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|  | WATER RESOURCES DIVISION POLICY AND PROCEDURE | | DEPARTMENT OF ENVIRONMENTAL QUALITY |
| | Original Effective Date: July 26, 2011 | | Category: <input type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input checked="" type="checkbox"/> External/Interpretive |
| | Revised Date: February 23, 2015 | | |
| Reformatted Date: | Subject: Part 353 Activities Not Constituting a Use | Program Name: Water Resources Program | Type: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Procedure <input type="checkbox"/> Policy and Procedure |
| | Number: WRD-008 | Page: 1 of 4 | |

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.

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.

AUTHORITY:

Part 353 of the NREPA.

STAKEHOLDER INVOLVEMENT:

The DEQ, Water Resources Division (WRD), public noticed draft policy WRD-008, Part 353 Activities Not Constituting a Use, March 25, 2013, through April 15, 2013. Comments on the draft document were invited through announcements in the DEQ Calendar and by e-mail to individuals and organizations that previously expressed an interest in the Critical Dunes Program. The policy was revised to address comments, as appropriate, and a responsiveness summary was prepared.

DEFINITIONS:

“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, 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 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.

Water Resources Division
POLICY AND PROCEDURE

Number: WRD-008

Subject: Part 353 Activities Not Constituting a Use

Permit not required

Page 2 of 4

POLICY:

The following developmental, silvicultural, or recreational activities generally do not significantly alter the physical characteristics of a critical dune area 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 flag pole, 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 critical dune areas. 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.

Water Resources Division
POLICY AND PROCEDURE

Number: WRD-008

Subject: Part 353 Activities Not Constituting a Use

Page 3 of 4

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.

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 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.

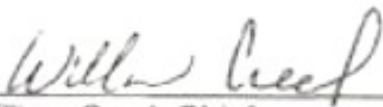
Water Resources Division
POLICY AND PROCEDURE

Number: WRD-008

Subject: Part 353 Activities Not Constituting a Use

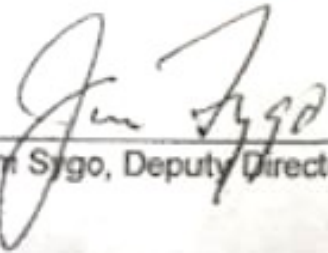
Page 4 of 4

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