



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



AARON B. KEATLEY
ACTING DIRECTOR

May 8, 2023

VIA EMAIL AND CERTIFIED MAIL

Maria Dal Pra, Supervisor
Peaine Township
P.O. Box 91
Beaver Island, Michigan 49782

Roberta Welke, Supervisor
St. James Township
P.O. Box 85
Beaver Island, Michigan 49782

Dear Maria Dal Pra and Roberta Welke:

SUBJECT: Audit of the Critical Dune Area Permits

I am writing to inform you of the results of the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division's (WRD's) audit of the Peaine and St. James Township critical dune zoning ordinances, pursuant to Subsection 35310(3) of Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The audit reviewed the project applications, reviews and subsequent permits issued by the townships. The audit report is enclosed and available online through the MiEnviro Portal at: <https://mienviro.michigan.gov/ncore/external/home>. The MiEnviro Portal site names are 15-CDA Zoning Ordinance-Peaine Twp and 15-CDA Zoning Ordinance-St. James Twp, respectively.

The townships are not in compliance with their ordinances or state law. Specifically:

- The critical dune ordinance posted online is not the version submitted and approved by EGLE;
- Applications did not have all the information required for reviews;
- Projects within 100 feet of the crest did not all have plans prepared by a licensed profession engineer or registered architect; and
- Projects were permitted without the required federal and state threatened and endangered species permit.

The following changes in the township's administration of their ordinances are required or the department may withdraw the approval of the local ordinance and authority will revert to EGLE.

Required Actions: The following deficiencies are expected to be addressed by both townships to continue their assumption of the authority granted under Part 353.

1. The critical dune sections of the ordinance approved by the Department are not the versions posted online.

Action:

- a) Peaine Township – Replace the existing sections 6.15 and 11.9 in the ordinance with the sections approved by the Department. Post the updated document to the township's website and send the updated link to EGLE.
 - b) St. James Township – Provide a copy to EGLE of the current ordinance with the approved sections 6.14 and 11.08 for the regulation of critical dune areas. Post the document to the township's Website and send the updated link to EGLE.
2. Applications did not have the required information to ensure the review of the proposed project meets the criteria stated in the township ordinances.

Action:

- a) Review and revise the application form to request all the information as required by the township ordinances. Submit the form to EGLE for review and concurrence.
 - b) Ensure all applications include an application form, Part 91, Soil Erosion and Sedimentation Control, of the NREPA permit or waiver, vegetation assurance, septic permit if proposed, site plan with dimensions, cross-sections showing the greatest depth of proposed impact, and other pertinent information needed for the review.
 - c) Obtain the information in action b) above for all active permits as of the date of this letter, extensions, and applications received over the next 12 months and provide to EGLE.
3. Plans signed and sealed by a licensed professional engineer or registered architect were not required per ordinance, specifically for those projects within 100 feet of the crest.

Action:

- a) Include on the application form all proposed impacts for which signed and sealed plans are required.
- b) Require the applicant to provide signed and sealed plans for projects as required by ordinance before a permit is issued.
- c) Require the applicant at 37105 Lakeshore Road to apply for a permit to build decks in the critical dune area. Proposed decks were included in the application but were not on the plans. The application must have all the required elements per the township ordinance. Submit the complete application to EGLE for their review before permit issuance.
- d) Attach sealed plans to all permits.

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4. Projects were permitted in dunes that have threatened and endangered species without the required federal and state threatened and endangered species permits.

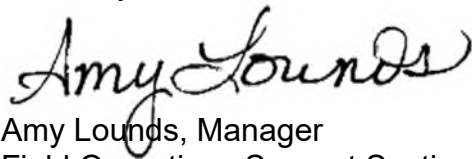
Action:

- a) Include a requirement on the application form that proper threatened and endangered species permits are obtained.
- b) Direct all applicants to contact and work with the Michigan Department of Natural Resources (DNR) if a species will be impacted by their project. All DNR permits and letters must be submitted with their application.
- c) Require the applicants at 37105 Lakeshore Road and 36465 McCauley's Point Road to conduct a survey of their sites for threatened and endangered species. Require future applications at 37125 Lakeshore Road to include a review of the site for threatened and endangered species.
- d) Provide a copy of the DNR permit or letter of no permit required to EGLE specifically for the proposed construction at 37105 Lakeshore Road and at 36465 McCauley's Point Road, Parcel B.

