DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

UTILITIES AND PUBLICLY PROVIDED

FACILITIES IN DESIGNATED NATURAL RIVER

AREAS

(By authority conferred on the natural resources commission by section 15 of Act No. 231 of the Public Acts of 1970, being S281.775 of the Michigan Compiled Laws)

R 281.301 Definitions.

Rule 1.

(1) As used in these rules:
- (a) "Act" means Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.
- (b) "Adopted natural river plan" means the river management plan adopted by the commission at the time of designation.
- (c) "Applicant" means a person, company, or unit of government applying for project approval pursuant to these rules.
- (d) "Commission" means the natural resources commission.
- (e) "Department" means the department of natural resources.
- (f) "Electric transmission line" means those conductors which operate above 30 kv, their necessary supporting or containing structures located outside of buildings, and the right-of-way used for transmitting a supply of electric energy.
- (g) "Natural river" means a river which has been designated by the commission for inclusion in the wild, scenic, and recreational rivers system.
- (h) "Natural river area" means the river, its bed, banks, and all lands lying within 400 feet of the river's edge of the designated river.
- (i) "Natural vegetation strip" means an area not more than 100 feet wide on either side of, and parallel to, the river, where native vegetation is maintained to enhance the natural character of the river.
- (j) "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 a result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.
- (k) "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.

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(l) "Pipeline" means any pipeline, including flow lines and transmission lines used to transport oil, gas, brine, sewage, or water, or conduits for electricity or communications
(m) from one facility to another, including the right-of-way within which such facilities are located.
(n) "Publicly provided facility" means a facility provided by a public agency, including a federal, state, county, township, municipality, or other agency.
(o) "River's edge" means ordinary high-water mark.
(p) "Road" means any right-of-way that is provided for public motorized traffic.
(q) "Utility" means any commercial entity which provides a public service, such as electric, communications, sewage, oil, gas, or water service.

History: 1979 AC.

R 281.302 Plans; application for approval; approval or denial within 60 days; exception.

Rule 2. Plans for construction, enlargement, and site or route location of all utility pipelines and transmission lines, roads and road rights-of-way, publicly provided recreation facilities, access sites, and public water management projects within a natural river area shall be approved by the department. An application for the approval of such plans shall be submitted by the applicant, in writing, to the department. Approval or denial by the department shall be made within 60 days of receipt of the complete application, except where a public informational meeting is held pursuant to R 281.304(3).

History: 1979 AC.

R 281.303 Application for approval; contents.

Rule 3.

(1) An application shall include all of the following:
(a) Plans showing the proposed project or right-of-way in relation to the natural river area, the adjacent shoreline property and existing land uses within 500 feet of the proposed project and existing structures, existing utilities, pipelines, roads, and contour information depicting the topography of the site.
(b) Plans showing prudent, feasible alternative routes or locations, and the reasons the route or site on the application was selected.
(c) The names and addresses of riverfront property owners within 500 feet of the proposed project as shown on the current tax assessment rolls.
(d) Other information which the department determines is necessary to complete an assessment of the proposed project.

History: 1979 AC.

R 281.304 Notice of application; permit application; copies; pre-filing conference; public informational meeting.

Rule 4.

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(1) Within 10 days of the receipt of a completed application, the department shall give notice of the application to all riverfront property owners within 500 feet of the proposed use, as shown on the current tax assessment rolls, the respectiveclerks of the county and township in which the proposed use is to be located, the local soil erosion and sedimentation control enforcing agency, the local soil conservation district, and the local watershed council organized under either Act No. 253 of the Public Acts of 1964, being S323.301 et seq. of the Michigan Compiled Laws, or Act No. 200 of the Public Acts of 1957, being S123.631 et seq. of the Michigan Compiled Laws, if any.
(2) An applicant is encouraged to have a pre-filing conference with representatives of the department and other appropriate state and local officials prior to formal submission of their application.
(3) The department may hold a public informational meeting on an application, upon written request of the general public or of 1 of those persons listed in subrule (1), within 30 days of the department's receipt of the complete application, when a proposed project appears to be controversial, or where additional information is desired prior to action by the department. If the department determines a public informational meeting shall be held, it shall be scheduled within 60 days of the department's receipt of a complete application. The department shall make a determination within 30 days following the meeting. All notification requirements of subrule (1) also apply to public informational meetings.
(4) The department shall coordinate and take into consideration any responses or constructive suggestions offered by the general public and those agencies and persons identified in subrule (1).

