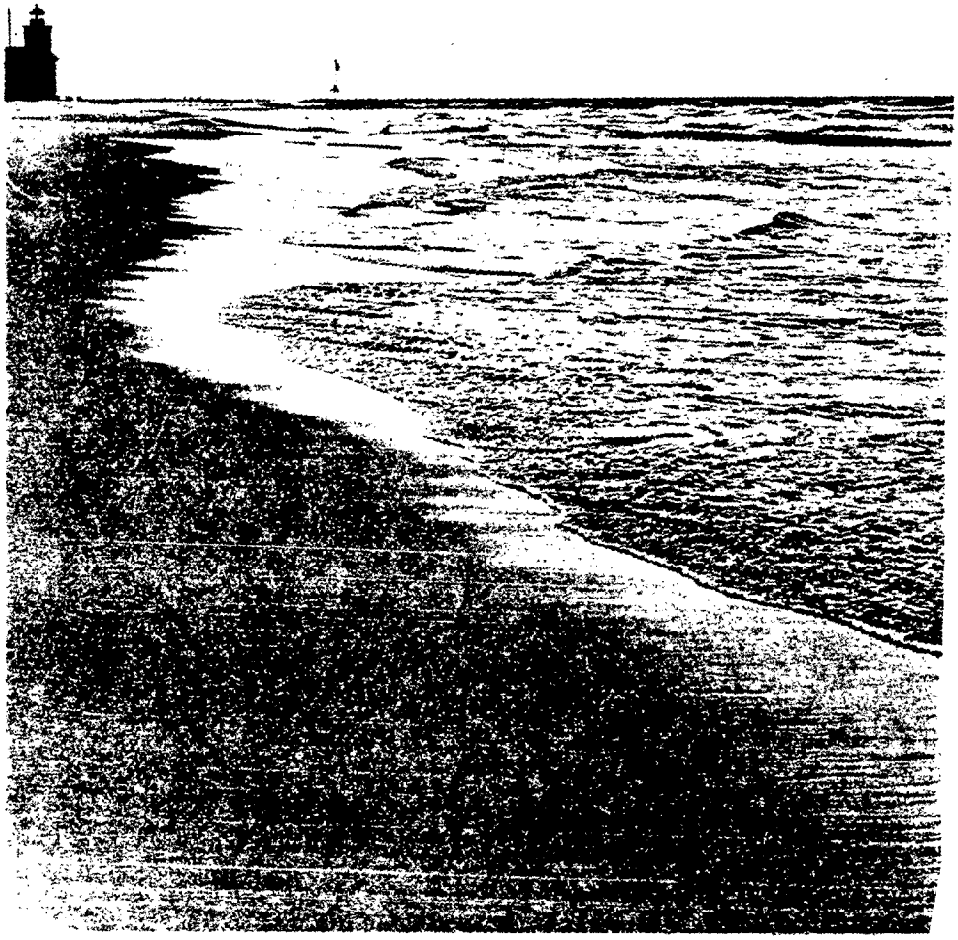

INTRODUCTION

Historically, the people of Michigan have recognized the desirability of our Great Lakes shorelands. Today, this is evident by the ever increasing pressures to develop our coastal areas. In an effort to provide consumer protection and prevent the needless destruction of critical shoreland habitat, the Michigan Legislature by near unanimous vote passed the Shorelands Protection and Management Act, Act 245 of the Public Acts of 1970, as amended.

Act 245 mandates the Department of Natural Resources to regulate some of the uses and development within three types of sensitive coastal areas: high risk erosion, flood risk and environmental. These areas have certain limited tolerances which cannot be exceeded without weakening or destroying coastal resources. Indiscriminate destruction of environmental areas and unregulated development in flood risk and high risk erosion areas has led to losses exceeding several million dollars annually.

This manual is intended to assist citizens and local units of government in understanding the provisions of Act 245. In the following pages, you will find questions and answers which will be helpful in understanding the Shorelands Protection and Management Act and the Great Lakes Shorelands Rules which are also included in this publication. The question and answer portion of this booklet is divided into three sections corresponding to the three types of areas addressed under the Shorelands Protection and Management Act.

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1

HIGH RISK EROSION AREAS

1. *What is a high risk erosion area?*
   A high risk erosion area is any shoreland area of the Great Lakes or connecting waterways where Department approved erosion studies have indicated that the bluffline is receding (moving landward) at an average rate of one foot or greater per year.
2. *How can the bluffline be identified?*
   The bluffline is the line which is the edge or crest of the elevated segment of the shoreline above the beach which normally has a precipitous front inclining steeply on the lakeward side.
3. *What are connecting waterways?*
   Connecting waterways are defined in Act 245 to be the St. Mary's River, Detroit River, St. Clair River and Lake St. Clair.

4. *Why do high risk erosion areas require management?*

   Management is necessary to reduce property loss from the natural hazard of rapidly eroding shorelands. The legislation requires a building setback for permanent structures which may in the future be built in high risk erosion areas. Building setbacks are determined to prevent damages from erosion for at least a 30-year period.

5. *What is defined as a permanent structure?*

   A permanent structure is a residential, commercial, industrial or institutional building, a mobile home, related or accessory buildings, and septic systems, tile fields and other waste handling facilities. Recreational vehicles and travel trailers, as well as other structures that are less than 15 feet by 15 feet by 10 feet high, are used for storage and picnicking, do not have a permanent foundation, and are easily moveable, are not considered permanent structures.

6. *Have local agencies and property owners been notified of the existence of high risk erosion areas?*

   Yes. Since 1974, notices have been mailed to local agencies and property owners. As additional high risk erosion areas are designated, and studies are updated, affected local units of government and property owners are notified.

7. *Are designated high risk erosion areas the only areas with erosion problems?*

   Most areas of the shoreline are subject to some erosion. Building setbacks are only required on shorelands receding at an average annual rate of one foot or greater per year.

8. *What is a building setback?*

   A building setback is the required distance between the bluffline and the permanent structure.

9. *How is a building setback determined?*

   Through various techniques, most involving comparisons of aerial photographs, the Department of Natural Resources determines the average annual bluff recession rate. The average annual recession rate is multiplied by a 30-year life for the structure. The resultant value may be adjusted for recession rate variability within the area to produce a minimum required setback from the bluffline which should protect a permanent structure from damages for at least 30 years. In addition to the minimum required setback, the Department also provides a recommended setback which is more responsive to fluctuations in the erosion processes and should provide longer protection for property owners.

10. *What happens if a parcel is not deep enough to accommodate the setback?*

    If a parcel established prior to high risk erosion area designation is not deep enough to accommodate the minimum required setback, a special exception may be granted as

described in Rule 2(9) and Rule 2(10) (in section 3 of this booklet).

11. *What does a property owner do to obtain a permit for a new permanent structure in a designated high risk erosion area?*

In areas without Department of Natural Resources approved local zoning pursuant to Act 245, a property owner in a designated high risk erosion area wishing to build a permanent structure must submit a permit application to the Department. Applications are available from the local building code enforcer or the Department of Natural Resources, Division of Land Resource Programs, P.O. Box 30028, Lansing, Michigan 48909.

12. *What happens if a property owner disagrees with a high risk erosion area designation?*

A property owner may appeal the designation by writing to the Director of the Department of Natural Resources within 60 days after receiving a letter of designation. A meeting may then be held between staff of the Department of Natural Resources and the property owner. If the issue cannot be resolved, a contested case hearing can be held. This added protection is provided pursuant to Public Act 306 of 1969, as amended, and R 299.3071 to R 299.3081 of the Michigan Administrative Code.

13. *What effect does high risk erosion area designation have on an existing structure?*
An existing structure which is not in conformity with the setback requirement cannot be altered, enlarged or extended in a manner which increases its nonconformity. If a nonconforming structure deteriorates, it may be restored if the repair costs do not exceed sixty percent of the replacement value of the structure in any 12-month period.

FLOOD RISK AREA

1. *What is a flood risk area?*
   As defined in the Shorelands Protection and Management Act, a flood risk area is "any area which is within the 100-year flood plain of a Great Lake or connecting waterway". This includes lands adjacent to bodies of water, such as certain coastal river mouths and coastal lakes, which have levels affected by the levels of the Great Lakes and connecting waterways.
2. *What is a connecting waterway?*
   Connecting waterways are defined in Act 245 to be the St. Mary's River, Detroit River, St. Clair River and Lake St. Clair.
3. *What is the 100-year flood?*
   A 100-year flood has a one percent chance of being equalled or exceeded during any one year. This does not mean that such a flood will occur only once in a 100 years. Rather, a 100-year flood may occur several times within a 100-year period or not at all. The 100-year flood frequency is considered to be a severe flood, but one with a reasonable likelihood of occurrence for purposes of land planning, property protection and human safety.

4. *How is the 100-year flood plain boundary determined?*

   In most cases this involves a detailed engineering study of the community. There are several sources of acceptable information listed in Rules 4(1) and 4(2) (in section 3 of this booklet). At this time, the Federal Emergency Management Agency through the Federal Insurance Administration is conducting detailed engineering studies of many Great Lake communities. These studies will provide detailed flood hazard area maps for each community and 100-year flood hazard area determinations.

5. *Why regulate flood risk areas?*

   Approximately 300 miles of Michigan shoreline were subject to flooding during the fall of 1972 and spring of 1973. Over 12,000 people were evacuated and upwards of 10,000 homes were subject to the effects of flooding. Public assistance to victims of flooding during this period amounted to over 46 million dollars. The intent of the flood risk portion of Act 245 is to minimize future flood damages by requiring certain building specifications for structures built in designated flood risk areas.

6. *How far does a designated flood risk area extend landward from a Great Lake or connecting waterway?*

   The extent of the 100-year flood plain depends on the elevation of the area. A flood risk area extends inland to all property that is low enough to be covered by the waters of a 100-year Great Lake flood.

7. *How are flood risk areas designated?*

Flood risk areas may be designated in two ways:

(1) Areas identified in one of the approved flood plain delineation studies listed in Rule 4(1) have been designated as flood risk areas by incorporation into the rules. As future approved flood plain delineation studies are completed, additional areas will be designated flood risk areas, on a community by community basis, by administrative rule. In these cases, local officials will be contacted but property owners will not be individually notified of designation.

(2) Additional areas as identified by studies other than the approved flood plain delineation studies referred to above, may be designated flood risk areas utilizing the procedures described in Rule 4(3), in which case, property owners will be individually notified on flood risk designation.

8. *How are individual property owners affected by flood risk area designations?*

New structures in a designated flood risk area must satisfy certain requirements to help alleviate flooding damage. A property owner proposing to build a permanent structure on a parcel, any part of which is in a designated flood risk area, must apply for and receive a permit to ensure that the proposed permanent structure meets the legislative mandate before construction can begin. In communities with Department-approved flood plain management ordinances, permitting is handled at the local level through the municipal building code enforcer. If a community does not have an

approved ordinance, permits will be issued by the state. Applications and assistance can be obtained from the local building code enforcer or the Department of Natural Resources, Division of Land Resource Programs, P.O. Box 30028, Lansing, Michigan 48909.

9. *Can a property owner contest designation?*

Ability to contest designation depends upon the procedure utilized to initially designate the flood risk area (see question 7). Where designation has occurred through administrative rule, it cannot be contested. If the designation has occurred on the basis of studies not incorporated by administrative rule, and property owners have been individually notified of the designation, then the designation may be contested by the procedures outline in Rule 4(13).

