

**ST. JAMES TOWNSHIP
Ordinance No. 1 of 2023**

**AN ORDINANCE TO AMEND SECTION 6.14 AND SECTION
11.08 OF THE ST. JAMES TOWNSHIP ZONING ORDINANCES
CONCERNING CRITICAL DUNE REGULATIONS**

THE TOWNSHIP OF ST. JAMES ORDAINS:

Section 1. Amendment of Section 6.14.

Section 6.14 of the St. James Township Zoning Ordinance of 2004 and any successor is hereby amended to read in its entirety as follows:

SECTION 6.14 - "CD", CRITICAL DUNE DISTRICT

a) **Purpose** - The Township of St. James hereby finds that the critical dune areas within the township are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of the township and to people from the State of Michigan and from other states and countries who visit this resource. The purpose of this section is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the township's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this section is intended to do all of the following:

- 1) Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
- 2) Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
- 3) Coordinate and streamline the township's decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.

b) **Definitions** - As used in this section,

"Accessibility measures" means a circulation path and at least 1 entrance on a circulation path complying with American national standards institute chapter 4 standards for accessible routes, from a road or easement serving the property, and, at the option of the applicant, from a sidewalk, a driveway, or a garage. Accessibility measures, however, do not include driveways.

"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 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.

"Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

"Critical dune area" means a geographic area designated in the "Atlas of Critical Dune Areas" dated February 1989 that was prepared by the Michigan Department of Natural Resources, or any successor state agency.

"Department" means the Michigan Department of Environment, Great Lakes, and Energy, or any successor state agency.

"Driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.

"Foredune" means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of Lake Michigan and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.

"Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.

"Special use project" means any of the following: (1) a proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site; (2) a multifamily use of more than 3 acres; (3) a multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre; or (4) a proposed use in a critical dune area, regardless of size of the use, that the township or Department determines would damage or destroy features of archaeological or historical significance.

"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 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.

c) Use Regulations

- 1) Land and/or buildings in this zoning district may be used for the following purposes only and only three (3) buildings can be erected in total on a single piece of property. No use shall be permitted that does not comply with the minimum setback requirements that are promulgated in Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.

- 2) Prior to the creation and recording of any new lot, the property owner is encouraged to seek a zoning permit to ensure that the lot will be useable for a purpose permitted under this Ordinance. If a subdivision, site condo, or any similar type of land division is proposed in this zoning district, the Planning Commission shall submit the application and land division plan/site plan and their proposed decision to the Department. The Department shall have sixty (60) days to review the plan and may affirm, modify, or reverse the decision of the Planning Commission.
- 3) The following uses are permitted by right within this zoning district:
 - (a) One (1) single family dwelling on each lot.
 - (b) One (1) guesthouse provided the following conditions exist:
 - (1) The guest house shall be located a minimum of fifteen (15) feet landward of the principal dwelling as determined by the Planning Commission after consideration of the best location to protect the dune.
 - (2) The floor area of the guesthouse shall not be larger than 50% of the principal dwelling or 1,500 square feet whichever is less and shall be architecturally compatible with the principal dwelling. A guesthouse shall be no smaller than 400 square feet.
 - (3) In no event shall a guesthouse be permitted on a lot of less than two hundred (200) feet in width as measured at the building line.
 - (c) Two (2) detached accessory buildings not more than twelve (12) feet in height, subject to the following conditions:
 - (1) Said accessory building shall not be located closer to a side lot line than allowed for a principal building.
 - (2) Detached accessory buildings, any portion of which is located on the side of a principal building, shall not be less than six (6) feet from such principal building and not nearer to the side lot line than the width of the side yard required on the lot for the principal building and shall maintain a front yard setback equal to or greater than that of the principal building.
 - (d) One (1) driveway servicing a dwelling or other permanent building, subject to the following requirements:
 - (1) Notwithstanding any other provision of this section, the construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in this zoning district, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject to the following requirements:
 - (A) A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this section. Additional driveways, if any, shall meet the applicable requirements for any other use under this section. The

development of a plan for a driveway shall include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record.

