



WATER RESOURCES DIVISION POLICY AND PROCEDURES

NUMBER: WRD-008
TITLE: PART 353 ACTIVITIES NOT CONSTITUTING A CONTOUR CHANGE OR USE
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ISSUE:

To identify activities generally considered to not be a "contour change" or "use" within the meaning of Sections 35301(a) and (i) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), respectively, requiring a permit under Part 353, Sand Dunes Protection and Management, of the NREPA.

DEFINITIONS:

"Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in Part 637, Sand Dune Mining, of the NREPA.

"Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in Part 637.

POLICY:

Part 353 regulates "contour changes" and "uses" in critical dune areas in recognition of the "significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits" that these areas provide (MCL 324.3502[a]). The Legislature has mandated that the "use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured" (MCL 324.35302[c]). The model zoning plan provided for in Sections 35312 to 35324 of the NREPA identifies further specific regulations in critical dune areas.

In this statutory context, the following activities are considered to generally not significantly alter the physical characteristics of a critical dune or constitute a contour change under Part 353, and therefore do not constitute a "use" requiring a Part 353 permit:

1. Construction using handheld tools of stairways, boardwalks, and/or trams including the entry/exit platforms that are elevated above grade to a height sufficient to allow sand movement, five feet wide or less, have no roof or walls, and will disturb vegetation only within the footprint of the stair/boardwalk/tram system. This does not include the use of wheeled or tracked self propelled tools. Stairways, boardwalks, trams, and decks placed lakeward of the ordinary high water mark of the Great Lakes may require a permit under Part 325, Great Lakes Submerged Lands, of the NREPA.

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2. Removal of trees that are threatening a structure, utility line, or human safety, provided that the trees are removed in such a manner to not cause a contour change on the surrounding dune, and the stump and root system are left in place to minimize erosion.
3. Installation of a pole or post installed by using handheld tools. Some examples include a flag pole, mailbox, sign, utility pole, light pole, birdhouse, birdfeeder, basketball hoop, and yard art.
4. Replacement of an existing deck or patio, in-place and in-kind, including new or additional posts by using handheld tools; or conversion of a patio to an elevated deck, not to exceed the existing area of impact.
5. Installation of a fence, but not a retaining wall, utilizing hand held tools provided:
 - The fence follows the existing grade.
 - Fences are constructed to be open to allow wind and sand movement; examples of such types of fences would be split rail or cyclone. Fences placed lakeward of the ordinary high water mark of the Great Lakes may require a permit under Part 325.
 - Soil movement is limited to that necessary to place the fence posts.
6. Placement of a temporary snow or sand fence. Fences placed lakeward of the ordinary high water mark of the Great Lakes may require a permit under Part 325.
7. Planting a native tree or other native vegetation using handheld tools without changing existing grades or contours.
8. Excavation with handheld tools for the purpose of access to an existing residential septic system for pump out of the system. Replacement of an existing septic system requires a permit under Part 353.
9. Excavation with handheld tools for the purpose of replacement or repair of existing below grade residential utility lines.
10. Regrading or repairing of a driveway and/or existing parking area that was previously permitted under Part 353 or that are in compliance with Section 35306 or adding additional material such as gravel, concrete, asphalt, or crushed rock to an existing driveway without changing the size of the driveway or contours outside of the driveway footprint.
11. Grading and/or removal of newly wind deposited, unvegetated sand located landward of existing structures to clear an access to existing structures, driveways, hardened parking areas, roads, and walkways provided excess sand is not disposed lakeward of the natural ordinary high-water mark of the Great Lakes, in regulated wetlands, floodplains, or unvegetated areas in Critical Dune Areas that are not on steep slopes. This does not apply to the removal of newly wind deposited, unvegetated, sand located lakeward of structures.
12. Removal of invasive species utilizing handheld tools.

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13. Replacement of an existing retaining wall permitted under Part 353 or in existence prior to the effective date of Part 353 of less than six feet in height, in place, with no impacts outside the footprint of the existing wall.

Approved: William Creal
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Date: 7-26-11

Last Reviewed By: _____
Name and Title

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