10. *What are the special requirements that residential structures built in designated flood risk areas must meet?*

Residential structures built in designated flood risk areas must meet one of two special requirements:

(1) The lowest floor, including the basement, must not be lower than the elevation defining the flood risk area, or

(2) The basement, or any portion thereof, may lie below the elevation defining the flood risk area if the basement, together with attendant utility and sanitary facilities, is certified by a professional engineer or architect to have been designed to be watertight and able to withstand hydrostatic

pressures from a water level equal to the elevation defining the flood risk area.

If option 2 is exercised, the lowest floor, excluding basement, must be at least one foot above the elevation defining the flood risk area.

11. *What are the requirements for new nonresidential structures?*

New nonresidential structures built in a designated flood risk area must have the lowest floor, including the basement, not lower than the elevation defining the flood risk area. As an alternative, the structure together with attendant utility and sanitary facilities must be certified by a professional engineer or architect to be designed so that below the elevation defining the flood risk area, the structure is watertight and able to withstand hydrostatic pressures from a water level equal to the elevation defining the flood risk area.

12. *Can a property owner appeal disapproval of a permit application?*

Yes. A property owner may write to the Director of the Department of Natural Resources within 60 days after receiving disapproval of a permit. A meeting may be held between staff of the Department of Natural Resources and the property owner. If the issue cannot be resolved, a contested case hearing can be held. This added protection is provided pursuant to Act 306, P.A. of 1969, as amended, and R 299.3071 to R 299.3081 of the Michigan Administrative Code.

ENVIRONMENTAL AREAS

1. *What is an environmental area?*
   As defined in the Shorelands Protection and Management Act, "an environmental area is an area necessary for the preservation and maintenance of fish and wildlife." Environmental areas are usually wetlands or marshes, but some are uplands or islands. Environmental areas are essential for nesting, reproduction, feeding, rearing of young or some other critical life process of coastal fish and wildlife species.
2. *What benefits in addition to fish and wildlife habitat do environmental areas provide?*
   Environmental areas may provide such benefits as water quality improvement, erosion control, flood water storage, groundwater recharge, sediment trapping, and maintenance of natural plant diversity.
3. *What shoreland property does the act apply to as far as environmental areas are concerned?*
   The act applies to designated property which lies up to 1,000 feet landward of the ordinary high water mark of the Great Lakes or a connecting waterway, and those lands bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high water mark as defined in Public Act 346 of 1972, as amended.

4. *What is a connecting waterway?*
The connecting waterways are defined in Act 245 to be the St. Mary's River, Detroit River, St. Clair River, and Lake St. Clair.

5. *What is the ordinary high water mark?*
The ordinary high water mark is the legal boundary separating state controlled bottomlands from private property. This mark is the line between upland and bottomland which persists through successive changes of water levels below which the presence and action of water is common or recurrent so that the character of the bottomland is marked distinctly from the upland and is apparent in the soil, in the configuration of the surface of the soil and in the vegetation. The ordinary high water mark is defined by Public Act 247 of 1955, as amended, as an elevation expressed in feet above sea level, International Great Lakes Datum 1955. On Lake Superior it is 601.5 feet, on Lakes Michigan-Huron it is 579.8 feet, on Lake St. Clair it is 574.7 feet, and on Lake Erie it is 571.6 feet.

6. *Do all environmental areas extend 1,000 feet inland from the ordinary high water mark?*
Although an environmental area may extend up to 1,000 feet landward from the ordinary high water mark, in most cases the boundary is less than 1,000 feet landward of the ordinary high water mark. The extent of the environmental area is dependent on the extent of the valuable fish and wildlife habitat.

7. *Are property owners and local governments notified of environmental area designations?*
   Yes. Notices of designation are delivered personally or by certified mail to the landowner of record at the address given in the last assessment roll and to the appropriate local government agency.
8. *If property is designated as an environmental area, does this mean the public can use it?*
   A property owner's right to control trespass is not altered by designation.
9. *If property is designated as an environmental area, can it be sold?*
   Yes. However, the use restrictions of the environmental area designation carry over to all subsequent owners.
10. *Does environmental area designation affect the right to hunt, trap or fish on the property?*
    No. However, these activities are subject to all other statutes, ordinances and regulations.
11. *Can trees be removed from a designated environmental area?*
    Timber harvest is not regulated unless it involves an identified colonial bird nesting area, such as a heron rookery.
12. *If an entire parcel is a designated environmental area, can a property owner build on it?*
    A structure zone not to exceed 12,000 square feet must be provided for all parcels of land which are totally included within the bounda-

ries of an environmental area at the time of designation. Use of the structure zone is subject to all other statutes, ordinances and regulations.

13. *Are there any tax benefits to this program?*
Yes. Property tax savings may be obtained by enrolling all or a portion of the designated area as well as any contiguous nondesignated, undeveloped property under the Farmland and Open Space Preservation Act, Act 116 of 1974.

14. *What is a property owner required to do if his/her property is designated as an environmental area?*
No action is required unless the property owner wishes to contest the designation.

15. *What actions are necessary if the owner of designated property proposes a "regulated shoreland use" as defined in Rule 3(6) (in section 3 of this booklet) on the property?*
If the proposed shoreland use is outside the environmental area boundary, no action pertaining to the Shorelands Protection and Management Act is required. If the proposed shoreland use is within the environmental area boundary, a permit must first be obtained from the Department of Natural Resources, Division of Land Resource Programs, P.O. Box 30028, Lansing, Michigan 48909.

16. *Does environmental area designation of shoreland property prohibit lake access?*
No. The Michigan riparian property owner has

the right to "wharf" to navigable waters. However, this right is subject to the protection of shorelands from unnecessary or severe environmental damage. A permit is necessary to construct access to open water through the environmental area.

17. *Is Act 245 the only statute which regulates coastal wetlands?*

No. Laws presently in effect on coastal wetlands in Michigan include the Goemaere-Anderson Wetland Protection Act, 1979, P.A. 203; the Great Lakes Submerged Lands Act, 1955, P.A. 247; the Inland Lakes and Streams Act, 1972, P.A. 346; and federal laws including Section 404 of the Water Pollution Control Act of 1977 and Section 10 of the Rivers and Harbors Act of 1899.

18. *What if a property owner disagrees with the environmental area designation?*

A property owner may appeal the designation by writing to the Director of the Department of Natural Resources within 60 days after receiving a letter of designation. A meeting may then be held between staff of the Department of Natural Resources and the property owner. If the issue cannot be resolved, a contested case hearing can be held. This added protection is provided pursuant to Act 306, P.A. of 1969, as amended, R 299.3071 to 299.3081 of the Michigan Administrative Code, and the Great Lakes Shoreland Rules.

2

THE SHORELANDS PROTECTION AND MANAGEMENT ACT OF 1970
STATE OF MICHIGAN

Act 245, Public Acts of 1970
as amended by Act 270, Public Acts of 1974

AN ACT to provide for the protection and management of shorelands; to provide for zoning and zoning ordinances; to provide certain powers and duties; to authorize certain studies; to provide for development of certain plans; to promulgate rules; and to provide for certain remedies for violations of rules.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "shorelands protection and management act of 1970".

Sec. 2. As used in this act:

(a) "Commission" means the water resources commission.

(b) "Connecting waterway" means the St. Marys river, Detroit river, St. Clair river, or lake St. Clair.

(c) "Department" means the department of natural resources.

(d) "Environmental area" means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(e) "High risk area" means an area of the shoreland which is determined by the commission on the basis of studies and surveys to be subject to erosion.

(f) "Land to be zoned or regulated" means the land in this state which borders or is adjacent to a Great Lake or a connecting waterway and which except for flood risk areas are situated within 1,000 feet landward from the ordinary high-water mark as defined in section 2 of Act No. 247 of the Public Acts of 1955, as amended, being section 322.702 of the Michigan Compiled Laws, and those lands bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 2(h) of Act No. 346 of the Public Acts of 1972, as amended, being sections 281.951 to 281.965 of the Michigan Compiled Laws, and those lands between the ordinary high-water mark and the water's edge.

(g) "Local agency" means a county, city, village, or township.

(h) "Shoreland" means the land, water, and land beneath the water which is in close proximity to the shoreline of a Great Lake or a connecting waterway.

(i) "Shoreline" means that area of the shorelands where land and water meet.

(j) "Flood risk area" means the area of the shoreland which is determined by the commission on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

Sec. 3. Within 1 year after the effective date of this act, the commission shall make or cause to be made an engineering study of the shoreland to determine:

(a) The high risk areas.

(b) The areas of the shorelands which are platted or have buildings or structures and which require protection from erosion.

(c) The type of protection which is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

Sec. 3a. Before January 1, 1975, the commission shall make or cause to be made an engineering study of the shoreland to determine:

(a) Flood risk areas.

(b) The frequency with which a flood risk area can be expected to be flooded.

(c) Appropriate rules necessary to prevent damage or destruction to property.

Sec. 4. Within 1 year after the effective date of this act the department shall make or cause to be made an environmental study of the shoreland to determine:

(a) The environmental areas.

(b) The areas of marshes along and adjacent to the shorelands.

(c) The marshes and fish and wildlife habitat areas which should be protected by shoreland zoning or regulation.

Sec. 5. The commission pursuant to section 3 shall determine if the use of a high risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The commission shall notify a local agency, the department of licensing and regulation, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a high risk area which is in a local agency.

Sec. 5a. The commission pursuant to section 3a shall determine if the use of a flood risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The commission shall notify a local agency, the department of licensing and regulation, the department of labor, the department of treasury, and the

department of commerce or other affected state agencies of its determinations and recommendations relative to a flood risk area which is in a local agency.

Sec. 6. The department in accordance with section 4 shall notify a local agency of the existence of any environmental area which is in a local agency and shall recommend to the commission appropriate use regulations necessary to protect an environmental area.

Sec. 7. Until July 1, 1975, a county, pursuant to rules promulgated under section 12 and Act No. 183 of the Public Acts of 1943, as amended, being sections 125.201 to 125.232 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned which is in the county.

Sec. 8. Until July 1, 1975, a city or village, pursuant to rules promulgated under section 12 and Act No. 207 of the Public Acts of 1921, as amended, being sections 125.581 to 125.591 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned which is in the city or village.

Sec. 9. Until July 1, 1975, a township, pursuant to rules promulgated under section 12 and Act No. 184 of the Public Acts of 1943, as amended, being sections 125.271 to 125.301 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned which is in the township.

Sec. 10. An existing zoning ordinance or a zoning ordinance or a modification or amendment thereto which regulates a high risk area, a flood risk area, or an environmental area shall be submitted to the commission for approval or disapproval. The commission shall determine if the ordinance, modification, or amendment adequately prevents property damage or prevents damage to an environmental area, a high risk area, or a flood risk area. If an ordinance, modification, or amendment is disapproved by the commission, it shall not have force or effect until modified by the local agency and approved by the commission.

Sec. 11. (1) The commission, in order to regulate the uses and development of high risk areas, flood risk areas, and environmental areas and to implement the purposes of this act,

shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(2) A circuit court upon petition and a showing by the commission that a violation of a rule promulgated under subsection (1) exists, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

Sec. 12. (1) Within 18 months after the effective date of this act the commission shall, in compliance with the purposes of this act, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high risk areas and environmental areas.

(b) An inventory of existing federal, state, regional and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland management.

(f) Identification of the high risk and environmental areas which need protection.

(g) Recommendations which shall:

(i) Provide procedures for the resolution of conflicts arising from multiple use.

(ii) Foster the widest variety of beneficial uses.

(iii) Provide for the necesary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(iv) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low lying lands and for fish and game management.

(v) Provide criteria for shoreland alteration control.

(vi) Provide for building setbacks from the water.

(vii) Provide for the prevention of shoreland littering, blight harbor development and pollution.

(viii) Provide for the regulation of mineral exploration and production.

