

**ARTICLE 15
FLOOD HAZARD AND
HIGH RISK EROSION (HRE) OVERLAY DISTRICT**

SECTION 15.1: Flood Hazard and High Risk Erosion (HRE) Overlay

15.1.1 Intent: The intent of this overlay district is to prevent the placement of structures in areas of high risk erosion and flood hazards consistent with Part 323 (Shorelands Protection and Management) of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), as amended. It is furthermore the intent of this section to:

- A. Establish a minimum setback from an eroding bluff which, based on the erosion studies prepared by the Department of Natural Resources pursuant to Part 323 (Shorelands Protection and Management) of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), as amended, is intended to provide a minimum of 30 years protection from shoreland erosion.
- B. Minimize the economic hardships which individuals and Port Sanilac may face in the case of unanticipated property loss due to severe erosion or flood hazards, and protect individuals from buying lands which are unsuited for intended purposes because of flood or erosion hazards.
- C. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or erosion to bluffs and banks of drains, creeks, rivers, or the Lake Huron shoreline.
- D. Require that the uses vulnerable to floods or erosion shall be protected against such flood or erosion damage at the time of initial construction, enlarging, altering or moving.
- E. Facilitate qualification for flood insurance under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended and regulated by the Federal Insurance Administration, Department of Housing and Urban Development.
- F. The standards and requirements in this section, and on the zoning map, are intended to further the purposes of Part 323 (Shorelands Protection and Management) of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), as amended..

15.1.2 Definitions:

- A. Bluffline:** The line which is the edge or crest of the elevated segment of the shoreline above the beach which normally has a precipitous front including steeply on the lakeward side. Where there is no precipitous front indicating the bluffline, the line of perennial vegetation may be considered the bluffline.
- B. High Risk Erosion Area:** An area designated as a high risk area due to shoreland erosion by the Michigan Department of Natural Resources pursuant to Part 323 (Shorelands Protection and Management) of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), as amended.
- C. Setback:** The distance required to obtain an open space between a property line, bluffline or other specified boundary and structures erected on the premises.
- D. Structure:** Anything fabricated, constructed or erected which requires fixation or placement in or on the ground or to another structure which is affixed or placed in or on the ground. The term shall include signs but shall exclude wire, stone, wooden and other fences.

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- E. Accessory or Appurtenant Structure:** A building or other structure, the use of which is incidental to that of the main building or use of the land. The structure will not have a permanent foundation and shall be constructed to be easily moved or removed. Accessory or appurtenant structures shall be less than 15 feet by 15 feet by 10 feet high and used for picnicking or storage of recreational or lawn equipment.
- F. Permanent or Principal Structure:** A residential, commercial, industrial, or institutional building, a mobile home, accessory and related building, septic systems, tile field, or other waste handling facility erected, installed or moved on a parcel of land.
- G. Moveable Structure:** A permanent structure which is determined to be moveable based on a review of the design and size of the structure, a review of the capability of the proposed structure to withstand normal moving stresses and a site review to determine whether the structure is accessible to moving equipment.
- H. Substandard Lot:** A lot of record or a lot which is described in a land contract or deed executed and delivered before the designation of high risk erosion area and which does not have adequate depth to provide the minimum required setback from the bluffline for a permanent structure. The term also means those lots which are legally created after the designation of a high risk erosion area, which have sufficient depth to meet setback requirements for permanent structures, but which subsequently become substandard due to erosion processes.

