

PEAINE AND ST. JAMES TOWNSHIP ZONING ORDINANCE  
Adopted April 26, 2004

1 SECTION 6.14 - "CD", CRITICAL DUNE DISTRICT  
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3 a) **Purpose** - The Townships of St. James and Peaine hereby declare that the critical dune areas  
4 are a unique, irreplaceable, and fragile resource that provide significant recreational,  
5 economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological  
6 benefits to the people of this community, to the state, to people from other states and countries  
7 who visit this resource. These lands include the entire critical dune area as designated by the  
8 Michigan Department of Natural Resources pursuant to Part 353 of the Natural Resources and  
9 Environmental Protection Act, being the Sand Dunes Protection and Management portion of  
10 Act 451 of the Public Acts of 1994, as amended, and to such other lands as locally designated  
11 and depicted thereon. Locally designated sand dunes together with dunes designated under  
12 PA 451 shall be known as critical dune areas for the purpose of this Ordinance. Lands that  
13 are within two hundred and fifty (250) feet of a critical dune area, that are determined by the  
14 Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a  
15 critical dune area shall also receive all the protection afforded to critical dunes in this zoning  
16 district, even if not so depicted on the zoning map.  
17

18 This Section is enacted into law pursuant to the provisions and in accordance with the State of  
19 Michigan, Natural Resources Protection Act 451 of 1994, as amended.  
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21 b) **Definitions** - The following terms apply in the CD Critical Dunes District only and  
22 supplement the terms defined in the Definition Article of this Zoning Ordinance:  
23

- 24 1) **"Contour change"** includes any grading, filling digging, or excavating that significantly  
25 alters the physical characteristic of a critical dune area, except that which is involved in  
26 sand dune mining.  
27
- 28 2) **"Crest"** means the line at which the first lakeward facing slope of a critical dune ridge  
29 breaks to a slope of less than 18 percent for a distance of at least 20 feet, if the area extent  
30 where this break occurs is greater than 1/10 acre in size.  
31
- 32 3) **"Critical dune area"** means that geographic area designated in the "atlas of critical dune  
33 areas" dated February 1989 that was prepared by the department and any other such  
34 locally designated sand dune areas determined to be essential to the hydrology, ecology,  
35 topography, or integrity of a critical dune area.  
36
- 37 4) **"Foredune"** means 1 or more low linear dune ridges that are parallel and adjacent to the  
38 shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face  
39 of a foredune is often gently sloping and may be vegetated with dune grasses and low  
40 shrub vegetation or may have an exposed sand face.  
41
- 42 5) **"Person"** means an individual, partnership, firm, corporation, association, local unit of  
43 government, or other political subdivision of the state, or a state or agency.

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- 6) **"Rehabilitation"** means restoration of the natural contours of a critical dune to the extent practicable, and 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.
  - 7) **"Sand dune area"** means that area designated by the department which includes those geomorphic features composed primarily of sand, whether windblown or of other origin and which lies within two (2) miles of the ordinary high-water mark on a Great Lake as defined in Part 325 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, and includes critical dune areas.
  - 8) **"Sand dune mining"** means the removal of sand from sand dune areas for commercial, or industrial purposes, or both.
  - 9) **"Use"** means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristics of a critical dune area or contour change done or caused to be done by a person, but does not include sand dune mining.
- c) **Use Regulations** - 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 323 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.

Prior to the creation and recording of any new lot, the property owner is encouraged to seek a zoning permit to insure 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 District, the Planning Commission shall submit the application and land division plan/site plan and their proposed decision to the Department of Natural Resources, Land & Water Management Division. The Department shall have sixty (60) days to review the plan and may affirm, modify, or reverse the decision of the Planning Commission.

- 1) One (1) single family dwelling on each lot.
- 2) One guesthouse provided the following conditions exist:
  - (a) 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.