(ix) Provide the basis for necessary future legislation pertaining to efficient shoreland management.

(2) Upon completion of the plan, the commission shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

Sec. 13. The department and commission may enter into an agreement jointly or separately or to make contracts with the federal government, other state agencies, local agencies or private agencies for the purposes of making studies and plans for the efficient use, development, preservation or management of the state's shoreland resources. Any study, plan or recommendation shall be available to a local agency in this state which has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local agencies and the commission.

Sec. 14. For the purposes of this act, the department and the commission may receive, obtain or accept any monies, grants or grants-in-aid for the purpose of research, planning or management of shoreland.

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND RESOURCE PROGRAMS
GREAT LAKES SHORELANDS

Filed with the Secretary of State on December 10, 1981.These rules take effect 15 days after filing with the Secretary of State.

(By authority conferred on the natural resources commission by section 11 of Act No. 245 of the Public Acts of 1970, as amended, and Executive Reorganization Order No. 1973-2, as amended, being §§281.641 and 299.11 of the Michigan Compiled Laws)

R 281.21 to R 281.24 of the Michigan Administrative Code, appearing on pages 821 to 828 of the 1979 Michigan Administrative Code, are amended to read as follows:

R 281.21 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means Act No. 245 of the Public Acts of 1970, as amended, being §281.631 et seq. of the Michigan Compiled Laws, and known as the shorelands protection and management act of 1970.

(b) "Bluffline" means the line which is the edge or crest of the elevated segment of the shoreline above the beach which normally has a precipitous front inclining steeply on the lakeward side.

(c) "Minimum required setback" means the distance between the bluffline and the lakeward edge of the permanent structure.

(d) "Moveable structure" means a permanent structure which is determined to be moveable based on a review of the design and size of the structure, a review of the capability of the proposed structure to withstand normal moving stresses, and a site review to determine whether the structure is accessible to moving equipment.

(e) "Nonconforming use" means a structure, building, plot, premises, or land lawfully occupied at the time of designation that does not conform to the provisions of the act or these rules.

(f) "One hundred-year flood" means a flood having a 1% chance of being equalled or exceeded in any given year.

(g) "Parcel" means a continuous area or acreage of land which is under the same ownership at the time of designation.

(h) "Permanent structure" means a residential building, commercial building, industrial building, institutional building, mobile home, accessory and related buildings, septic systems, tile field, or other waste handling facility erected, installed, or moved on a parcel of property. The term does not include recreational vehicles or travel trailers. The term also does not include appurtenant structures which are less than 15 feet by 15 feet by 10 feet high, which are used for picknicking or storage of recreational or lawn equipment, and which are constructed in a manner that facilitates easy removal. The appurtenant structure shall not have a permanent foundation and shall not be used as a residential facility.

(i) "Structure zone" means an area within an environmental area where a permit is not required to engage in the activities specified in R 281.23(6).

(j) "Substandard lot" means a lot of record or a lot which is described in a land contract or deed executed and delivered before the designation of a high-risk erosion area and which does not have adequate depth to provide the minimum required

setback from the bluffline for a permanent structure. The term also means those lots which are legally created after the designation of a high-risk erosion area, which have sufficient depth to meet setback requirements for permanent structures, but which subsequently become substandard due to erosion processes.

(k) "Wetland-oriented birds" means waterfowl, shorebirds, gulls, terns, herons, rails, bitterns, or other birds associated with coastal or wetland areas.

(l) "Wetland-oriented mammals" means muskrats, mink, beaver, otter, or other mammals associated with coastal or wetland habitats.

(2) The terms defined in the act have the same meanings when used in these rules.

R 281.22 High-risk erosion areas.

Rule 2. (1) Not less than 30 days before designation of a high-risk erosion area, the department shall mail predesignation letters to the affected landowners of record as shown in the last assessment rolls. The letter shall explain that the property is being considered for designation as a high-risk erosion area and shall invite comments from the affected landowners. The department shall schedule a meeting before designation to explain the proposed designation to property owners and local governmental agencies.

(2) The department shall designate a high-risk erosion area upon its finding that bluffline recession has been occurring at an average annual rate of 1.0 foot or greater per year, based on a minimum period of 15 years. The designation shall contain the minimum required setback from the bluffline for any future permanent structure. The setback shall be based on a projected 30-year period of bluffline recession.

(3) In designating a high-risk erosion area, the department shall notify the landowner of record and the local government agency affected thereby. The notice of designation shall be delivered personally or sent by certified mail to the landowner of record at the address given in the last assessment roll.

(4) The notice of designation to affected landowners and local governmental agencies shall include all of the following information:

(a) The authority and reasons for designation of high-risk erosion areas.

(b) A description, graphic or otherwise, of the limits of the high-risk erosion area.

(c) An explanation of any regulatory measures which may be required in the high-risk erosion area and the regulatory role of the local governmental agency.

(d) The procedure by which the designation may be appealed.

(5) The department shall consider additional high-risk erosion areas as may be proposed by local governmental agencies, citizens, or interested groups.

(6) A regulation may be modified upon presentation of engineering studies acceptable to the department documenting annual recession rates at variance with department recession rate data. Upon department acceptance of the data as accurate and compatible with the objectives of the act, a structure's setback from the bluffline shall be calculated and implemented based on the new recession rate information.

(7) In the absence of an approved local ordinance enacted pursuant to sections 7, 8, 9, and 10 of the act, any person or local governmental agency proposing to erect, install, or move a permanent structure on a parcel, any portion of which is in a designated high-risk erosion area, shall submit to the department for its approval a permit application. The permit application shall contain all of the following information:

(a) A legal description of the property.

(b) A description of the proposed permanent structure.

(c) A sketch of the proposed site which shows the location of the proposed permanent structure in relation to the location of the bluffline.

(d) The signature and address of the applicant.

(8) A permit application to erect, install, or move a permanent structure on a parcel, any portion of which is in a designated high-risk erosion area, shall be approved if the proposed permanent structure meets or exceeds the minimum setback requirements established by the department. A permanent structure shall not be erected, installed, or moved lakeward of the bluffline in a high-risk erosion area.

(9) A special exception may be granted to install a moveable structure on a substandard lot if all of the following provisions are complied with:

(a) If a sanitary sewer is not used, the septic system, tile field, or other waste handling facility shall be located on the landward side of the moveable structure.

(b) The moveable structure shall be located as far landward of the bluffline as local zoning restrictions allow.

(c) The moveable structure shall be designed and constructed in accordance with proper engineering standards and building moving restrictions applicable to the subject area. Review and approval of the design shall be incorporated into the department permit process. All construction materials, including foundations, shall be removed or disposed of as part of the moving operation. Access to and from the structure shall be of sufficient width and acceptable grade to allow for moving of the structure.

(10) If a substandard lot does not have access to and from the structure site of sufficient width and acceptable grade to allow for a moveable structure, a special exception may be granted to utilize an erosion control device in place of a portion of the minimum setback requirement. The special exception shall be granted only if all of the following provisions are complied with:

(a) If a sanitary sewer is not used, the septic system, tile field, or other waste handling facility shall be located on the landward side of the permanent structure.

(b) The permanent structure shall be located as far landward of the bluffline as local zoning restrictions allow.

(c) The erosion control device shall be designed to meet or exceed proper engineering standards for the Great Lakes, and a professional engineer shall certify that the device has been designed and will be constructed in accordance with these standards.

(11) An existing structure which is not in conformity with the setback requirements of a designated high-risk erosion area shall not be altered, enlarged, or otherwise extended in a manner which increases its nonconformity. If a nonconforming structure deteriorates or becomes damaged, it may be restored to its condition before the deterioration or damage if the repair costs do

not exceed 60% of the replacement value of the structure in any 12-month period. If, in any 12-month period, the cost of restoring the nonconforming structures is in excess of 60% of its replacement value, the requirements for new permanent structures shall apply.

(12) Not more than 60 days after receipt of a permit application, the department shall send to the applicant, by certified mail, a notice of its approval or disapproval. In case of disapproval, the reasons therefor shall be stated. A permit application which does not require field investigation shall be processed within 20 days.

(13) Approval of a permit does not exempt the applicant from complying with other statutes, ordinances, or rules and regulations.

(14) Any aggrieved party that contests the designation of a high-risk erosion area or the disapproval of a permit application shall be granted a hearing if a petition is filed with the department not more than 60 days after the designation letter or the notice of disapproval is sent. Such petition shall be sent to the director of the department of natural resources, P.O. Box 30028, Lansing, Michigan 48909. The hearing shall be conducted in accordance with sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws, and R 299.3071 to R 299.3081 of the Michigan Administrative Code.

(15) The landowner of record and the local governmental agency shall be sent a notice by certified mail if the high-risk erosion area designation is removed.

(16) All high-risk erosion area designations in existence on the effective date of these rules shall remain in full force and effect.

R 281.23 Environmental areas.

Rule 3. (1) In determining whether an area is necessary for the preservation and maintenance of fish, all of the following uses shall be considered:

(a) Spawning, which is the placement and fertilization of eggs by fish for the propagation of young.

(b) Nursery, which is the utilization of an area by young fish as a sheltered habitat in which to feed and grow.

(c) Feeding, which is the process of obtaining and ingesting plant or animal matter necessary for maintaining growth and life functions.

(d) Protection, which is the utilization of an area as escape cover from predators or unsuitable environmental conditions.

(e) Migration, which is a daily or seasonal movement.

(2) In determining whether an area is necessary for the preservation and maintenance of wildlife, all of the following uses by wetland-oriented birds and wetland-oriented mammals shall be considered:

(a) Breeding, which is the process of courting, pairing, and mating.

(b) Nesting, which is the process of laying, incubating, and hatching eggs.

(c) Rearing of young, which is the feeding and protection of young.

(d) Feeding, which is the process of obtaining and ingesting plant or animal matter necessary for maintaining growth and life functions.

(e) Resting, which is a period of inactivity in the daily routine or seasonal migration.

(3) Not less than 30 days before designation of environmental areas, the department shall mail predesignation letters to affected landowners of record as shown in the last assessment rolls. The letter shall explain that the property is being considered for designation as an environmental area and shall invite comments from the affected landowners. The department shall schedule a meeting before designation to explain the proposed designation to property owners and local governmental agencies.

(4) The department shall designate environmental areas determined to be necessary for the preservation and maintenance of fish or wildlife, or both. The notice of designation shall be delivered personally or sent by certified mail to the landowner of record at the address given in the last assessment roll and to the local governmental agency.

(5) The notice of designation to affected landowners and local governmental agencies shall include all of the following information:

(a) The authority and reasons for designation of environmental areas.

(b) A description, graphic, or otherwise, of the limits of the environmental area.

(c) An explanation of any regulatory measures which may be required in environmental areas and the regulatory role of the local governmental agency.

(d) The procedure by which the designation may be appealed.

(6) The following shoreland uses in an environmental area shall require a permit from the department in accordance with these rules or from a local governmental agency pursuant to an ordinance approved by the department:

(a) Dredging, filling, grading, or other alterations of the soil.

(b) Alteration of natural drainage, but not including the reasonable care and maintenance of established drainage improvement works. A permit is not required for maintenance of existing dikes.

(c) Alteration of vegetation utilized by fish or wildlife, or both, for the uses covered in subrules (1) and (2) of this rule. Timber harvest shall not require a permit, unless it involves an identified colonial bird nesting area, such as a heron rookery.

(d) Placement of permanent structures.

(7) Farming of lands within the environmental area is allowed without a permit if all of the following provisions are complied with:

(a) Artificial draining, diking, dredging, or filling is not used.

(b) The natural contour of the land is not altered.