15.1.3 General Provisions:

- A. No lot shall hereafter be created, subdivided or otherwise established without sufficient depth to accommodate a principal structure in accord with the requirements of this section. Hereafter, all principal structures erected, and all structural alterations or relocations of existing principal structures shall be in accordance with the requirements of this section.
- B. Any substandard lot of record or substandard lot described in a land contract or deed executed or delivered prior to the adoption of this section shall only be developed if a variance is granted.
- C. Any lot or parcel which, in whole or part, falls within the area affected by this section shall be used for the erection, relocation or reconstruction of a principal structure, only upon receipt of a zoning permit from the zoning administrator.
- D. Accessory structures which can be easily and economically removed prior to erosion damage are exempted from the setback requirements for principal structures in this section, except that no accessory structures which are permanent in either construction or location may be placed in the high risk erosion area. To the fullest extent practical, permitted accessory structures which are placed in high risk erosion areas shall be removed prior to erosion damage.
- E. The lawful use of any principal structure existing at the time in which this section is adopted may continue in the same manner and to the same extent although the location of the principal structure does not conform with the provisions of this ordinance. A nonconforming principal structure shall not be repaired, restored, extended, enlarged, or removed except in accord with the requirements that follow:
1. Routine Repairs and maintenance work required to keep a nonconforming principal structure in sound condition are permitted. Remodeling of a nonconforming principal structure is permitted as long as the structure is neither enlarged nor extended in a nonconforming manner. A structure may be returned to its original condition without the authorization if damaged less than 25% of the structure's replacement cost.

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2. Except as provided in Section 15.1.3.E.1, the Zoning Board of Appeals shall not authorize restoration unless the board determines that the structure will be restored in compliance with the following standards:
 - a. An existing structure which is not in conformity with the setback requirements of a designated high risk erosion area shall not be altered, enlarged, or otherwise extended in a manner which increases its nonconformity. If a nonconforming structure deteriorates or becomes damaged, it may be restored to its condition before the deterioration or damage if the repair costs do not exceed 60% of the replacement value of the structure in any twelve (12) month period. If, in any twelve (12) month period, the cost of restoring the nonconforming structure is in excess of 60% of its replacement value, the requirements for new permanent structures shall apply.
 - b. The Zoning Board of Appeals may allow the restoration of structures when in compliance with the terms of this Section and when restoration would not violate the spirit and intent of this ordinance. Furthermore, as a condition for approval of restoration plans, the Zoning Board of Appeals may require:
 - i. Measures which will aid in stabilizing the bluff other than the construction of erosion control devices.
 - ii. The use of runoff or soil erosion control techniques to prevent any acceleration erosion which may occur during restoration of the structure.
 - iii. The relocation of a restored principal structure further back from the eroding bluff when the Zoning Board of Appeals determines that the structure is likely to suffer erosion damage within three years based on average annual recession rates calculated in the shoreland erosion studies conducted pursuant to Part 323 (Shorelands Protection and Management) of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), as amended.
 - iv. The lawful disposal of all debris resulting from the damage or from the restoration of a principal structure in a manner such that the debris poses no safety or health hazard.
 - v. The Zoning Board of Appeals may impose other conditions on the restoration of nonconforming principal structures, provided these conditions are consistent with the intent of this ordinance and consistent with the promotion of the public health, safety and welfare.
 - c. The Zoning Board of Appeals shall not authorize the enlargement or extension of any principal structure in a manner which does not conform with the setback or variance requirements of this ordinance.
 - d. The pre-catastrophe replacement cost of repairing damage to a nonconforming structure, excluding contents, damaged by erosion, flood, fire, or other means, shall be made on the basis of an appraisal by a qualified individual designated by the Zoning Board of Appeals. The cost for such determination shall be borne by the applicant.

15.1.4 Areas Affected:

- A. Flood Hazard Area:** Generally, these lands are those bordering on and adjacent to Leins Creek and Lake Huron. Copies of the Flood Hazard Area maps, as may be issued by the Federal Insurance Administration, shall be kept on file in the Village office for examination by interested parties.
- B. Shoreland (Coastal) Erosion Areas:** The boundaries of those stretches of shoreland affected by the high risk erosion overlay zone shall be consistent with the affected

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properties described in the U.S. Army Corps of Engineers (USACE) recommendations as from time to time amended.

- 1.** The northern boundary of the HRE zone is Cherry Street, as extended to the shore of Lake Huron. The southern Village limit (Goldman Street) defines the southern limit of the HRE zone.
- 2.** This area is shown on the official Village of Port Sanilac Zoning Map, which is part of this Ordinance. This area extends landward from the ordinary high water mark to the minimum setback line for principal structures. For the purpose of the high risk erosion overlay zone, the minimum setback requirement shall be measured landward from the bluffline and shall be construed as running parallel to the bluffline. In the event the bluffline recedes (moves landward), the setback line of the high risk erosion area shall also be construed as to have moved landward a distance equal to the bluffline recession.