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- (b) The floor area of the guesthouse shall not be larger than 50% of the principal dwelling or 1,500 square feet which ever is less, and shall be architecturally compatible with the principle dwelling. A guesthouse shall be no smaller than 400 square feet.
- (c) 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.
- 3) Two (2) detached accessory buildings not more than twelve (12) feet in height, subject to the following conditions:
  - (a) Said accessory building shall not be located closer to a side lot line than allowed for a principal building.
  - (b) 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.
- 4) 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 this Ordinance.
- 5) A special use project as defined in Part 801 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, shall not be permitted in this Critical Dune District.
- d) **Height Regulations** - No building shall exceed thirty-five (35) feet in height.
- e) **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.
  - 1) **Front Yard** - There shall be a front yard setback of not less than thirty-five (35) feet.
  - 2) **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.
  - 3) **Rear Yard** - There shall be a rear yard setback of not less than thirty-five (35) feet. (See Section 4.21).

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2     **4) Lot Area and Width** - The minimum lot area for uses in this zoning district shall be  
3     one hundred thousand (100,000) square feet and have a minimum width of two  
4     hundred (200) feet as measured at the building line.

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6     Narrower lots than specified above may be permitted for use at the discretion of the  
7     Planning Commission provided that the following standards are met:

8  
9         **(a)** Only lots of record as of the effective date of this amendment may be split.

10  
11         **(b)** The split lot shall be a minimum of one hundred fifty (150) feet in width as  
12         measured at the building line or shall be split in half, which ever is greater.

13  
14         Where possible:

15  
16         **(c)** One access drive serves two (2) or more lots up to where it must split to serve  
17         individual dwellings and it is demonstrated that one (1) access drive will have a  
18         less deleterious effect on the dune environment than multiple drives.

19  
20         **(d)** One access path to the beach for each two (2) lots provided it is demonstrated that  
21         one (1) beach access path will have a less deleterious effect on the dune  
22         environment than multiple paths.

23  
24     **f) Floor Area Requirements** - Each dwelling unit in this Zoning District shall have a  
25     minimum of seven hundred sixty-eight (768) square feet of usable floor area exclusive of  
26     porches, garages, unfinished basements, and utility areas, with a two-story building having  
27     a minimum of six hundred (600) square feet on the first floor.

28  
29     **g) Development Plan Requirements** - A development plan, in accordance with this Section  
30     and with Article XIV of this Ordinance, shall be submitted for all uses in a CD Critical  
31     Dune District. Requirements for such a development plan are as follows:

32  
33         **1)** Preliminary sketches of proposed site and development plans shall be submitted for  
34         review to the Planning Commission prior to final site plan submittal. The purpose of  
35         such procedure is to allow discussion between the applicant and the Planning  
36         Commission to better inform the applicant of the acceptability of their proposed plans  
37         prior to incurring extensive engineering and other costs, which might be necessary for  
38         final site plan approval. Such plans shall include information of Article XIV as  
39         deemed necessary by the Zoning Administrator. The Planning Commission shall  
40         review the preliminary development plan and make recommendations to the applicant  
41         based on the purposes, objectives and requirements of this Ordinance, and specifically  
42         paragraph 4 of this Section. If the preliminary plan meets the requirements of  
43         paragraphs 2 and 3 below, the Planning Commission may grant plan approval.

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2 The property owner shall stake the location of all proposed structures and uses and  
3 property corners for the Planning Commission site inspection a minimum of seven (7)  
4 days prior to the Commission meeting.  
5

- 6 **2)** A Final Development Plan shall be submitted, as per Article XIV, for each permitted  
7 and accessory use prior to any site work or grading conducted on the property. No  
8 structure shall be constructed, reconstructed, altered, or relocated in this District prior  
9 to the Planning Commission approving the Final Development Plan. A zoning permit  
10 shall not be issued until permits have been granted from all local and state agencies  
11 and a Final Development Plan has been approved by the Planning Commission. The  
12 plan shall illustrate porches, decks and other structures to be built on the site.  
13

14 If the plan submitted illustrates less than three (3) buildings as permitted by this  
15 Section, the Planning Commission shall inquire about potential future building on the  
16 site. The purpose of this request is to promote the maximum protection of the dune in  
17 relation to all proposed or future buildings.  
18

- 19 **3)** In addition to the information required in Article XIV - Development Plan  
20 Requirements, the Planning Commission may request, and the applicant shall submit,  
21 the following in written or graphic form:  
22