(c) Only normal farming implements and generally accepted agricultural practices are used.

(d) The environmental area is utilized by a person who is engaged in the business of farming, and the land is to be used for the production and harvesting of agricultural products.

(8) Pumping of water into an environmental area is allowed without a permit.

(9) A structure zone not to exceed 12,000 square feet shall be delineated for all parcels of land which are totally included within the boundaries of an environmental area at the time of designation. If a parcel has less than 12,000 square feet of land outside the boundaries of the environmental area, a structure zone shall be delineated which, in conjunction with the land outside the environmental area, shall total 12,000 square feet. Use of a structure zone is subject to all other statutes, ordinances, and rules and regulations.

(10) The department shall consider additional environmental areas as may be proposed by local governmental agencies, citizens, or interested groups.

(11) In the absence of an approved zoning ordinance enacted pursuant to sections 7, 8, 9, and 10 of the act, any person or local governmental agency proposing 1 of the uses regulated in subrule (6) of this rule outside the structure zone or proposing a change in the location of a structure zone shall submit to the department a permit application for the proposed use. The permit application shall contain all of the following:

(a) A legal description of the property.

(b) A drawing of the site with the proposed project clearly shown.

(c) A detailed description of the proposed project.

(d) The signature and address of the applicant.

(12) A permit application, as described in subrule (11) of this rule, shall be approved if both of the following conditions are satisfied:

(a) The adverse effects to the uses described in subrules (1) and (2) of this rule are minimal and are mitigated to the maximum extent feasible.

(b) A feasible and prudent alternative to the proposed plan is not available.

(13) Not more than 60 days after receipt of a permit application, the department shall send to the applicant, by certified mail, a notice of its approval or disapproval. In case of disapproval, the reasons therefor shall be stated. A permit

application which does not require field investigation shall be processed within 20 days.

(14) Approval of a permit does not exempt the applicant from complying with other statutes, ordinances, and rules and regulations.

(15) Any aggrieved party that contests the designation of an environmental area or the disapproval of a permit application shall be granted a hearing if a petition is filed with the department not more than 60 days after the designation letter or the notice of disapproval is sent. Such petition shall be sent to the director of the department of natural resources, P.O. Box 30028, Lansing, Michigan 48909. The hearing shall be conducted in accordance with sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws, and R 299.3071 to R 299.3081 of the Michigan Administrative Code.

(16) The landowner of record and the local governmental agency shall be sent a notice by certified mail if the environmental area designation is removed.

(17) All environmental area designations in existence on the effective date of these rules shall remain in full force and effect.

R 281.24 Flood risk areas.

Rule 4. (1) Any area which is within the 100-year floodplain of a Great Lake or a connecting waterway, as identified in 1 of the approved floodplain delineation studies set forth in this subrule, is designated as a flood risk area. The following floodplain delineation studies are adopted in these rules by reference:

(a) Flood insurance study, city of Algonac, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, April, 1977.

(b) Flood insurance study, township of Bangor, Michigan, Bay county, U.S. department of housing and urban development, federal insurance administration, January, 1979.

(c) Flood insurance study, township of Caseville, Michigan, Huron county, U.S. department of housing and urban development, federal insurance administration, February, 1977.

(d) Flood insurance study, township of Chesterfield, Michigan,

Macomb county, U.S. department of housing and urban development, federal insurance administration, January, 1978.

(e) Flood insurance study, township of Clay, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, June, 1978.

(f) Flood insurance study, township of East China, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, January, 1978.

(g) Flood insurance study, city of East Tawas, Michigan, Iosco county, U.S. department of housing and urban development, federal insurance administration, September, 1977.

(h) Flood insurance study, township of Erie, Michigan, Monroe county, U.S. department of housing and urban development, federal insurance administration, March, 1978.

(i) Flood insurance study, city of Escanaba, Michigan, Delta county, U.S. department of housing and urban development, federal insurance administration, September, 1977.

(j) Flood insurance study, township of Fort Gratiot, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, June, 1978.

(k) Flood insurance study, township of Frenchtown, Michigan, Monroe county, U.S. department of housing and urban development, federal insurance administration, March, 1977.

(l) Flood insurance study, city of Gibraltar, Michigan, Wayne county, U.S. department of housing and urban development, federal insurance administration, December, 1978.

(m) Flood insurance study, city of Gladstone, Michigan, Delta county, U.S. department of housing and urban development, federal insurance administration, September, 1977.

(n) Flood insurance study, township of Grosse Ile, Michigan, Wayne county, U.S. department of housing and urban development, federal insurance administration, February, 1980.

(o) Flood insurance study, township of Hampton, Michigan, Bay county, U.S. department of housing and urban development, federal insurance administration, February, 1978.

(p) Flood insurance study, city of Harbor Springs, Michigan, Emmet county, U.S. department of housing and urban develop-

ment, federal insurance administration, November, 1976.

(q) Flood insurance study, township of Ira, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, September, 1979.

(r) Flood insurance study, township of Kawkawlin, Michigan, Bay county, U.S. department of housing and urban development, federal insurance administration, August, 1978.

(s) Flood insurance study, township of LaSalle, Michigan, Monroe county, U.S. department of housing and urban development, federal insurance administration, August, 1977.

(t) Flood insurance study, city of Monroe, Michigan, Monroe county, U.S. department of housing and urban development, federal insurance administration, December, 1976.

(u) Flood insurance study, township of Monroe, Michigan, Monroe county, U.S. department of housing and urban development, federal insurance administration, June, 1977.

(v) Flood insurance study, city of Muskegon, Michigan, Muskegon county, U.S. department of housing and urban development, federal insurance administration, December, 1976.

(w) Flood insurance study, township of Muskegon, Michigan, Muskegon county, U.S. department of housing and urban development, federal insurance administration, August, 1977.

(x) Flood insurance study, city of New Baltimore, Michigan, Macomb county, U.S. department of housing and urban development, federal insurance administration, March, 1978.

(y) Flood insurance study, city of North Muskegon, Michigan, Muskegon county, U.S. department of housing and urban development, federal insurance administration, November, 1976.

(z) Flood insurance study, city of Norton Shores, Michigan, Muskegon county, U.S. department of housing and urban development, federal insurance administration, September, 1977.

(aa) Flood insurance study, township of Pinconning, Michigan, Bay county, U.S. department of housing and urban development, federal insurance administration, March, 1978.

(bb) Flood insurance study, city of St. Clair, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, December, 1977.

(cc) Flood insurance study, township of St. Clair, Michigan, St. Clair county, U.S. department of housing and urban development, federal insurance administration, February, 1978.

(dd) Flood insurance study, city of St. Clair Shores, Michigan, Macomb county, U.S. department of housing and urban development, federal insurance administration, February, 1978.

(ee) Flood insurance study, township of Sims, Michigan, Arenac county, U.S. department of housing and urban development, federal insurance administration, December, 1977.

(ff) Flood insurance study, village of Suttons Bay, Michigan, Leelaneau county, U.S. department of housing and urban development, federal insurance administration, December, 1976.

(gg) Flood insurance study, township of Wisner, Michigan, Tuscola county, U.S. department of housing and urban development, federal insurance administration, November, 1977.

(hh) Flood insurance study, city of Wyandotte, Michigan, Wayne county, U.S. department of housing and urban development, federal insurance administration, November, 1977.

(2) The documents adopted in this rule are available from the Federal Insurance Administration, U.S. Department of Housing and Urban Development, Washington, D.C. 20410, or from the Michigan Department of Natural Resources, Division of Land Resource Programs, P.O. Box 30028, Lansing, Michigan 48909.

(3) The department may designate additional flood risk areas which are located within the 100-year floodplain of a Great Lake or a connecting waterway. The following information and studies may be used in delineating the flood risk areas:

(a) Current floodplain information reports by the U.S. army, corps of engineers.

(b) Report on Great Lakes open-coast flood levels by the U.S. army, corps of engineers.

(c) Current flood hazard analysis studies by the U.S. department of housing and urban development, federal insurance administration.

(d) Current flood hazard analysis studies by the U.S. soil conservation service.

(e) Engineering studies currently acceptable to the department.

(4) If the studies listed in subrule (3) of this rule are used to determine the flood risk area, the following procedures for designation shall be used:

(a) Not less than 30 days before designation of a flood risk area, the department shall mail predesignation letters to the affected landowners of record as shown in the last assessment roll. The letter shall explain that the property is being considered for

designation as a flood risk area. The department shall schedule a meeting before designation to explain the proposed designation to property owners and local governmental agencies.

(b) The department shall designate a flood risk area upon its finding that the property lies within the 100-year flood plain of a Great Lake or a connecting waterway.

(c) In designating a flood risk area, the department shall notify the landowner of record and the local governmental agency affected thereby. The notice of designation shall be delivered personally or sent by certified mail to the landowner of record at the address given in the last assessment roll.

(d) The notice of designation to affected landowners and local governmental agencies shall include all of the following information:

(i) The authority and reasons for designation of flood risk areas.

(ii) A description, graphic or otherwise, of the limits of the flood risk area.

(iii) An explanation of any regulatory measures which may be required in the flood risk area and the regulatory role of the local governmental agency.

(iv) The procedure by which the designation may be appealed.

(5) The department shall consider additional flood risk areas as may be proposed by local governmental agencies, citizens, or interested groups.

(6) In the absence of an approved local ordinance enacted pursuant to sections 7, 8, 9, and 10 of the act, a person or local governmental agency proposing a new permanent structure on a parcel, any portion of which is in a designated flood risk area, shall submit to the department, for its approval, a permit application for the proposed new permanent structure. A new permanent structure in a subdivision for which approval is required pursuant to Act No. 288 of the Public Acts of 1967, as amended, being §560.101 et seq. of the Michigan Compiled Laws, and known as the subdivision control act of 1967, is exempt from the requirements of this rule. The permit application shall contain all of the following information:

(a) A legal description of the property.

(b) A description of the proposed permanent structure.

(c) A topographic map of the property in sufficient detail to allow review.

(d) The means to be undertaken to prevent property loss.

(e) The signature and address of the applicant.

(7) A permit application for a new permanent structure on a parcel, any portion of which is in a designated flood risk area, shall be approved if it meets or exceeds the minimum requirements established in subrule (10) or (11), or both, of this rule.

(8) Not more than 60 days after receipt of a permit application, the department shall send to the applicant, by certified mail, a notice of its approval or disapproval. In case of disapproval, the reasons therefor shall be stated. A permit application which does not require a field investigation shall be processed within 20 days.

(9) Approval of a permit does not exempt the applicant from complying with other statutes, ordinances, or rules and regulations.

(10) New residential structures in a flood risk area shall have the lowest floor, including the basement, not lower than the elevation defining the flood risk area, except that the basement or any portion thereof may be located below the elevation defining the flood risk area if both of the following provisions are complied with:

(a) The basement, together with attendant utility and sanitary facilities, is certified by a professional engineer or architect to have been designed to be watertight and able to withstand hydrostatic pressures from a water level equal to the elevation defining the flood risk area.

(b) The lowest floor of the residential structure, excluding the basement, is at least 1 foot above the elevation defining the flood risk area.

(11) New nonresidential structures in a flood risk area shall have the lowest floor, including the basement, not lower than the elevation defining the flood risk area or shall, together with attendant utility and sanitary facilities, be certified by a professional engineer or architect to have been designed so that, below the elevation defining the flood risk area, the structure is watertight and able to withstand hydrostatic pressures from a water level equal to the elevation defining the flood risk area.