- (B) Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include all of the following:
 - (i) Storm water drainage, that provides for disposal of storm water without serious erosion.
 - (ii) Methods for controlling erosion from wind and water.
 - (iii) Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- (C) Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include all of the following:
 - (i) Storm water drainage, that provides for disposal of storm water without serious erosion.
 - (ii) Methods for controlling erosion from wind and water.
 - (iii) Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- (2) Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

- (e) Other accessory uses customarily incidental to the preceding listed permitted uses including, but not limited to, off-street parking as required by Article VIII and signs as regulated by Article VII of the Zoning Ordinance of 2004 and any successor.
- (f) A special use project shall be permitted under the terms and conditions of this subsection. A person who desires to obtain approval for a special use project should understand that an environmental assessment or environmental impact statement is required for projects meeting a special use. Refer to MCL 324.35313, 324.35319, and 324.35320.

A person who desires to obtain approval for a special use project shall file an application for the special use project with the zoning administrator for processing to the zoning board of appeals. The board is to review the application and propose a decision. The zoning administrator is to send the application and proposed decision to the department for review. The department shall have 30 days to review the plan and may affirm, modify, or reverse the proposed decision of the township.

- 4) Except as provided in this subsection, the following uses are prohibited in this zoning district:
 - (a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.
 - (b) Production facilities regulated under Parts 615 and 625 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.
 - (c) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
 - (d) A use that does not comply with the minimum setback requirements required by rules that are promulgated under Part 323 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.
 - (e) The uses described in subsections (a) and (b) above that are lawfully in existence at a site on July 5, 1989, may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be regulated as provided under Article X of this of the Zoning Ordinance of 2004, and any successor.

- 5) Unless a variance is granted pursuant to subsection f) below, the following uses shall not be permitted in this zoning district:
- (a) A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - (b) A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
 - (c) A use involving a contour change if the Planning Commission determines that it is more likely than not to increase erosion or decrease stability.
 - (d) Silvicultural practices, as described in the "forest management guidelines for Michigan", prepared by the society of American foresters as revised in 2010, if the Planning Commission determines that they are more likely than not to increase erosion or decrease stability.
 - (e) A use that involves vegetation removal if the Planning Commission determines that it is more likely than not to increase erosion or decrease stability.
- 6) Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement, and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements of this section and the following:
- (a) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.

- (b) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

The choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

- 7) The lawful use of land or a structure within this zoning district, as existing and lawful at the time this section was originally adopted or at the time any applicable amendment to this section was adopted, may be continued although the use of that land or structure does not conform to the requirements of this section. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing nonconforming uses shall be regulated as provided under Article X of the Zoning Ordinance of 2004 and any successor. Provided, however, a structure or use located in this zoning district that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of Article X of the Zoning Ordinance of 2004 and any successor, for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced. A replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
- 8) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on July 5, 1989, shall not be precluded under this section.
- 9) A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this section or under Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, is exempt for purposes for which the permit was issued from the operation of this section 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 1-foot vertical rise in a 3-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 1-foot vertical rise in a 4-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 1-foot vertical rise in a 4-foot horizontal plane or less.
- d) **Dimensional Regulations** - All uses in this zoning district shall comply with all of the following dimensional regulations:
- 1) Height Regulations - No building shall exceed thirty-five (35) feet in height.
 - 2) Area Regulations - No building or structure shall hereafter be erected, altered or enlarged unless the following yard and lot area requirements are provided and maintained in connection with such building, erection, alteration, or enlargement.
 - (a) Front Yard - There shall be a front yard setback of not less than thirty-five (35) feet.
 - (b) Side Yard - There shall be a side yard setback of not less than twenty-five (25) feet on each side of any dwelling or accessory building. The Planning Commission may reduce this requirement to a minimum of ten (10) feet for the purpose of reducing dune impact. On the street side of a corner lot, a twenty-five (25) foot setback shall be provided and maintained.
 - (c) Rear Yard - There shall be a rear yard setback of not less than thirty-five (35) feet. For shoreline protection strip requirements, see Section 4.21 of the Zoning Ordinance of 2004 and any successor.
 - (d) Lot Area and Width - Except as provided herein, the minimum lot area for uses in this zoning district shall be one hundred thousand (100,000) square feet and have a minimum width of two hundred (200) feet as measured at the building line. Provided, however, narrower lots than specified above may be permitted for use at the discretion of the Planning Commission provided that the lot was a lot of record as of July 5, 1989

- 3) Floor Area Requirements - Each dwelling unit in this zoning district shall have a minimum of seven hundred sixty-eight (768) square feet of usable floor area exclusive of porches, garages, unfinished basements, and utility areas, with a two-story building having a minimum of six hundred (600) square feet on the first floor.

