

	WATER RESOURCES DIVISION FIELD OPERATIONS SECTIONS RESCISSION OF POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Rescinded Date: March 26, 2018	Subject: Part 353 – Review of Shore Protection Structures		Category: <input checked="" type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive
Program Name: Water Resources Program		Number: WRD-FOS-011	Type: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Procedure <input type="checkbox"/> Policy and Procedure
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Water Resources Division (WRD) Policy and Procedure No. WRD-FOS-011, Part 353 – Review of Shore Protection Structures, dated December 28, 1995, is rescinded. The WRD's Shoreline Committee recommends rescinding this policy. This policy is outdated and the previous version of this policy (No. 353-95-02) was rescinded on June 25, 2015; the previous version was inadvertently reformatted to the new template on April 22, 2015, and renumbered as WRD-FOS-011.

SECTION MANAGER APPROVAL:



Jerrod Sanders, Manager
Field Operations Section – Lakes Michigan and Superior

	WATER RESOURCES DIVISION FIELD OPERATIONS SECTION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: December 28, 1995 Revised Date: Reformatted Date: April 22, 2015	Subject: Part 353 – Review of Shore Protection Structures		Category: <input checked="" type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive Type: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Procedure <input type="checkbox"/> Policy and Procedure
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

NOTE: The policy supersedes former Land and Water Management Division Policy Number 353-95-02.

PURPOSE:

The installation of shore protection structures within designated critical dune areas (CDA) is regulated under Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), because it is a developmental activity as well as a contour change. Although these structures often are reviewed under Part 301, Inland Lakes and Streams; or Part 325, Great Lakes Submerged Lands, of the NREPA, the physical environment in a CDA, as well as the statutory requirements under Part 353, require a different level and focus of review. This policy provides insight into specific concerns associated with shore protection devices in a dune environment as well as directions for field and office review of such permit application files

AUTHORITY:

Part 353 of the NREPA; being Sections 324.35301 to 324.35326 of the Michigan Compiled Laws.

DEFINITIONS:

Section 35316(2) of Part 353 requires that a structure be constructed behind the crest of the first landward ridge of a CDA that is not a foredune. Shore protection structures qualify as “structures” under Part 353 for the same reason the “plunge pool” in the Dune Harbor Estates Proceedings was found to be a structure (*Dune Harbor Estates v Michigan Department of Environmental Quality, 2006*). Since Part 353 does not define “structure,” the courts have turned to the common dictionary definitions. The Oxford English Dictionary defines “structure,” in part, as “That which is built or constructed. a. A building or edifice of any kind, esp. a pile of building of some considerable size and imposing appearance.” Black’s Law Dictionary defines “structure” as “Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together.”

A special exception is required for a shore protection structure in a CDA because it is a structure lakeward of the dune crest [see Section 35316(1)(c) in conjunction with Section 35316(2) of Part 353].

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FORMS USED:

Critical Dune Area Project Review Report (EQ 2738).

PROCEDURES:

Step	Who	Does What
1	District Staff	Along with the standard incoming file review, assesses the project to determine whether it falls under multiple jurisdictions of Part 301; Part 323, Shorelands Protection and Management; or Part 325 in addition to Part 353 of the NREPA. If it does, copies of the Joint Permit Application (EQP 2731) should be provided to all involved field representatives. NOTE: All groin applications require public noticing under Part 325.
2	District Staff	If the Part 301/353 district representative is a different individual than the person responsible for Part 353 applications, district representatives should discuss the application while making a permit decision ensuring that a coordinated effort is used to review these applications and that the requirements of all applicable statutes are met. It is recommended that the Part 353 staff act as the primary file manager because of the intricacies involved in the CDA regulations as related to shore protection.

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Step	Who	Does What
3	District Staff	<p>Conducts a site inspection, thoroughly documenting in the project review report (EQ 2738) the property conditions and any reasons the proposed shore protection structure does not meet the requirements of Section 35316 of Part 353, including Section 35316(c) that prohibits a structure lakeward of the crest. The site reviewer should also begin to evaluate the factors to be considered under a special exception evaluation.</p> <p>FIELD REVIEW UNDER PART 353 SHOULD INCLUDE:</p> <ul style="list-style-type: none"> • Contacting Surface Water Assessment Section staff to obtain historic shoreline recession rate information on the property. • Determining the impact to the lakeward facing slope where the project is proposed. Consideration should be given to the amount of excavation required as well as the ultimate height above grade (and impact to wind patterns/sand movement) of the proposed shore protection structures. • Determining if there is existing access to the construction site or if an access road is proposed on slopes greater than 1:3 on the lakeward facing slope. • Identifying and documenting areas having slopes greater than 1:3 that would be impacted by the structure or access road. Impacts include, but are not limited to, filling, excavation, vegetation removal, and/or construction on the slope. • Determining if there is an existing erosion problem on the property and/or in the immediate area and describing the conditions and severity of the problem. • Determining if there are any buildings or other structures on the property in danger as a result of erosion. If there are buildings threatened by erosion, determining if there is sufficient room on the property to move the buildings landward. • Noting any alternative methods of shore protection that could be permitted that would reduce impacts to the CDA as compared to the proposed structure.

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Step	Who	Does What
4	District Staff	If a permit for the proposed project cannot be granted, offers the applicant the opportunity to apply for a special exception in accordance with Section 35317 of Part 353. If the applicant applies for a special exception, staff should employ the standard procedure for special exception review.

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Step	Who	Does What
5	District Staff/ Special Exception Panel	<p>Prepares for a special exception. The special exception panel will determine whether the project qualifies based on its merits. The review will ensure:</p> <ul style="list-style-type: none"> • Human health and safety are protected. • Compliance with applicable local zoning, other state laws, and federal laws. • The protection of the dune resources is ensured. • The problem for which relief is requested is not self-created but rather due to the unique circumstances of the property. <p>The special exception review in these cases will often result in a balance of human health and safety with protection of the dune resource. Shore protection structures are located at the toe of the dune in a windward location that is of critical importance to sand dune development and stability. The shore-perpendicular movement of sand and wind currents that drive this movement will be altered by the placement of a shore protection structure. Furthermore, the placement of shore-parallel structures causes the retention of upland sediments that are critical to the beach's natural morphologic response to increased wave energies and water levels. Such construction adversely impacts the beach's natural ability to protect itself through the attenuation of wave energy. Generally speaking, engineered shore protection structures are not consistent with the statutes' purpose of "...protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured" [Section 35302(c) of Part 353]. For this reason, it is expected that the installation of shore protection structures in CDAs will be strictly limited to those sites where existing buildings are imminently threatened by erosion, with no option for moving the buildings to a safer, landward location.</p>
6	District Staff	<p>If and when a permit is issued, it should be issued under all applicable statutes with appropriate conditions.</p>

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SECTION CHIEF APPROVAL:

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