(12) An existing structure which is not in conformity with the elevation requirements of a designated flood risk area shall not be altered, enlarged, or otherwise extended in a manner that

increases its nonconformity. If a nonconforming structure deteriorates or becomes damaged, it may be restored to its condition before the deterioration or damage if the repair costs do not exceed 60% of the replacement value of the structure in any 12-month period. If, in any 12-month period, the cost of restoring the nonconforming structure is in excess of 60% of its replacement value, the requirements for new permanent structures shall apply.

(13) Any aggrieved party that contests the designation of a flood risk area under subrule (4) of this rule or the disapproval of a permit application shall be granted a hearing if a petition is filed with the department not more than 60 days after the notice of designation or notice of disapproval is sent. Such petition shall be sent to the director of the department of natural resources, P.O. Box 30028, Lansing, Michigan 48909. The hearing shall be conducted in accordance with sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws, and R 299.3071 to R 299.3081 of the Michigan Administrative Code.

(14) The landowner of record and the local governmental agency shall be sent a notice by certified mail if the flood risk area designation is removed.

(15) All flood risk area designations in existence on the effective date of these rules shall remain in full force and effect.

MICHIGAN'S STREAMS ACT

MICHIGAN'S INLAND LAKES AND STREAMS ACT

1972 Public Act 346
as amended
and
Administrative Rules

DIVISION OF
LAND RESOURCE PROGRAMS
DEPARTMENT OF NATURAL RESOURCES

4/82

MICHIGAN NATURAL RESOURCES COMMISSION

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April 1982

INLAND LAKES AND STREAMS ACT

Act 346
Public Acts of 1972
as amended by Act 262, Public Acts of 1980

AN ACT to regulate inland lakes and streams; to protect riparian rights and the public trust in inland lakes and streams; to prescribe powers and duties; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

281.951 Short Title.

Sec. 1. This act shall be known and may be cited as the "inland lakes and streams act of 1972."

HISTORY New 1972, p. 1025, Act 346, Imd. Eff. Jan. 9, 1973.

281.951 Definitions.

Sec. 2. As used in this act:

(a) "Bottomland" means the land area of an inland lake or stream which lies below the ordinary high water mark and which may or may not be covered by water.

(b) "Bulkhead line" means a line which is established pursuant to this act beyond which dredging, filling or construction of any kind is not allowed without a permit.

(c) "Commission" means the natural resources commission.

(d) "Department" means the department of natural resources.

(e) "Impoundment" means water held back by a dam, dike, floodgate or other barrier.

(f) "Inland lake or stream" means a natural or artificial lake, pond or impoundment; a river, stream or creek which may or may not be serving as a drain as defined by Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.623 of the Compiled Laws of 1948; or any other body of water which has definite banks, a bed and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair and Detroit rivers. It does not include the Great Lakes, Lake St. Clair and a lake or pond which has a surface area of less than 5 acres.

(g) "Marina" means a facility which is owned or operated by a person, extends into or over an inland lake or stream and offers service to the public or members of the marina for docking, loading or other servicing of recreational watercraft.

(h) "Ordinary high water mark" means the line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

(i) "Person" means any individual, partnership, corporation, association, political subdivision of the state, the department or other instrumentality or agency of the state, political subdivision thereof or other legal entity.

(j) "Project" means an activity which requires a permit pursuant to section 3.

(k) "Property owners association" means any group of organized property owners publishing a directory of their membership, the majority of which are riparian owners and are located on the inland lake or stream which is affected by the proposed project.

(l) "Riparian owner" means a person who has riparian rights.

(m) "Riparian rights" means those rights which are associated with the ownership of the bank or shore of an inland lake or stream.

(n) "Seasonal structure" includes any type of dock, boat hoist, ramp, raft or other recreational structure which is placed into an inland lake or stream and removed at the end of the boating season.

(o) "Structure" includes a marina, wharf, dock, pier, dam, weir, stream deflector, breakwater, groin, jetty, sewer, pipeline, cable and bridge.

(p) "Upland" means the land area which lies above the ordinary high water mark.

HISTORY New 1972, p. 1025, Act 346, Imd. Eff. Jan. 9, 1973.

281.953 Operations prohibited without a permit.

Sec. 3. Except as provided in this act, a person without a permit from the department shall not:

(a) Dredge or fill bottomland.

(b) Construct, enlarge, extend, remove or place a structure on bottomland.

(c) Erect, maintain or operate a marina.

(d) Create, enlarge or diminish an inland lake or stream.

(e) Structurally interfere with the natural flow of an inland lake or stream.

(f) Construct, dredge, commence, extend or enlarge an artificial canal, channel, ditch, lagoon, pond, lake or similar waterway where the purpose of ultimate connection with an existing inland lake or stream, or where any part of the artificial waterway is located within 500 feet of the ordinary high water mark of an existing inland lake or stream.

(g) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake or similar water with an existing inland lake or stream for navigation or any other purpose.

HISTORY New 1972, p. 1026, Act 346, Imd. Eff. Jan. 9, 1973.

281.954 Operations permitted without permit.

Sec. 4. A permit shall not be required for:

(a) Any fill or structure existing before April 1, 1966, in waters covered by former Act No. 291 of the Public Acts of 1965, and any fill or structures existing before January 9, 1973, in waters covered for the first time by this act.

(b) A seasonal structure placed on bottomland to facilitate private noncommercial recreational use of the water if it does not unreasonably interfere with the use of the water by others entitled to use the water or interfere with water flow.

(c) Reasonable sanding of beaches to the existing water's edge by a riparian owner.

(d) Construction or maintenance of a private agricultural drain regardless of outlet.

(e) A waste collection or treatment facility which is approved for construction by the department of public health or ordered or approved by the water resources commission.

(f) Construction and maintenance of minor drainage structures and facilities which are identified by rule promulgated by the commission pursuant to section 11(1). Before such a rule is promulgated, it shall be approved by the majority of a committee consisting of the director of the department, the director of the department of agriculture, and the director of the state transportation department or their designated representatives. The initial rules shall be issued before July 8, 1973, and shall be reviewed at least annually thereafter.

(g) Maintenance and improvement of all drains legally established or constructed prior to January 1, 1973, pursuant to Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.630 of the Michigan Compiled Laws, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the commission pursuant to section 11.

(h) Projects constructed under the watershed protection and flood prevention act, 16 U.S.C. 1001 to 1009.

(i) Construction and maintenance of privately owned cooling or storage ponds used in connection with a public utility except at the interface with public waters.

(j) Maintenance of a structure constructed under a permit issued pursuant to this act and identified by rule promulgated pursuant to section 11(1), if the maintenance is in place and in kind with no design or materials modification.

HISTORY New 1972, p. 1036, Act 346, Imd. Eff. Jan. 9, 1973; 1980, p. ____, Act 262, Eff. Sept. 11, 1980.

281.955 Permit; application; form and contents; fee.

Sec. 5. (1) Before a project which is subject to this act is undertaken, a person shall file an application and receive a permit from the department. The application shall be on a form prescribed by the department and shall include any information that may be required by the department. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(2) An application for a permit shall be accompanied by a fee to be credited to the state general fund based on an administrative cost of $25.00. An administrative fee shall not be charged for an application which is received from a governmental unit created by law or which is solely for the maintenance of an existing project.

HISTORY New 1972, p. 1036, Act 346, Imd. Eff. Jan. 9, 1973; 1980, p. ____, Act 262, Eff. Sept. 11, 1980.

281.956 Request for notification of pending application; fee; review of application; final inspection; certification; hearing; granting or denying permit; reasons for denial; modification of application; conditional permit.

Sec. 6. (1) A person who desires notification of pending applications may make a written request to the department accompanied by an annual fee of $25.00 which shall be credited to the state general fund. The department 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 so requested notice. The monthly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project and a summary statement of the purpose of the project. The department may hold a public hearing on pending applications.

(2) Upon receiving an application, the department shall submit copies for review to the director of public health or local health department designated by the director of public health, the city, village, or township, and the county where the project is to be located, the local soil conservation district, the local watershed council organized under Act No. 253 of the Public Acts of 1964, as amended, being sections 323.301 to 323.320 of the Michigan Compiled Laws, if any, the local port commission, if any, and the persons required to be included in the application pursuant to section 5(1), accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant the application without a public hearing where the project is located. The department shall hold a public hearing upon the written request of the applicant or a riparian owner or a person or governmental unit which is entitled to receive a copy of the application pursuant to this subsection.

(3) After completion of a project for which an application is approved, the department shall cause a final inspection to be made and certify to the applicant that the applicant has complied with the department's permit requirements.

(4) At least 10 days notice of a hearing to be held pursuant to this section shall be given by the publication in a newspaper circulated in the county where the project is to be located and by mailing copies of the notice to the persons who have requested the weekly list pursuant to subsection (1), the person requesting the hearing, and the persons and governmental units which are entitled to receive a copy of the application pursuant to subsection (2).

(5) The department shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held, after the filing of an application pursuant to section 5. When a permit is denied, the department 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 department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (2).

(6) The department, by rule promulgated pursuant to section 11(1), may establish minor project categories of activities and projects that are similar in nature and have minimal adverse environmental impact. The department may act upon an application received pursuant to section 5 for an activity or project within a minor project category after an on-site inspection of the land and water involved without providing notices or holding a public hearing as required by subsection (2). A final inspection or certification of a project completed under a permit granted pursuant to this subsection shall not be required, but all other provisions of this act shall be applicable to a minor project.

HISTORY New 1972, p. 1036, Act 346, Imm. Eff. Jan. 9, 1973, 1980, p. ____, Act 262, Eff. Sept. 11, 1980.

281.957 Prerequisite to issuance of permit; specification in permit.

Sec. 7. The department shall issue a permit if it finds that the structure or project will not adversely affect the public trust or riparian rights. In passing upon an application the department shall consider the possible effects of the proposed action upon the inland lake or stream and upon waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce and industry. The department shall not grant a permit if the proposed project or structure will unlawfully impair or destroy any of the waters or other natural resources of the state. This act shall not modify the rights and responsibilities of any riparian owner to the use of his/her riparian water.

A permit shall specify that a project completed in accordance with this act shall not cause unlawful pollution as defined by Act No. 245 of the Public Acts of 1929, as amended.

HISTORY New 1972, p. 1028, Act 346, Imd. Eff. Jan. 9, 1973
COMPILERS NOTE: For provisions of P.A. 1929, No. 245, referral to in this section are section 123.1 et seq.

281.958 Duration, terms, and revocation of permit; hearing.

Sec. 8. A permit is effective until revoked for cause but not beyond its term and may be subject to renewal. A permit may specify the term and conditions under which the work is to be carried out. A permit may be revoked after a hearing for violation of any of its provisions, any provision of this act, any rule promulgated under this act or any misrepresentation in application.

HISTORY New 1972, p. 1029, Act 346, Imd. Eff. Jan. 9, 1973

281.959 Bulkhead line; establishment; application; jurisdiction; duties.

Sec. 9. The department may establish by permit a bulkhead line on its own application or on the application of a city, village, township or county. The application shall be filed as provided in subsection (1) of section 5 with public notice and hearings as provided in section 6. Upon acceptance of the bulkhead line by the affected units of government, the area landward of the bulkhead line shall thereafter be under their jurisdiction as to the placement of structures and fills in the waters unless jurisdiction is returned to the state. In establishing a bulkhead line, the department shall provide for local requirements and insure the public trust in the adjacent waters against unreasonable interferences.

HISTORY New 1972, p. 1039, Act 346, Imd. Eff. Jan. 9, 1973

281.950 Ordinary high water mark; agreement with riparian owner; fee; agreement as proof of location.

Sec. 10. Upon the written request of a riparian owner and upon payment of a service fee of $50.00 to be credited to the state general fund, the department may enter into a written agreement with a riparian owner fixing the location of the ordinary high water mark for his/her property. In the absence of substantially changed conditions, the agreement shall be conclusive proof of the location in all matters between the state and the riparian owner and his/her successors in interest.