e) Permit Requirement, Application Procedures, and Permit Requirements

- 1) A person shall not initiate a use within this zoning district, unless the person obtains a permit from the Zoning Administrator under Section 12.01 of the Zoning Ordinance of 2004 and any successor.
- 2) A permit for a use authorized in this zoning district shall be subject to the dimensional regulations of subsection d) above and all of the following requirements and procedures:
 - (a) A person proposing a use within this zoning district shall file an application with the Zoning Administrator. The application form shall include information necessary to allow the Zoning Administrator and/or the Planning Commission to determine whether the proposed use complies with the requirements of this section and other applicable requirements of this Ordinance and shall include all of the following information:
 - (1) That the county enforcing agency designated pursuant to Part 91 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, finds that the project is in compliance with Part 91 and any applicable soil erosion and sedimentation control ordinance that is in effect in the township.
 - (2) That a proposed sewage treatment or disposal system on the site has been approved by the county health department.
 - (3) Assurances that the cutting and removing of trees and other vegetation will be performed according to the "Forestry Management Guidelines for Michigan" prepared by the Society of American Foresters in 1987, as revised in 2010 and may include a program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.
 - (4) A site plan that contains data required by the Planning Commission concerning the physical development of the site and extent of disruption of the site by the proposed development that will allow the Planning Commission to determine compliance with the requirements of this section.

If the Zoning Administrator is not certain of the degree of slope on a property for which a use permit is sought, the Zoning Administrator may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway.

- (b) The Zoning Administrator shall provide notice of an application filed under this section to each person who makes a written request to the local unit of government for notification of pending applications. The notice shall state that unless a written request is filed with the Zoning Administrator within 20 days after the notice is sent, the Planning Commission may grant the application without a public hearing. The township shall charge a fee for providing this notification as established from time to time by the township board pursuant to Section 12.08 of the Zoning Ordinance of 2004 and any successor. The Planning Commission may hold a public hearing on any pending application and shall hold a public hearing pertaining to a permit application upon the written request of 2 or more persons who own real property within 2 miles of the property on which the proposed use will be established.
- (c) At least 10 days' notice of a public hearing to be held pursuant to subsection (b) above shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and by providing notice to the persons who have requested notice pursuant to subsection (b) above, to the person requesting the hearing, and to the applicant.
- (d) After the filing of an application, the Planning Commission shall grant, grant with conditions pursuant to Section 12.05 of the Zoning Ordinance of 2004 and any successor, or deny the permit within 60 days, or within 90 days if a public hearing is held. If a permit is denied, the Planning Commission shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the Planning Commission may issue a conditional permit before the expiration of the 20-day period referred to in subsection (b) above.
- (e) The Planning Commission shall grant or grant with conditions the permit being requested if the Planning Commission finds that the requirements of this section have been met and that the proposed use will not significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - (1) The diversity of the critical dune areas within the township.
 - (2) The quality of the critical dune areas within the township.
 - (3) The functions of the critical dune areas within the township.

When reviewing the application for the permit and the required site plan the Planning Commission shall recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to assure compliance with all applicable state and local requirements.

- (f) The decision of the Planning Commission with respect to a permit shall be in writing and shall be based upon competent, material, and substantial evidence on the record.
 - (g) A decision denying a permit shall document, and any review upholding the decision shall determine, all of the following:
 - (1) That the Planning Commission has met the standards of subsection (e) above and the burden of proof under subsection (f) above.
 - (2) That the decision is based upon sufficient facts or data.
 - (3) That the decision is the product of reliable scientific principles and methods.
 - (4) That the decision has applied the principles and methods reliably to the facts.
 - (5) That the facts or data upon which the decision is based are recorded in the file.
 - (h) If a permit for a proposed use within this zoning district is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.
- 3) A permit shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. The proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the critical dune area.
- 4) Except as provided in subsection 3) above, a permit shall provide that a use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the use shall meet all of the following requirements:
- (a) The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - (b) Access to the structure shall be from the landward side of the dune.

