

## **Critical Dune Area Special Exception Frequently Asked Questions Water Resources Division**

1. **What is a special exception?** When a proposed project cannot be permitted according to specific sections of the critical dune area statute, the applicant may submit a form and other information to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) indicating why the project should be permitted. This is called a request for a special exception; it is similar to a request for a variance submitted to a local zoning administrator. The applicant may choose to modify the project to comply with the statutory requirements instead of applying for a special exception.

Requesting a special exception requires a completed special exception application form, a fee in addition to the permit application fee, and supporting information submitted to the DEQ for review. The special exception application may be submitted with the permit application or when the DEQ has notified the applicant that the project cannot be permitted as proposed without a special exception. Applying for a special exception does not guarantee that EGLE will issue a permit for the project.

2. **How do I know I will need to apply for a special exception?** If the proposed project impacts slopes greater than a 1-foot vertical rise in a 3-foot horizontal plane, the applicant will be required to submit an application for special exception unless the impacts meet the conditions of the model zoning plan regarding driveways or accessibility measures. The special exception application fee is \$2,000. There are other proposed impacts that may require a special exception. They may be found in the model zoning plan or by contacting your local DEQ district office. Contact information for your local district office can be found at [Michigan.gov/WRD](http://Michigan.gov/WRD).
3. **Where can I find the model zoning plan?** The formal title of the critical dune area statute is Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; MCL 324.35301 *et seq.* You can find a copy of the critical dune area statute on EGLE's Critical Dunes Program Web site, [Michigan.gov/CriticalDunes](http://Michigan.gov/CriticalDunes), under the link for "Laws." The model zoning plan is in the critical dune area statute and includes sections MCL 324.35304 to 324.35309 and MCL 324.35311a to 324.35324. The sections cover permitted uses, prohibited uses, and the special exception process, among other things.
4. **How long will the process take?** Seeking a special exception may be part of the larger process of applying for a permit for a proposed use within a critical dune area. The permit process typically takes between 60 and 90 days. However, a decision concerning a permit application can take more or less time depending on a variety of factors, including: whether the applications for the permit and the special exception are



## FAQ for the Critical Dune Area Special Exception Application

complete and submitted at the same time; whether the local unit of government takes 60 days to comment on the application; how quickly the applicant provides any additional information EGLE needs; and if a public hearing is requested.

An applicant may request an extension of the permit processing time. However, the best way to expedite the permit process is to submit a complete permit application, including the application for a special exception if one is needed, and all necessary supporting information and materials well in advance of your project. EGLE offers a preapplication meeting process that may be helpful when preparing to submit an application. The preapplication meeting request form may be found online at [Michigan.gov/CriticalDunes](https://Michigan.gov/CriticalDunes) or [miwaters.deq.state.mi.us/](https://miwaters.deq.state.mi.us/).

5. **May I request a special exception from EGLE if my local unit of government will not grant me a variance?** EGLE may grant a special exception from the model zoning plan in the critical dune area statute only where it is administering the critical dune permit program. If your property is located in a local unit of government with a critical dune ordinance, you must obtain a variance for your project directly from the local unit of government.
6. **What is a practical difficulty?** The critical dune area statute does not define the term “practical difficulty.” However, a practical difficulty is generally understood to be a feature of the project site (the land) that makes it hard for the owner to comply with the dimensional requirements of the model zoning plan. For instance, a lot may be an unusual shape or size that makes it difficult to comply with the requirement to not impact steep slopes.
7. **How is a practical difficulty related to requesting a special exception?** A practical difficulty is a condition for seeking a special exception. In other words, the critical dune area statute allows a property owner to apply for a special exception from the dimensional requirements of the model zoning plan only if a practical difficulty will occur if the special exception is not granted. If the property owner can comply with the dimensional requirements in the model zoning plan, the owner cannot obtain a special exception from those requirements.
8. **How does an applicant inform EGLE about a practical difficulty in an application for a special exception?** The applicant must identify the conditions of the land that make it hard to comply with one or more of the dimensional criteria in the model zoning plan and specifically request relief from that section or sections of the law.
9. **Is information concerning a practical difficulty enough for EGLE to grant a special exception?** The special exception application and decision process will require the applicant to provide EGLE with additional information. For instance, the applicant must provide information concerning whether land is public or private, the impact to the health and safety of people if the special exception is granted or denied, and whether the project complies with other laws. The applicant may provide information regarding the

## FAQ for the Critical Dune Area Special Exception Application

impact of the proposed project on the diversity, quality, and function of critical dunes within the local unit of government.

10. **Where do I find out about other laws that may apply to my project?** The zoning administrator of the local unit of government will know the ordinances applicable to your parcel. It is important that you talk to the local officials to ensure your project meets all local ordinances. The local building inspector, local government official, your contractor, or your attorney may have a list of the permits needed or other laws that apply for your project. A preapplication meeting with local DEQ staff may be helpful in identifying additional permits or regulatory requirements administered by EGLE. The preapplication meeting does not waive the applicant's responsibility to determine and acquire all necessary local, state, and federal permits.
11. **What other information should I provide with the special exception application?** The application form gives the applicant the opportunity to provide additional information regarding their project that may better explain their request. Other information may include zoning information from the local unit of government, impacts on other regulated resources, proposed restabilization after construction, or conditions of neighboring properties.
12. **Does the local unit of government review the application?** Yes, the local unit of government has 60 days to provide comments to EGLE. To speed up the review process, applicants may contact the local unit of government to see if they have any additional questions and encourage the local unit of government to send their comments to EGLE as quickly as possible. If the local unit of government objects to the special exception, the critical dune area statute does not allow EGLE to approve the special exception.
13. **What is a public interest in land?** The public may have an interest in the impact on the conditions of the land a proposed use may have in a critical dune area. For example, a proposed project may impact a forested dune that provides important wildlife habitat or it may cause erosion of a dune that stabilizes and protects a larger area. The critical dune area statute requires examining the public's interest in a proposed use in connection with whether the land is public or private. The statute requires EGLE to examine whether a use will significantly damage the public interest in the land if there is a significant and unreasonable depletion or degradation of the diversity, quality, or functions of the critical dune areas within the local unit of government.

*\*This publication is intended for guidance only and may be impacted by changes in legislation, rules, policies, and procedures adopted after the date of publication. Although this publication makes every effort to teach users how to meet applicable compliance obligations, use of this publication does not constitute the rendering of legal advice.*