HISTORY New 1972, p. 1029, Act 346, Imd. Eff. Jan. 9, 1973

281.961 Rules; promulgation and enforcement; hearing; review; proceeding by riparian owner.

Sec. 11. (1) The commission may promulgate and enforce rules to implement this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948.

(2) If a person is aggrieved by any action or inaction of the department, he/she may request a formal hearing on the matter involved. The hearing shall be conducted by the commission in accordance with the provisions for contested cases in Act No. 306 of the Public Acts of 1969, as amended.

(3) A determination, action or inaction by the commission following the hearing shall be subject to judicial review as provided in Act No. 306 of the Public Acts of 1969, as amended.

(4) This section does not limit the right of a riparian owner to institute proceedings in any circuit court of the state against any person when necessary to protect his/her rights.

HISTORY New 1972, p. 1039, Act 346, Imd. Eff. Jan. 9, 1973

291.962 Rights of riparian owner as to water frontage and exposed bottomland.

Sec. 12. This act shall not deprive a riparian owner of rights associated with his/her ownership of water frontage. A riparian owner among other rights controls any temporarily or periodically exposed bottomland to the water's edge, wherever it may be at any time and holds the land secure against trespass in the same manner as his/her upland subject to the public trust to the ordinary high water mark.

HISTORY New 1972, P. 1029, Act 346, Imd. Eff. Jan. 9, 1973

281.963 Violations; civil action; penalty.

Sec. 13. (1) The department may commence a civil action in the circuit court of the county in which a violation occurs to enforce compliance with this act, to restrain violation of this act or any action contrary to an order of the department denying a permit, to enjoin the further performance of, or order the removal of, any project which is undertaken contrary to this act or after denial of a permit by the department, or to order the restoration of the affected area to its prior condition.

(2) In a civil action commenced under this act, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than $5,000.00 per day for each day of violation.

(3) Except as provided in subsection (4), a person who violates this act or a permit condition, is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00 per day for each day of violation.

(4) A person who knowingly makes a false statement, representation, or certification in an application for a permit; in a notice or report required by a permit; or a person who knowingly renders inaccurate any monitoring device or method required to be maintained by a permit is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00 per day for each day of violation.

(5) Any civil penalty assessed, sought or agreed to by the department shall be appropriate to the violation.

HISTORY New 1972, p. 1039, Act 346, Imd. Eff. Jan. 9, 1973; 1980; p. _____, Act 262, Eff. Sept. 11, 1980.

281.964 Repeal.

Sec. 14. Act No. 291 of the Public Acts of 1965, as amended, being sections 281.731 to 281.752 of the Compiled Laws of 1948, is repealed.

HISTORY New 1972, p. 1000, Act 346, Imd. Eff. Jan. 9, 1973

281.965 Saving clause.

Sec. 15 All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this act takes effect are saved and may be consummated according to the law in force when they were commenced. This act shall not be construed to affect any prosecution pending or begun before the effective date of this act.

HISTORY New 1972, p. 1030, Act 346, Imd. Eff. Jan. 9, 1973

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND RESOURCE PROGRAMS

INLAND LAKES AND STREAMS

Filed with the Secretary of State on March 15, 1982.
These rules take effect 15 days after filing with the Secretary of State

(By authority conferred on the department of natural resources by sections 4, 6, and 11 of Act No. 346 of the Public Acts of 1972, as amended, being §§281.954, 281.956, and 281.961 of the Michigan Compiled Laws)

R 281.811 to R 281.821, R 281.824, R 281.837, and R 281.841 to R 281.844 of the Michigan Administrative Code, appearing on pages 963 to 967 and 970 to 972 of the 1979 Michigan Administrative Code, are amended, and R 281.815 to R 281.819 are added, to read as hereinafter set forth.

R 281.822 and R 281.831 of the Michigan Administrative Code, appearing on pages 966 and 968 of the 1979 Michigan Administrative Code, are rescinded.

R 281.811 Definitions.
Rule 1. (1) As used in these rules:
(a) "Act" means Act No. 346 of the Public Acts of 1972, as amended, being §281.951 et seq. of the Michigan Compiled Laws.
(b) "Applicant" means a person applying for a permit pursaunt to the provisions of the act.
(c) "Bottomland dredging" means dredging of channels and canals and the removal of any rock, stone, or soil from bottomlands.
(d) "Bottomland filling" means placement of rock, stone, soil, or other material on bottomlands.
(e) "Reasonable sanding of beaches to the existing water's edge" means placing a layer of sand which is free of organic or other pollutant materials and which does not shift the location of the existing ordinary high-water mark or shoreline contour.
(2) Terms defined in the act have the same meanings when used in these rules.

R 281.812 Permit applications.
Rule 2. (1) An application for permit shall be made on a form as prescribed and provided by the department. Application forms may be obtained from the land resource programs division of the department of natural resources or from any designated field office of the department.

(2) An application for a permit shall not be deemed as received or filed with the department until all information requested on the application form, the application fee, and any other information requested by the department have been received by the department. For purposes of determining when the period for granting or denying a permit begins, an application shall not be deemed to be filed with the department until all information requested by the department has been received.

(3) Application fees shall be submitted to the department with the initial submittal of an application form. The fee shall be paid by check, money order, or draft made payable to: "state of Michigan."

(4) After receipt of an otherwise complete application, the department may request such additional information, environmental assessments, waterway design calculations, records or documents as are determined to be necessary to make a decision to grant or deny a permit.

(5) An application shall be considered to be withdrawn and the file for the application shall be closed if an applicant fails to respond to any written inquiry or request from the department within 30 days of the request.

(6) An application for a permit to construct or replace a bridge or culvert shall include complete plans and specifications describing the proposed work.

(7) When the proposed project includes activities at multiple locations or numerous lakes or streams, the applicant may submit a preliminary site plan showing the proposed work and all lakes or streams involved. After completing a timely field investigation, the department shall advise the applicant of those activities which require a permit.

R 281.813 Permit conditions.

Rule 3. (1) A permit shall provide that the work authorized therein shall be completed within a specified term, normally not more than 1 year from the date of issuance, or as otherwise determined by the department. An extension of time may be granted by the department. An administrative fee shall not be required for an application for an extension of time.

(2) Permits authorizing projects which involve a lake or stream crossing by pipelines or utilities shall specifically condition the activity to be subject to the requirements and specifications of R 281.832 to R 281.839.

(3) A permit does not obviate the necessity of receiving approval from the state department of public health or a local unit of government when applicable, including a local unit of government responsible for administering Act No. 245 of the Public Acts of 1970, as amended, being §281.531 et seq. of the Michigan Compiled Laws, and Act No. 347 of the Public Acts of 1972, as amended, being §282.101 et seq. of the Michigan Compiled Laws, and the United States army corps of engineers where applicable.

(4) The department shall not issue a permit, except for a conditional permit or a permit under a minor project category until 20 days after the mailing of the list to each eligible subscriber as provided for in subsection (1) of section 6 of the act.

(5) Upon request, the department shall provide any person with a copy of a permit application and supporting documents pursuant to Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws.

R 281.814 Environmental assessment.

Rule 4. In each application for a permit, all existing and potential adverse environmental effects shall be determined and a permit shall not be issued unless the department determines all of the following:

(a) That the adverse effects to the environment and the public trust are minimal and will be mitigated to the extent possible.

(b) That the resource affected is not a rare resource.

(c) That the public interest in the proposed development is greater than the public interest in the unavoidable degradation of the resource.

(d) That no feasible and prudent alternative location is available.

R 281.815 Structure maintenance.

Rule 5. The following structures may be maintained in accordance with section 4(j) of the act:

(a) Wood seawalls, when the repair is only of the seawall facing or sheeting, support piling, or cap and the maintenance does not encompass more than 25% of the permitted seawall length.

(b) Riprap shore protection structures, where original materials have been displaced by erosion or ice damage and the placement of earthern fill will not be required as part of the maintenance.

(c) Noncommercial docks and pilings.

(d) Boat ramps.

(e) Bridges and culverts, where the maintenance is of an existing in-place structure and does not involve removal of the structure or alteration of the watercourse, streambed, or adjacent banks.

(f) Dams and lake level control structures, where the maintenance will be conducted without drawing down the lake or impoundment and is limited to minor surface repairs; the repair or replacement of stop logs, racks, and gates; or surface stabilization of earthern embankment type structures where the work is above the existing water surface.

(g) Docks and pilings of a marina having a current operating permit from the department.

R 281.816 Minor project categories.

Rule 6. Upon receipt of an application for a permit for any of the following minor projects, the department may act upon the application as provided in subsection (6) of section 6 of the act:

(a) Noncommercial piers, docks, and boat hoists which meet all of the following design criteria:

(i) The length or size of the proposed structure is not greater than the length or size of similar structures in the vicinity and on the watercourse involved.

(ii) Free littoral flow of water and drift material is provided for.

(iii) Clean, nonpolluting materials will be used for the construction.

(iv) A structure is a single structure appurtenant to the applicant's upland. Multiple structures or structures additional to existing structures shall not be considered under this project category.

(b) Spring piles and pile clusters which meet the following design and proposed criteria:

(i) The location, number, and purpose for placement is usual for such projects in the vicinity and watercourse involved.

(ii) All piles and other materials used in their placement are clean, nonpolluting materials.

(iii) The location and placement will not create an obstruction to navigation.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) The proposed structure fulfills an identifiable need for erosion protection, bank stabilization, or the protection of, or improvements on, uplands.

(ii) The structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials.

(iii) The structure is not more than 100 feet in length and is located in an area on the waterbody where other similar structures already exist.

(iv) The placement of backfill or other fill associated with the construction does not exceed an average of 1 cubic yard per running foot along the shoreline and a maximum of 100 cubic yards.

(v) The structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Filling for the creation and improvement of swimming areas and beaches, the restoration of existing permitted fills, fills placed incidental to construction of other structures, and fills that do not exceed 100 cubic yards as a single and complete project which meet both of the following design criteria:

(i) The fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(ii) Fill for the improvement of swimming areas or beaches, utilizing clean sand or gravel, will not exceed a blanket depth of 6 inches and will not be placed in a water depth exceeding 4 feet.

(e) Dredging for the maintenance of previously dredged areas or dredging of not more than 100 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted.

(ii) All dredging spoils will be removed to an upland site exclusive of wetland areas.

(f) Construction of bridges and culverts, whether new, replacement, or temporary, and the removal of bridges or culverts with the restoration of the crossing site which meet all of the following criteria.

(i) The bridge or culvert structure proposed is of a type and design, including certifications, described by 1 of the following:

(A) The proposed structure has a waterway opening area of not more than 25 square feet and the waterway opening approximates or exceeds the cross-sectional area of the channel.

(B) The proposed structure is a temporary stream-crossing structure which is programmed for removal and site restoration within 2 years from the date of permit issuance and which has a waterway area that approximates or exceeds the cross-sectional area of the channel.

(C) The proposed structure is a replacement stream crossing which fully spans the bottomlands and the owner or the owner's engineering consultant certifies that the proposed structure is of equal or greater hydraulic capacity; that deletion of auxiliary waterway openings is not planned; and that available information does not indicate the presence of a harmful interference.

(D) The proposed structure is a new stream-crossing structure which fully spans the bottomlands, the design of which is certified by a registered professional engineer to pass the 100-year flood as determined by the department without causing harmful interference, which certification includes hydraulic waterway design calculations.