23 **(a)** A finding that the project is in compliance with Part 91 of the Natural Resources  
24 and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as  
25 amended, including a written review by the Soil Erosion and Sedimentation  
26 Control Officer.  
27

28 **(b)** Assurances that the cutting and removing of trees and other vegetation will be  
29 performed according to the instructions or plans of the local soil conservation  
30 district. Copies of instructions and plans shall be submitted.  
31

32 **(c)** A topographic map of the site with 2-foot contour intervals at or near any proposed  
33 structure or roadway or consult with the local Soil Conservation District regarding  
34 the percent of slope.  
35

36 **(d)** A written statement that the proposed structure will occupy land having a slope of  
37 less than thirty-three (33) percent. (See slope definition in Article III).  
38

39 **(e)** If the proposed structure is on a slope that is twenty-five (25) to thirty-three (33)  
40 percent, the Development Plan shall be prepared by a registered professional  
41 architect, landscape architect, or professional engineer. Prior to the approval of the  
42 plan, the Planning Commission shall consult with the Charlevoix Conservation  
43 District.

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(f) A structure that is proposed to occupy a slope that is greater than thirty-three (33) percent shall be prohibited, unless a variance is granted by the Zoning Board of Appeals pursuant to Section 11.07.

(g) The proposed use will 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 one hundred (100) feet measured landward from the crest of the first landward ridge that is not a foredune, the applicant shall demonstrate that the proposed use meets all of the following requirements:

- (1) The use will not destabilize the critical dune area
- (2) Contour changes and vegetative removal are limited to that essential to siting the structure
- (3) Access to the structure is from the landward side of the dune
- (4) The dune is restabilized with indigenous vegetation or vegetation approved by the Soil Erosion and Sedimentation Control Officer.
- (5) Excavation techniques and methods shall be employed that insure no unnecessary destabilization of the landward and/or lakeward side of the dune including the possibility that mechanical equipment may not be used.
- (6) The crest of the dune is not reduced in elevation

(h) Any proposed sewage treatment or disposal system on the site shall be approved by the Northwest Michigan Community Health Agency. Proof of such approval shall be submitted before any zoning permit is granted.

(i) The property owner has caused the staking of the location of all proposed structures and uses and property corners for the Planning Commission site inspection a minimum of seven (7) days prior to the Commission meeting.

(j) The Planning Commission may require additional information as it deems necessary to evaluate the proposed development including an environmental assessment as outlined in the sample ordinance language prepared by the Department of Natural Resources.

**(4) Review Standards of the Development Plan**

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1 (a) Development shall not result in the clearance of natural vegetation in excess of that  
2 which is necessary for the structure, required access, required parking, and the  
3 required well, septic, or sewage disposal system. Dead, diseased, or dying trees  
4 may be removed provided that where such removal of dead vegetation occurs, the  
5 open area thereby created shall be replanted within ninety (90) days or by spring  
6 with more vegetation than was removed and with vegetation native to the area.  
7

8 Selective cutting of trees to provide a better view of the lake is permitted, provided  
9 the proposed selective cutting is done in conformance with the following standards:  
10

11 (1) No tree cutting is permitted on a foredune.  
12

13 (2) Vegetation lakeward of the principal structure setback may be selectively cut,  
14 provided each of the following standards is met:  
15

16 a) An area equal to no more than thirty (30) percent of the width of the lot as  
17 measured from the lot width at the shoreline setback line, may be selectively  
18 cut of vegetation or an area not more than thirty (30) feet wide for each one  
19 hundred (100) feet of shoreline, whichever is less.  
20

21 b) Selective cutting shall leave sufficient vegetation to screen cars, dwellings,  
22 and accessory structures as seen from the water, to preserve natural beauty  
23 and to control erosion.  
24

25 c) Natural shrubbery and low vegetation shall be preserved as far as practicable  
26 and where removed it shall be replaced with other vegetation native to the  
27 area that is equally effective in retarding runoff, preventing erosion, and  
28 preserving natural beauty. Where possible, stump and root systems shall be  
29 left.  
30

31 d) Where selective cutting would result in exposed sand and/or significantly  
32 increase the chance of serious wind or water erosion, it shall not be permitted.  
33