- (c) The dune shall be restabilized with indigenous vegetation.
- (d) The crest of the dune shall not be reduced in elevation.
- 5) The Zoning Administrator shall prepare a monthly list of the applications made during the previous month and shall promptly provide copies of the list for the remainder of the calendar year to the persons who have requested notice. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use.

f) Variances

- 1) Dimensional variances from the requirements of this section shall be governed by this subsection f) and not by Section 11.06 of the Zoning Ordinance of 2004 and any successor.
- 2) The Zoning Board of Appeals may issue dimensional variances from the requirements of this section if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this subsection unless the Zoning Board of Appeals determines that the proposed use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - (a) The diversity of the critical dune areas within the township.
 - (b) The quality of the critical dune areas within the township.
 - (c) The functions of the critical dune areas within the township.
- 3) The decision of the Zoning Board of Appeals shall be in writing and shall be based upon competent, material, and substantial evidence on the record. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - (a) That the Zoning Board of Appeals has met the burden of proof under subsection 2) above.
 - (b) That the decision is based upon sufficient facts or data.
 - (c) That the decision is the product of reliable scientific principles and methods.
 - (d) That the decision has applied the principles and methods reliably to the facts.

- (e) That the facts or data upon which the decision is based are recorded in the file.
- 4) A variance shall not be granted from a setback requirement under this section unless the property for which the variance is requested is one of the following:
 - (a) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this section.
 - (b) A lot legally created after July 5, 1989, that later becomes nonconforming due to natural shoreline erosion.
 - (c) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

Section 2. Amendment of Section 11.08.

Section 11.08 of the St. James Township Zoning Ordinance 2004 and any successor, is hereby amended to add a new subsection d), which shall read in its entirety as follows:

- d) In December each year the Zoning Administrator shall file a written report with the Department, documenting the number of variances granted under this section during the previous 12-month period.

Section 3. Amendment of Article XII.

Article XII of the St. James Township Zoning Ordinance of 2004 and any successor is hereby amended to add a new Section 12.10A, which shall read in its entirety as follows:

SECTION 12.10A - CRITICAL DUNES RESTORATION

- a) Any person who violates the critical dunes regulations within Section 6.14 of this Ordinance, in addition to the penalties provided in Section 12.10 of the Ordinance of 2004 and any successor, shall be subject to the critical dunes' restoration requirements of this section.
- b) When the Zoning Administrator determines that a person has violated the critical dunes regulations within Section 6.14 of this Ordinance, the Zoning Administrator shall send written notices specifying the violation that has occurred to the person who has violated the critical dunes regulations, to the owner of the property on which the violation has occurred, and to the Michigan Department of Environment, Great Lakes, and Energy, or any successor state agency.
- c) The person who has violated the critical dunes regulations and/or the owner of the property on which the violation has occurred shall create a critical dunes' restoration plan for approval by the Zoning Administrator who will consult with the Michigan Department of Environment, Great Lakes, and Energy, or any successor state agency. Once the

restoration plan is approved, the person/owner shall proceed with the restoration.

- d) In the event the District Court finds a violation of the critical dunes regulations within Section 6.14 of this Ordinance in a municipal civil infraction enforcement action, or if the Circuit Court finds a violation of the critical dunes regulations within Section 6.14 of this Ordinance in a proceeding to abate the nuisance per se or the critical dunes violation, then the District Court or the Circuit Court shall order the person who has violated the critical dunes regulations and/or the owner of the property on which the violation has occurred to fully comply with the approved critical dunes restoration plan developed for that property, unless the Court finds that the critical dunes restoration plan is unreasonable. Upon such a finding, the Court shall order the restoration of the critical dunes under the terms and conditions the Court finds to be just under all of the circumstances.

Section 4. Severability.

If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Zoning Ordinance of 2004, and any successor. The Township Board hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

Section 5. Effective Date.

This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the Township.

Julie Gillespie
Julie Gillespie, Township Clerk

Roberta S. Welke
Roberta S. Welke, Township Supervisor

Ordinance No. 1 of 2023 was hereby adopted on the 12th day of July 2023, by the St. James Township Board as follows:

Motion by: Cole

Seconded by: Gillespie

Yeas: McDonough, Cole, Gillespie, Welke

Nays: _____

Absent: Fingerroot

I certify that this is a true copy of Ordinance No. 1 of 2023 that was adopted at a regular meeting of the St. James Township Board on July 12, 2023, and published in the Petoskey News-Review on July 26, 2023.

Dated: 8-3-23

Julie Gillespie
Julie Gillespie, Township Clerk