(E) The proposed structure is a new or replacement structure to be placed on an upland channel or similar artificially constructed waterway where consideration for the passage of flow is not a significant design factor.

(F) The proposed structure is an extension of an existing bridge or culvert where the total extended length does not exceed 24 feet.

(ii) The structure will provide sufficient underclearance to facilitate passage of watercraft which could be expected to navigate the waters involved.

(iii) The total volume of fill to be placed below the ordinary high-water mark for placement of the structure does not exceed 200 cubic yards.

(iv) The removal of existing structures will be conducted without dropping demolition materials in the watercourse, and haul roads, work pads, or other structures to facilitate the removal will not be placed below the ordinary high-water mark.

(g) Watercourse crossings by utilities, pipelines, cables, and sewer lines which meet all of the following design criteria:

(i) A minimum of 30 inches cover will be maintained between the top of the cable or pipe and the bed or stream or other watercourse on buried crossings.

(ii) The method of construction proposed is the least disturbing to the environment employable at the given site.

(iii) Any necessary backfilling will be of washed gravel.

(iv) The diameter of pipe, cable, or encasement does not exceed 20 inches.

(h) Dredging and construction or enlargement of ponds, lagoons, ditches, stormwater management basins, and similar artificial waterways when the proposed activity meets both of the following criteria:

(i) The artificial watercourse will have a surface area of less than 5 acres, with no direct connection to an existing inland lake or stream.

(ii) The resulting spoils will be placed on an appropriate upland site in a manner which will not impair flood flows.

(i) Structural repair of man-made structures which meets all of the following design and purpose criteria:

(i) The repair will not alter the original use of a currently serviceable structure.

(ii) The repair will not adverely affect public trust values or interests, including navigation, fish migration, and water quality.

(iii) Any materials used for repair will be of nonpolluting materials.

(j) Fish habitat structures which meet all of the following criteria:

(i) The structures are placed so as not to impede navigation or create a navigational hazard.

(ii) The structures are permanently anchored to the bottomlands.

(iii) The structures are constructed of nonpolluting materials.

(iv) The structure placement has the written authorization of the riparian owner and the appropriate department district fisheries biologist.

(k) Scientific structures, such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, which meet all of the following design and purpose criteria:

(i) The structures do not impede navigation or create a navigational hazard.

(ii) The devices are constructed of nonpolluting materials.

(iii) The placement of any scientific structure has the written authorization of the riparian owner.

(l) Navigational aids which meet either of the following criteria:

(i) The aids are approved by the United States coast guard.

(ii) The aids are approved under Act No. 303 of the Public Acts of 1967, as amended, being §281.1001 et seq. of the Michigan Compiled Laws.

(m) Extension of a project under a current permit which will not result in any damage to natural resources.

R 281.817 Minor drainage structures and facilities.

Rule 7. The following structures are minor drainage structures and facilities which do not require a permit pursuant to section 4(f) of the act:

(a) Cross road culverts which serve only to equalize the existing water surfaces at the ends of the culvert.

(b) Cross road culverts constructed to continue the existence of drainage courses other than inland lakes and streams.

(c) Roadside ditches which serve to convey storm water runoff from the highway right-of-way without materially changing the drainage pattern which existed prior to the construction of the ditches.

(d) Standard appurtenances for storm water runoff facilities, such as manholes, catch basins, and headwalls.

(e) Cross road culverts constructed for the continuation of a drainage course where the drainage area above the culvert is less than 2 square miles.

R 281.818 Mainstream portions of natural watercourses.

Rule 8. The following legally established drains are deemed to be mainstream portions of natural watercourses and are not subject to permit exemption pursuant to section 4(g) of the act.

(a) Grand River basin (Jackson county).
Point of beginning: The intersection of Liberty and Milwaukee streets in the city of Jackson.
Point of ending: The west line of Rives township, Jackson county, 1,165 feet south of the northwest corner of section 7, T1S, R1W.

(b) Rogue River basin (Newaygo and Kent counties).
Point of beginning: At its intersection with the south line of section 2, T10N, R12W, Tyrone township, Kent county.
Point of ending: At Ransom lake in section 12, T11N, R12W, Grand township, Newaygo county.

(c) Shiawassee river trunk drain (Saginaw county).
Point of beginning: At the junction of the Shiawassee river and the Flint river in section 9, T11N, R4E, James township, Saginaw county.
Point of ending: At a point in mid-channel of said river in section 34, T10N, R3E, Charles township, Saginaw county, approximately 0.2 mile from the south line of the section.

(d) Clinton river drain.
(i) Macomb county
Point of beginning: The Market street bridge in the city of Mount Clemens.
Point of ending: The Red Run drain outlet.
(ii) Oakland county
Point of beginning: At the intersection with Orchard Lake road on the north line of section 32, T3N, R10E, city of Pontiac.
Point of ending: At the intersection with Auburn road on the east line of section 27, T3N, R10E, city of Pontiac.

(e) Black river drain (Sanilac county).
Point of beginning: AT the south line of section 6, T10N, R16E, Lexington township, Sanilac county.
Point of ending: At the north line of section 1, T12N, R14E, Custer township, Sanilac county.

(f) Maple river drain (Gratiot and Shiawassee counties).
Point of beginning: At Highway US-27, section 28, T9N, R2W, Washington township, Gratiot county.
Point of ending: At its upper terminus in section 3, T6N, R3E, Shiawassee township, Shiawassee county.

(g) Little Thornapple river drain (Barry and Ionia counties).
Point of beginning: At the south line (M-43) of section 13, T4N, R8W, Carlton township, Barry county.
Point of ending: At the outlet from Tupper lake where the outlet enters Jordan lake in section 34, T5N, R7W, Odessa township, Ionia county.

(h) Kawkawlin river drain (Bay county).
Point of beginning: Mouth of river on Saginaw bay, in section 33, T15N, R5E, Bangor township, Bay county.
Point of ending: At the intersection with Euclid avenue on the west side of section 5, R14N, R5E, Bangor township, Bay county.

(i) St. Joseph River drain (Hillsdale county).
Point of beginning: At the intersection of the line between sections 8 and 9, T8S, R4W, Camden township, Hillsdale county.
Point of ending: At a point 715 feet southeast of the line between sections 25 and 26, T8S, R4W, Camden township, Hillsdale county.

(j) East Branch of St. Joseph river drain (Hillsdale county).
Point of beginning: At the intersection of the line between sections 33 and 34, T7S, R1W, Pittsford township, Hillsdale county.
Point of ending: At the intersection with the state line.

(k) Pigeon river drain (Huron county).
Point of beginning: At the mouth of the Pigeon river on Saginaw bay in the village of Caseville, including the mouth of the Pigeon river cut-off drain.
Point of ending: At a point 3/4 of a mile south of Kinde road in section 1, T17N, R10E, Caseville township, Huron county.

R 281.819 Marina operating permit application; criteria for processing.

Rule 9. In acting upon an application for marina operating permit, the department shall not issue a permit unless the department determines that the facility meets all of the following criteria:

(a) The facility does not unreasonably affect the public trust or riparian interests.

(b) Ingress and egress are within the riparian owner's interest area.

(c) The recreational watercraft-carrying capacity of the waterbody upon which the facility is located is not exceeded by the increased use brought about by the marina, and the increased use attributable to the marina will not create congestion or safety problems or aggravate existing recognized congestion or safety problems.

(d) The construction and operation of the facility will not destroy or adversely impair the use of the waters or natural resources of the state.

(e) The facility is not aesthetically displeasing and conforms to similar structures and activities in the area on similar watercourses.

(f) The facility has adequate parking space to accommodate anticipated users.

(g) The facility is in compliance with local zoning ordinances. If the facility is not in compliance, and the local unit of government having proper jurisdiction notifies the department at the time of public notice objecting to the issuance of a permit, the department shall withhold permit issuance for 30 days from the date of expiration of public notice. If the local unit of government does not file an action to restrain operation of the facility in a public forum within the specified 30-day time frame, the department may issue a permit for marina operation if all other criteria are met.

(h) The structures do not constitute a safety or navigational hazard and are in good repair.

(i) The potential adverse environmental effects of operating a marina have been determined pursuant to R 281.814.

R 281.821 Conditional permits.

Rule 11. (1) The department may issue a conditional permit when emergency conditions warrant a project to protect property or the public health, safety, or welfare.

(2) Conditional permits shall be issued only under emergency conditions. Upon a determination by the department that a project would be in the best interest of both the applicant and the public, the department may declare an emergency condition to exist and issue a conditional permit. Physical and economic factors shall be considered in determining whether an emergency condition exists.

(3) Bridge or culvert repairs or replacements may be made under emergency conditions upon submitting an application and receiving a conditional permit. A written report which includes details of the needed emergency repairs shall accompany the application. The department shall give such applications timely response.

R 281.823 Bridge construction procedures.

Rule 13. (1) Each construction project should be completed so as to prevent erosion and subsequent damaging siltation of streams or lakes. The area of erodible land exposed to the elements by the grading operations at any one time shall be controlled by the owner's engineer and the duration of such exposure prior to final trimming, finishing or maintenance of the area should be as short as practical.

(2) Gravel or stone, consisting of durable particles of rock and containing only negligible quantities of fines, shall be used for construction pads, haul roads and temporary roads in or across streams.

(3) When required by the department, a sedimentation basin shall be constructed downstream from the work site to trap silt and sediment resulting from construction operations. A detailed sketch of a sedimentation basin is available on request from the department. The collected silt and sediment shall be removed as directed by the owner's engineer and the sedimentation basin removed on completion of the project. As found necessary, the department will assist the owner in the design of a sedimentation basin.

(4) The disturbance of lands and waters that are outside the limits of construction as staked shall be avoided.

(5) The owner shall give written notice 5 days prior to the start of work.

R 281.824 Specifications; bridge and culvert projects.

Rule 14. (1) The department of transportation standard specifications (1970 or later editions) listed in this rule are necessary for the protection of natural resources. These specifications are intended to cover all construction and related work as it affects natural resources found in and adjacent to work areas.

(2) General coverage in proposal or specifications as follows:

(a)	Protection and restoration of property	Sec. 1.07.07 Std. Specs.
(b)	Forest protection	Sec. 1.07.13 Specs.
(c)	Control of water pollution and siltation	Sec. 1.07.14 Specs.
(d)	Borrow areas	Sec. 2.08.01 Std. Specs.
(e)	Borrow area restoration	Supp. Specs.
(f)	Channel excavation	Sec. 2.09.05 Std. Specs.

(3) The following are additional department of transportation standard specifications covering measures for prevention of erosion and siltation:

(a)	Topsoil surface	Sec. 6.53 Std. Specs.
(b)	Mulching	Sec. 6.54 Std. Specs.
(c)	Seeding	Sec. 6.52 Std. Specs.
(d)	Fertilizing	Sec. 6.52 Std. Specs.
(e)	Riprap (plain-heavy)	Sec. 6.01 Std. Specs.
(f)	Cobble gutter (plain-grouted)	Sec. 6.03 Std. Specs.
(g)	Slope planting	Sec. 6.55 Std. Specs.
(h)	Dune grass planting	Sec. 6.56 Std. Specs.
(i)	Sodding	Sec. 6.51 Std. Specs.
(j)	Slope protection	Sec. 6.01 Std. Specs.
(k)	Crushed limestone surface	Supp. Specs.
(l)	Paved ditches	Supp. Specs.
(m)	Rye seeding	Sec. 6.52 & Supp. Specs.