The townships have 60 days from the date of this letter to respond to the stated concerns and submit any information to address the audit report findings. The information shall be sent to Zach Chamberlin, Environmental Quality Analyst, Field Operations Support Section, WRD, at 269-716-4894; ChamberlinZ@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Future permits, special use projects, and annual reports shall be sent to Keri Kent, Environmental Quality Analyst, Gaylord District Office, WRD, at EGLE, 2100 West M-32, Gaylord, Michigan 49735-9282.

Sincerely,



Amy Lounds, Manager
Field Operations Support Section
Water Resources Division
517-331-7966

Enclosure

cc: Russ Smith, Charlevoix County
Jeremy Fruk, Health Department of Northwest Michigan
William Markey, Peaine Township
Rick Speck, Peaine and St. James Townships
Lori Taylor-Blitz, St. James Township
Kate Lederle, EGLE
Zach Chamberlin, EGLE
Keri Kent, EGLE

Figure 1. The locations of critical dune areas in Peaine and St. James Townships. The critical dune area is regulated to the water's edge of Lake Michigan.

Source map: Beaver Island Master Plan, 2017.

Office Review

Information about permits issued by both townships was received by the Department of Environment, Great Lakes, and Energy (EGLE) on September 14, 2022. The zoning ordinances for both townships are enforced by one zoning official on Beaver Island, Mr. Rick Speck. EGLE's in-office review consisted of identifying the parts of a complete application, review, and permit for each project reviewed by the townships. The application should consist of an application form completed by the property owner, the Soil Erosion and Sedimentation Control (Part 91 or SESC) permit or waiver, the vegetation assurance, a septic permit if needed, and site plans with cross-sections. The review should include all notes and correspondence regarding the final decision. The permit should identify all activities and conditions permitted with the permitted plans attached.

In Peaine Township, three permits issued at three sites were reviewed. In St. James Township, four permits issued at three sites were reviewed. Application forms and plans were submitted for all applications. The Part 91 permit or waiver, proof of a septic permit, and the vegetation assurance were not part of most applications as required by both township zoning ordinances. The site plans did not have cross-sections which are used to identify contours and the proposed depth of excavation of the dune. Without good plans compliance inspections are inconclusive. A summary of the projects permitted, and their deficiencies, is in Table 1.

Table 1. Summary of permitted projects with the information provided by the townships.

| Permit | Address | Project | Expiration | Application Form | Part 91 | Vegetation Assurance | Septic | Plans | Cross-sections |
|---------------------------|----------------------------|--|------------|------------------|---------|----------------------|------------------|--------------------------------|----------------|
| Peaine Township | | | | | | | | | |
| P-2138 | 31891 Mrs. Redding's Trail | build house | 7/14/2022 | yes | yes | no | application only | yes | no |
| P-2178 | 36865 Allen's Lakeview Rd | Addition | 7/6/2023 | yes | no | no | not required | dim. ¹ not on plans | no |
| P-2179 | 36465 McCauley's Point | home with decks on existing foundation | 7/6/2022 | yes | no | no | no | yes | no |
| St. James Township | | | | | | | | | |
| S-1883 | 37360 Allen's Lakeview Rd | build house with deck | 1/12/2023 | yes | no | no | no | yes | no |
| S-1883 revised | 37360 Allen's Lakeview Rd | decks on two sides | 5/5/2023 | yes | no | no | no | yes | no |
| S-1884 | 37125 Lakeshore Rd | build house with deck | 1/12/2023 | yes | no | no | no | yes | no |
| S-1885 | 37105 Lakeshore Rd | build house with decks | 1/12/2023 | yes | no | no | no | yes | no |

¹dim. indicates dimensions.

Field Review

EGLE staff flew to Beaver Island on September 21, 2022, to conduct a site visit of the permitted projects with the zoning official for both townships, Mr. Rick Speck. The ambient temperature was in the mid-70's, partly cloudy with light winds.

Before leaving for the permitted sites, we learned about the local process for processing applications from Rick.

