



WATER RESOURCES DIVISION POLICY AND PROCEDURE

WRD-008 – Part 353 Activities Not Constituting a Use

Effective Date: July 26, 2011

Last Revision Date: November 15, 2019

Distribution: External

ISSUE

To identify activities generally considered to not be a “contour change” or “use” within the meaning of Sections 35301(a) and (k) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), respectively, and, therefore, does not require a permit under Part 353, Sand Dunes Protection and Management, of the NREPA; and to clarify the exemptions allowed for utility work related to Section 35306(4) of Part 353.

Other federal, state, and local laws may apply. Property owners are encouraged to seek assistance from federal, state, and local government agencies to ensure compliance with applicable regulations.

STAKEHOLDER INVOLVEMENT

The Michigan Department of Environment, Great Lakes, and Energy’s (EGLE) Water Resources Division (WRD) public noticed draft policy WRD-008, Part 353 Activities Not Constituting a Use, on March 25, 2013, through April 15, 2013. Comments on the draft document were invited through announcements online in EGLE’s Calendar and by e-mail to individuals and organizations that previously expressed an interest in the Critical Dunes Area Program. The policy was revised to address comments, as appropriate, and a responsiveness summary was prepared. EGLE public noticed a revision to the policy on November 8-14, 2019, to add language regarding the placement of sandbags, made revisions based on the comments received, and issued a revised policy on November 15, 2019.

DEFINITIONS

“Contour change” includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a Critical Dune Area (CDA), 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 CDA 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

The following developmental, silvicultural, or recreational activities generally do not significantly alter the physical characteristics of a CDA or constitute a contour change and, therefore, are not “uses” 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 stairway, boardwalk, or tram system. This does not include the use of wheeled or tracked self-propelled tools.
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 using handheld tools. Some examples include a flagpole, 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 dimensions and area of impact.
5. Installation of a fence, but not a retaining wall, utilizing handheld tools provided:
 - The fence follows the existing grade.
 - The fence is constructed to be open to allow wind and sand movement; examples of such types of fences would be split rail or cyclone.
 - Soil movement is limited to that necessary to place the fence posts.
6. Placement of a temporary snow or sand fence.
7. Planting a native tree or other native vegetation using handheld tools without changing existing grades or contours.
8. Removal of newly wind deposited, unvegetated sand located on existing structures, driveways, hardened parking areas, roads, sidewalks, and boardwalks provided excess sand is not disposed below the ordinary high water mark of the Great Lakes, in regulated wetlands or floodplains, or on slopes with a gradient greater than 25 percent; the crest or vegetated areas within CDAs. This category does not apply to the removal of naturally deposited sand in unvegetated or open dune community.
9. Removal of invasive species utilizing handheld tools.
10. Replacement of an existing retaining wall previously 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.
11. Placement and/or installation of large rocks, poles, or concrete blocks to be used as a barricade for vehicle activity. The rocks, poles, or concrete blocks shall be placed intermittently with ample space between each rock, pole, or concrete block to allow wildlife passage and sand movement, and shall not significantly alter the physical characteristics or decrease stability of the dune feature, require vegetation removal, or be placed on slopes with a gradient of more than 25 percent.
12. Repair an existing residential water well or install a new residential water well. The well site shall not significantly alter the physical characteristics or decrease stability of the dune feature, require

vegetation removal, or be placed on slopes with a gradient of more than 25 percent. Any temporary or permanent access to the well site requires a permit under Part 353. Drilling mud must be managed and cleaned up in such a manner as to not impact the dunes by causing erosion or impacting vegetation.

13. Placement of sandbags to be used for temporary shoreline protection due to high water levels.
- Sandbags shall be considered a temporary protection measure only for the purpose of protecting homes and critical infrastructure (e.g., roads, septic systems).
 - Installation shall be where there is significant erosion or failure of an existing shore protection structure is occurring, and homes and critical infrastructure are at risk.
 - A permit has been obtained under Part 325, Great Lakes Submerged Lands, of the NREPA.
 - The sandbags shall be placed, by hand only, when water levels are at or above the Ordinary High Water Mark (OHWM) of the Great Lake.
 - The sandbags shall be placed at the toe or lakeward of the eroding dune slope.
 - The sandbags shall not be placed lakeward of foredune.
 - The sandbags may only be filled with clean sand from an upland source outside of a CDA or within a CDA from open dune areas (free of vegetation) on the property. Sand from bottomland dredging is not authorized by this activity.
 - The sandbags, including what is used to secure them, made of non-polluting materials is preferred.
 - Sandbag Removal: If the sandbags fail, all debris associated with the sandbag shall immediately be removed from the shoreline and disposed properly. The sandbags shall be removed completely when permanent shore protection is installed with a valid state permit or when water levels recede to below the OHWM. All sand from the sandbags must remain onsite in dune areas free of vegetation or used during construction of the permanent shoreline protection structure.

Pursuant to Section 35306(4) of Part 353, a permit is not required for a use needed to maintain, repair, or replace pipelines, utility lines, and other utility facilities that were in existence on July 5, 1989, or were constructed in accordance with a permit under Part 353. This exemption does not include septic systems or other site-specific water, power, or wastewater treatment systems and applies only if the maintenance, repair, or replacement is completed in compliance with all of the following:

- (a) Vehicles shall not be driven on slopes greater than one-foot vertical rise in a three-foot horizontal plane.
- (b) All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
- (c) Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
- (d) To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
- (e) In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than one-foot vertical rise in a four-foot horizontal plane shall be limited to installation by plowing or directional boring only.
- (f) In the case of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline, the excavation area shall be located on slopes one-foot vertical rise in a four-foot horizontal plane or less.

APPROVING AUTHORITY



Teresa Seidel, Director
Water Resources Division



Aaron B. Keatley, Chief Deputy Director

HISTORY

Policy No.	Action	Date	Title
353-09-02	Original	July 31, 2009	Activities Not Constituting a Use Under Part 353
WRD-008	Revised	July 26, 2011	Part 353 Activities Not Constituting A Contour Change or Use
WRD-008	Revised	February 23, 2015	Part 353 Activities Not Constituting a Use
WRD-008	Revised	November 15, 2019	Part 353 Activities Not Constituting a Use

CONTACT/UPDATE RESPONSIBILITY

Any questions or concerns regarding this policy and procedure should be directed to the Critical Dune Area Program, Field Operations Support Section, WRD, at 517-284-5567.

An EGLE policy and procedure cannot establish regulatory requirements for parties outside of EGLE. This document provides direction to EGLE staff regarding the implementation of rules and laws administered by EGLE. 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. EGLE staff shall follow the directions contained in this document.