(4) The state highway design office has information for the design engineer on control of erosion through sodding; water control by catch basins, downspouts, concrete shoulders, and spillways; borrow restoration, particularly adjacent to highway limits; and seeding, mulching, and plantings. The following standard plans are available:

(a)	Special outlet headwalls, etc.	E-4-A-9F
(b)	Sodding, etc.	E-4-A-10D
(c)	Paved ditches, etc.	E-4-A-110C
(d)	Shoulder gutter and spillway	E-4-A-128

R 281.832. General requirements; all size pipelines and conduits.

Rule 22. (1) The owner or his agent shall submit general construction plans, including a route map and stream crossing specifications. These general plans and related documents shall be submitted not later than 3 months prior to the solicitation of bids and preferably the route plans should be reviewed with the department prior to acquisition of rights of way. Five copies of construction plans and specifications shall be submitted with the application.

(2) A pre-construction meeting shall be held if deemed necessary by either the department or the owner in order to thoroughly aquaint all concerned parties with the measures which must be taken to minimize erosion and siltation and properly protect the natural resources in the project area.

(3) Ten days written notice shall be given to the department by the owner before the beginning of work.

(4) The owner shall take all necessary steps to prevent damage to fish and game habitat and to preserve the natural resources of the state. Excavation shall be carried out so as to minimize discharge of damaging material into any stream, lake or reservoir.

(5) The work of clearing, scalping, grading, slope erosion protection, ditching, backfilling and final clean-up within 50 feet of streams, lakes and reservoirs shall be completed within as short a period as reasonably possible in order to minimize erosion occurring from wind and precipitation.

(6) Trench excavation on any one spread shall be stopped when 10,000 feet remain open, except as authorized in the permit issued by the department.

(7) Replacing of bank plugs and grading of stream banks within 50 feet shall be accomplished immediately following pipe laying.

R 281.833 Special requirements.

Rule 23. Certain information and special protective measures may be required by the department at specified stream crossings. The following items, if required shall be outlined by the department to the owner either prior to or in the permit issued covering the job.

(a) Three days oral notice of crossing, ditching or blasting within 50 feet of certain stream crossings.

(b) Construction work across certain stream crossings may be prohibited within 3 days just preceding, or during, Memorial day, Independence day or Labor day holiday periods.

(c) Installation of approved warning signs may be required at certain stream crossings, to be located as directed by the department, to provide notice of pipeline crossing construction or excavation and shall be maintained by the owner until removal is authorized by the department or until the water crossing bed has been restored to normal.

(d) Soil data on certain water crossings may be requested to determine the nature of soil to be encountered and to delineate possible trouble areas with regard to trench excavation limits. A plan and profile sheet of the water crossing may be requested by the department where soil data indicates a need therefor.

(e) Temporary sedimentation basins or cofferdams may be required for certain water crossings. In such case, the provisions for sedimentation basins hereinafter set forth shall apply.

R 281.834 Sedimentation basins and cofferdams.

Rule 24. (1) Sedimentation basins or cofferdams, where required, shall be constructed prior to any other work at the site crossing. A detail sketch of a sediment basin is available on request from the department.

(2) Temporary weirs or cofferdams are to be removed, including any materials trapped by them in the control of siltation, within 2 weeks of final clean-up. Intermittent removal of silt or sand during construction may be required for proper operation of sedimentation basins. In any event, the sedimentation basins shall be cleaned before removal.

(3) Weirs shall be constructed of continuous interlocking steel sheeting except where other substitute materials are authorized by the department. When specified by the department, a detail sheet of the weir installation will be furnished by the owner.

(4) The owner is responsible for securing the necessary approval of private land owners where temporary additional right of way or easement is necessary to construct and operate a settling basin. An easement is not required in locations where the crossing is made on state owned lands.

R 281.835 Haul roads.

Rule 25. (1) Temporary haul roads crossing streams shall be constructed of coarse aggregate with culverts or logs or both laid parallel to the stream. Only coarse aggregate or metal or wood mats may be used as a running surface on log construction. The side slopes shall be protected with permanent riprap, as specified in Rule 26, up to a level 2 rows above the normal water level and over the ends of the culverts.

(2) Permanent haul roads crossing streams (roads that are to be left in place at the request of the property owner) will require a permit under Act No. 245 of the Public Acts of 1929, as amended. Plans and specifications for such crossing shall be prepared by a registered professional engineer and submitted by the property owner along with the application for a permit to construct the facilities.

(3) Both temporary and permanent haul roads shall have adequate top width to permit passage of all construction equipment without sloughing of side slopes.

(4) Culverts of adequate size and length, approved by the department, are required in both temporary and permanent haul roads.

(5) Fording of streams is permitted only where it will not cause either erosion or siltation.

R 281.836 Trench excavation.

Rule 26. (1) All pipe trenches shall be excavated to a depth which will provide a minimum cover of 30 inches from the bed of the stream to the top of the pipe. This minimum cover shall control except where special conditions at certain water crossings may warrant a lesser or greater depth of cover.

(2) Appropriate trench excavation methods shall be employed to minimize material from the pipe trench flowing into the stream, giving due consideration to the soil, terrain, cover, side slopes and weather conditions involved.

(3) The pipe trench excavation shall stop some distance from the stream to leave a protective plug of 10 to 20 feet of unexcavated material at each bank. The plugs shall be left in place until the pipe laying operation across the stream has begun. Bypassing of water in the trench to the side by diversion ditches or by pumping may be required at certain water crossings.

(4) The trench in the stream bed may be backfilled if the material used does not cause excessive siltation. Stone, coarse aggregate or washed gravel shall be used where backfill is required and where use of existing material will cause excessive siltation.

(5) Pumping or draining from trench excavations shall be made on either side of the pipeline and not into the waters of the state. The owner shall secure the necessary approval of private land owners before discharging water from the trench excavation onto private lands.

R 281.837 Stream bank protection; pipeline and utility projects.

Rule 27. (1) Following the installation of the pipeline or cable, all work areas along or across streams or lakes shall be restored immediately and the exposed beds and banks shall not remain unprotected for more than 7 days, except where subsequent permission is provided for a pumping and testing operation.

(2) All disturbed stream banks shall have a finished slope no steeper than 1 on 2 (1 vertical to 2 horizontal) to prevent sloughing until stabilized by vegetative cover or riprap. The 1 on 2 slope shall be graded up and back to the high-water line. If the top of the natural bank is more than 3 feet above the high-water line, a minimum 10-foot berm shall be constructed at this level and the remaining slope shall be constructed upward parallel with, or on a flatter slope shall be constructed upward parallel with, or on a flatter slope than, the original natural bank.

(3) All raw soil exposed above the permanent riprap protection line shall be sodded, riprapped, or seeded, fertilized, and mulched. Temporary riprap (sandbags) may be used.

(4) Mulch shall consist of 3 inches of straw or other approved material. Mulch on slopes greater than 10% shall be held in place by a spray of asphalt type SS-1S emulsion mixed with an equal amount of water.

(5) Seeding and fertilizing rates shall be as follows:

(a) Fertilizer per acre: 200 pounds of 6-24-24.

(b) Seed per acre: 10 pounds Kentucky 31 fescue, 3 pounds Birdsfoot trefoil, and 3 pounds white clover.

(6) Permanent riprap shall be placed from the bed of the channel to 3 feet above the normal high-water line or to the top of the bank. Permanent riprap shall be a 5-to-1 mix of sand to cement in burlap or canvas bags, sackrete, broken concrete, man-size rock, or other material approved by the department. Sackrete, where used, shall be transferred to burlap or canvas bags.

(7) Deflecting dikes, which are reinforced by 1 row of sandbags, shall be used to divert runoff and minimize slope erosion from steep slopes adjacent to water crossings where the contributing runoff could be great enough to cause slope erosion. Water shall be diverted to undisturbed areas adjacent to the right-of-way.

(8) Deflecting dikes shall be placed along the top of all stream banks where the entire slopes is not protected with riprap. Deflection dikes shall also be placed at the top of, and at 100-foot intervals or less on, slopes greater than 20%.

R 281.838 Final clean-up.

Rule 28. Final clean-up shall consist of removing the temporary haul road across the stream; reshaping the stream as nearly as possible to its original configuration, width, depth and bottom material; protection of the stream banks as specified in Rule 27; and removing all construction material and debris from the crossing site, including any material and debris downstream from the site as a result of the pipeline construction.

R 281.839 Use of water for cleaning and testing pipeline.

Rule 29. (1) The cleaning and testing procedure shall be conducted in a manner that will minimize potential problems which might affect fish and game habitat or other natural resources of the state.

(2) Water used for filling the pipeline may be taken from a lake, stream or reservoir, if a written request is made to the department and the requisites listed below are met. In addition, location of points for discharge of cleaning and testing water shall be approved in advance by the department:

(a) Erosion or siltation are to be minimized.

(b) Appropriate releases from the affected riparians shall be obtained where the rate at which water is taken to fill a pipe is more than 30% of the flow at the time or if a state owned lake or reservoir is exhausted beyond 15% of the total volume.

(c) Water containing detergent or rust from the pipe itself shall be discharged so as to prevent its flowing into any stream, lake or reservoir except where a special request for this specific procedure is made.

(d) Water used for hydrostatic testing shall be discharged in a manner and at a location which minimizes erosion or siltation to any stream or public reservoir, and which does not result in thermal pollution of any trout waters.

(e) The rights of downstream riparians shall be recognized and observed regardless of approval or a no objection statement from the department.

R 281.841 Bulkhead lines.

Rule 31. (1) An application for the establishment of a bulkhead line pursuant to section 9 of the act by a local unit of government shall include a resolution which is adopted by the governing body of the local unit of government making application and which requests the department to hold a public hearing for the purpose of considering establishment of a bulkhead line. The hearing shall be held in the applicant's jurisdiction pursuant to section 6 of the act.

(2) An ordinance adopted by a local unit of government to exercise control landward of an established bulkhead line shall be consistent with the act and these rules. The local unit of government shall submit a proposed ordinance to the department for review and approval prior to formal adoption by the local unit of government. A copy of an application received by a local unit of government pursuant to its ordinance shall be forwarded to the land resource programs division of the department prior to the issuing of a permit. Variance from the ordinance shall not be granted unless approved by the department.

(3) When establishing a bulkhead line on its own application, the department may retain jurisdiction over the area landward of the bulkhead line to the ordinary high-water mark.

R 281.842 Notification of pending applications.

Rule 32. The list prepared and mailed by the department pursuant to subsection (1) of section 6 of the act shall include permit applications received during each week. The list shall be mailed biweekly to each subscriber. The list shall include all of the following information:

(a) Process number.
(b) Applicant's name and address.
(c) Watercourse.
(d) Location of proposal by town, range, and section.
(e) Project description.

R 281.843 Hearings.

Rule 33. (1) The department may hold a public informational hearing when a proposed project appears to be controversial or when additional information is desired prior to action by the department.

(2) All other hearings shall be conducted pursuant to subsection (2) of section 11 of the act.

(3) All persons who receive notification under subsection (1) of section 6 of the act shall receive not less than 10 days' prior notification of any hearings held under the act.

R 281.844 Notification and inspection of completed project.

Rule 34. (1) The applicant shall notify the land resource programs division of the department within 10 days of completion of the project to facilitate scheduling of final inspection.

(2) The department shall schedule its field inspection of a completed project only when weather conditions will permit a thorough inspection of the project.

R 281.845 Special conditions.

Rule 35. Whenever vertically upward bottomland displacement, also called surcharge, results from filling or other activity immediately adjacent to the displacement area by the applicant, he/she shall be responsible for its timely removal at the direction of the department.

R 281.846 Rescission.

Rule 36. The rules of the department entitled "Inland Lakes and Streams" being R 281.801 to R 281.810 of the Michigan Administrative Code and appearing on pages 4120 to 4122 of the 1967 Annual Supplement to the Code, are rescinded.

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