History: 1979 AC.

R 281.305 Application; review.

Rule 5.

(1) The following general considerations shall be weighed when reviewing an application:
   (a) Effect on the environmental factors and ecological systems involved, such as effect on adjacent lands, waters, aesthetics, wildlife, fisheries, recreational, floodplain, vegetation, and historic and archaeological values.
   (b) Cumulative effect upon the natural river area from similar potential developments.
   (c) Alternatives available to the applicant.
   (d) Secondary effects likely to be caused or encouraged by the project, such as off-road vehicle use, horseback riding, or additional foot access which may lead to noise, erosion, water pollution, or disruption of aesthetic qualities.
   (e) Economic factors relating to costs of right-of-way acquisition, construction, and maintenance, and the need for additional facilities or resource protection measures in the approximate area in the future.
   (f) All other factors relevant to the purposes and provisions of these rules.
(2) In addition to the general considerations, the following specific requirements shall apply:
   (a) Approval for rights-of-way shall be based upon the following:

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(i) Alternative routes available to the applicant.
(ii) Proximity of existing rights-of-way, which the proposed facility could share or be located adjacent to.
(iii) The narrowest width right-of-way necessary to facilitate construction and maintenance of the pipeline, transmission line, or road shall be used. The forest management division guidelines, utilities, pipelines, and communication structures on state land, which are available by writing the Forest Management Division, Department of Natural Resources, P.O. Box 30028, Lansing, Michigan 48909, shall be followed.
(iv) Capacity of new pipelines, transmission lines, and roads to accommodate projected or anticipated future needs in that area to reduce the need for additional future crossings.

(b) Approval of a plan for site location and design of publicly provided recreation facilities, access sites, publicly developed water management projects, or other structures shall be based upon all of the following:
(i) The adopted natural river plan.
(ii) Site location shall be in accordance with the adopted natural river plan.
(iii) A site plan shall be developed so as to take advantage of existing topography and vegetation to minimize the impact of facilities on the natural character of the area.
(iv) Alteration of existing topography shall be kept to a minimum, as provided for in the approved site plan.
(v) Removal of trees, shrubs, and other vegetation in the natural river area shall be in accordance with the adopted natural river plan.
(vi) A plan shall incorporate the use of materials that blend with the natural setting. Dark roof areas, muted earth tone paints or stains, and low silhouettes are considered desirable.
(vii) A proposed use shall be constructed and maintained so that it does not lead to accelerated bank erosion or degradation of the river resources.
(viii) When replacing an existing bridge or culvert, or constructing a new road crossing over a designated natural river, a structure to accomplish the road crossing shall be designed to maximize the purpose and objectives of the natural river act. In reviewing an application, the department shall consider the anticipated effects of the structure on any portion of the natural river area, and shall consider all of the factors outlined in subrule (1)(a) to (f).

History: 1979 AC.

R 281.306 Construction and maintenance of approved projects; applicable requirements and specifications.

Rule 6.

(1) Construction and maintenance of approved projects shall follow all applicable requirements and specifications set forth in R 281.811 to R 281.846, R 323.1701 to R 323.1714, R 460.511 to R 460.519, R 460.521 to R 460.529, R 460.540 to R 460.548, R 460.588, R 460.852, R 460.865, R 460.1251 to R 460.1422, R460.2804 to R 460.2879, R 323.1311 to R 323.1329, and R 460.14001 to R 460.14999 of the

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Michigan Administrative Code. The forest management division guidelines, utilities, pipelines and communications structures on state land, which are available by writing the Forest Management Division, Department of Natural Resources, P.O. Box 30028, Lansing, Michigan 48909, shall be followed.