- 1) The applicant expresses interest in building a structure and the required zoning permit.
- 2) Ed Wojan (realtor), Rick, and the contractor visit the site. Typically, the contractor has the site staked. Due to the interest of whether a site is buildable the zoning official is expected to write a letter to the applicant or realtor indicating the site is buildable.
- 3) The applicant, or their contractor, applies.
 - a. Must have applied for a Part 91 and septic permits.
 - b. Must have a site plan.
 - c. Must be staked.
- 4) This information is submitted to the township's planning commission for their approval. The planning commission meets once a month.
- 5) A zoning permit is written for the property, identified by tax identification number, for a period of one year.

Rick had the following comments regarding the local permitting process.

- Charlevoix County will not issue a building permit until a zoning permit is received from the township.
- All Part 91 permits and health department permits are issued by staff in Charlevoix who visit the island periodically. Permits are issued to the applicant or contractor.
- Many permits are not acted upon – no building is constructed.
- The township is interested in identifying erosion areas along the shoreline from McCauley's Point south to Left's Point.

Site Visits in Peaine Township

P-2138 issued for a house and septic at 31891 Mrs. Redding's Trail. 15-012-425-001-25 Expiration date of the permit was 7/14/22. Unable to locate site.

P-2179 issued for a house on an existing foundation and septic at 36465 McCauley's Point Road. Parcel B 15-012-232-003-50, T 39N R10W section 32. Expiration date was 7/6/22.

Existing block foundation on three sides, approximately 40 feet by 41 feet inside dimensions, with foyer 18 feet by 6 feet on lakeward side. Crack in south wall. Foundation landward and within 100 feet of the crest. State and federally listed threatened plant, Pitcher's thistle, *Cirsium pitcheri*, noted on steep slopes between the foundation and crest. Plans show a proposed covered porch surrounding the foyer on the lakeward side over steep slopes and impacting Pitcher's thistle. An additional deck is proposed on the landward side. The septic is marked by a single stake and would most likely impact steep slopes. A letter dated 9/22/1999 from the health department noted "the drainfield area will set back from any

grade drop-off a sufficient distance to prevent effluent from breaking out the slope.” No septic permit was with the application.

The structure is within 100 feet of the crest and requires signed and sealed plans. Plans were sealed. The covered porch cannot be constructed as proposed as it will impact steep slopes and a threatened plant species. This impacts the proposed roofline. The structure could possibly be rotated so the gable end faces the lake to avoid the impacts and maintain the design. A 5-foot wide uncovered, grated walkway that allows sun and water to the plants on the steep slope is permissible.

A vegetation assurance was not submitted.

There was evidence of ponding on the driveway. A stormwater plan should show where stormwater will be directed to minimize erosion and maintain stability of the driveway.

The footings on the landward wall are broken. Any future excavation should show where the sand will be placed on site.



Posted permits at gated driveway.



Approach to existing foundation. Proposed septic on hill to the right.



Northern foundation established foundation wall.



Western foundation wall and enclosed foyer area.



Southern foundation wall.



Looking landward from the crest.



The crest looking north, Pitcher's thistle found on the slope adjacent to the foundation.



Pitcher's Thistle on steep slopes between the foyer and the crest.



Pitcher's thistle next to Artemisia on steep slopes adjacent to the foundation, landward of the crest.



Stake labeled Septic.



Steep slopes adjacent to the septic stake.

P-2178 issued for an addition at 36865 Allen's Lakeview Road, 15-012-675-849-00, expiring on 7/6/2023.

Within 100 feet of the crest, measured 16 feet by 31 feet. Need signed and sealed plans, vegetation assurance and Part 91 waiver.



Crest



Crest



Corner stake of proposed addition, 16 feet from the edge of the house.

General Notes

We discussed with Rick about adding all the requirements for an application to the township's critical dune zoning application form. We also discussed contacting EGLE-WRD staff about threatened and endangered species when the township has questions.

Site Visits in St. James Township

S-1883 issued for a house and deck at 37360 Allen's Lakeview Rd, 15-013-709-776-50, which is -776 and -777 combined, Plat of Port of St. James No 9. T39N R10W Sec 29. Expires on 01/12/23. Very small buildable area close to road. Sites combined to provide flatter space. Owner decided not to build. Application needs SESC permit or waiver, septic permit, and vegetation assurance.