34 (b) Development shall result in the least topographic modification of the site as is  
35 possible.  
36

37 (c) Filling and grading shall be permitted only according to an approved site plan and  
38 approved Soil Erosion and Sedimentation Control Permit. Sand and bluff  
39 stabilization shall be required during all phases of construction and post-  
40 construction as specified by standards set forth in Part 91 of the Natural Resources  
41 and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as  
42 amended. Such a revegetation program shall be designed to return open sand areas,  
43 both pre-existing and newly created, to a stable condition, to be initiated as soon as

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1 possible following construction and include the measures to be taken for the  
2 maintenance of revegetated areas for at least two years after the time of planting.  
3 No fill shall be placed in an established floodplain or wetland. No fill shall cause  
4 surface water to collect or to run off onto adjoining lands contrary to existing  
5 natural drainage.  
6

7 **(d)** No soil, sand, gravel or other material shall be permitted to be removed from lands  
8 within this zone except as may be authorized by a permit granted under Part 353 of  
9 the Natural Resources and Environmental Protection Act, being Act 451 of the  
10 Public Acts of 1994, as amended; or as may be incidental to the establishment of a  
11 permitted use approved by a development plan under the terms of this Section and  
12 Article XIV of this Ordinance. Incidental soil, sand or gravel removal shall  
13 conform with the following standards:  
14

15 **(1)** Removal for the purpose of constructing a basement shall be permitted but soil  
16 removed shall be retained on the site when doing so does not enlarge the risk of  
17 erosion or create another threat to the development or the natural environment.  
18

19 **(2)** No dune shall be cut down in elevation between the lakeshore and the structure  
20 setback.  
21

22 **(e)** The total impervious surface area of the site, including the principal structure,  
23 accessory structures, paved drive and parking areas, patios and accessory uses shall  
24 not exceed ten (10) percent of the total area of the lot, except on nonconforming lots  
25 of record in existence as of the effective date of this Section where it shall not  
26 exceed thirty (30) percent of the total lot area.  
27

28 **(f)** The following access requirements apply to all development in this District.  
29

30 **(1)** A use, including driveways, on a slope that is greater than thirty-three percent  
31 (33%) shall be prohibited, unless a variance is granted by the Zoning Board of  
32 Appeals pursuant to Section 11.07.  
33

34 **(2)** Wherever feasible, roads and pathways shall be located in areas where vegetation  
35 has stabilized the dunes and shall be constructed in a manner that minimizes  
36 disruption to the dune.  
37

38 **(3)** Roads or driveways shall be located landward of the principal structure. Access  
39 roads or driveways shall respect the natural topography and may be run in a dry  
40 trough between dunes and/or through natural gaps within the dune system. The  
41 natural topography of dune crests shall not be altered unless no other means of  
42 access is feasible.  
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- (4) Whenever feasible, shared access drives and utility easements shall be provided.
- (5) Roads or driveways shall have beach grass (*Ammophila breviligulata* Fernald) or other suitable material planted and maintained in a living condition on areas of open sand to a distance of fifty (50) feet adjacent to each side of the road or driveway.
- (6) No vehicles shall have access lakeward of the shoreline setback except where public access has been provided, is approved, and is lawful. No off-road vehicle use is permitted from the shoreline to the inland boundary of a critical dune area, except in DNR designated areas and on the access drive providing access to an approved structure.
- (7) Parking shall meet or exceed the minimum needs of the permitted use and shall be sited and screened along with the principal use pursuant to the standards applied during the site plan review process.
- (8) If a pathway or trail to the shore would cause erosion or damage to non-vegetated or vegetated sand areas, raised boardwalks or stairs may be required. Such a structure shall not be designed so as to cause any weakening or damage to the bluff or dune.
- (9) Stairways or lifts shall be designed so as to avoid placement on dune faces unless there is no other feasible alternative. Even then, approval may be conditioned on a design, color, and materials that blends the structure into the dune environment and the planting of obscuring vegetation where appropriate.
- (g) The Planning Commission may recommend alternatives of a proposed development to minimize adverse impacts anticipated if the development is approved and to assure compliance with all applicable state and local requirements.