15.1.5 Schedule of Regulations: Within the boundaries of the high risk erosion area established by this section, no principal structure shall be located between the ordinary high water mark and the line defining the minimum setback distance indicated on the table that follows.

Area A	55 feet	40 feet
Area B	95 feet	65 feet
Area C	70 feet	55 feet
Area D	65 feet	50 feet
Area E	50 feet	35 feet
Area F	60 feet	45 feet
Area G	65 feet	50 feet

15.1.6 Variances from the Setback Requirements:

- A. A reduction from the “Standard Setback Requirement from the Bluffline” to the “Minimum Setback Requirement” may be granted by the Zoning Board of Appeals upon showing of hardship or unusual circumstances.
- B. A variance from the “Minimum Setback Requirement” for principal structures on substandard lots of record or lots described in a deed or land contract may be granted by the Zoning Board of Appeals under the exceptional circumstances described below, but then only if the conditions hereafter are complied with:
 1. Established prior to the effective date of this ordinance, but which have inadequate depth to comply with the minimum setback for principal structures.
 2. Created in full compliance with this ordinance, but which at the time of application to establish a principal structure, lack sufficient depth because of natural erosion processes.
- C. Any nonconforming lot or legal conforming lot described in a deed or land contract which becomes substandard as a result of the amendatory ordinance establishing the high risk erosion overlay zone shall not be used for establishing a principal structure except if a variance is granted.
 1. A special exception may be granted by the Planning Commission to install a moveable structure on a substandard lot if all of the following provisions are complied with:

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- a. If a sanitary sewer is not used, the septic system, tile field, or other waste handling facility shall be located on the landward side of the moveable structure.
 - b. The moveable structure shall be located as far landward of the bluffline as local zoning restrictions allow.
 - c. The moveable structure shall be designed and constructed in accordance with proper engineering standards and building moving restrictions applicable to the subject area. Review and approval of the design shall be incorporated into the department permit process. All construction materials, including foundations, shall be removed or disposed of as part of the moving operation. Access to and from the structure shall be of sufficient width and acceptable grade to allow for moving of the structure.
- D. If a substandard lot does not have access to and from the structure site of sufficient width and acceptable grade to allow for a moveable structure, a special exception may be granted to utilize an erosion control device in place of a portion of the minimum setback requirement. The special exception shall be granted only if all of the following provisions are complied with:
1. If a sanitary sewer is not used, the septic system, tile field, or other waste handling facility shall be located on the landward side of the permanent structure.
 2. The permanent structure shall be located as far landward of the bluffline as local zoning restrictions allow.
 3. The erosion control device shall be designed to meet or exceed proper engineering standards for the Great Lakes, and a professional engineer shall certify that the device has been designed and will be constructed in accordance with these standards.
- E. Modification of the Minimum Setback Requirement. A person who can document, with acceptable engineering studies, an annual average recession rate which differs from the Michigan Department of Natural Resources (MDNR) recession rate data may be granted a modification of the setback requirement for principal structures by the Zoning Board of Appeals. Prior to any modification of the minimum setback requirement, the applicant's engineering studies shall be sent to the MDNR, who shall report to the Zoning Board of Appeals on the accuracy of the applicant's studies. The Zoning Board of Appeals shall only act upon requests for modification of the setback requirement after a determination has been made on the validity of the applicant's data and only after the Zoning Board of Appeals has determined that such modification would not violate the spirit and intent of this ordinance.

SECTION 15.2: DISCLAIMER OF LIABILITY

15.2.1 Disclaimer of Liability: The provisions of this Ordinance are considered the "minimum" necessary for reducing erosion hazards and property loss for a "30-year period" based upon current engineering and scientific methods of study. Faster or slower rates of erosion occur. Erosion rates may be increased by natural causes such as high lake levels or major storms or man-made causes such as the construction of erosion control devices or by increasing the amount of runoff from the land. Placing a structure landward of the high-risk erosion is not a guarantee or warranty of safety from erosion damage. Individual property owners concerned with erosion hazards are encouraged to consult with local building officials and personnel of the Department of Natural Resources to arrive at site design plans which may use a greater setback to maximize protection from erosion damage.