Looking North.



Looking southwest towards road.

S-1885 issued for a house and deck, 32 feet by 57 feet at 37105 Lakeshore Road, 15-013-525-028-00, Lot 28 of Port of St. James Sub. Expires on 01/12/23. Needs vegetation assurance plan, location of deck on site plans, signed and sealed plans, and septic permit with the application. Foundation 69.5 feet landward from the crest of foredune. The plat – Donegal Bay Subdivision, approved in 1963, shows the dimensions of lot 28 to be 160.9 feet on the north line, 167.17 feet on the south line, 91.19 feet on the east line, 100 feet on the west line (lake). Plans show distance from the high water mark = 100 feet. Pitcher's thistle noted on the site.



Septic permit is a mound drip system. Location does not match the zoning permit site plan.



Pitcher's Thistle



Looking south-east toward road and neighboring property from Lot 27.



Looking south toward partial foundation. Pitcher's thistle found along edges of perimeter fill.



Pitcher's thistle found lakeward of siltfence. Unknown where the deck will be built or how far it will extend.

S-1884 issued for a house and deck, 42 feet by 50 feet at 37125 Lakeshore Road, 15-013-525-027-00, Lot 27 of Port of St. James Subdivision Plat. The application needs the Part 91 permit, septic permit, vegetation assurance plan, plans showing the deck(s), and signed and sealed plans. The permit expires on 01/12/23. House will not be built. Noted 7+ locations of Pitcher's thistle landward of the crest of the dune.



Deceased Pitcher's thistle flower stalk and basal rosette on Lot 27.

Findings: A review of the township ordinances posted online noted the Peaine ordinance is dated November 20, 2017, and did not include the versions of Sections 6.15 and 11.9 approved by the Department on January 25, 2018. The St. James ordinance posted online is dated April 26, 2004. Changes to the ordinance regarding critical dune areas were adopted by St. James Township on March 4, 2015, and approved by the Department on April 7, 2015. It is unknown what versions of the ordinances are being used to regulate critical dune areas. Neither of the townships have posted online the critical dune area ordinances approved by the Department for the regulated community.

Information about seven permits on six sites in critical dune areas on Beaver Island were reviewed. The applications included a form and site plans. Most applications did not have a septic permit and Part 91 (SESC) permit or waiver. A vegetation assurance plan was not included in any of the applications. The ordinances approved by the Department require a SESC permit, septic permit, and vegetation assurances with each application, Subsection 6.15 H. (3) of the Peaine ordinance and Subsection 6.14 e) 2) of the St. James ordinance, respectively.

One project was permitted within 100 feet of the crest in Peaine Township and had plans sealed by a licensed professional engineer as required by Subsection 6.15 J. (9)(e). At another site, an addition was permitted within 100 feet of the crest and did not have sealed plans. In St. James Township, two permits were issued for two projects within 100 feet of the crest. Sealed plans were not included in the permits as required by Subsection 6.14 e) 3) of the approved St. James Township ordinance. The plans identified 100 feet from the high water mark, which is not the crest, as defined in Subsection 6.14 b).

Accurate site plans are required to assist in the review of all potential impacts related to the project, including those outside the foundation. The proposed decks at 37105 Lakeshore Road and 37125 Lakeshore Road were not shown on the plans. A cross section of the deepest excavation proposed on site aids in the review of potential impacts to the dune site and the potential need for slope protection. Information about vegetation assurances and cross sections is available at Michigan.gov/CriticalDunes.

The federal and state threatened species, Pitcher's Thistle, *Cirsium pitcheri*, was found at several project sites, specifically 36465 McCauley's Point, 37105 Lakeshore Road, and 37125 Lakeshore Road. Disturbance during construction is prohibited without a permit from the Department of Natural Resources (DNR), Wildlife Division. Before construction, property owners are required to contact the DNR, Wildlife Division, Permit Specialist Ms. Casey Reitz, ReitzC@Michigan.gov, 517-899-8161, P.O. Box 30444, Lansing, MI, 48909-7944.

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