(a) The department, in addition to the above requirements, may require other reasonable measures to further protect the natural river environment, including the following as are deemed appropriate and necessary:

(b) Upon reaching the natural vegetation strip during clearing operations for overhead electric transmission line, communication line, and pipeline rights-of-way, tall-growing tree species may selectively be removed. Shrubs, low-growing tree species with a mature height of less than 20 feet, and other vegetation shall be left as natural as possible. Following construction, special measures may be required to discourage damaging off-road vehicle use, enhance wildlife habitat, or protect against soil erosion. The department may require that the right-of-way be left in a rough, ungraded condition and that slash and stumps be scattered over the right-of-way or made into brush piles, if landowner concurrence is obtained.

(c) A single-span stream crossing shall be used whenever possible, which shall be consistent with proper vertical clearance of the wires over the waterway and proper structure height for minimal adverse visual impact. This will result in poles being placed as far landward of the river banks as possible.

(d) If an underground utility right-of-way crosses the natural vegetation strip, only minimal brush and tree removal shall be performed during construction. Following construction, special measures may be required to restore the natural appearance of the area, stabilize river banks, discourage damaging off-road vehicle use, or enhance wildlife habitat. If revegetation is required, native plant materials commonly used in that area, as specified by the department, shall be replanted in the natural vegetation strip. The department may require that the right-of-way be left in a rough, ungraded condition and that slash and stumps be scattered over the right- of-way or made into brush piles, if landowner concurrence is obtained.

(e) Management of trees, shrubs, and other vegetation for maintenance of all rights-of-way shall be done manually in the natural vegetation strip.However, herbicides may be applied by hand to stumps of selectively cut trees in the natural vegetation strip, where establishing and maintaining a low-growing shrub community in this zone will further the objectives of the act. The department may authorize application of selected pesticides to control insect or disease infestations.

(f) The time and method of planting recommended vegetation shall be specified by the department to ensure maximum survival and growth of plant species.

(g) The stream shall be crossed by a method of construction which minimizes disruption to the streambed. Streams should be crossed at the point and time least damaging to fishery resources, and generally at right angles. If aerial crossings are used, they shall be designed to accommodate recreational use of the river in addition to protection of the streambanks.

(2) Materials used for bank stabilization following a river crossing shall maintain and enhance the natural and aesthetic qualities of the natural river area, control bank erosion, restore fish habitat, and discourage damaging off-road vehicle use. Specifications regarding stabilization efforts and revegetation shall be consistent with

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the goals of maintaining stream width as near as possible to the original width, and to provide early revegetation of the area involved.

(3) During construction for a new road or bridge, or reconstruction of an existing road or bridge, strict erosion control measures shall be taken to prevent sediment fromreaching the river. Only minimal clearing of existing vegetation, grubbing, and grading shall be performed in the natural river area. The construction area shall be restored to as natural a condition as possible in the natural river area immediately following construction.

(4) Where bank stabilization is needed to stabilize a bank along a road or at bridge crossings, materials shall be used that insure the maintenance and enhancement of the natural and aesthetic qualities of the natural river area.

(5) All of the following apply to publicly provided recreational and water management projects and access site facilities:

(6) Construction or maintenance of these projects shall follow the recommendations of the adopted natural river plan.

(7) Only minimal removal of existing vegetation within the natural river area shall be performed.

(8) The time and method of planting recommended vegetation shall be specified by the department to ensure maximum survival and growth of plant species.

(9) A plan shall incorporate the use of materials that blend with the natural setting. Dark roof areas, muted earth tone paints or stains, and low silhouettes are considered desirable.

History: 1979 AC.

R 281.307 Hearing; appeals.

Rule 7.

(1) An applicant who is denied approval, or a person who is not satisfied with the decisions of the department, is entitled to a hearing pursuant to sections 71 to 77 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.277 of the Michigan Compiled Laws, and pursuant to R 299.3071 to R 299.3081 of the Michigan Administrative Code.

(2) In making a final decision in a contested case, the commission shall consider those factors listed in R 281.305(1)(a) to (f).

(3) A requested use shall not be granted if the commission determines that the requested use poses substantial hazard to human life, property rights, either public or private, or to the public trust.

History: 1979 AC.

R 281.308 Violations.

Rule 8.

(1) The staff of the department shall investigate an alleged violation and, if it is found that a violation exists, shall order the applicant, in writing, to correct conditions found to be in violation of these rules.

(2) Any construction or a use of land or premises in violation of these rules may be

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subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1979 AC.

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